

Who owns the rights to a character — the author, illustrator or publisher?

Q: I am a writer and publisher. I've hired an illustrator and I would like to know what rights she and I have with regard to the characters. She has been told that she has the rights to the characters and can do whatever she wishes with them. She also feels that she should be entitled to any royalties I receive on the books, or on other products that evolve using the characters. We signed an agreement that she will be paid a flat fee for her work, and she agreed. How can I know if the price is fair, or should be different?

According to Kendra Marcus, owner of Book Stop Literary Agency, "Ownership of characters and images of those characters should be negotiated in advance and outlined in a written contract or agreement between the publisher (buyer) and illustrator (seller). A typical publisher agreement for a flat fee (outright sale) would include a grant of rights for a specific term (Illustrator hereby grants, transfers and assigns all rights, title and interest in and to the illustrations to Publisher, including without limitation, all copyright rights, worldwide and in perpetuity.) It would also detail how the Publisher could use those rights (e.g. Publisher shall be entitled but not required, to publish and distribute the illustrations or any parts thereof in any manner it chooses, to make any and all modifications to the illustrations that it chooses, and to include the illustration in any publication, in all forms of media now known or hereafter developed, without any further payment to the Illustrator than is provided for herein.) In addition it would state how much would be paid for those rights (e.g. In full consideration of all rights granted above the publisher agrees to pay the illustrator a fee of XXX...). The price for such a sale is completely negotiable and should be calculated keeping in mind how extensively the images will be used (number of copies expected to be sold) and for what period of time."

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