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Berrett-Koehler Publishers, Inc.
235 Montgomery Street, Suite 650
San Francisco, CA 94104-2916

2/20/08

To: Prospective Berrett-Koehler Authors

Re: Background on the Berrett-Koehler Publication Agreement

Fr: Steven Piersanti, President

There is more to the Berrett-Koehler publishing agreement than at first meets the eye. In keeping with the intention stated in our original business plan to "rethink the concept of the publishing company and create a new kind of publishing business," we have attempted to rethink the publication agreement between author and publisher. The publishing agreement defines, structures, and sets the tone for many aspects of the publishing relationship and business. Therefore, we have attempted to operationalize in the agreement our guiding philosophy that publications belong to the authors who create them, not to the publisher, and that our role is to be steward rather than owner of the publications. The resulting agreement, in the words of one observer, "creates incentives for both parties to contribute and do well, whereas most contracts are contingencies for when things go wrong, legal protection against foul-ups."

Our main objective is to create a more balanced and fair agreement -- one that is more of an equal partnership -- between the author and publisher. In my view, most publishing agreements today are grossly one-sided: the author has few rights and many obligations, while the publisher has many rights and few obligations. In attempting to remedy this inequity, we have tried to incorporate the requests that various authors have given to us, and we have inserted key provisions that are radical departures from what I have seen in any other publishing company's agreement. We are of course fully mindful of the need for the publisher to run a financially sound business (and we have taken the precaution of having several intellectual property attorneys as well as authors and agents review the agreement). But we believe that it is possible to balance the author's and publisher's needs and, indeed, that the changes we have made will in the long run result in a more sound and profitable business.

Among the distinctive provisions of the publication agreement are:

1. Perhaps the most radical provision is in Paragraph 13, wherein the Author is given the right to terminate the agreement "if, for any reason, the Author is not satisfied, in the Author's sole judgment, with any aspect of the relationship with the Publisher or with the Publisher's

performance in any aspect of publishing and selling the Work." Our motivation in doing what one attorney told me "is going to blow away any attorney who looks at the agreement" is partly a sense that it is about time that publishers started doing what some of the best non-publishing companies have been doing for years: giving customers (in this case, authors) the right to terminate a transaction or relationship if the customers, in their own sole judgment, are not completely satisfied. But our bigger motivation is simply a personal sense that the current norm -- wherein authors sign away the rights to their creations for life with little possibility of getting back their rights -- is not fair, particularly in this age when the people and even the companies with whom the authors originally signed their agreements are frequently no longer around several years later. Although I am not aware of any other publishing company offering such a right, I actually do not think it is too high of a risk, partly because there is a notice provision that will allow Berrett-Koehler to recoup some of its investment (in the event that an author does exercise this right) and partly because I believe the risk will be balanced by the competitive edge gained from the publisher's imperative to maintain a high level of performance to satisfy and keep authors instead of being able to fall back on contractual handcuffs.

2. In the spirit of giving authors more control over their creations, Paragraph 10 gives authors much more involvement than is normally the case in deciding the title of the book, the design of the cover and interior of the book, and other publishing details. This is something that many authors have indicated to us is very important to them. It is a direct departure from the common contractual language that allows publishers to impose a title and cover on a book that the authors don't want.

3. Similarly, the copyright is held in the author's name (not the publisher's name, as many publishers do).

4. The discounts for authors' purchase of copies of their books are much better than the author discounts in most publishers' publication agreements. And, unlike many publishers' agreements, there is no restriction on the authors' ability to sell copies themselves of their books to their clients, customers, or others.

5. We have eliminated the "bait and switch" clauses that are the stock of most agreements with regard to royalties. Authors think that they are getting one royalty, but when they read the fine print, they discover that the royalty rates are reduced by one third, one half, or even two thirds for many types of sales, including direct mail sales, advertising-generated sales, foreign sales, sales at a 50% or greater discount (which would include many or most wholesaler sales and special sales), and other categories of sales. Indeed, in many agreements, the only sales that are at the "regular" royalty rate are bookstore sales. A quite common provision is the following, specifying the "fine print" royalties of one of the major publishing houses: "5% for copies of any edition sold through the medium of mail order, coupon, space, radio, or television advertising, direct by mail circularization, or any other direct to consumer mail order methods; 10% for copies of any edition of the Work sold for export, or outside the United States, or at less than the established wholesale price."

6. The royalty rates go up to 20%, which is higher than many other publishing agreements go.

7. The number of free copies given to authors is much higher than the publishing industry norm.

8. The author does not pay for preparing the book's index, unlike many publication agreements.

9. The author does not pay for proofreading, unlike some agreements.

10. The common clause that the publisher will have the right to the author's next book or books has been deleted, in the view that the publisher should earn the right to publish the author's next book and the author should be free to make that choice rather than being locked in by the previous book's contract.

11. Also deleted is the competing works clause, which commonly states that the author will not furnish to any other publisher any work on the same subject that in the opinion of the publisher would conflict with the sale of the work. These clauses are often objectionable to authors and agents because they are so sweeping and intimidating.

12. Authors and agents typically ask for a "Reversion of Rights to Author" clause, and one that is favorable to the author is included, which includes frequently requested provisions to define when books are out of print and to return rights to the author.

13. Also included is another clause that authors and agents often request: "The Publisher acknowledges that the general ideas and concepts contained in the Work may be used by the Author in the normal course of the Author's day-to-day business, and the use of such general ideas and concepts in the Author's day-to-day business will not be deemed a violation of the Agreement."

13. Various other clauses and changes have been inserted that agents typically bargain for, to protect authors.

14. We also attempted to reduce the amount of jargon and to make the agreement easier to read and understand throughout.

Of course, you will also find a number of provisions that are in the publisher's favor in helping to run a sound and profitable business. Our major emphases in setting up Berrett-Koehler, besides the partnership and equity themes I have described above, are building into the basic business design (a) maximum flexibility and responsiveness; (b) strong, deeply ingrained, well-thought-out cash flow; (c) high value-added in the editing and production of publications; (d) aggressive, multi-channel sales and marketing strategies; and (e) low overhead and a very sound cost structure. All of these major emphases have been built into the publication agreement.

I welcome any ideas that you and others have about how the agreement can be further improved. I also welcome questions about any clauses in the agreement that you find unclear.