

AGENTS 101

The Association of Authors' Representatives (<http://www.aar-online.org>) is a good place to start looking for a literary agent. The AAR has over 350 members, about whom authors may perform background research using a database on the organization's website. To be granted AAR membership, applying agents must demonstrate a solid sales record and provide recommendations from two current AAR members. Membership necessitates adherence to this strict canon of ethics:

- 1) The members of the Association of Authors' Representatives, Inc. are committed to the highest standard of conduct in the performance of their professional activities. While affirming the necessity and desirability of maintaining their full individuality and freedom of action, the members pledge themselves to loyal service to their clients' business and artistic needs, and will allow no conflicts of interest that would interfere with such service. They pledge their support to the Association itself and to the principles of honorable coexistence, directness, and honesty in their relationships with their co-members. They undertake never to mislead, deceive, dupe, defraud, or victimize their clients, other members of the Association, the general public, or any person with whom they do business as a member of the Association.
- 2) Members shall take responsible measures to protect the security and integrity of clients' funds. Members must maintain separate bank accounts for money due their clients so that there is no commingling of clients' and members' funds. Members shall deposit funds received on behalf of clients promptly upon receipt, and shall make payments of domestic earnings due clients promptly, but in no event later than ten business days after clearance. Revenues from foreign rights over \$50 shall be paid to clients within ten business days after clearance. Sums under \$50 shall be paid within a reasonable time of clearance. However, on stock and similar rights, statements of royalties and payments shall be made not later than the month following the member's receipt, each statement and payment to cover all royalties received to the 25th day of the previous calendar month. Payments for amateur rights shall be made not less frequently than every six months. A member's books of account must be open to the client at all times with respect to transactions concerning the client. If a member receives in writing a claim to funds otherwise due to a client, the member shall immediately so advise the client in writing. If the member determines that the claim is serious, and that the funds should not be remitted to the client because of the claim, the member shall proceed in accordance with the following: For a period not to exceed ninety days, the member may deposit the funds in question into a segregated interest-bearing account pending possible resolution of the dispute. No later than the expiration of that ninety-day period, if the dispute remains unresolved and the claimants do not otherwise agree with respect to the disposition of the disputed funds, the member shall take such steps as may be necessary to deposit the funds with a court of competent jurisdiction, with appropriate notice to the claimants, so that the claimants will have an opportunity to present to that court their claims to those funds. Upon so depositing the funds, the member will have complied with the member's obligations under this Canon of Ethics.
- 3) In addition to the compensation for agency services that is agreed upon between a member and a client, a member may, subject to the approval of the client, pass along charges incurred by the member on the client's behalf, such as copyright fees, manuscript retyping, photocopies, copies of books for use in the sale of other rights, long distance calls, special messenger fees, etc. Such charges shall be made only if the client has agreed to reimburse such expenses.

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4) A member shall keep each client apprised of matters entrusted to the member and shall promptly furnish such information as the client may reasonably request.

5) Members shall not represent both buyer and seller in the same transaction. Except as provided in the next sentence, a member who represents a client in the grant of rights in any property owned or controlled by the client may not accept any compensation or other payment from the acquirer of such rights, including but not limited to so-called “packaging fees,” it being understood that the member’s compensation, if any, shall be derived solely from the client. Notwithstanding the foregoing, a member may accept (or participate in) a so-called “packaging fee” paid by an acquirer of television rights to a property owned or controlled by a client if the member: a) fully discloses to the client at the earliest practical time the possibility that the member may be offered such a “packaging fee” which the member may choose to accept; b) delivers to the clients at such time a copy of the Association’s statement regarding packaging and packaging fees; and c) offers the client at such time the opportunity to arrange for other representation in the transaction. In no event shall the member accept (or participate in) both a packaging fee and compensation from the client with respect to the transaction. For transactions subject to Writers Guild of America (WGA) jurisdiction, the regulations of the WGA shall take precedence over the requirements of this paragraph.

6) Members may not receive a secret profit in connection with any transaction involving a client. If such profit is received, the member must promptly pay over the entire amount to the client. Members may not solicit or accept any payment or other thing of value in connection with their referral of any author to any third party for any purpose, provided that the foregoing does not apply to arrangements made with a third party in connection with the disposition of rights in the work of a client of the member.

7) Members shall treat their clients’ financial affairs as private and confidential, except for information customarily disclosed to interested parties as part of the process of placing rights, as required by law, or, if agreed with the client, for other purposes.

8) The AAR believes that the practice of literary agents charging clients or potential clients for reading and evaluating literary works (including outlines, proposals, and partial or complete manuscripts) is subject to serious abuse that reflects adversely on our profession. For that reason, members may not charge clients or potential clients for reading and evaluating literary works and may not benefit, directly or indirectly, from the charging for such services by any other person or entity. The term “charge” in the previous sentence includes any request for payment other than to cover the actual cost of returning materials. Members who participate in conferences or other events where writers are charged separately for individual consultations with agents in which the writer’s work is read or evaluated may not provide such consultations. The foregoing shall not prevent members from accepting honoraria and/or reimbursement of expenses for participating in such conferences or other events.

“Frequently Asked Questions,” as listed on the Association of Authors’ Representatives website

What can an agent do for you?

Literary and dramatic agents are engaged in the marketing of rights to literary properties.

They serve as their clients’ representatives with respect to the clients’ literary work. They review their clients’ work and advise them about its quality and potential marketability, and the possible strategy for securing its publication. An agent’s relationship to a client is fiduciary and includes fiscal responsibility for funds collected on the client’s behalf.

Your Agent May:

- Offer editorial guidance.
- Establish contacts for you with firms and persons who are acquiring rights to literary and/or dramatic material.
- Advise you about current trends conditions, practices, and contractual terms.
- Market your literary material and rights therein. Negotiate and review licensing agreements.
- Review royalty statements.
- Monitor licensees’ marketing of your work.

What does the Author/Agent relationship consist of?

The specifics of the relationship between an author and agent will vary depending on the nature of the work in question, the author’s needs, and the agent’s policies and practices. At a minimum, the relationship should include:

- An understanding as to what works of the author-and what rights in those works-are covered by the relationship.
- Agreement as to the compensation the agent is to receive for the agent’s services.
- Agreement as to what expenses of the agent are to be reimbursed by the author, and how that reimbursement is to be made.

How can you find an agent?

Literary agents are listed in many sources, including Literary Market Place, a directory of the publishing industry, which is available at most libraries. You may also ask for recommendations from editors, writing instructors, or fellow writers.

Most agents will not accept queries by telephone, fax or E-mail. To contact an agent, write a brief letter describing your work and listing your prior publications (if any). You must include a stamped self-addressed envelope for reply. You may approach several agents at the same time. Submit material only when an agent asks you to do so, and agents expect you to inform them when you are submitting to more than one agent simultaneously. Your materials should be

unbound, neatly typed and double-spaced. Be sure to include a stamped, self-addressed mailer for return of your manuscript. Always retain a copy of your manuscript.

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Once you have found an agent who wants to represent you, you should feel free to discuss such matters as the nature and scope of the agent's responsibilities, the agent's compensation, the expenses for which the agent will be reimbursed, etc. and to inquire about the agency's size, client list and areas of specialization.

The AAR believes that the practice of literary agents charging clients or potential clients for reading and evaluating literary works (including outlines, proposals, and partial or complete manuscripts) is subject to serious abuse that reflects adversely on our profession. For that reason, the AAR prohibits its members from charging reading fees.

What should you do if you find an agent?

The following is a suggested list of topics for authors to discuss with literary agents who have offered to represent them:

- Are you a member of the Association of Authors' Representatives?
- How long have you been in business as an agent?
- Do you have specialists at your agency who handle movie and television rights? Foreign rights?
- Do you have subagents or corresponding agents in Hollywood and overseas?
- Who in your agency will actually be handling my work? Will the other staff members be familiar with my work and the status of my business at your agency? Will you oversee or at least keep me apprised of the work that your agency is doing on my behalf?
- Do you issue an agent-author agreement? May I review the language of the agency clause that appears in contracts you negotiate for your clients?
- How do you keep your clients informed of your activities on their behalf?
- Do you consult with your clients on any and all offers?
- What are your commission rates? What are your procedures and time-frames for processing and disbursing client funds? Do you keep different bank accounts separating author funds from agency revenue? What are your policies about charging clients for expenses incurred by your agency?
- When you issue 1099 tax forms at the end of each year, do you also furnish clients upon request with a detailed account of their financial activity, such as gross income, commissions and other deductions, and net income, for the past year?
- In the event of your death or disability, what provisions exist for my continued representation?
- If we should part company, what is your policy about handling any unsold subsidiary rights in my work?

(Please bear in mind that most agents are NOT going to be willing to spend the time answering these questions unless they have already read your material and wish to represent you.)