How about 'kill fees' in your next contract?

In the magazine business, "kill fees" are routine in most writer contracts with major publishers.

If a magazine accepts an article but decides not run it, whatever the reason, the writer is given a kill fee.

The fee can be substantial. My friend Janice Hopkins Tanne, of the American Society of Journalists and Authors, tells me kill fees typically run 10 to 50 percent of the agreed-upon fee for the article had it been published. Sometimes they are 100 percent.

That's as it should be.

Imagine a writer who has put two months, perhaps more, into a major article, then waits two years for it to appear, unable in the meantime to market it elsewhere, only for it to be killed.

Of course, once an article is killed, the writer can trot it across the street to another publisher and keep the kill fee.

Is it time for textbook contracts to include a kill fee?

You have read horror stories about publishers canceling major textbook projects at the 11th hour and saying to the authors: "So sorry."

That's what happened when Macmillan/McGraw-Hill School Publishing canceled Merrill Math. The seven co-authors, all TAA members, had to go to court for compensation for their work.

The result, in March, was the announcement of a \$3.2 million settlement — the biggest in book publishing history.

The authors deserved every penny.

They had spent months revising their successful K-8 math series. Their editors had applauded their drafts for the revision. The final manuscript was delivered on time. Then, wham, no warning, they were told the project was canned.

It turned out that the publisher, two or three months earlier, had made the decision to push another series and didn't want *Merrill Math* as an in-house competitor. But nobody ever had the courtesy to tell the authors, who continued slaving away to make deadlines, naively assuming everything was on track.

Over the past eight years, several similar cases, all involving el-hi projects, have gone to court. To my knowledge, authors have pre-

EDITOR'S NOTEBOOK



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BY JOHN VIVIAN

vailed in every case that's wended its expensive way through the judicial system.

Kill fees would preclude the need for costly, frustrating litigation. Such fees could also save embarrassment for publishers that cancel a project.

Here's how it could work:

When a publisher and author sign a contract, they agree that the publisher will pay the author a fee if the publisher decides to call off the project.

How much should a kill fee be?

There is no magic number. Clearly, the fee should compensate an author for the time that went into a project. The fee also should cover what the author anticipated would be the royalty income for the life of the book, certainly through at least one edition.

The rights to the project should revert immediately to an author if a project is scuttled.

Besides a kill fee, contracts should include a provision for the publisher to further compensate the author if the publisher wants to keep a book off the market and if the author agrees.

In a case like Merrill Math, the publisher could have saved hundreds of thousands of dollars in the legal fees that went into fighting the suit had there been a kill fee in the contract with the authors.

And there would not have been the embarrassment of the public disclosures about how shabbily the authors had been treated.

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