

**TACKLING THE UNTHINKABLE:
BACKLIST RIGHTS CLEARANCE AND
DIGITIZATION**

AAUP 2012 ANNUAL MEETING

HANDOUTS

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December 9, 2011

Dear,

This letter constitutes an addendum to the publishing agreement fully-executed on [insert date] with the University of Illinois Press to publish, [insert title].

We are pleased to inform you the University of Illinois Press is beginning to distribute our titles electronically. As we continue to expand our relationship with e-book vendors, including those with sales to libraries and to individual consumers, we wish to amend your publishing agreement to conform to our current e-book royalty rate.

Though our current contract conveys e-book rights to us, it does not specify royalty terms for e-book sales. We are able to offer you the same terms for e-books as we offer for clothbound books, [insert royalty percentage] of the net amount we receive from selling your book as an e-book.

Please acknowledge your agreement to this addendum by signing both copies of this letter, retaining one for your records, and returning the other to me.

All other terms of the original agreement remain the same. We hope you are as enthusiastic about these new digital opportunities as we are and we look forward to advancing our relationship into the digital realm.

Respectfully,

Signature:

Willis G. Regier

Director

THE UNIVERSITY OF ILLINOIS PRESS

Date:

wregier@uillinois.edu

Author & Book Title

1. Does the grant of rights (usually found under Clause 8) in main contract between UIP and the author/publisher include the phrase, **“The XXX grants and assigns exclusively to the Publisher all rights in the Work...throughout the World in all forms, languages, and media now known or hereafter developed”**? (a contract which does not include this language or restricts the rights to print only, paperback or hardcover only, no electronic editions, includes specific time limits that don't renew, etc. cannot be approved for e-book)

____ (if N is checked, there is no need to check anything further)
 Y N

2. Does the contract restrict distribution/territory rights? If yes, indicate restrictions. (usually Clause 8, Grant of Rights)

____ ____ _____
 Y N Restrictions

3. Does the contract include a royalty for ebooks already? (this can usually be found in Clause 15 of the author contract under Royalties or check the file to see if the author has signed a royalty addendum)

____ ____
 Y N

Third party permissions (including permissions obtained for jacket/cover art)

4. Check third party permissions granted for all text, photos, illustrations, etc. Read each permission carefully, ensuring that no permission specifies “print only” or “no electronic or digital publishing/editions/use.” Permissions that indicate “one-time use only,” “one edition only,” or “for this book only” are okay. Please note any permission that places limits or restrictions on print run, format, time period, or distribution, etc. or states “no subsequent use”).
5. Flag each potentially problematic permission or contract with a neon post-it note. Place the post-it note at the bottom of the page (so the bottom half is

**FIRST: SAMPLE CONTRACT AMENDMENT TO AUTHORIZE DIGITAL EDITIONS;
INCLUDES AUTHOR PAYMENTS**

Sample #1

Date

Author
Address

Dear Professor ABC:

This letter constitutes an amendment to the publishing agreement fully-executed on (DATE) with the (YOUR) Press to publish (TITLE).

The Press continues to expand its relationships with e-book vendors, including those with sales to libraries and to individual consumers, such as the Amazon Kindle. Sales through these channels have grown substantially. In order to take advantage of these e-book opportunities, we wish to amend your publishing agreement so that we can fully exercise digital/electronic rights.

You will receive your share of royalties on electronic versions of your book as follows:

[If you want to pay at different rates for sales of individual units and aggregated uses:]

8.1.3 On electronic editions sold as a single unit: XX% based on the net sales

8.2.1 For licensed electronic access rights, XX% of net receipts of any payment ("Net receipts" shall mean any payment that Publisher actually receives in excess of \$50.00 after all manufacturing costs, commissions, foreign taxes, and other charges have been deducted).

[If you want to set a single rate for both sales of individual units and aggregated uses:]

Digital editions and databases. The Press agrees to pay the Author (XX)% of the net proceeds derived from selling and/or licensing digital/electronic rights in the Work.

All other terms of the original agreement remain the same.

If you are in agreement with these terms, please sign both copies of this letter and return one copy to me in the enclosed envelope. (We also request that you sign and return the enclosed W-9 tax form which will complete our records.) Once countersigned, this letter shall serve as an amendment to our agreement.

Sincerely,
Director

AGREED TO:

DATE: _____

SSN: _____

cc: Rights Manager, Accounting Manager

Sample #2

E-Addendum

ADDENDUM TO (YOUR) UNIVERSITY PRESS PUBLICATION CONTRACT

FOR: TITLE OF BOOK

- 1. If the contract refers to "book publishing rights," these rights shall henceforth be understood by all parties to include publishing rights to the work in all print, electronic, and any other media formats.*
- 2. In addition to the royalties named in the contract for printed (casebound and/or paperback) editions, the Publisher agrees to pay the Author, during the continuance of the Agreement, royalties on all electronic edition at the same rate ...(deleted specifics on how this is calculated).*

Sample #3 (sent with royalty statements, which is a great idea!)

[Date]

Re: [title] by [author]

Dear Royalty Report Recipient:

We are pleased to inform you that we are beginning to distribute (YOUR) Press titles electronically.

Since this electronic version is a new format for the above book and thus a potentially new source of royalty income for you, we need to create an addendum to the original contract. If you are contracted to receive royalties, we would like to offer you our standard cloth royalty for this electronic version: XX percent of net sales beginning with the first copy sold. If not, we want to inform you of this opportunity for your book to expand its range.

If this is agreeable to you, please sign and date the bottom of this letter and return it to me in the enclosed envelope. We will then add your book to our list of electronic titles. Please note that your rights will be protected in this electronic format, just as they are in the printed edition, and that the electronic version will retain the intellectual integrity of its printed companion.

If you have any questions, please get in touch with me.

Very best wishes,

[name]
Director
[e-mail]

Author/Estate Signature Date

Sample #4:

For our contracts we send a simple addendum that states: "On copies of the entire version of the Work published in an online, digital, or other electronic format, the royalty shall be: XX% net income"

Sample #5:

"Royalties paid to the Author on all sales of any electronic versions of the Author's Work sold by the Publisher, whether (a) directly over the Publisher's own website or through another server owned or controlled by the Publisher, or (b) indirectly through a licensing arrangement for distribution and sales of the electronic versions of the work by any outside agent, will be calculated as follows: XXX percent (XXX%) of actual net sales proceeds will be paid to the Author on all electronic copies or partial copies sold."

Sample #6:

ADDENDUM TO PUBLISHING AGREEMENT

TITLE: *The Art of Selling Ebooks*

I agree to this addendum, which replaces the first paragraph of Section C. ("Royalties") in the fixed contract with the following paragraph:

- C. The manuscript will be published at the Publisher's expense. (YOUR) Press will pay the X% of net sales (sales at normal discount, less returns and allowances) for all editions in all media except for electronic book sales and licenses. (YOUR) Press will pay the Author XX% of net sales for all electronic sales and licenses of electronic books. Royalty to be paid after 300 copies of the printed edition of the work have been sold.

Author _____ Date _____

Sample #7:

30 July 2009

Professor XXXX
312 Main Street
XXXXXX, XX XXXXX

Dear Professor XXXX:

I'm sure you are aware of, and may even be following, the wave of publicity around e-books. Amazon's Kindle and the Barnes & Noble Nook are just two examples of the technology individuals now have at their disposal for reading digital content. And while e-book sales still account for less than 1% of total book sales revenue in the U.S, the recent success of Kindle and the impending move by Google into the e-book market suggest that e-books are here to stay. Meanwhile, libraries are shifting more of their collections, including monographs, into electronic form—a development that will surely have a significant impact on university presses.

With this in mind, we at (YOUR) University Press are actively pursuing a number of options for making our books available in electronic form. Our primary focus at the moment is on reaching the academic market through sales to libraries, but we are pursuing opportunities for retail sales as well. Your book, XXXXXXX, is one that we've identified as a possible candidate for sale as an e-book—assuming that there are no rights restrictions associated with illustrations or previously published materials.

In order to take advantage of these e-book opportunities, we wish to amend our publishing agreement with you to include an e-book royalty rate. In Clause 4 of your agreement (“ROYALTIES”) we propose adding a new paragraph to read:

The Publisher agrees to pay the Author a royalty of *XX percent* of its net proceeds on the sale of any digital edition, wherever the sale occurs. If the digital edition is packaged with other digital editions published or licensed by the Publisher, the Publisher will allocate to the work that portion of the total proceeds received that is equal to the proportion the work bears to the Publisher's content in the entire product, and apply the *XX percent* royalty rate.

All other terms of the original agreement remain the same.

If you are in agreement with these terms, please sign both copies of this letter and return one copy to me. Once countersigned, this letter shall serve as an amendment to our publishing agreement. If you have any questions, please feel free to give me a call at (XXX) XXX-XXXX.

Yours sincerely,

Director

AGREED AND ACCEPTED:

XXX XXXX Date

Sample #8:

Dear Dr. Author,

You are probably aware that many publishers, including (YOUR PRESS), are actively exploring opportunities to more widely disseminate scholarship in the digital realm. These range from publication of complete books in various electronic formats to participation in electronic archival services and online libraries. We have already begun to include some of our titles in such programs as NetLibrary, ebrary, Questia, and the ACLS e-book project. We're working with various online vendors and search engines to make our books more "discoverable" on the internet, and we are currently making a major investment in preparing more of our books for internet search and digital sale.

Many of the electronic publishing models we intend to pursue are "e-collections" or "e-archives," where your work would be included in an online library. As in a traditional library, your book would be part of a collection of thousands of other works.

Regardless of the model or the party with whom we are contracting, there are certain principles we consider to be important. We look for state of the art copyright and security standards. All of our arrangements will continue to be non-exclusive to ensure multiple opportunities to distribute works through as many channels and to as many customers as possible. And we believe in limited-term licenses so that we will have the flexibility to change course with experience.

Our contract with you includes a grant of the digital rights to your work to (YOUR) University Press. However, since the contract does not specify a royalty to be paid on digital sales and licenses, we are pleased to be able to offer you XX% of the net amount we receive on these sales and licenses, regardless of the form they take. To formalize this arrangement, we have sent two copies of this contract amendment. We would appreciate your signature on both copies of this amendment, and ask you to return one copy in the enclosed self-addressed stamped envelope.

If you have any questions, please feel free to contact me. We hope that you are as enthusiastic about new digital opportunities as we are and we look forward to continuing our fruitful relationship.

Sincerely,

AGREED:

Director

Author

Date _____

Sample #9:

Date

Author

Author address

Dear Professor Author:

Greetings from (YOUR) University Press. I hope you are well.

As you know, the press strives to provide authors with the best possible exposure for their books. Many publishers are embracing digital publishing strategies to give books an even better reach, and we'd like to make you aware of our efforts on this front.

The press has established partnerships with companies, such as Questia, NetLibrary, and ebrary, who serve academic libraries and customers by making book content available through subscription services. Going forward, we also hope to make your book available through portable devices such as Amazon's Kindle and other ebook readers.

In order to give your book even greater visibility, we plan to include *Book Title* in our digital initiatives. While the grant of rights in your agreement allows for the publication of your book in "all forms and all languages," we want to confirm with you that we can fully exercise electronic rights. You will receive your share of royalties on electronic versions of your book as follows:

1. On Net Receipts for electronic access to the Work and/or publication of the Work in electronic form, and any subsequent editions of the Work if revised by AUTHOR in electronic forms, the following royalty rates shall apply: XX% (XX percent) on net income received by the Publisher for electronic access; XX% (XX percent) on net income received by the Publisher for units sold.

In lieu of a formal contract addendum, we ask that you sign *both* copies of this letter, and return one to the press no later than (date). If you have any questions, please don't hesitate to contact my colleague (name), our intellectual property manager. He/she can be reached at (phone number) or (email).

We look forward to continued success with your book and wish you all the best.

For (YOUR) University Press

Director

Date _____

Accepted and Approved:

Author Signature

Date _____

Sample#10:

[date]

[author]

[address]

[address]

Dear Dr. [author]:

I am writing to request your consideration of an amendment to the royalty provisions contained in your publishing agreement dated [insert date] for your book, [insert book title up to thirty characters], to address sales of an ebook edition.

The accelerated and ever-escalating impact of the digital revolution upon scholarly publishing could not have been anticipated, even five years ago. For university presses, such impact is nowhere more concrete than in the increasing preference of research libraries, our principal customers, for digital content over print. A recent Library Journal poll estimates that 94% of research libraries offer ebooks to patrons. Most researchers will know that this shift took place for journals a few years ago; and while scholars still appreciate the print journal, most of their research occurs online or via a library's database aggregation. The transition in journals publishing from print to digital transpired over the course of several years, while publishers scrambled to meet the challenges of creating new technological infrastructures.

With journals having led the way, the transition from print to digital delivery for books has exploded. The technological challenges have been met, and, as researchers, educators, and students realized the advantages of having 24x7 access via new technologies, publishers have been striving to meet this demand.

Research libraries have clamored for ebooks. An entirely new publishing vocabulary has emerged. Ebooks, tablets, iPads, ePub files, xml, html5, Kindle, Nook, Droid, iPhone, and Google Editions, once geekspeak, have entered our vernacular. Publishers in general, and not-for-profit university presses in particular, face daunting practical, technological, financial, and legal challenges in responding to the overwhelming demand for ebooks. The variegated legal challenges we face, in particular, prompt this letter. Below is a taxonomy of the legal challenges that relate to the broad range of Pennsylvania State University Press authors. As an author, your agreement with the Press likely falls into one of these categories.

- Contracts without specific royalty terms for digital or ebooks. While our contracts written prior to the digital revolution typically "assign exclusively to the Publisher all rights in the work with the full copyright therein, including the right to publish and sell it throughout the world in all forms, languages, and media now or hereafter known or developed," these same contracts rarely spell out the royalty payment terms for any "media now or hereafter known or developed." Thus, many titles have no royalty clause in their contracts for ebooks.
- Contracts with royalty terms for digital or ebooks untenable for publishers. Some of our early contracts include ebook royalty rates, but they imagine ebooks as an incidental or secondary source of revenue. Thus, when ebook royalty payments were first imagined by publishers, they were frequently considered an insignificant portion of sales. Hence publishers, including the Penn State University Press, frequently offered inflated royalty rates of anywhere from 15% to 50%. We're finding that paying such high royalty rates is not feasible for any publisher today.
- Contracts whose royalty for digital or ebooks fall under "subsidiary rights." "Subsidiary" rights are rights secondary to a book's principal means of generating revenue. We might sell, for example, Spanish translation rights for one of our books to a Madrid publishing house. In this instance we split the revenue with the author at a rate of 50% of net receipts. In the past, putting ebooks in this category made perfect sense for us and most other publishers. But with the onset of the digital age, what was formerly secondary became "primary." That is, publishers, especially scholarly publishers, quickly realized when

books became ebooks research libraries ↓ one of our main customers ↓ preferred to “license” a collection of ebooks. Such a license might involve a rental or subscription-based pricing model, which would fall under a subsidiary rights clause. This meant that according to the agreement we would need to pay the royalty rate for licensing content to the author: 50% net. When what was formerly secondary revenue became primary income, publishers discovered that the existing business model became financially untenable.

____ initials ____ initials

page 1 of 2

For Penn State University Press authors who have entered into agreements since 2010, none of this will be immediately relevant, inasmuch as these more recent contracts address these changes in the scholarly publishing. But for those with agreements signed prior to this date, with terms like those outlined above, the Press must determine whether the cost of creating ebooks from this deep pool of titles and the cost of administering the legal and financial results will be worth the investment ↓ or whether it makes better business sense in some of these cases not to move forward with a digital or ebook version. The investments in digital retroactive publishing are not insubstantial and include both technical and labor costs. The return is uncertain, but the Press is compelled to chart a course forward.

- Many PSU Press books published before 2010 are not currently available as digital books or ebooks or are available only as scanned (pdf) versions. If they are to become ebooks, they will need to be converted into other digital or ebook formats (e.g., HTML5, ePub). We estimate the expense of the technical conversion will be approximately \$350.00 per title.
- Besides the conversion expenses, the Press must also pay: (1) for clearing all digital (ebook, etc.) rights for any third-party material (e.g., maps, charts, illustrations, photographs) to which the Press does not hold copyright; and (2) for creating or securing digital files for any press-owned or third-party material included in ebooks. At times, costs might prevent us from creating an ebook version.

While we take seriously our commitment to disseminate your publications as broadly as possible and wish to meet the new demand for digital content, we face the practical, financial, and legal challenges outlined above. And even if we could address these concerns, we lack the resources to guarantee that we can create ebooks for all our titles. We are looking for sources of income to help with this digitization initiative, but in the meantime, the more pressing problems to be solved concern the legal issues enumerated above and the financial challenges of converting books into ebooks and the labor cost of administering this.

To accomplish our goal of increasing the dissemination of our publications, we are asking authors with books published before 2010 to waive all royalties on any form of sales or license for ebook formats or ebooks in an aggregated collection. Print royalty rates would remain unchanged. By waiving royalties in this manner, authors will allow us to minimize our risk of digitizing older titles, hoping that the long tail effect will make the investment worthwhile. Costs for third party rights and related rights might still mean that some books are not digitized, but with authors waiving royalties, we will better be able to absorb the financial risk of creating ebook versions of all titles. It is understandable that you might not wish to waive electronic royalties; if that is your preference, we will not create a digital or ebook version of your work. As always, though, we will continue to strive to keep the work in print and available as a paperback book.

We wish we were in a position to create digital or ebooks of your titles without having to ask this of our authors. Weighing the resources and our options, however, it is our only choice. We hope that our desire to make your book available in a digital or ebook format, even without a financial return to you, will nonetheless be of value to our mutual objective of publishing scholarly content and making it as widely accessible as possible.

If you approve this waiver of royalties and revenues for a digital or ebook version of your book, please initial the bottom each page of this letter, countersign the enclosed copy below, and return it to me by 1 May 2012. If you decide not to respond we will assume that you do not want your book to exist in an ebook format. If this work was authored by more than one author, each author will receive a separate letter, and we will not proceed unless we have signatures from all authors. We look forward to the possibility of including your work in our digital collections. If you have questions about this waiver request, please email us at ebooks@psu.edu.

Sincerely,

Director

Alternative contract language to include digital/electronic rights

A. Grant of Rights. The Author, being the owner and proprietor of a work entitled tentatively TITLE OF BOOK (hereinafter called "the work") hereby grants and assigns to the Publisher the world publishing rights to the work in all print, electronic, and any other media. In addition to the royalties named in the contract for printed (casebound and/or paperback) editions, the Publisher agrees to pay the Author, during the continuance of the Agreement, royalties on all electronic edition at the following rates ... (deleted specifics on how this is calculated).

B. Grant of Rights. The Author grants and assigns to the Publisher the full and exclusive right during the term of copyright to publish or cause others to publish the Work, any revisions of the Work, and any derivative works based on the Work, in all forms and in all languages throughout the world.

C. Rights granted: To produce, publish, and exhibit or publicly to display and nondramatically to perform the Work and to license production, publication, and exhibition or the public display and nondramatic performance of the Work in all nonprint forms and media, including mechanical, optical, and electronic, utilizing any storage, retrieval, reproduction, or transmission technology now known or hereafter invented.

D. Grant of Rights: "The Author hereby grants and assigns to the Publisher exclusively all rights in the Work in all forms and media now known or hereafter devised, including electronic rights, in all languages throughout the world, including but without limitation all statutory and common-law copyrights therein (and renewals and extensions thereof) and the exclusive right to print, publish, sell, and otherwise exploit the Work and to authorize others to do so."

E. Grant of Rights. The Author will prepare and supply to the Publisher a work now titled XXX. The Author does hereby grant and assign exclusively to the Publisher all rights in the work with the full copyright therein, including the right to publish and sell it throughout the world in all forms, languages, and media now or hereafter known or developed.

F. Grant of Rights. The Author grants and assigns to the Publisher during the term of copyright (and any renewals or extensions of copyright) the full and exclusive right to publish or cause others to publish the Work and any revisions of the Work, in all forms, in print, electronic, digital, and any other means, future media, and technologies now or hereafter known, devised, or developed, and in all languages throughout the world.

G. Grant of Rights: The Author grants and assigns exclusively to the Press for the full term of any copyright the copyright in the Work, namely, all rights to print, publish, reproduce, display publicly, and sell the Work **in all forms, languages, and media throughout the world**, and the exclusive right on the Author's behalf to license, sell, or otherwise dispose of the following subsidiary rights in the Work: paperbound editions; reprint editions, both clothbound and paperbound; first and second serial, syndication, anthology, and digest; book club; foreign publication and translation; dramatic, motion picture, documentary, and television; mechanical, audio, and visual reproduction; **inclusion in electronic storage and retrieval systems; production, publication, and exhibition in computer software; and any other rights not specifically enumerated in any media and technology now known or hereafter invented.**

OR: Good reason to NOT send amendments: I was told by our Legal Dept that because our contracts gave us the author's sole and exclusive right, title, and interest in the works, that we were not limited to certain rights, but rather we had the authority to step into the shoes of the author and exercise all the exclusive rights listed in 17 U.S.C. 106. Random House case isn't applicable to us as we are the owner, and not merely a licensee. This press also pays royalties like this: Pay the hardcover rate for ebooks sold at a hardcover price (such as the pdf to EBSCO and ebrary); pay the paperback rate for ebooks sold at a paperback price.

SECOND: E-BOOK ROYALTIES / RIGHTS PAYMENTS

As one AAUP colleague noted, when she conferred with their university counsel about this issue, she was told that to arbitrarily set any eBook royalty that the author has not agreed to in writing could be considered a "breach of contract" issue. You need to think very carefully about whether you want to just set a royalty rate or send every author a contract amendment to establish payment terms.

You will need to decide if you will pay different rates for e-books sold as single unit (such as Kindle or perpetual access e-books to libraries) and for e-content that is aggregated or disaggregated by libraries (such as ebrary or EBSCO) or whether you will set a single rate for all digital uses. One colleague explained their decision to offer a single rate this way: We originally amended our contracts to include an e-book royalty rate for sales and a separate royalty rate for e-book/database licensing. But we now offer one rate since certain vendors both sell and license, and sometimes a sale permits more than one simultaneous access. Rather than struggle over these distinctions, we now offer one royalty rate for all digital licensing. This rate falls between the royalties offered for print sales and our standard subsidiary rights royalty split.

Or you could proceed with or without an amendment, setting an arbitrary royalty rate.

One example of a press that did not send amendments was to set a royalty rate based on the retail price of the eBook (if you set different prices for library eBooks and non-library eBooks)--you could pay the hardcover rate for ebooks sold at a hardcover price (such as the pdf to EBSCO and ebrary); and then pay the paperback rate for ebooks sold at a paperback price.

If you will pay different rates for e-books sold as a single unit and aggregated content, (for example as a subsidiary right) then this is a sample contract clause:

7.1.9 Electronic rights (including but not limited to electronic, digital, and computer-based media and technologies of all kinds, and the storage, retrieval, transmission, display, output, and reproduction of data through any such media and technologies. These include, by way of example only, interactive media and multimedia in which the Work may be adapted and used in conjunction with other matter, whether such data is stored on hard drives or other fixed storage media, disks and diskettes, and other portable storage media, and/or remote on-line databases. "Electronic Rights" as the term is used in this Agreement include the following specific applications and uses of the Work in computer-based and similar electronic media and technologies for data entry, storage, retrieval, transmission, display, and output of any and all kinds, and/or like media and technologies attaining similar results, whether now known or hereafter devised: databases, networks, and on-line services, interactive and multimedia [but excluding electronic editions sold as a single unit—royalty rate is in paragraph 8.1.3])

And any income could be designated this way:

8.2.1 For licensed electronic access rights, XX% of net receipts of any payment ("Net receipts" shall mean any payment that Publisher actually receives in excess of \$50.00 after all manufacturing costs, commissions, foreign taxes, and other charges have been deducted).

Or like this:

"Except for matters listed in Clause 8, the following shall govern all disposition of rights in or exploitation of the Work: The Publisher shall pay the Author XXXXX percent (XX%) of the amount it actually receives less any commissions or fees incurred in connection therewith from exploitation of the Work or any rights therein by third parties, for the sale, licensing, or exploitation of all subsidiary rights in the Work in all forms and media, except that for television, film, and allied rights, the Publisher shall pay the Author XXXXX percent (XX%) of the amount (less commissions, etc.) it actually receives."

One press has this:

11. ELECTRONIC RIGHTS AND ROYALTIES

The Press may elect to make selected material from the Work available electronically as a form of promotion. Access to this material will be free through the Press's World Wide Web site (or its electronic successor), and no royalties will be payable on such promotional distribution.

The Press may make the Work as a whole or in part available for sale or license electronically.

- If the Press receives income in the form of fees for "browsing," where the person or entity receiving access would not own the rights of downloading or repeated access, it will be considered a subsidiary right, and the Press will pay the author XX percent (XX%) of the net income from any such license (after recovering the cost of converting files to a form that allows such browsing).
- If the Press receives income from electronic sales or licenses of the Work, such as the license of a continuing right to access the Work in electronic form, or the right to download it to a local reader, the Press shall pay the author XX percent (XX) of the net income from such license (after recovering the cost of converting files to a form that allows such sales or licenses).

Royalties from electronic sales or licenses will be paid under the same terms and on the same schedule as royalties for the print editions.

THIRD: SAMPLE COVER LETTERS TO AUTHORS

Dear Author:

We are now ready to move towards selling an electronic version of some of our books, including one of yours. But because our standard contract language did not in earlier years include royalties on electronic editions, nor in pre-1998 contracts was it clear on whether we even had the right to create electronic editions, we need your signature on the enclosed contract addendum in order to proceed.

At first, the book will be sold in an electronic edition made available through eBook vendors to library buyers. Later on it might be sold in electronic form through other distributors, perhaps with the capability of downloading individual chapters. This will, of course, be a form of publication supplementary to the print editions of the book, and we do not anticipate that electronic availability will have any impact whatsoever, for the foreseeable future, on our decisions about keeping books fully available for sale in printed form for as long as possible.

We will pay royalties on sales of the electronic version on an annual basis ...(deleted specifics on how this is calculated).

Sincerely,

Etc.

+++++

Dear Author:

Re: *Your book*, Copyright © 2005

We are going through our titles to find those for possible inclusion in e-book programs such as Amazon Kindle. We would like to include your book in these programs.

In our standard agreements for e-book rights we now offer xx% net royalties for eBooks sold as a single unit. If you agree to this royalty, please sign both copies of the enclosed addendum and return one copy to us.

With best regards,
Sincerely yours,

+++++

FOURTH: PERMISSIONS

There have been a couple of recent discussions on AAUP-R about "how does one interpret grant-of-permission terms?"

GRANT-OF-PERMISSION TERMS:

ONE-TIME

ONE-EDITION

PRINT RUN LIMITATION

TIME LIMITATION

FORMAT LIMITATION (print only, cloth only, cloth and paperback only)

PUBLIC DOMAIN

WHAT IF PERMISSION WAS GRANTED WITH NO OBVIOUS RESTRICTIONS, AND NO FEE WAS CHARGED?

WHAT IF THE BOOK WAS PUBLISHED MANY YEARS AGO AND SOME PERMISSIONS ARE MISSING?

FAIR USE

OTHER

What do those actually mean? How do you handle those? If you re-clear permissions, of course try to get the permission for no additional fee. Some of the arguments you can use are: eBooks are really only a different "binding," a permission fee has already been paid, lifetime eBook sales are usually very low (especially for scholarly books), and/or you are a non-profit publisher.

Establish your rules about what you can interpret as okay for digital rights.

FIFTH: WHERE TO START ON YOUR BACKLIST

Texas started with books that were in print. We undertook clearing backlist for e-rights in Spring 2010. We called it "Team Google" (since we were concentrating on clearing rights on as many books as we could that were already in Google Book Search). You can find our checklist in the HANDOUTS or at the 2010 annual meeting Wiki (last item):

http://aaupwiki.princeton.edu/index.php/2010_Book_to_E-book

We knew we needed to get more books checked for eRights for non-library eBook programs. So we set up Team Google (so named because the impetus was getting content approved for Google Editions eBook program). This has involved about 25 volunteer staffers (out of a staff of 45) from every department sitting down in our conference room with the contract files (where we file permissions) and copies of the books and checking for contractual rights and permission rights. We had one person (a fellow) working on this some of his time, but he could only do so much and it was obviously going to take several months to check just the books that are in print, never mind books that are OP that we want to also turn into eBooks. We created a "shift schedule" of 4 hours per day, about 5 staffers per day. So, in one day, we got about 20 hours of checking. In a week, we got 100 hours of checking. There were 2 morning shifts and 3 afternoon shifts.

We started with a list of about 1,500 books we have sent to Google Book Search. This gave us a list of most of our books that are in print. A few have gone out of print since they were sent to GBS, but for the most part, these titles are in print. I went through and eliminated any that I knew rights had reverted to the author, were licensed from another publisher, or were distributed. We ended up with a list of about 1,350 titles to check.

We created a general instruction sheet for staffers since most have never seen a contract or permissions. We told them the sorts of things to look for—no electronic or digital, one-time, one-edition, and so on. We created a cover sheet for each book.

We divided this list of 1350 titles and ran lists of about 100 titles. We then gave the folks who were working (5 or 6 per shift) the lists along with 10-20 contracts and copies of the books from our in-house library. We actually had one person pulling the contracts and books from our library shelves--keeping the congestion down in those areas. She would stack the lists, contracts and books in the conference room, and someone would come in, pick up a stack, sit down and start going through things. She also re-filed contracts and books once we were done with them. I highly recommend having only one person doing the pulling/refiling/reshelving.

They marked permissions they had questions about with neon post-its, and they marked third-party material in the book for which they could not find permission with neon post-its. They rubber-banded the contract file, book, and cover sheet together and put them into boxes labeled “approved” and “not approved / issues / questions.” We then checked marked material and made decisions about what could and could not become an eBook.

We ended up approving about 70% of our titles.

We then did a second round of e-rights clearing for books that were out of print but that we still held publishing rights to and that we were bringing back into print via POD. The procedure was essentially the same.

Texas general instructions and checklist

Team Google: 7 Easy Steps!

1. Pull contract files. I recommend pulling 20 at a time. (this was done for them)
2. Pull books from editorial library. (this was done for them)
3. Find publishing contract in contract file and check for contractual rights.
 - From January 2000 on, our contracts list a royalty rate for electronic editions sold as a single unit. Check clause 8.1.3: if the electronic edition clause is crossed out or omitted, we do not have electronic rights. Otherwise, we do.
 - For contracts written earlier than 2000, assume we have electronic rights unless the author is high profile, in which case we will do a contract addendum.
4. Check permissions.
 - Read each permission carefully. Most importantly, ensure that no permission specifies “print only” or “no electronic or digital publishing/editions/use.”
 - “One-time use,” “one edition only,” “for this book only” are all fine.
 - Permissions that limit print run or limit the permission to a specific amount of time enter into a gray area. Whether or not we allow it depends on the specifics (who granted the permission, whether a fee was paid, etc.).
 - What to do: flag each potentially problematic permission with a neon post-it note. Place the post-it at the bottom of the page (so that the bottom half is sticking off the page, and is clearly visible). Then, please write the permission problem(s) for the permission in question on the post-it. For example: “print only”; “print run”; “no electronic rights,” etc.
5. Check actual book to ensure that all third-party material is accounted for in the permissions. This includes all photos and illustrations (interior and exterior), epigraphs, and essays published by permission. Look at the acknowledgements, permission, credits, and copyright pages for lists of contributors and contributions.
6. If you find any such material in the given book, and the material does not have a corresponding permission in the contract folder, please note this on a large post-it note, which will be stuck to the front of the contract folder. If there are any other issues (beyond those that are already flagged with neon post-its), you can also address these by way of a big post-it on the front of the contract folder.

7. Place the given book and contract folder in one of two boxes: approved (with no issues whatsoever); or, not yet approved (with issues to be addressed). We'll take it from there!

CHECKLIST FOR TEAM GOOGLE:

Team Google Checklist

Book title

Initials of Checker

_____ Pull contract

_____ Pull book from editorial library

_____ Check book contract for electronic rights

_____ Check permissions. Flag any issues with neon post-its

_____ Check actual book for third-party material; check against permissions in contract folder. Flag any issues with post-it notes on book page or front of file

_____ Place book, checklist, & contract file in appropriate box (approved, not approved/questions/issues)

KEEPING TRACK:

And now some detail on how we kept track. We created a layout in our presswide Filemaker database called Non-Traditional Formats (NTF) that had fields for what was "live" in Google Book Search as well as fields for the various eBook vendors we work with.

As for keeping track in our database, we selected one non-library vendor (Kindle) and designated one field to note whether it was "rejected" (contract or permissions issues) or "approved"--if the field was blank, it meant the title had not been checked. The status also then automatically applied to other eBook vendors.

The page shows the contractual status of e-rights (as granted in the author's contract), as well as permission e-rights clearance in a field called All Digital Rights Cleared.

I've included a few examples of the NTF page of Texas titles with different issues.

The first is for Ginger Strand's book—please notice under "CONTRACTUAL E-SALE INFO" that "Single Unit e-sale OK" is marked "yes" while "Aggregated Database e-sale OK_" is marked "no"—this is because this author deleted our Subsidiary Rights Electronic Rights clause in her contract. This means we can put the book into e-book programs that sell the book as a unit but not into programs that aggregate content for libraries.

The author contract also limited the territories where we could sell our book— we have exclusive rights in the US, Canada, the Philippine Republic, and non-exclusive rights throughout the rest of the world excluding the British Commonwealth—we abbreviate this as COBE and you will see that just above the CONTRACTUAL E-SALE INFO in REGION RESTRICT.

The ALL DIGITAL RIGHTS CLEARED? field is completed by the acquisitions editor; in this case it is "yes" meaning none of the third-party permissions excluded digital rights.

In the COMMENTS field, there is a note that some permissions are restricted to North America. I put that information in and our Digital Publishing Manager then knows she needs to limit where the e-book can be sold.

We also use a contract summary database:

CONTRACTS DATABASE: DATA ENTRY INFORMATION/summary

AUTHOR: Ginger Strand

BOOK TITLE: Killer on the Road: Violence and the American Interstate (Contract title: EXIT: UTOPIA)

CONTRACT DATE: 6/14/10

AGREEMENT TYPE: Author Agreement 12/09

EXPIRATION DATE: On termination of Agreement UTP agrees to revert to the Author in writing all rights granted to UTP under this Agreement, except those rights UTP has previously granted to licensees. Upon expiration of any such licenses, such rights will revert to the Author.

REVERTED:

COPYRIGHT REGISTRATION NOTES: AIF states that she has a signed contract for an excerpt to be published in "Wired" and she'll keep us posted on this. Did she sign the agreement with them before us? Is the excerpt a chapter in our book? Checked book and contract file and didn't find any reference to "Wired." Sent Acq editor TM asking if she knew anything. Colleen (Publicist) wrote that she didn't end up going with Wired but has an excerpt in the Believer slated for May (she kept serial rights). OK, nothing "previously" published. Claim text, some photos (credited to author), exclude some photos. / Copyright to be in the Author's name.

REGISTRATION SENT: 5/4/12

STATEMENT: 5/11/12

REGISTRATION RECEIVED:

AREA SALES RESTRICTION: Exclusive rights in the US, Canada, the Philippine Republic, and non-exclusively throughout the rest of the world excluding the British Commonwealth as defined on attached Schedule A; COBE

TERMS CASE:

TERMS PAPERBACK:

SINGLE UNIT, ELECTRONIC:

SUB RIGHTS: We have: trade and mass-market pb rights subject to Author's approval, 2nd serial rights, book club rights, permission rights, microfilm or

microfiche rights, general print publication rights (condensations and abridgments subject to Author's approval.)

--NO translation rights, first serial rights, audio rights, **subsidiary electronic**, and secondary rights (dramatic, reading, motion picture and TV, radio, and commercial rights.)

All rights not expressly granted to UTP in this Agreement are reserved to the Author.

RIGHTS RESTRICTIONS: Print and e-book format only, in the English language only. Exclusive rights in the US, Canada, the Philippine Republic, and non-exclusively throughout the rest of the world excluding the British Commonwealth as defined on attached Schedule A. Trade and mass-market paperback rights and condensations and abridgments are subject to Author's approval. No translation, first serial, audio, electronic subsidiary rights, and secondary rights (dramatic, reading, motion picture and TV, radio, and commercial rights.)

TERMS, SUB RIGHTS:

SERIES: Discovering America Series, Mark Crispin Miller, Series Editor

SERIES SUB RIGHTS \$\$

CCC ACADEMIC PERMISSIONS: OK

COMMENTS: Final title of the Work will be mutually agreed upon. English language only. Author to deliver the manuscript on or before 3/1/11 in electronic format. Work to be published at UTP's own expense in a print edition within 12 months following receipt of final manuscript. UTP to consult with the Author regarding the jacket /cover design, jacket copy, catalog copy, and marketing strategy for the Work. All sums due the Author are to be paid to the Author's agent.

(end of contract summary)

Then I have included other NTF pages for a few titles with different issues.

Andrew, *THE IMAGE IN DISPUTE*, published in 1997, is a backlist title where there are digital restrictions on a permission from the Artists Rights Society, so this book did not become an e-book. You will note in the KINDLE field, it says “suggested—rejected”

MacLaury, *COLOR AND COGNITION* was also rejected because of permissions, but I want you to notice that the 3 problem permissions (no digital rights) were all from university presses. Please grant other university presses e-book rights with your permissions!

I hope some of this helps you. Please feel free to contact me if you have questions.

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