

**ACKERMAN  
DECLARATION**



export of services, making a publisher subject to civil and criminal penalties.

### **Cornell University Press**

3. Cornell University Press was founded in 1869 and was the first university press in the United States. Through our imprint Comstock Publishing Associates, we publish one of the country's most distinguished and historic lists of books on natural history, including works on animals, plants and ecosystems around the globe.

4. I began my career in publishing as a manuscript editor at Cornell University Press 24 years ago, following my graduate studies in Russian history at Stanford University. I became the Acquisitions Editor for history and philosophy and then the Editor in Chief. I have been the Director of Cornell University Press since 1989.

5. Cornell University Press publishes approximately 160 new books each year. Many of our books have become standard references in their fields. We have approximately 2,500 titles currently in print.

6. We publish nonfiction works and some classic fiction in translation, and we have long been recognized for the quality and variety of the books we publish in anthropology, Asian studies, biological sciences, classics, American and European history, labor relations, literary criticism, natural history, philosophy, politics and international relations, Slavic studies, veterinary science, and women's studies. We publish works by leading scholars in the United States and throughout the world. Our books are sold throughout the world and translated into many languages.

7. One area of particular strength for us within natural history has been ornithology. The Cornell Lab of Ornithology is one of the leading bird research institutions in the world, and our publishing activities have both reflected and contributed to its eminence.

### *Field Guide to the Birds of Cuba*

8. The island of Cuba has a rich and diverse array of bird life that includes 354 recorded species. Many North American species migrate to Cuba or through Cuba each year. As the largest island in the Caribbean, it also has many indigenous species of scientific interest, including the smallest of all birds, the bee hummingbird.

9. For several years, Cornell University Press has published the *Field Guide to the Birds of Cuba*, a definitive reference work that is both a summation of the ornithology of Cuba and a classic field guide. It describes the habitats and natural history of the birds of Cuba, providing detailed information about the appearance, habitats, diets and nesting and mating habits of hundreds of species, with maps showing their ranges and more than 700 images to illustrate male, female and juvenile plumage. Some migratory species are also depicted as they look at different times of year.

10. The *Field Guide* combined the contributions of experts in different fields and nations to create a work that none could have created on their own. The authors of the *Field Guide* are two of the foremost ornithologists of Cuba, who have unmatched knowledge of and access to the birds of their country. The RARE Center for Tropical Conservation and several American museums, including the Smithsonian Institution and the American Museum of Natural History, gave the authors access to their collections in the United States for research. The illustrations were created by an artist who lives and works in Miami. He based many of them on photographs provided by VIREO (Visual Resources for Ornithology), the world's most comprehensive collection of bird photographs, at the Academy of Natural Sciences in Philadelphia. The foreword for the book comes from the emeritus director of ornithology of the American Museum of Natural History in New York. Designers at Cornell University Press

devised brilliant ways to combine the artists' images with the authors' information and to display the distribution maps. Outside peer reviewers and the Press's science editor commented on and revised the text, with the full cooperation of the authors.

11. All these efforts created a comprehensive and easily understandable resource for ornithologists, environmental scientists and interested members of the public. The Cornell Lab of Ornithology has expressed interest in creating a Spanish-language version of the book to make the information more accessible to scientists in Latin America, which would facilitate and encourage further research and conservation.

12. The *Field Guide* has been sought after by scientists, research institutions, libraries, and bird enthusiasts. It provides information about many species that cannot be seen in North America and offers glimpses of familiar North American birds as they appear away from their familiar surroundings.

13. Sales of the *Field Guide* have also benefited from increased interest in the world's fragile and threatened ecosystems. The book highlights vulnerable, endangered and critically endangered species. Its detailed descriptions of each species combine to form a group portrait of creatures that occupy specific niches in the natural and man-made world, whose appearance or disappearance in particular places may be harbingers of environmental change.

14. The *Field Guide* has been especially important for scientists and bird enthusiasts in the United States, who may not travel freely to Cuba to observe the birds in their natural settings and conduct research.

### **The Need For Changes**

15. The demand for the *Field Guide* continues to be strong, and we will soon have to start reprinting the book to fulfill orders for it. Since the first printing, however, we have learned

that several changes would have to be made to the text before the book can be reprinted.

16. Some of the changes are merely typographic, but others are substantive. They concern the descriptions, habitats, habits and geographic distribution of particular birds. The changes range from the colors of the wing feathers in one species to the habitats of other species. To take just one example, the habitat listed in the *Field Guide* for the Northern Flicker should include mangroves, but it currently does not, and its belly is not “white” but “buffy.”

17. Ordinarily, we would make such changes as a matter of course before reprinting a book. This year, however, we have learned that OFAC has taken the position that the substantive alteration of works from certain countries that are subject to U.S. trade embargoes, including Cuba, may amount to a prohibited export of services.

18. We understand that OFAC has taken confusing and inconsistent positions in letters to publishers who have sought guidance on the types of editorial activities that may be permitted. One publisher was informed in September 2003 that reordering sentences or paragraphs is prohibited. Another was told in July 2004 that reordering sentences would be permitted. One position has remained constant, however: that the OFAC Information Regulations prohibit American publishers from effecting the “substantive or artistic alteration or enhancement” of a work by an author in one of the forbidden countries. OFAC has permitted changes to be made only when it deems them not to be substantive or artistic alterations or enhancements.

19. The changes we would make in reprinting the *Field Guide to the Birds of Cuba* would substantively alter and enhance it.

20. Without the changes, however, the *Field Guide* is not factually accurate. Reprinting it without making the changes would be a disservice to readers and to researchers in

the field. Cornell University Press does not publish information that it knows is not accurate, complete and up-to-date.

21. OFAC and the OFAC Information Regulations have created a dilemma for Cornell University Press. We may not uphold the standards for which we are known and publish accurate, complete information, without risking civil and criminal penalties.

#### Applying for Permission to Publish

22. I have been informed that publishers may apply to OFAC for permission to edit works from the countries subject to sanctions. As I mentioned above, however, we have no reason to think OFAC would approve of the factual changes we must make in order to meet our responsibilities as a scholarly publisher in reprinting the *Field Guide to the Birds of Cuba*.

23. We also have no idea how long it would take to get a ruling from OFAC. OFAC's letters, available on its Web site, indicate that it has taken some publishers more than a year to resolve questions they have raised. And, preparing applications and negotiating with OFAC would divert already scarce resources from our work publishing books.

24. Free societies like ours do not require publishers to apply to the government for permission to publish. I lived and conducted research in the Soviet Union more than twenty-five years ago, and I saw first-hand the effects of censorship and self-censorship. The very existence of a system of official approval -- and possible punishment -- inhibits the free exchange of information and ideas on which the international community of scholars and our society depend.

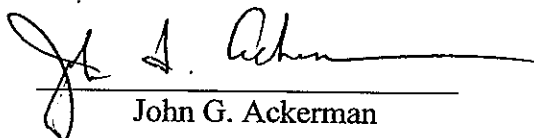
25. That free exchange is exactly what university presses exist to promote.

26. International collaborations like the *Field Guide* are common in academic publishing. They increase the store of information available to everyone. If American publishers cannot participate freely in this kind of scholarly exchange, American intellectual life

will be impoverished, and we will be denied the possibility of understanding more about the world around us. The conditions in Cuba affect us as much as they affect the birds that fly freely between our countries, and many Americans want to learn more.

27. Most Americans cannot visit Cuba, but books can bring us information that we cannot get for ourselves. If publishers cannot make those books vivid and readable, like the *Field Guide*, and accurate, as we want the new printing to be, the scope of Americans' knowledge is restricted and vital freedoms are curtailed.

Dated: September 22, 2004

  
John G. Ackerman