

RECOMMENDED PRINCIPLES FOR CONTRACTS COVERING ONLINE BOOK PUBLISHING

by the National Writers Union

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For centuries there was little doubt about what constituted a book: it was a set of bound sheets containing words and sometimes pictures. In the past few years the definition has been extended to compact discs containing audio, video and other digital elements along with text. This brought the book into the digital world, but it remained something tangible that could be packaged and sold in stores.

We're now at the threshold of another form of book distribution in which only the words themselves and accompanying material are conveyed--via electronic networks. Online book publishing is still in its infancy, but with the phenomenal growth of the Internet and the prospects for even more elaborate information networks, it is likely to become a significant factor for writers.

The National Writers Union thus wants to be sure that this aspect of the book business develops in a way that respects writers' rights. The NWU is a staunch supporter of new communications technology and of public access to these media, but those who create the content must be treated fairly. This approach was taken in the NWU's recent position paper on electronic (i.e. disc-based) books; here we attempt to do the same for their online counterparts.

Understanding the role of writers in online book publishing is complicated by the fact that there are two very different forms of this business. On the one side are entrepreneurs who use the online networks as distribution channels for simple text versions of books. Writers submit manuscripts to them on diskettes in plain-text (ASCII) form. The "publishers" do minor formatting and then post the works on computer networks, where customers who have made payment arrangements may download them.

These online companies usually do little or no editorial work on the text. They often accept any text that is offered to them, regardless of its quality, because it costs very little to add a new title. Strictly speaking, these operations should not be called "publishers," since they perform few of the traditional functions of a publishing house (selecting from among submitted manuscripts and proposals, editing those works chosen for publication, designing and promoting the book, etc.). These bare-bones online operations are more accurately called a new type of book distributor.

The NWU is not opposed in principle to this sort of book distribution--especially when it makes available works that cannot find a traditional publisher or are out of print--but we believe that an operation that adds little value to a book product does not deserve the same rights and income share as one that does.

The contrast is clear when we look at the other type of online book publishing, which involves the creation of books with far more content than a fixed amount of plain text. This approach to online publishing makes use of the fact that areas of the Internet such as the World Wide Web now contain features that allow a posted electronic text to be embedded with links which, when clicked on with a mouse, immediately transport the reader to another part of the work or to other texts that are outside the book itself but accessible through the Internet.

Sometimes these hyperlinks, as they are known, can also fetch bits of audio, video and other digital elements that are either part of the work itself or have been posted elsewhere on the Net. Online books thus become hypertexts with multimedia capabilities. Publishers of such works employ editors, designers and others to add original multimedia elements and insert links to connect the reader to digital content outside the work. Thus the publishers add significant value to the author's text.

Both plain-text and hypertext/multimedia online book publishing imply important changes in the nature of authorship and the relationship between author and publisher. In this paper the NWU is putting forth recommendations on how those changes should be reflected in the contracts writers sign to have their work made available. We recognize that online book publishing will undergo further changes in the coming years, but we believe it is important to state at this early point what we think is essential for the protection of writers' rights in this new medium.

I. COPYRIGHT. We take the same position here that we did in our position paper on disc-based electronic books: Authors should retain their copyright when their work is extended to the electronic realm. In the case of hypertexts with multimedia links, the copyright on any added elements should be held by those who created them. An online publisher may hold the copyright on the configuration of hypertext links embedded in a work by one of its employees, but that should not affect the writer's copyright in the underlying text.

As online publishing becomes more sophisticated, the variety of works will not be limited to monographs embellished by hypertext links. One can imagine collaborations of various writers contributing to a work, perhaps at different times, with multimedia elements contributed by any number of independent creators. Over time, new forms of joint copyright may emerge, but it is essential that copyright remain with those who do the creating, not with publishers.

II. GRANT OF RIGHTS. Because online publishing is still quite underdeveloped, authors should grant online operators only the right to distribute the work in that medium. All other rights should be retained by authors, so that they can contract separately with print publishers and sell subsidiary rights (translations, film and TV adaptations, etc.) on their own.

The NWU also believes that the grant of rights should not be open-ended. Given the uncertainties of the future of online publishing, contracts should be limited to a specified length of time. In the case of plain-text online distributors, the period of time should be quite short-- perhaps a year or two, with an option to renew. For hypertext/multimedia publishers who make a significant investment in producing a work, the grant could be longer, perhaps five years, and also provide an option to renew.

III. CREATIVE CONTROL. In the case of an online distributor that does no editorial work on the text, the author has absolute creative control by default. If plain-text operations begin taking on more

editorial functions, they should also observe the practice in print publishing that the author has the final say on the content of the work. Hypertext/multimedia online publishers should do the same, while working closely with authors to integrate their added elements without undermining the integrity of the text.

IV. ROYALTIES. Obviously, in light of the vastly lower costs of producing an online title and the absence of significant inventory expenses and returns from bookstores, the royalty rate paid to authors should be much higher than in print publishing. But how much higher? (The term "royalties" should be understood to include all forms of revenue deriving from the work.)

The NWU believes the division of income between the author and the online company should depend on how much value the latter is adding to the product.

* An online operator doing the bare minimum--formatting the author's plain-text manuscript, putting it online and collecting money from purchasers--is acting as no more than a distribution service and is entitled to a fee equal to only about 10 percent of the revenue. Copy editing, developmental editing, etc. could increase that share to 15 or 20 percent.

* A hypertext/multimedia online publisher is entitled to a larger share, but the NWU believes that in no instance should the author receive less than 50 percent of the revenues.

We suggest the following range of income splits:

| | Publisher/distributor | Author |
|---|-----------------------|--------|
| Distribution only | 10% | 90% |
| Copy editing & formatting | 15% | 85% |
| Developmental editing | 20% | 80% |
| Creation of hypertext links and multimedia | 25-50% | 75-50% |

V. AVAILABILITY AND PROMOTION. With printed books authors generally understand what it means to have a work published: Copies will be printed and bound, made available to bookstores and wholesalers, and sent to publications for review consideration. While authors are frequently not satisfied with the extent to which their books are distributed and promoted, the general mechanics of the process are clear.

With online books the systems of distribution and promotion are being reinvented, so authors should take nothing for granted. They should insist on contract provisions that detail, to the extent possible, the ways in which the online publisher is going to make potential readers aware of the existence of the work (online promotion, print promotion, etc.) and the ways in which they are provided access (by e-mail only, by World Wide Web, or whatever). The length of the grant of rights might be tied to specific commitments by publishers with regard to availability and promotional budgets. Authors may also want to consider a provision stating that after the publisher has exhausted its agreed-on promotional budget, a portion of the future royalties from the work be used for promotion, which could help extend the "in-print" life of the work.

VI. TERMINATION. Print book contracts typically provide for the termination of the grant of rights if the publisher does one of several things: fails to publish the book within a reasonable amount of time, fails to pay royalties, or allows the work to go out of print.

All of these provisions should be adopted in online book contracts. Yet the concept of "out of print" obviously has to be re-thought when the work does not exist in physical form. The criterion for whether a publisher retains rights should be whether the work is still being actively marketed.

Although the practice of limiting the duration of grants of rights will help protect authors against inadequate promotion, an author should still have a right to termination if the online publisher stops promoting the work. At that point the work would be deemed "out of promotion," and the rights would immediately revert to the author.

VII. OTHER ISSUES. There are many other elements of a fair contract common to print, disc-based and online book publishing--among them the need for clear and prompt royalty statements and arbitration clauses--that need not be described here.

A final note should be added, however, on the social aspect of online book publishing. As the NWU stated in its position paper on disc-based electronic books, we believe that publishers and authors should work together to make the new communications technologies available to the widest portion of the population. This means that prices should be kept down, and efforts should be made to ensure that access to the technology (in this case, personal computers with modems linked to the Internet and other networks) is not limited to a small, affluent portion of the population. We support, for instance, the Free-Nets that have been formed in Cleveland and other cities.

It may turn out that the best way to do this in online book publishing is to put the business in the hands of authors themselves. Given the low overhead costs of online publishing, authors could band together in cooperatives that would eliminate the middleman profit and thus allow works to be distributed at the lowest possible price, especially in the case of plain-text versions. Some authors may choose to make their books available for free.

Whether or not the non-profit model takes hold, the NWU believes that fairness to authors and the freest possible flow of information must be cornerstones of the publishing industry of the future.

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