By Michael R. Lennie

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Valley Center, California

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Michael R. Lennie is an attorney licensed in California and New York who devotes more than half his practice to the representation of authors throughout the Country. He may be contacted at his offices by dialing 800-TAA-LAWS or (619) 749-1033. (Be sure to advise that you are a TAA member for member discounts.)

"Electronic Publishing: The Authors Guild and American Society of Journalists and Authors Electronic Publishing Clause and The Association of Authors Representatives Clause"

As succinctly stated by an author-client a couple of years ago, "Unless they are going to chop down Brazil, electronic publishing has a bright future." Of course electronic publishing has more going for it than vanishing rain forests. It can be accomplished at a fraction of the cost of print publishing, and therefore can be made available to the public at a much lesser cost while netting a higher return to the publisher in an industry traditionally bearing only a small margin of profit.

Electronic publishing lends itself to abridgment, adaptation and anthologizing of a work. It may be easily combined with art, literature, music, film and video in multi-media and interactive formats. These are exciting and innovative concepts and have a lot to offer both formal and self-directed education.

But there are serious concerns that accompany electronic publishing. Electronic copies are not only cheap, they are easily copied in ways that are hard to detect, hard to monitor, and therefore susceptible to piracy.

Our forefathers discerned that creativity is a precious commodity and thus wrote:

"The Congress shall have the Power...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries..." Article I, Section 8 Constitution of the United States.

The Congress passed copyright laws to carry out these lofty goals and to create a system by which creativity would be rewarded thus assuring its continuity.

To make a point Marshall McLuhan titled the first chapter of a book "The Medium Is The Message." Understanding Media" [1964]. But we know this is not literally true. By way of example, without a creative message the medium of commercial television is a numbing inert box. Without protection of authors' rights to fair compensation and artistic control, the same fate awaits electronic media. Although it is therefore in the economic self interest of publishers to insure fair compensation and artistic control in the author, most publishers offer authors standard contracts that do neither.

It is in this environment that The Authors Guild and the American Society of Journalists and Authors (ASJA) have formed a joint position statement on writers' electronic rights.

Below is the Authors Guild and ASJA electronic rights guidelines followed by their suggested electronic rights clause. Following the Authors Guild and ASJA electronic rights clause are excerpts from the Association of Authors' Representatives position paper on electronic rights followed by what they refer to as a "typical electronic reproduction clause used recently and similar to those accepted by major US publishing houses in lieu of their boiler-plate."

EXCERPTS FROM AUTHORS GUILD/ASJA GUIDELINES

Writers unable to retain their electronic rights should negotiate for

the following safeguards in the ³ grant of rights:

1. THE PRINT PUBLISHER AS ELECTRONIC PUBLISHER

Allow the print publisher to issue the work in electronic form only on the condition that terms be negotiated immediately prior to electronic publication. Writers should not be expected to negotiate terms for electronic publication when they sign a print publishing contract. The value of those rights, and the entire electronic publishing industry, are likely to change radically in the near future.

2. THE PRINT PUBLISHER AS ELECTRONIC RIGHTS LICENSOR

Divide the proceeds of the licensing of electronic rights to reflect the print publisher's role as agent for the sale of those rights. Publishers have found acceptable a 90/10 split in favor of the writer for the licensing of electronic rights. Writers with agentstraditionally retain subsidiary rights such as film rights that involve the transformation of the work into a new medium. Where publishers are granted such rights, publishing contracts usually provide the publisher with an agent's percentage for selling those rights. Many electronic formats will be more like films than like books, with producers pulling together audio, visual, computer programming and text components to make the electronic product. Writers are entitled to 85-90% of the proceeds from the licensing of electronic rights, with publishers retaining the usual agent's fee of 10-15%.

Retain the right of approval over all electronic licenses. Writers should be able to insist that the electronic work be equal in quality (including the packaging, marketing, and advertising for the Work) to that of the printed work. The reputation and standards of electronic publishers vary as greatly as in print publishing. Only by retaining a right of approval can writers monitor the quality of the electronic work.

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