3. THE PRINT PUBLISHER AS ELECTRONIC PUBLISHER OR LICENSOR

Grant electronic rights only on an advance or royalty basis. Electronic books are books - writers should insist on royalties for electronic "sales" of the work, including an access fee for works on database services. The royalty percentage should escalate significantly after relatively few sales, since nearly all electronic-publishing costs are incurred in producing the first electronic copy of a work. Compared to printed books, duplication, storage, and transportation costs for electronic books are minimal.

Grant the right to issue electronic versions of the work only in specified, existing formats, preferably on a non-exclusive basis. Granting the right to issue the work in all electronic formats now existing or to be developed in the future is granting too much. Existing and future formats have the potential to undermine the integrity and value of the work. Until the electronic publishing market matures, writers should be wary of granting exclusive rights to any publisher for any format. Many companies and formats will fail to penetrate the developing electronic market.

Retain control over abridgment or anthologizing of the work and over any illustrations, sound, text or computerized effects added to the work. Writers' reputations ride on their published works. If an electronic publisher seeks to do anything more than a direct transposition of the printed work, then the writer should have a right of approval over the form and context of the electronic work. Retaining controlover the illustrations, sound, text, and computerized effects added to a work, if writers carefully exercise that control, could help avoid conflicts with other subsidiary rights.

Electronic publishers should givereasonable assurance that the work will not be copied without authorization. Without

copy protection, fast, cheap, and perfect electronic duplication could severely damage the value of a work. Licensees should be required to prominently display copyright warnings and to use the best available means to prevent unauthorized copying.

Unexploited electronic rights should revert to the writer. The principal value of a work could be in its electronic licensing. If after a specified period of time a publisher fails to exploit the rights in any of the electronic formats granted to the publisher, the rights to the unexploited formats should revert to the writer.

4. ELECTRONIC PUBLISHER OF PERIODICAL ARTICLES. (This section is omitted due to space limitations)

5. OTHER BOOK CONTRACT ISSUES

Publishers should indemnify writers for all claims arising from illustrations, text, sound, or other materials added to writers' works. The materials added to the electronic version of a writer's work could be libelous, obscene, invade privacy rights, or infringe copyrights. Writers should bear no legal responsibility for the content of these additional materials.

For the purposes of "Out of Print" Clauses, electronic and print rights should be treated separately. A work should not be considered "in print" just because electronic versions of the work are available, since a work could remain available on a database indefinitely, at minimal cost to a publisher. Traditionally, writers can ask that print rights revert when a work is not available in print form in the United States in a major edition. Similarly, electronic rights should revert when electronic usage falls below a specified minimum.

Securing electronic publication permissions for any copyrighted materials incorporated in the work should be the publisher's responsibility. Writers often secure limited print rights in copyrighted materials, such as photographs, illustration,

and text, that appear in their works. The electronic rights to these materials could be expensive. If a publisher seeks the electronic rights to a work, then the publisher should bear the additional costs of securing the electronic rights in any copyrighted materials included in the work.

Accounting for electronic sales of a work should be detailed, clear, and verifiable. Electronic versions of a work can be produced in an instant and disappear just as quickly, so publishers will have to be particularly diligent in monitoring electronic sales. Royalty statements should contain accurate records of production runs, the number of units sold or accessed, returns, copies distributed free of charge, and copies remaining in the warehouse. Audit clauses should expressly permit the writer's representative to review the databases that compute these figures.

AUTHORSGUILD/ASJASUG-GESTED ELECTRONIC RIGHTS CLAUSE

The Authors Guild and the ASJA strongly recommend that writers retain their electronic rights. Where writers are unable to do so, we suggest the following clause granting limited electronic rights for books and articles. (Authors Note: The clause concerning "articles" is not included here due to space limitations):

Book Contract

Author grants Publisher the right to license the publication of nondramatic electronic versions of the Work only in the following formats: [list formats, for example, Macintosh CD-ROM, CD-I, on line database] (the "Authorized Formats"). Author retains the rights to all other electronic technologies and formats, whether now existing or developed in the future. Publisher's right to license electronic versions of the Work is subject to Author's approval of the license, such approval not to be unreasonably withheld but in no event shall

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