

BEYOND THE BOOK

KENNEALLY: Well, good morning, and thank you for having us here. My name is Chris Kenneally. I am the Director of Author and Creator Relations for Copyright Clearance Center, based in Boston. We're very happy to be here and to have this discussion, which is a kind of special edition of a program that we've taken around the country and we call Beyond the Book. I think today it's probably more appropriately called Beyond the Textbook.

And we've got a number of people here who I think have a variety of insights on the various pieces of the development of a work. And my own training as a journalist – I wrote for a number of publications for nearly 15 years – leads me to want to always try to find out something new, to get that shock that says, I didn't know that. So I certainly hope that in our discussion this morning you'll feel that at least a few times when someone brings up a topic. And certainly if that raises a question, as I mentioned, we will be having a question and answer period following the kind of interview chat that we do. So again, thank you for having us.

I want to open the program with Diane Feldman, who is the principal of AuthorCraft Editorial Services. And that's an authorship consultancy, is how Diane describes it, that offers developmental and substantive editing, copyediting, and a variety of other consulting services. She's been working in this field for nearly 15 years and has extensive experience in scientific and technical books, medical research manuscripts, grant proposals, software documentation, corporate procedures, and white papers. I'm very happy to have Diane join us.

Diane, I want to start by asking you to give us a basic definition, because I think the concept of an author's editor is something that not everyone may be familiar with. I mean, most of the audience here will have worked in one way or another with an editor, but you're a very special kind of editor.

FELDMAN: Right. When you think of most editors, their responsibility – the responsibility of most editors that you think about is to their publication. But an author's editor is employed by the author, and so their responsibility and their goal in life is to make your publication look as good as it can, to communicate your message as effectively as it can, to be sure that when it goes to the publisher it's in the very best possible shape.

KENNEALLY: I'm sorry, Diane, but I was going to say, those are very broad goals, but there are some key objectives that you have when working with authors that I think are critical regardless of what kind of a manuscript it is. Can you tell us about those?

FELDMAN: Right. Whether it's a grant proposal, or a journal article, or a book, it really comes – the objectives are the same. And the first and most important one is to save the author time. The details of publication are time-consuming. To check all of the fine points of abbreviations and fonts, and is it the right length, and have you been consistent in your terminology, and are you using the same units of measures that are commonly used in that journal or for this publisher, and so on – they're small things, yes, but they take a lot of time, and especially if you don't do that kind of checking every day.

An author's editor knows style guides back and forth, has them on his or her desk, has ready access to all of the grammar books and other editors, and relationships with other editors and with publishers, so that they can just see to these fine points in much less time, and save you all of that painstaking aggravation of checking these things, which you often cannot even see after a while.

Their second objective, though, and actually much more important, is to help you write a clear, well-written manuscript, whether it's a proposal, or a textbook chapter, or a whole textbook or a journal article. They want to be sure that you're getting your message across. And editor's – excuse me, a publisher's editor will take care of many of the details of these small things I mentioned about consistency and so on, but no publisher's editor is going to say, I think you should rearrange this sentence, it'll have more impact this way. Or I think you've lost the flow of your article or of your chapter when you skipped to this point. Or I think this point would be better made up here. Once again, it takes a certain distance from your manuscript to even see these things sometimes, and you're just too close to it to be able to see that you've made a leap of logic, or you've made an assumption that you should not have made.

KENNEALLY: Can I ask you, Diane, do you think that in that role as author's editor, it's easier for authors to take that kind of criticism, because this is someone they have a relationship with, they've chosen, and they probably don't feel quite as vulnerable as they might if it was directly with the publisher's editor?

FELDMAN: Well, that's right. Or with a colleague. Many people will give their manuscripts to colleagues to read and, of course, that's a great idea in terms of verifying your research or verifying its relevance to the people in your field, but you can't expect your colleagues to say I think you need to rearrange this paragraph, or I think you've missed a key point about what the audience does or doesn't know that will provide them with important background to get what you have to say.

So the author's editor not only is in a more objective and less sensitive place to bring these things to your attention, but because we do it every day, we do it tactfully. We know how to ask the questions instead of saying, you know, you missed something here. It's part of our skill to illuminate what's going on by asking you questions about what it is you've written.

KENNEALLY: Your work is attempting to, as you say, illuminate the manuscript, to get the best possible work out of the author for the benefit of the reader. But this isn't a process of trying to dumb down anything, or simplify, or anything like that, is it?

FELDMAN: Oh, certainly not. Again, when you're deep into research, it's very easy to lose track of what it is that you knew when you started, or what you didn't know when you started. You're writing your book because you have something to share, something new. But it's hard to keep in focus where the reader is coming from, where to draw the line between what it is that they already know and what it is that you're sharing with them.

Sometimes to just reiterate even commonly known principles in your field, or to state your own assumptions about what you're thinking about when you went into your project, can serve two purposes. For the very knowledgeable expert in your field, and at least it gives them a context, as they're reading your manuscript, to be able to fill – step into the new information that you're providing. For the person who's less knowledgeable in your field, it gives them the background to be able to grasp your point.

KENNEALLY: We say in our title that we're talking about doing all this work in the digital age, and you were recently involved in a project that had you communicating in the editing of a textbook with, I believe, a publisher in Switzerland and an author in London. So we're not talking –

FELDMAN: It was the other way around.

KENNEALLY: It was? I'm sorry, OK. But still and all, that's the world we live in today, and it's not necessarily about face-to-face, and having meetings, and taking up people's time. The new Web environment allows you to communicate this way. But that brings up, I think, a whole special sense of responsibility, and can you talk about that?

FELDMAN: I can. And perhaps all of us who work in this digital age have struggled with some of these issues in the past, but they just get magnified when you're talking about a project as large as a book. Communication is absolutely essential. You need to be sure that you're not making any assumptions among the parties concerned – the editor, the publisher, and the author – about who's doing what and who's doing it when. You need to establish upfront, certain decisions, for example, about the mechanics of publication. Even though the publisher may hand you a style guide and say, this is how we want you to format your paper, not every single decision is going to be made – or laid out in that style guide.

The editor, the publisher, and the author must together agree, hopefully as early as possible, on what these conventions are going to be, in order to save everybody time. Too often I've seen it happen in some other projects, where people don't

establish that level of communication, and go way down the wrong path, and end up wasting a great deal of time by not staying in communication.

KENNEALLY: Which is kind of contradictory, because we think of the Web as making everything happen so fast, and perhaps it's almost happening too fast for people to think about what the consequences may be some step down the line. And so your job is to think ahead like that.

FELDMAN: Well, exactly. Because an author's editor is one who deals with these details and questions and issues all of the time, they're in a much better position to bring up, you know, we need to make a decision about this, we need to determine who's going to do what here. And help to keep everybody on track. Especially when you're working with a multi-author project, an author's editor can be invaluable in terms of coordination.

I want to say one thing, though, about this digital business. There's nothing that will substitute for face-to-face communication. And I strongly urge that when you're taking on a large project that you at least have a face-to-face meeting with all of the parties. They don't necessarily have to be all in the same room at the same time, but when you have a face to connect with all of the communication that follows, it really makes a huge difference. So don't make your project a faceless one.

KENNEALLY: This is a note that will come up over and over, I think, and it's about following guidelines. You referred to it in terms of fonts and so forth, but even something as basic as proposals for a textbook project, those guidelines are out there, they're available on the Web. And how common or uncommon is it that authors are following them? I'm asking you to be brutally honest in front of an authors group here.

FELDMAN: (laughter) Well, I think that our presenters in the first session alluded to the fact that they often receive manuscripts that don't follow the guidelines, and I think that's partly – well, certainly they spoke about receiving manuscripts in which, clearly, the author hasn't even really looked at the journal. That doesn't do anything for a publisher, that's for sure.

I like to think of the guidelines as being like the rules of etiquette. Just as rules of etiquette keep a social interaction smooth, the guidelines are there to smooth the whole process of reading, reviewing, and getting an article or a textbook published.

KENNEALLY: And again, I would imagine it's not that authors are being cavalier. They've simply not taken into account that this is something that's out there for them. I mean, it's surprising, I think – I know as a writer myself, that these kinds of things now are so openly available, we almost forget it. It's just too easy to get the information, and we kind of overlook it as a result.

FELDMAN: It's very true. And it is certainly pesky to deal with those guidelines sometimes. After all, you put all of your work into creating this manuscript in the first place. Do you really have to mess with making sure that all the commas are in the right place in your reference list?

And the answer is yes. Whether it's a journal or a textbook publisher or someone who's reviewing a proposal, first of all they're looking for key information to be in key places. This is especially true in a proposal. If you haven't followed those guidelines to the letter, they may not see what they're looking for where they're looking for it, and assume that you just didn't provide that information. Even if you do provide it someplace else, since it's out of context, it's not going to register with them.

KENNEALLY: Well, let me ask you one more question – and we'll come back, because I think the notion of an author's editor is something that a lot of people in the audience may want to explore – and it is whether this is simply for an early stage author, someone who's learning the ropes. Can a mid-career author benefit from this kind of relationship?

FELDMAN: Actually, it's really in working with an author's editor over time that the real value of working with an author's editor comes out. An editor can be your publishing partner, someone who works with you regularly, gets to know your style, gets to know your research, gets to know your career goals, and can help you target your publications to enhance your body of work and to enhance your career.

A long-term relationship enables an author's editor to position your current project within your overall body of work. An author's editor can be a sounding board for new ideas for future projects. Can help to suggest ways for you to develop a variety of publications out of a large and complicated project.

And as you develop expertise over time, a couple of things happen. One is that your time becomes much more valuable, and so the time that an author's editor can save you is all that more important to you. But even more importantly, as you develop expertise, you lose sight of what non-experts don't know. It becomes more and more difficult to know where you have to provide some background information, where you have to bring the reader in, where you have to establish, for the audience, for the reader, what your basic assumptions or what the commonly held principles are. The deeper you get into your expertise, the more difficult it is for you to see that on your own.

KENNEALLY: Well, thank you very much, Diane.

FELDMAN: My pleasure.

KENNEALLY: I'd like to move now to chatting with Ted Buchholz, who is the Senior Vice President of Copyright Clearance Center, but Ted has a long and

distinguished career in textbook publishing itself. And I'll tell you a few of his accomplishments.

From 1991 to 2001, he led Harcourt College Publishers, which at the time was a \$200 million multi-site publishing division of Harcourt, Inc. He was first the publisher and senior vice president, and then president and chief executive officer.

He previously to that served as publisher and senior vice president of Holt, Rinehart and Winston, and he held several senior editorial and leadership positions with Prentice Hall and Academic Press. And just before coming to CCC, Ted led ExploreLearning, a Virginia-based educational publishing startup. Welcome, Ted Buchholz.

Ted, I want to take you way back to the very beginning of your publishing career, which was as a sales rep, and yet, I think, more than that. Can you tell us about that?

BUCHHOLZ: Well, when I joined publishing – but first, I've got to ask one question. I'm the loose cannon here. Is Alan Schenk (sp?) here? Al, OK. So haven't seen you since 1978 or '79, I don't think. But anyway, there's a story about Al that I'm going to bring into this. So let's see – so what were you saying?

KENNEALLY: Well, I was just asking as a sales rep, it was more than just trying to get books into the professors' lists. It was to do something else.

BUCHHOLZ: Well, and so it –

STAFF MEMBER: Can you use the lav here?

BUCHHOLZ: Oh, sure. Yeah, for me as a sales representative, first out of Washington, D.C., my job was to sell textbooks. And whereas I did a pretty good job of that, the fact of the matter is that I loved talking to professors. And so my first acquisition, so to speak, as a sales rep was basically finding two professors of chemistry at the University of Maryland and getting them to figure out how to do the proposal and everything, and I was able to acquire that book as a sales representative. And I thought that was fantastic

And so that notion of the selling, which is, of course, a difficult process, but of getting to know who the customers are, and then knowing how to work with them, such that the authors would understand the role of publishing in their life if they wanted to be published, and how they could make money, as well as encourage their own growth in terms of prestige, or tenure, or all kinds of things, notoriety – And that was fantastic to me. Those two things connected for me, so that I love that notion of the editorial interest in terms of what people are teaching about, and what's difficult to teach, and why don't students learn the things that they really should be learning. And that became the focus of my career.

KENNEALLY: Were there signs that you looked for, though, when you had these conversations, that helped you to identify who might be a good candidate to write a book, to be an author?

BUCHHOLZ: Yes. They had to be good-looking women and – just kidding. No, but they – honestly, the things that I looked at for – could an author, a potential author, describe the market that they're in. Did they have a full understanding of the issues going on in the market? So in finance, for example, was there enough stuff around, weighted average cost to capital, or just things like that? And try to find out ways that, if we published that book, that it could become more competitive. And that key of differentiation has been real important in this industry.

So Al Schenk, for instance – back to Al – is that Al published a book with Goodyear Publishing. And I was there, I was a sales rep based out of, at that time, Baltimore and then Cincinnati. And that was the first calculus textbook to have graphs in full color. Now today, that doesn't sound like a lot, but that was a major differentiation in that textbook, and it build on Al's scholarship as well. I'm sorry, you couldn't hear, Al, right? So that was a fantastic lesson for me, to understand how that kind of a differentiation – it wasn't the words, it was the usage of graphs, and that was pretty revolutionary.

KENNEALLY: Well, clearly textbooks have changed in the 30 years, nearly, since that book came out. And what is helping to differentiate projects today? I mean, when you were at ExploreLearning, you were involved with online materials, and clearly, there is just a whole range of digital formats in a bewildering array. Can you talk about what authors ought to be thinking about there?

BUCHHOLZ: Well, when I ran that startup, it was all about math and science and basically having the capability for students, actually in part of K-12, as well as developmental math in college, to get a better understanding of the concepts behind mathematics. So these interactivities were all about how do you learn the concept for a slope intercept form of a line, or any other mathematical or scientific concept – how do the tides work, things like that. So those kinds of concepts are something that I think students leave at the table whether they're in high school or college, and so that was a mission-based focus for me to try to see if we could improve math and science education in the United States.

KENNEALLY: It's such an enormous challenge, though. I wonder whether in publishing today at Harcourt, even though you left in 2001 – even at that point you were grappling with the impact of the Web, and prior to that, CD-ROMs and so forth. Is thinking about these kinds of formats at all the responsibility of authors, or is it something that publishers are thinking about and saying, can you come to me with this or that?

BUCHHOLZ: It's a good question. Most authors don't have the technical experience to build those things. There are some and there have been some that have worked. And so publishers in general have done a pretty good job of creating digital content that they could leverage over their businesses. So for instance, probably MyMathLab from Pearson is probably the most used supplementary program, and they're able to use that across all their math programs. And they've got a pretty strong position in the market, the leading position in the market.

But what we're looking for in terms of digital content, interactive content, things like that, are different ways that students can learn. Not all students learn from just lecture, not all students learn from simply reading a textbook. And so that diversity of style and content is pretty helpful for students, it seems like.

KENNEALLY: And it would seem to me that how students learn and how they're learning today, in fact, is something that really the professors know far better than the publishers would do. You would assume that much, at least.

BUCHHOLZ: Yes.

KENNEALLY: Everybody here who's got a project in mind or on paper clearly wants to see that accepted. What's the most common reason – is there one – for a promising project to be accepted, and are there obvious signs that something is just bound to be declined?

BUCHHOLZ: You know, as a publisher business enterprise, you have to look at risk and opportunity. And so, we always looked at these particular programs as how potential – the potential that they may have in terms of driving revenue or actually creating a position in the market that we may want to build off of. And so we – from my perspective, basically, the thing to think about in terms of that is how do we go forward – I've lost my train here. Sorry.

KENNEALLY: Well, the – to the finding that position in the marketplace, that was what was most important to you in either accepting or rejecting a proposal.

BUCHHOLZ: Oh, OK.

KENNEALLY: What kind of leverage it gave you as a businessperson, really.

BUCHHOLZ: Well, the – in terms of proposals from authors, what we did is we looked at them carefully. We looked to see if, in fact – if they had any prior writing experience. Obviously that was a very positive thing. We looked to see if, in fact, they could write something, take a portion of what they might write in a textbook and use that. And beyond that, to make the determination as to whether or not we're interested in going forward with thinking about publishing with that author.

KENNEALLY: OK, Ted, thank you very much indeed. I want to move now to a colleague of mine from Copyright Clearance Center as well, Dru Zuretti. Dru, by the way, is coming to us straight from Anchorage, where she just participated in the Mayor's Midnight Sun Marathon, and so we're really happy to have her here. Perhaps a bit tired, but all the same, welcome, Dru.

Dru travels extensively throughout the United States on educational visits to colleges and university campuses, and she's presented seminars on copyright issues for a variety of national conferences, including the National Association of College Stores, the Medical Library Association annual conference, and the Special Library Association annual conference as well.

Dru, what I wanted to do was to start thinking about the published work and to, again, always keep in mind that we do live in this digital age, and sort of put in perspective first for people how important copyright has become today for creators, authors of all kinds. Give us a brief sketch of that IP world.

ZURETTI: This is a fascinating time in the world of copyright. As we move from the industrial age to the information age, intellectual products are actually the primary fuel of the U.S. economy. Many people don't realize that, that in fact IP accounts for more than \$433 billion, or 5.6% of the gross national product. So because copyright is so important to the United States economy, we have an environment where people are really concerned about making sure that their intellectual property is protected – and that includes publishers and authors alike.

So what happens in the world is actually reflected on the campus. And because intellectual property is so important, creators are really worried about being able to protect their own assets. Digital distribution technologies therefore constitute both a threat and an opportunity right now.

KENNEALLY: Well, let's first, again, continue to provide people with some background that they may or may not be aware of, and that is that the authors here are also – if we can call them this – content consumers. And there may be some very understandable confusion about how strict or loose to play with copyrighted material. And there's a term called fair use out there that I think is important to bring up and to give people a sense of what that means. And then we're going to take it to the next step, which is to ask, well, as authors, what are they going to be hoping to achieve in protecting their work. But first, what does fair use mean on a campus?

ZURETTI: OK, I want to just back up for one second, because I don't like to assume that everyone understands exactly what can be copyrighted or what copyright is.

KENNEALLY: Fair enough.

ZURETTI: So a work becomes copyrighted the minute that it is created in a fixed, tangible form of expression. The copyright immediately becomes the property of the person who creates it, and only the author or those deriving the rights from the author can claim ownership. So that means when you create your work, until it's published, and then you have a publisher contract whereby you transfer the rights to the publisher, or in some cases, the work that you create may in fact be owned by the university if you're a faculty member, who employs you – so that's an interesting piece of information to be aware of.

So the work does not need to be registered with the U.S. Copyright Office in order to actually be copyrighted, although registration does provide some additional recourse in a court of law in case your work has been infringed. So fair use –

KENNEALLY: Can I just ask you then – so registration means what, exactly?

ZURETTI: Registration means sending a copy of your manuscript, and filling out a form, and paying a fee of – I think it's \$30 or \$35 right now. So it's a very simple process. It doesn't mean sending the manuscript to yourself in an envelope so that you have a date stamp that tells you that it belongs to you. That was one of the myths of copyright for a while.

KENNEALLY: OK. But you were going to tell us about fair use, then.

ZURETTI: Fair use is a very interesting aspect of copyright law and often is misunderstood. Fair use, in fact, is not a right, which some people think that it is. It is a defense in a court of law. And it's actually, in statute, is only about a paragraph.

There are four factors to consider when thinking about fair use. And before I go into those, I want to mention that this does affect you as academic authors. If you're creating textbooks, or chapters, or scholarly journal articles, your works may be used by other faculty in their classrooms. So it's important for you to be aware of when your works can be used by someone else, distributed to their students, without the ability for you to receive royalty payments or fees for that use, and when, in fact, you're entitled to be able to receive compensation for the use in a classroom. And that's where fair use comes into play.

There are four factors, which are the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality, and the market effect. Amount and market effect are the two factors that really most impact use in an academic environment. There have been copyright guidelines, classroom guidelines, that give faculty a rule a thumb when trying to make a determination about what can be used in a classroom. So a single copy for research or teaching purposes is permitted without obtaining permission. So someone can make a copy of your material for their own teaching or research purposes. Multiple copies have to meet tests of brevity, spontaneity, and cumulative effect. Each copy –

KENNEALLY: Can I ask you, because those are loaded terms, if you can –

ZURETTI: They are.

KENNEALLY: – parse them out? Brevity, spontaneity, and cumulative effect.

ZURETTI: Right. So in brevity, a faculty member can make a photocopy of some of your material, or you can make a photocopy of somebody else's material, if it's very brief. If it isn't the entire work, for example.

Spontaneous, we often think of as in a classroom someone may have come across a piece of material that they want to use, and say, wow, this is absolutely relevant to the class that I'm about to have this week, and I want to make copies for my students to read, or I want my students to access those copies digitally, and so I'm just going to make them available in that way. And copyright permission is not typically required in that event.

Cumulative effect can mean how often is this going to happen. Is this going to happen semester after semester, and is this going to impact the market for the work, because after a while, the material has been used to such degree that it is creating a cumulative amount of material over a long period of time.

So fair use applies whether it's in an academic environment or in a private or corporate environment. Fair use applies in all cases. But in the classroom, there are some guidelines that make it a little bit more accessible for people to understand. Fair use is often difficult to determine for an individual.

KENNEALLY: I was going to ask you then, Dru, so that once we know something really doesn't fit the fair use standard, that means that permission becomes necessary, that holding the rights and knowing which rights you have is obviously important. It's indeed essential. And so what can people do to license their works, and how should they start thinking about that, and making sure that the works, in fact, are protected and people can reuse them in the proper way?

ZURETTI: Licensing of an individual author's works can benefit an author in a number of ways. For example, if someone is writing a textbook or some other kind of work and would like to be able to use your work in their newly published version, they, of course, will need to ask you permission to do that. And so there needs to be a way that those people can get in touch with you. You need to have some sort of facility so that someone will be able to know who is the author or owner of the work and how to then access that author. Also, if you want to use materials from someone else in your classroom or in your work, you need to be able to find a way to locate them. One of the ways that you can do that is just a little bit of a plug for Copyright Clearance Center, but there certainly is the – CCC has an author program specifically for that purpose.

One of the things you need to really know is, in fact, do I own the rights to the work. When you convey the rights in your publishing contract, it's important to understand and know what it is that you've actually conveyed, because there are different types of use that the publisher might have clearly defined in his contract and some types of use that are not defined that you may actually own. For example, you may own the rights for use in an electronic form. Certainly that was the case in the past. So if you have older materials that you've published, that may not outline those materials, if they're going to be published in an electronic format, belong to the publisher. You may still retain those rights yourself.

So be very aware of what your contract is when you publish. Also be very aware of what the copyright policies are on your campus, if you're a faculty member, so that you know if your scholarly works or your textbook works are owned by you, so that you can have a contract with the publisher and sell those works.

You can list your works with Copyright Clearance Center, and people can come to us. We list works for nearly 10,000 publishers and authors. And they can be used in an academic environment, whether that's for classroom handouts, or a course reader, or whether it might be for use in electronic reserves, or online in a Blackboard or WebCT environment, where –

KENNEALLY: In fact, Dru, I was going to ask about that, because again, we're trying to emphasize the changing nature of this whole environment. And there is, again, confusion throughout the whole world about whether something that is available online, or has been digitized, or anything like that needs permission or anything. In fact, it does, and in fact, there are services – not just ours – that do allow and facilitate that kind of request for permission and access. Can you talk a little bit about the ones that CCC has?

ZURETTI: Yes, Copyright Clearance Center offers the Electronic Course Content Service, which gives people the ability to come to us and get permission to reuse copyrighted material in an electronic environment, and that specifically includes your course management system, electronic reserves, a professor Website. So you can get permission through the Electronic Course Content Service that way, and you can register your works through that program. And also, the academic permission service, which is a program for paper-based permissions for classroom use.

KENNEALLY: And the thing about online that's so remarkable, I think, is not only can you get material, but you can find out who's using your material. So I find, even with my own work, that it's occasionally worthwhile to do some searching online, to Google myself, if you will, to see who may be using material or posting it in certain places. And it's something that, I think, once an author becomes aware of how easily that's happening, I think they even want to protect it all the more.

ZURETTI: The use of materials in an electronic environment is such a major issue right now. It is perceived often by the institution as a new area of value for intellectual property, where creating digital textbooks is also something that education publishers are looking at, academic publishers are looking at, to have more information about. Students are looking to be able to access their texts online, so course cartridges are available and course textbooks are available electronically.

So yes, not only are materials created for an online environment, but text materials that don't exist in an electronic format now are being scanned and loaded into an electronic environment. And it's very interesting to see, if you Google yourself, where that might show up, either behind a password or simply out there available for the whole world to print and distribute.

KENNEALLY: Right, and that's going to be a subject that's going to, I think, furrow the brows of many people for many years to come, including Google itself. Thank you very much, Dru.

ZURETTI: You're welcome.

KENNEALLY: Finally, I want to introduce someone who's probably pretty well known to this audience here at TAA, and that's Michael Lennie. He's been an attorney for 34 years and holds licenses in both California and New York. And for the last 19 years, his practice has focused on the representation of authors, and most highlighted, I think, by the historic case of *Buffington vs. Macmillan*, which *Publishers Weekly* itself said was one of the largest settlements ever rewarded to authors. He's based in San Diego, has a literary agency and law office, and he represents trade and textbook authors in a variety of genres. Michael is the national adviser to TAA, as well as a member of the Authors Guild. Michael, welcome.

I know you're probably going to want to jump on some things that were brought up just now, because they're very relevant to a case that you're involved with, but before we get there, I'd like to ask you, as an attorney and as a literary agent, to talk about this concept of copyright, which sounds like a singular entity, but in fact is a very complicated, multi-layered bundle of rights, really. Can you tell us what that means?

LENNIE: Sure. This analogy just came to me fairly recently, actually, because I'm doing more and more of the shopping, and more and more of the cooking. But a bundle of asparagus seems to make a pretty good analogy. And you have maybe 10, 12 spears in this bundle of asparagus. And if you wanted to, you could sell that bundle to somebody else, or in the alternative, you could sell them one of the spears, or nine out of ten of the spears. Well, the electronic rights are one of those spears. And then, as Chris and I have talked about before, there's actually lots of little segments – the tip and the stalk of that particular spear – that get divided up even further. Foreign rights is another spear. Film rights, if you're talking about trade books, is another spear.

The author is in the enviable position of authoring the work and owning every single spear, and you only have to give up those spears that you want to give up and that you feel the publisher can profitably exploit for you. That's not what they're going to ask for. They're going to ask for all the spears. And most of us are so enthralled by the idea that anybody would be interested in publishing our work, that we sign that contract like we're signing a hotel register. But keep in mind – and maybe you need to do that as a first-time author, but keep in mind, you own all the spears. They've come to you. They want to publish you. You've got some leverage, even if you're first time.

KENNEALLY: That was a point that Dru made, I think, that from the very beginning, it's the author that holds the rights and then decides – and based not upon a single decision, but upon a variety of decisions – who may publish, who may make the movie, who may create the CD-ROM, and so forth, and so on. So it's a real responsibility there.

Can you successfully, though, make that case with publishers these days? I mean, so often we hear that, as you point out, that publishers want it all. And if you have some tips to offer in terms of helping authors think about how to unbundle it first in their own mind and then to make the case for unbundling or for separate negotiations around certain rights with their publishers.

LENNIE: OK, well, let's just take the example, which everybody in the audience has experienced who's published a book. The publisher wants all the rights. So how do you unbundle, as Chris puts it? Well, you want to know what they've done with electronic rights in the past. Do they have the technical support to be able to exploit the electronic rights, or are they really going to just license that to somebody else?

Difference between licensing and developing by the publisher is a very important distinction. If the publisher is going to license some third party to exploit a right, what the publisher is, is your agent, in effect. And they say we'll give you 50% of the revenue we get in licensing that. Well, when compared to your 15% or 12%, that sounds pretty good, but it's 50% of what they get to act as your agent, and they might get 15% of the revenue from this third-party sale. So that means you're going to get 7.5%. It's not enough. That's a very expensive agent. I work at 15% commission as an agent to sell rights. Most agents do.

KENNEALLY: Well, something else worth thinking about, and even though it's now 10 years into the digital age, things are still evolving and changing constantly, to the point where I don't think we have, in our own minds, imagined what are the differences. That, in fact, print has a whole set of different costs, has a whole set of different distribution and all that, and that electronic is entirely different. It may look and feel to us as readers, if you will – content consumers, again – as something like the same, but it is very different, and that those costs and those

different distribution methods have an impact on what the publisher may pay and how the author may wish to expect to be paid. Right?

LENNIE: Absolutely. Even though we're 10 years into it, it's worth understanding and keeping in mind that we're really on the early cusp of this. So there's a lot of development that's going to happen with regard to electronic rights. And if I get no other message across to you, it is don't shut any doors, don't tie yourself in for the next 10, 20 years. If you're buying in a CD right now, buy it – not a publishing CD, but a six-month CD. Buy it for six months. Don't buy it for five years, because there's big changes down the road. And my prediction is that they will be in your favor as an author. That is, the authors should, down the road, be getting more money than publishers are willing to part with at this point in time.

But the differences that Chris is talking about are these. Just think about the electronic product. The electronic product has no paper cost. Is that a big part of the production of a print book? Absolutely. They have no storage cost. They have no inventory cost. They have no shipping cost. You don't return an electronic book. Twenty-eight percent of books – and I'm speaking of all types of books – get returned. That's gone as a cost or a worry for the publisher.

At the same time, electronic books offer an awful lot to all of us, publisher and author together. And that is, since they don't cost as much, they become a less expensive product, and they are a hedge against putting ourselves out of business by continuing to increase the cost, the weight of textbooks and supplements. If you can access them electronically, that says a lot for the viability of this industry.

KENNEALLY: In fact, there's an article in the most recent *Publishers Weekly* that was talking about e-books, which were the next big thing about five years ago, and a number of trade publishers, particularly, got into that world very fast and then had to get out with their tail between their legs. But the education publishers are finding that there is a market there for e-books in a variety of places, and that, I think, sort of reinforces the point you've made, that down the road that's going to become increasingly important to this very audience.

LENNIE: Yeah, the educational publishers are way ahead of the trade publishers on e-books, and that's where the big innovations are going to be made initially. And there's some excellent products. Somebody was – was it you, Dru? I can't recall, but somebody made the comment – I think it was Ted, maybe – that we all learn differently. But when we were in school, we didn't have the opportunity to learn differently. You learned the way it was put out in that textbook and taught from the lectern, or you didn't learn at all.

But now if you're a person who learns best by sitting quietly in your own room, you have that possibility through a course management system. If you learn by seeing how – I was an engineer in a former life, before I became an attorney. If you learn by seeing how something mechanically works – you know, heat transfer,

kinematics – you see how these different devices move together, maybe you learned that way, maybe you didn't get a thing out of reading the text.

So it's a wonderful world we live in. You have to understand a little bit about how it's developing and what the costs are to protect yourself as an author, but we're in a very exciting time.

KENNEALLY: An exciting time, but a challenging time, which is my way to give you the opportunity to talk about a case that you've recently brought on behalf of, I believe, a member of TAA. And more important, not so much about the case, but what the implications are and what perhaps authors ought to be thinking about.

LENNIE: OK. There's a lawsuit in San Francisco Federal Court at this time that we brought against a major publisher, and it involves electronic rights. As I said before, we're really at the beginning of all of this, although we're maybe 10 years into it. It's still the wild, wild west out there, insofar as what rights are paid for, what the accounting systems are. Accounting systems have always been terrible, and now that we're putting kits together with multiple elements to the kits, the accounting departments and publishing houses don't know what in the world they're doing. And often, marketing will get out ahead of accounting, such that they'll put together a product and they somehow forget to tell accounting about it, and so it doesn't get picked up.

This case involves a lot of electronic products that are being sold, marketed without a couple of things. One, it is an older contract –1984, it doesn't have electronic rights in it. So they don't have the right to do electronic products in the first place. Forgetting about that for a moment, if they are going to do electronic products, they have the duty, and perhaps it's even a fiduciary duty, to account for the products. Why do you have a publisher? They've got to keep track of what it is they're selling, so that they can make their own profit and so that they can pay you a portion of it. That hasn't been done with regard to a number of products.

So it's an interesting case to me from the standpoint that our ability to make these products is way ahead of our ability to account for them. It's interesting to me, because it has some aspects of punitive damages to it, which actually are available, to the surprise of me, through a copyright violation. And also, there are punitive damage possibilities because of fraudulent accounting.

Now, other folks on this panel are good deadpans, and there are actually shivers running down their spines. (laughter) But this is really – as much as anything, it's a matter of accounting not keeping up with product management. And it'll happen. It'll catch up, and hopefully this is an aberration, although there are a lot of authors in the same situation. But it's not going to last long in our schedule of making electronic books available to more and more people.

KENNEALLY: Well, I was going to say, and just as a way to conclude before we go to questions from the audience, that you referred to this as the Wild West. And what the Wild West eventually turned into was the great settlement of the West and tremendous opportunity for many, many people. So I hope we can at least be optimistic that that is going to occur. Michael, thank you very much.

LENNIE: Thank you.

KENNEALLY: And what I'd like to do now – I hope that's gotten people, as I said at my introduction, thinking about some things that they hadn't thought about before, raised some questions, and now here's your opportunity to ask them of the panel. We have a handheld microphone. Ron is going to go around. If you would, as I mentioned earlier, for the purposes of the video, hold the microphone just like that in front of you and ask the question. And let us know who it is you're asking. OK?

JOHN: John Huron from Phoenix. I'd like to ask two questions if I may be allowed. I'll ask the one so you can answer, and I think the nice lady from the Iditarod fresh down from Alaska might – whatever that funny running was – but please might be the most appropriate one for this to go to, pertaining to. There are many photocopy versions of ancient texts –

KENNEALLY: I think you pull it a little closer then.

JOHN: A little closer then. All right, so there are many photocopied versions of ancient texts. For example, Montaigne's *Essays* came out in 1588. Let's say if one recopies, a 1950 publication, a 1970 publication of a 1588 original, carefully snipping away any peripheral modern notes, is one in public domain? And I have a second question when I may.

ZURETTI: I love those kinds of questions. I always say I have a son named Anthony, who will always try to find the loophole in my logic when he was a kid. And so often audiences, when asked about copyright, will try to find the loophole there so that they can then be allowed to do something. And so someone inevitably asks the Anthony question in the group.

It is true that the 1588 version of the material is, in fact, in public domain, whereas the 1950 version may not be. The owner of the rights to the 1950 version will likely be the publisher of that version who has, in fact, created it with some notes and so forth.

As to whether or not under the law you can make a photocopy of the newly printed version of the 1588 text, I think that that's got you in a bit of a gray area. And as I'm not an attorney, I wouldn't even begin to give you advice on that. My advice would be to go to – did you say it was a French work? Go to France, find the original work, and see if you can make a copy of that.

JOHN: And quickly, much shorter on the second question, describe please in a – Mr. Lennie, if you would kindly, describe please any advantages or drawbacks – yea side or nay side – that you might see in copyrighting one’s own work by pen name.

LENNIE: OK. I’m still in France looking for the descendants of this 16th Century author. Well, the use of a pen name is something that’s fairly commonly done, not in textbooks very often, but certainly in trade books. And Steve Dylan may be in the audience and might be able to answer technically on this whether there are any legal steps you need to go through. But I don’t know of any. It’s an honored mechanism in authoring, to write under a pen name. And some authors find a way to kind of multiply their presence by doing so.

KENNEALLY: Right.

HEINZ: Yeah, my name is Heinz Zweirich (sp?), and the question is for Michael Lennie. How do you enforce the copyrights and also the royalties for items published in China, but also in Europe where apparently copying has been so far been done quite liberally? How do you go about – or if the publisher does not enforce the rights, how do you encourage the publisher to enforce the rights?

LENNIE: OK. Well, most contracts do not provide any duty for the publisher to enforce copyright. There may be some case law that suggests that that’s an implied duty in a contract, but the contracts themselves pretty much avoid that liability.

What publishers are doing in China, I really am not on top of. China, of course, and a lot of the Orient are areas where there’s a good deal of piracy. The reprographic rights – International Reprographic Rights Organization is doing an awful lot to spread the word of copyright around the globe. And they are working intensively in Africa, for instance, they’re doing some work in Asia as well, to have organizations, such as the Copyright Clearance Center in the United States, formed in their country, such that when a work from England or a work from the United States, from anywhere other than their country, is copied, the copier needs to pay a license fee. That license fee is then repatriated to the country of origin and dispersed to the author, if they collect on an ISBN-specific basis, or dispersed to author groups if they collect on more of a broad licensing basis.

KENNEALLY: And if I can add to that, and Michael makes a good point about this organization, IFRRO, as it’s know – the International Federation of Reproduction Rights Organizations. And here in the United States, CCC is a member. And so we have agreements, these bilateral agreements, with a variety of countries, and they will inform us who should be paid and on what basis, and so forth. Or the money will pass along to the Authors Coalition, of which TAA is one of, I think, now about 12 members.

M: Sixteen, 17 (inaudible) –

KENNEALLY: Sixteen, 17. It gets growing very fast. And it's very important. The thing, too, though to understand is that the United States has quite a different system and a whole different sensibility around copyright than many countries. And particularly in Europe, there are statutory copyright – or there is statutory copyright legislation in many countries in Europe that allows for really free copying of all kinds of material. However, it then – a fee is charged, kind of collected as if it were a tax, and that money is distributed within their country and also to rights holder organizations like CCC around the world. But they don't require permission to be asked, whereas in this country, on a voluntary basis, we do ask for permission. There, there's a right by statute.

FORTNEY: I have a question for Mr. Lennie. This is Marilyn Fortney (sp?). I'd like to ask a question about if you have a book that you have – that the publisher wants to put online, and they want to incorporate Website Internet links, and maybe – I'm not exactly sure how they would do this, but I would think that the person that wants to buy into that would take like a subscription – this is what I'm just theorizing out. I don't know if this is a real thing or not. But if they did take a subscription, like for one or two years, how is that paid to the author? You know, if like somebody buys into that subscription? And then how do you keep track of all of that through accounting?

LENNIE: Yeah. Well, that's what I've been asking for about a year now in my lawsuit. And it does exist. It's not just in your imagination. It's called course management services. I think that's what that's what the S is for, C&S, and they sell access to students.

So perhaps they would sell your book originally, your print book, and in that book would be a code of some sort that would allow you to access the Website and use all of the various supplements that will help support your book. But after the first student who buys that is through using the book, the access is no longer available to that student. And ideally, the theory is that then the next student, if he buys your book as a used book, will purchase an access card separately from the publisher, or from Blackboard, or CT Web. And that money ideally will be reflected in the royalty report, and you'll get whatever your royalty rate is for electronic works.

The reason I'm in a lawsuit is because that isn't happening in our case. And that's where we get to the wild, Wild West. All those systems have not caught up with the theory yet.

FORTNEY: Well, I'm at that borderline, so we will be discussing it –

LENNIE: Well, you're at the right conference.

FORTNEY: – very shortly, I'm afraid.

ZURETTI: I also wanted to add, from another perspective, that because CCC has so many publishers who register their works with us and allow us to grant permission on their behalf, a number of those are included in electronic online academic environments. So what happens when you are registered with CCC as an author or through your publisher, and therefore receiving royalty distributions through your publisher, is that someone may come to us and ask for permission to use material, either for a semester in electronic reserves, or for their class, or for use in their course management system.

We then grant permission based on what royalty fee guidelines you give us, and then you receive a distribution of those royalties with very detailed information about exactly who has used your work and for what semester and what class. So the distributions happen on a quarterly basis from Copyright Clearance Center.

LENNIE: Just a follow-up comment to that, that's what should be happening throughout the industry, and it's not. I would love to form a group amongst these panelists and come up with uniform protocols for digital rights management.

I attended an all-day workshop in New York City about a month and a half ago. It was textbook digital publishing. It's OEB – and I don't remember what it stands for. But I went to learn what are the systems for digital rights management. The word got mentioned perhaps once or twice during the whole day and never explained. There were no standards. There were plans to have standards maybe at some point in the future. But once again, accounting is not there yet, and some of the very influential people on this panel would make very good people to make an influence and perhaps get some of that going.

KENNEALLY: We'll certainly want to follow up with that. Absolutely.

AUDIENCE MEMBER: Here's the typical scenario. And let's say you're a successful author, your publisher wants to do a CD animation to go with the book, enhance sales. So they lay the \$75,000 on the table for the production. Then they ask you to do the storyboards, write the scripts, present the QuickTime files. They have a contractor that converts the things to Flash, that does the animations and so on. The author is not compensated in any way, but is told that the compensation for all the hours of work will be from enhanced sales of the book.

I questioned that, because I thought, well, after they make back their \$75,000, then they're making 100%, and the author – me, in this case – is stuck with my enhanced sales, a nebulous concept. If we rock the boat, then – and the publisher's leverage is to pull back and not do the animations, which turn out to be very popular, what do we do to get a share of that action in terms of, say, work-for-hire? They won't even do a work-for-hire for these. Any comments from –

KENNEALLY: Ted, did you have an experience with that?

BUCHHOLZ: Yes, I did. In a number of cases, although not the majority, is that at Harcourt, what we would do is we tried to work with the author such that they would receive royalties above and beyond – I’m sorry, above and beyond just the textbook royalties.

Now, most publishers do not basically try to use the rights without much payment to the authors. But in order to keep an author happy, in order to have the enterprise grow, to create a franchise of books or products and digital components, it’s really important to have that partnership. But it’s not – that’s not the case right now. It’s not done.

AUDIENCE MEMBER: If the CD is not sold separately, but it’s –

BUCHHOLZ: Bundled –

AUDIENCE MEMBER: – bundled with the book, how do you come up with the royalty item?

BUCHHOLZ: OK, so for instance, a similar approach with course packs. Same sort of thing. And so basically what happens is, based on who the authors are and their participation in it – and that’s something you have to decide upfront in terms of what the royalty would be, because publishers don’t want to invest so much money that they can’t get their money back from it, because some of these are very speculative and new enterprises.

But basically to outline what each of the authors – if there’s multiple authors – would get from that, revenues that result from the increased value of the textbook plus the CD-ROM or a course pack. It does remind me of the horror and nightmare of the Frankenstein books that we used to create in custom publishing, and the industry uses as well, where it was very difficult to determine which pieces of these books were aligned with which author. And that’s part of the issue that you have with your case, it appears to me.

LENNIE: Yeah, we have Excel sheets that would cover the wall, because the kit keeps getting broken down further and further, and the accounting department doesn’t know how to deal with those further breakdowns.

BUCHHOLZ: The tough thing, I think, is that when publishers – publishers do really force to get all rights, and so, as a president of a company, or my boss of Harcourt, said get all the rights. So we would get generally all the rights. The problem is that if in fact they’re never exploited, the publisher can simply hold them for some time. They just sit there, even though the author may have some desire to exploit them himself.

LENNIE: Yeah, that’s right. But that’s a separate problem –

BUCHHOLZ: It's problematic.

LENNIE: But with regard to your question, Robert, I think the publisher needs to be saved from himself, in effect. The publisher will say, well, this is going to (inaudible) by selling more and more of my own books. But we've got to have a provision in this contract that says if there are stand-alone sales or if my CD gets packaged with somebody else, here's what the royalty is going to be. I know it's never going to happen, but if it ever does, we've covered it.

KENNEALLY: Can I say something that I think is a recurring theme through all the various panelists' points? And that is that increasingly, authors have more responsibility to take ownership and to monitor the editing and the publishing and the marketing of their product. Or at least it seems to me it's more of a responsibility than ever before. And it's one that is perhaps burdensome to people who have a career also in academia, but it's one that they can't ignore or that they would ignore at the detriment of that career. And it can start with an author's editor and go on to working with someone like Michael, to hiring a publicist if that was necessary, and so forth.

And I think that if the message comes out that authors taking responsibilities for their works is now just expected, then that's a good message for this audience to have. You can't wait for someone to do that job for you. You said, Diane, you can't expect publishers to edit in the fashion that you would really want in order to make that work as powerful and as strong as it ought to be.

FELDMAN: Very true.

KENNEALLY: Are there any other questions?

AUDIENCE MEMBER: One other comment I had to make, and that was in relationship to the last question. Mr. Lennie did write an amendment in one of my contracts. I felt that an instructor's manual, sure, it does help sell textbooks, but if they go – if the publisher actually tries to sell the manuals, then definitely the author should receive reimbursement.

So he did write an amendment. It turned out that as I watched the catalogues from the publisher being published, and I'd go to conventions and I'd read what the catalogue said, sure enough they had a price on that instructor's manual. And they know that when they sell any of those instructor's manuals, they have to give me some remuneration for it. And I think I did receive some. It's very little, but at least you have that area covered.

KENNEALLY: And the point that if it's not in the contract and the right has been conveyed takes us back to this notion of a bundle of rights, that it's not simply one product that has been licensed, but that specific work as published in that specific medium. It's more than just – what am I trying to say – the text itself. You're

talking about the published work, which I think, in fact, addresses the question about something that – it was the 1588 manuscript published in the 1950s. It's the published work that is not in the public domain, because they may have added to it, or illustrated, or just organized it in a fashion that stamped an ownership on it.

AUDIENCE MEMBER: We're from the Bahamas, so our rules are a little bit different than the United States laws. But we wanted to ask the question. We're employed by the government of the Bahamas as teachers. We were taken out of the classroom to write a series of textbooks, but it was during our employ with the government, so we don't own the rights to them and we receive no royalties.

So we just wanted you to explain that to us. What happens in a situation such as that? Who does the book belong to? We never even saw the publishing contract, so we know absolutely nothing about it. And having heard about the Textbook and Academic Authors Association, we thought it would be good for us to come.

Now, our government is not in the business of publishing textbooks, but this was a new endeavor. But we just wanted to know what our rights as authors of this work.

KENNEALLY: Well, I'm a lawyer, so I hesitate, but I can say, as an author myself, that that sounds like – again, the laws would be different. It sounds like a classic work-for-hire agreement, in which case, presumably, you were employed by the government in some fashion as a teacher, or simply as a consultant for this project, and your fee is that salary you were paid for the year, whenever you were employed. And as such, the ownership of that work remains with whoever the entity was that employed you.

An analogy to that would be newspaper journalists in this country who are employed by the *Boston Globe* or the *Los Angeles Times* or whatever. They are staff and the work is owned outright by the *Los Angeles Times*. But if I, as a freelancer, were to contribute an article for the Lifestyle Section or the Op-Ed page or whatever, that would be something to negotiate. And really, you are not in a position of being an independent contractor in that situation.

But it strikes me that your experience in working on that project certainly qualifies you to work on future projects. And now having attended this, you've kind of been made aware of some issues, so that when that contract does come up, you can be sure to protect yourself.

Well, I want to thank the panel. I want to thank everyone involved at the TAA for inviting us here. That would include John Wakefield, Michael Sullivan, Kim Pollock, Janet Tucker. Everyone's been great to us. Very happy to answer any questions you may have. Just come on up to any of us. If you have any interest in receiving materials about licensing your work with Copyright Clearance Center, you can go online at authors.copyright.com, or you can e-mail me and I'd be happy to help you out with any questions you have. Thank you again.

(applause)

END OF TAPE