



Beyond the Book[®]



“A Play on Words” – Presented at the Text & Academic Authors Association 2008

KENNEALLY: Welcome everyone to a play of words, which is part of the textbook track. If you're not supposed to be here, we'd still like you to stay. I handed out rewards to everyone who was here when I had my rewards for staying. As I told people I was raised a good Catholic boy so if you've been given a reward you're supposed to feel guilty if you leave before we're done. And if you did not get your reward, let me know afterwards and I'd be happy to. It's a flash drive. They're a convenient thing to have and I can get you some things. But welcome. Pleased to have you all here. This is a reprise but not a repeat of a program some of you may have seen last year. So even if you were here last year to hear Michael Lennie and Jan Kardys, I think you're going to enjoy what's about to happen in the next hour or so. We will try to leave some time for questions.

And as you can see, too, we're innovating here from what is normally the case. And I don't know about you but I attend enough conferences and I see enough people who are bound – shackled, even – to their PowerPoint presentations. So I hope you'll appreciate what we're going to try to do which is to unshackle, to free this presentation. And by doing so have a bit of fun. And I think you will enjoy the various perspectives of our presenters. I'll briefly introduce myself. My name is Chris Kenneally. I'm the director of author relations for Copyright Clearance Center. I am the host of an ongoing podcast series which is online at beyondthebook.com and we will be reposting this program, as well as many of the others that you've heard today, on that podcast series. So if you get a chance and want to look at the transcript to see some of the materials there, you can find that when it's posted and there'll be information to all members as to when all that will happen.

But right now I'll give you the scenario here and tell you who we're listening to. When it comes to book contracts, negotiations are all business, though as I say just this once we're going to let it all be a play. So imagine that you're in that infamous fourth wall looking in on a negotiating session here. It'll feature Jan Kardys and Michael Lennie. Jan Kardys has over 20 years diversified publishing experience working for more than eight publishing corporations. She was director of contracts at Warner Books, director of contracts at Macmillan Publishing and contracts

director for Prentice-Hall/Simon & Schuster. She has also worked in editorial subsidiary rights and product and Harcourt Brace Jovanovich, Doubleday, Scholastic, Lippincott and Kroll (sp.?) and St. Martin's Press. And in a previous lifetime Jan even worked at Google.

KARDYS: Correct.

KENNEALLY: Michael Lennie has negotiated hundreds of major contracts for both established and first-time authors in all genres. As national advisor to TAA, he regularly advises professionals on how to protect their work and their copyrights. He's also a member of the TAA Council and comes to us from San Diego where he works and lives. And so what we've got here, as I say, is a play about a contract negotiation. We have a fascinating scenario here. No good piece of drama comes without a little bit of a backstory. And so we'll tell you about the backstory here. The author's name is Izzy (sp.?) Smart and Izzy has been fairly successful. He's had a successful series about 10 years in the making and now has a new series to propose to the publisher, represented by Michael as his agent.

But if the truth be told, neither side has performed exactly properly. The publishers have made some mistakes and the authors have made some mistakes as well. It's probably not the first time and it won't be the last time for Izzy but he just can't deliver those books on time. In fact he's consistently behind schedule. And this results in a variety of problems for the publisher and has left a lingering memory for the publisher. Jan will tell you a bit more about that. It does have an impact not only on Izzy's books but on other people's books and as I say that leaves a bad taste in the publisher's mouth.

Apart from what the contract said, Izzy failed to send in a marketing plan that was required and again that resulted in some problems on the publisher's end. He did something that we care about a great deal at Copyright Clearance Center. Despite what his contract required, he didn't clear permissions properly or on time – which goes without saying with Izzy – for at least four of these books. And finally he failed to revise the manuscripts following the editing on time and that further allowed that – habitual procrastination meant missing some production dates. But as I say the publisher wasn't perfect either. And there was a royalty dispute, among other issues. Believe it or not they actually sold the e-book without telling Izzy. And this meant that there were royalties due to him that were not reported.

There were some sub-rights as well, subsidiary rights, that were sold without prior approval despite what the contract said and in one particularly bad case this was outed in an adaptation for an electronic Web site that posted some incorrect information and led to a fairly serious academic embarrassment. And this has had some impact on the value of the brand. So that's the scenario as we come into this new contract round. Things are a big of a clean slate but not exactly and I guess Michael I'd like to start with you in terms of what your expectations are going into all of this. What are you looking for and what's negotiable and what's not?

LENNIE: Can you hear me (inaudible)?

(tech talk)

LENNIE: Can you hear me now? Well we've had – we have our past history and we've both dropped the ball from time to time. And we're looking at a new series so we're hoping to get off to a good start, negotiate a good contract. I'm concerned about – there's a lot of ancillaries and things that go with the main textbook so I'm concerned about control issues with regard to those things. I want to make sure that they go with my book and if they go with somebody else's book they get reported and I get paid for them. And then there are – it's a typical publisher contract. It's horrid to begin with. And so I need to negotiate some things. I know Jan is a skilled negotiator and so I'm looking for a spirited discussion on these items.

KENNEALLY: And Michael if I recall the history in the previous series it was a work for hire but this one offers the potential for getting copyright for the author and that's pretty important for you.

LENNIE: Actually it was a work for hire for the first seven years that it was out and then after that they decided they'd offer Izzy an actual contract with royalties. And that went on for another four or five years.

KENNEALLY: Right. But that's just an important point to lay out. Now Jan you've got some goals and a checklist that you'll probably be working from. Tell us about that.

KARDYS: Yes. In the back of the room we have a checklist and some handouts that you might like. But what we put together is a working checklist which I designed from the publisher's point of view but you can also use it as an author to consider all the different things.

KENNEALLY: And is there an implication – I think in putting together the checklist, Jan, as the contract manager at Unicorn Press this is because you've learned from bad experience that editors make mistakes when they have their initial discussions with agents about contracts or with authors, for that matter.

KARDYS: Yes. For example editors are under the gun to get a contract drafted and sometimes they forget important details. You can use this to your advantage. They will negotiate the advance, the payout, the basic royalties. But sometimes they'll forget about audio rights, electronic rights – which is very hot today. The territory should be defined very clearly. And then the sub-rights. Sometimes they won't negotiate those upfront with the agent or the publishing attorney representing the author. So if you know there's certain sub-rights you don't want to give your publisher, bring them up in the initial deal discussion with the publisher.

Also series. If your book is going to be part of a series where you will continue to revise your book and there will be ancillary products coming out of it – for example an audio edition, a DVD, workbooks, supplement material –

KENNNEALLY: Merchandising.

KARDYS: Merchandising rights. For example in this particular book the psychology – it's a psychology textbook. The author is quite famous. We've made a great deal of money on this author. He's leading in his field. He's a professor at Boston University and he has designed a personality chart which he has sold, Michael, how many copies?

LENNIE: 20,000 just on my own off my Web site.

KARDYS: Right. So we're impressed with this author. He self-published this personality chart and we want to use this chart not only in part of the series as a marketing tool, a giveaway, but we also want to take his personality chart, laminate it, do a print run of 100,000 and we want to shrink-wrap it with some of our trade authors. How do you feel about that, Michael?

LENNIE: Not so good. Unless we – I have some discussion about what the royalties are going to be to the – my author Izzy. I certainly don't want to put – I've sold 20,000 of them. I don't want you giving away 100,000 of them. And it diminishes the value of my product but we'll talk about that.

KENNEALLY: Then let's drop in on the conversation. Where are we starting? There's a lot to talk about there. What do we have to start with and who gets us going?

KARDYS: Well maybe we could talk about generally what the publisher's view of this book is. It's a psychology textbook. It's part of a series. This is the first – we're doing a new contract with this author and we're going to do a hardcover, paperback, workbooks, an audio/video version and we're going to try to merchandise him in ways we haven't before. The chart is – the personality chart is very important to us. And we're also going to do now a real e-book edition. And we want this author to cooperate with all the other writers who are going to help on this series. And we want you to work with our marketing department in order to create additional giveaway products. The personality chart is our first test with you.

LENNIE: You want to talk about the personality chart then to get things off?

KENNEALLY: What kind of contract language?

KARDYS: (overlapping conversations; inaudible) grant of rights. The grant of rights.

KENNEALLY: Grant of rights. That's the place to start. So what kind of contract language? Again for the audience here I think it's important – I'm pretending to be sitting there sipping the coffee and thinking well what do I care about when that contract lands in the mail or online? I should just be excited and happy that I've got this next series and I'm going to make another bundle of cash. But I really need to be cautious about some things and it's that first pivotal point, the grant of rights, where almost everything else flows from.

KARDYS: Well on page six I'll just read the clause and Michael will comment on it. Basically Unicorn Press gets to print, publish, distribute, license and sell the work in whole or in part in all editions, revisions, derivative works and any media now known or hereafter coming into existence. We can do it throughout the world in all languages. Throughout the universe too.

KENNEALLY: And throughout the universe. That's an important part of this. We don't want to leave off Mars. Michael do you just consider this a holdup at this point?

LENNIE: Well Jan these – I suppose in a list of wishes this would be high up. We're going to have some – have to have some discussion with regard to particularly derivative works. Izzy is going to want to have a right of approval of any derivative work. With regard to license, the same. In any media now known or hereafter coming into existence – the hereafter coming into existence is going to have to be negotiable as to royalty rates and advances. We don't know (inaudible) pig in a poke, poke in a pig. So until we know what that media is we can't give those rights away.

KENNEALLY: And I'm guessing Michael that you're insisting on specificity there because of the experience around e-books in the previous series.

LENNIE: Well it is. We had some problems, as you know. You've admitted those, that you were publishing some e-books and didn't get around to accounting for them or paying a royalty. So we'll deal with the past separately but insofar as going forward, I've noticed in looking through your notes on royalties that I haven't seen any royalty provision for e-books. Is that a continuation of the way it was handled in the past?

KARDYS: No that – we're sorry, Michael. This was drafted very quickly and you will definitely get e-book royalties in this contract. And we'll also put in an audio royalty rate.

KENNEALLY: What would be the split on that?

KARDYS: Well if we licensed e-books you would get 50%. But we have decided to do our own e-book edition because we have an electronic division at Unicorn Press.

LENNIE: And what royalty do you propose for the e-book?

KARDYS: Well how about the same rate as the paperback? We think that's fair.

LENNIE: The paperback?

KARDYS: Yes.

LENNIE: That would be the reduced rate from the print book?

KARDYS: Yes.

LENNIE: Substantially reduced.

KARDYS: Yes.

LENNIE: And that's because?

KARDYS: Well where we have had a history with this author of some horrendous problems. But we're very excited about publishing Izzy again and he has been successful with us. He has caused us a great deal of stress, a great deal of cost in editorial, in production, in art, marketing and sales because Izzy has repeatedly over the past 10 years failed to deliver on time not only the initial books but when we revise – having to do the revisions for comments and changes, he's also late. This has affected marketing and sales.

KENNEALLY: Can I just interrupt and push you on that, Jan? Because that sounds to me like not that convincing because oh you're blaming Izzy for all of your problems. What kind of problems does delivering late or responding in an untimely fashion really create on the publishing end?

KARDYS: Well there's many areas. Production schedules are not met. The art department has to do a cover. We like generally to show you the cover and discuss it. If you don't like the cover we like to go back and do another cover. You put too much stress on us, we ended up spending more money with an artist who we knew would do a great job. We really didn't have flexibility. We couldn't be as creative as we wanted to. This is a bestselling psychology author. We care about the brand. You put great stress on us. Marketing and sales were very upset because they couldn't get the books on time, the promotion materials were delayed, we ended up spending more money doing a rush job. Contracts – he put pressure on the contracts department. The legal department and editorial and the managing editor were furious. Causing them to spend weekends, additional hours editing books, and we believe they were not perhaps edited as carefully as they should have been.

KENNEALLY: And Michael I'm sure you feel sorry for all those editors who weren't able to be home with their families but does this really convince you to give a lower rate on the royalty?

LENNIE: No not whatsoever. And we acknowledge that Izzy is chronically late in these submissions. We haven't argued that it wasn't. Izzy's position is if he didn't have to spend so much time seeing what you've published without accounting and paying him then he'd have more time to get the drafts in on time. But we could spend an hour here talking about the past or we can talk about the contract that you very much want to do because Izzy has made more money for you in psychology than any author you've ever had in the past.

KARDYS: Well let's compromise here, Michael. I will give you the hardcover rate – whatever we pay for the hardcover for royalties, we'll give you that for e-books.

LENNIE: I would want more than that for e-books.

KARDYS: Well not – no, no. I can promise you across the board with all of our bestselling authors they are not getting a better rate. So you can't ask for this. This is really unjustified.

LENNIE: Well you might convince Izzy of that but I have represented a number of authors who have gotten better rates.

KARDYS: What are you asking for?

LENNIE: If the rate turned out to be 15% on the hard copies – and I'm not saying you would agree to that – we would want 20% on the electronic copies. So you have a relationship there, not an exact amount.

KARDYS: Well we will discuss this clause with the publisher. I am pretty convinced from prior history with all the authors we publish that we will not be going up to a higher rate so why don't we go to another clause? Do you want to discuss about derivative works, our position? You said you wanted any media now known coming into existence. We have never altered that clause in any publishing agreement at Unicorn Press. I do have a compromise for you, though.

LENNIE: Go ahead and make it.

KARDYS: I will give you consultation on any media if it's not covered under all the subsidiary rights clauses. In other words for example if someday there's an e-version that's on a little disk that you can swallow and the book appears in your head – that's not known right now – I will give you consultation on any media not known or invented/created, other than the sub-rights.

LENNIE: Consultation. Let me see if I understand what that means. In other words I'll be able to put in my two cents worth that since this little chip is only costing you five cents per copy, the author should get a substantially higher royalty rate and you'll say thank you, Michael. We've consulted with you now. We're going to give you 5% of royalty.

KARDYS: Yes but as you know this is uncharted territory, the electronic world. We are experimenting right now with doing – we have a whole new e-book division, electronic division and we have lost money on many of the e-books because people are continuing to buy the print editions.

LENNIE: That's way it makes a lot more sense –

KARDYS: Prior consultation. We'll give you prior consultation.

KENNEALLY: And Michael if –

LENNIE: Consultation is nothing legally.

KENNEALLY: Right. I was going to say you mean to say you're actually going to argue about the definition of a word here? This is crazy. The word consultation does seem a rather broad word, Jan. What is your definition of consultation?

KARDYS: Well I mean prior consultation would mean that let's say we did have some computer chip that you could swallow someday – which is a form of media not known at this present time. We will discuss it with you before we go ahead and do it. At that point we will probably have to figure out a royalty rate. But it's all new technology and as you know in the past with TV and motion picture rights, TV rights many years ago in the olden days were not put in publishing agreements. We're willing to compromise because we do want your author to be happy with us. Despite his prior problems with us.

LENNIE: You're only going to be able to get some mileage out of that so many times. We are not willing to put that in the hands of your discretion. If there is going to be something that is new, newly discovered, it's going to – it's really in both of our best interests (overlapping conversations; inaudible).

KARDYS: We'll give you approval but not to be unreasonable withheld or delayed. But this is something that's very important to us. We cannot change the language, we cannot take out in any media now known. We must have that right.

LENNIE: I'll agree to the approval not unreasonably withheld.

KARDYS: Thank you. Or delayed.

LENNIE: Or delayed.

KARDYS: And we want it within two days time period.

KENNEALLY: Because we know Izzy.

KARDYS: Right.

LENNIE: Izzy can't even brush his teeth (inaudible).

KARDYS: Should we go over the return of advance clause?

LENNIE: Sure.

KARDYS: Failure to deliver.

KENNEALLY: Now why would you want to go there, Jan?

KARDYS: Well it's a hot topic for Michael from our past negotiations.

KENNEALLY: Well tell us what it is. Can you just define what it is exactly?

KARDYS: Well return of advance would be the author, any author fails to deliver their manuscript or the manuscript comes in and the publisher deems it in their sole judgment to be unsatisfactory. So we have a very interesting clause, which I'll just read a little bit of it. Timely delivery of the work is essential to the publisher and is the essence of this agreement. If the author fails to deliver the outline, the sample chapters, complete manuscript by the due date, publisher may at the publisher's sole discretion terminate this agreement and recover all sums paid to the author. Author hereby immediately returns the advance and other sums upon the publisher's written request. In addition if we deem the book unsatisfactory we can find another writer to finish the manuscript we will use Izzy's name now and the author Izzy will now have to pay us a penalty if we cancel him and Izzy will not get future royalties or any future money in addition for the advance coming back because we had to spend additional monies with this additional writer.

We will give you – we will decide what the editorial changes are to make the book satisfactory and again because of Izzy's history of always being late over the past 10 years, not only initially up front but with all revisions, we have to have a very tight clause now, Michael – more than we would normally have with most authors – that he must get back to us within a very tight time period for revisions.

LENNIE: Well Jan you know that none of that's going to come about in this contract. The one thing that I would agree to on the time is of the essence because you keep beating me over the head with that that Izzy hasn't been timely. He has his own complaints you haven't been timely with regard to publication but we'll agree what's good for the goose is good for the gander and that is we'll have a time is of

the essence clause – which your guess is Izzy would never be able to comply with – so long as we set a date that this book will be published within not more than 12 months after the date of acceptance and time is of the essence as to that date as well.

KARDYS: Well this is rather complicated, as you know, since Izzy has himself admitted that he's never delivered on time, every revision has come in late, he's cost us repetitive money. Not only has he –

LENNIE: We've heard that.

KARDYS: And permissions are not cleared properly and I myself has cleared his permissions. We've paid for it.

LENNIE: I've got a solution for you on the permissions and that is that we're going to insist that the publisher clear the permissions and pay for the permissions. Then you won't have to worry about Izzy on that.

KARDYS: Well then we might have to lower the royalty rates in –

LENNIE: I don't think so.

KARDYS: – in some way. Well we'll have to get back to this.

KENNEALLY: Well can I just say we're hearing about poor Izzy here and his timeliness but we haven't heard too much about the publisher and – well we heard that they didn't pay the royalties they were supposed to but there was also some issues around subsidiary rights and I bet, Michael, that that makes you wary of a lot of this, too.

LENNIE: Well yeah. What you're pointing out, Chris, is that the publisher is taking this not submitting on time and beating Izzy over the head with it with regard to every single item in the contract. And it's good to bring up but not that frequently. A lot of the problems have been joint between the publisher and the author and that is that the publisher has had various delays, they've had production managers who have quit and gone to other publishers. Izzy has spent an awful lot of time chasing down editions, including the electronic – but others as well – that never got accounted for. So it's not a one-way street in any regard. As to the subsidiary rights, there's the incident back in June of 2006 when sub-rights were sold without adaptation approval. And that causes a great deal of concern in reputation in the community because the adapter really didn't know anything about psychology. So he ended up saying something that just made Izzy look ridiculous. There were articles written about that, newspaper articles. We suffered a lot from that.

KARDYS: We did – in that particular case, Michael, we did submit the adaptation for this Web site to Izzy and he has a history of delaying.

LENNIE: So we've heard.

KARDYS: And he didn't get back to us. We did submit the adaptation for his consideration and approval and to make suggested changes but he didn't get back to us on time. We were about to lose this sale. There was a lot of money. We do apologize. We did apologize profusely for this, for hurting his reputation. It also hurts Unicorn Press, too, just as well. But this was only a one-time thing.

LENNIE: It was a pretty big thing. It got press coverage for two months.

KARDYS: Well we – in the sub-rights section we are going to give you a much better clause this time. It's on anything condensed or abridged or altered for any of the sub-rights. We'll have to put a dollar amount of \$200. Any permissions under \$200, we're not going to give you approval rights on. We just don't have time. We'll give you approval over those but not to be unreasonably withheld or delayed but if it's time of the essence for a particular deal, we need a two-day turnaround time. We need his e-mail address, his work address, all of your contacts because we must be able to contact him and get a reply.

LENNIE: We'll agree to a two-week turnaround time. As you know Izzy is very much in demand on the speaking circuit. He has other books that are under publication that he has deadlines for. Two days is out of the question. But 14 days should be sufficient.

KARDYS: Well why don't we compromise with five business days.

LENNIE: It's not enough. (inaudible) he needs to have some time. You pointed out and I think are aware that he may get distracted from time to time so he needs – I'd agree to 10 days.

KARDYS: Why don't I discuss this with the permissions department at Unicorn Press and the foreign rights department and the domestic rights department who are three different departments granting these rights and if they say they can do it, if 14 days is enough then we'll consider it but if they need two days or five days, I think we have to be realistic in this case based on Izzy's history. We don't want to put stress on him but we can lose deals and he is quite famous and we've brought in – you've made a lot of money from Unicorn Press on sub-rights so time really is, again, of the essence.

LENNIE: Well we make 15%. You make 85%. So I don't think it's fair to just say we've made a lot of money. But we'll try to get approval on this from Izzy as well as his wife and his son and daughter so that we have four fallbacks who might say no just like you do. But we can comprise it preferably 14 days, 10 days at the very lowest.

KARDYS: I'll check with our sub-rights department.

KENNEALLY: What's the next clause we want to look at?

KARDYS: Are we OK on the return of advance clause, Michael? Do you have any additional comments about that?

LENNIE: As you know it's a very large advance and he's not going to put it in a CD account for 1.5% for three months or 3% for three months. Those monies usually get spent. So we would insist upon what's referred to as a first proceeds clause, that is that if for some reason the work doesn't get published then Izzy will have an opportunity to take the book elsewhere to another publisher and the first proceeds that come out of that publication will go to repay the advance.

KARDYS: And normally we might consider that, Michael. But as you know Izzy has done these psychology books with us for 10 years. Seven of those years he did work for hire agreements. It's only been in the last three years that we, out of our generosity, decided to give him copyright and a normal contract. Despite the problems with him. We've bent over backwards to promote him. We've spent a great deal of marketing money. But you – if you notice the series clause, this is a series that he's creating for us and you don't really own the series. We do. That's a clause you might want to read over. Since we own the series, heaven forbid he's disabled, he has a heart attack, he can't work – we would consider Izzy's son or daughter to help revise the books and get them up using his name. But we can't give you an open first proceeds or any kind of first proceeds because we own the series here.

LENNIE: Well you don't own it yet. We don't have a contract. We're going to insist that we own the copyright on that. We don't agree to have anybody else revise unless Izzy's either dead or incapacitated or he agrees to the revisers. So what you're buying is the personal services of Izzy. As long as Izzy is here to deliver them that's fine. But you get rid of him, your series is done.

KARDYS: Michael just so you know, on the editor on this series language we have e-mails which Izzy did agree in writing before this contract was drafted that he acknowledged and agreed that Unicorn Press owns the series. We're willing to compromise. We'll give him the 12-month period to return the advance if he delivers an unsatisfactory manuscript but you have to understand, we do own this series.

LENNIE: You don't own it until you have a signed agreement and Izzy has not signed any agreements. Especially since you've elaborated on it now, we wouldn't agree to that in a million years.

KARDYS: Well let's get back to this because I think we're going to be in a heated discussion about this clause.

LENNIE: Oh it appears so. Can we talk about unsatisfactory manuscript?

KARDYS: Oh of course.

LENNIE: As you know from negotiating contracts through my office before we have standard changes in the unsatisfactory manuscript clause. Basically once again as you know what they provide is that within 60 days of our submission of final manuscript that you will either accept or indicate you are not accepting in writing the manuscript. If you don't get back to us within that time it will be deemed accepted. If it's declared not acceptable, you'll provide us with a detailed list of the reasons and the things that need to be corrected. We'll be given 60 days then to make those corrections and resubmit the manuscript. If it's still not accepted then all rights are returned to us.

KARDYS: Well what we would give you on this – again going back to Izzy failing to deliver on time, not only initially, on every single book that we've ever done with him – when we revise it and we do have editorial changes that we send to him in order to publish each new book he's always delayed. So we can't agree to –

LENNIE: Let me just interrupt at this point. If Izzy is such a big problem to your publisher then maybe you want to do this with somebody else. If you want to do it with the psychology author who is top in his field, could sign with any number of other publishers, I'd suggest you drop this he's always late business.

KARDYS: Well we feel we can work with him. He has an excellent relationship with the publisher and with the editor. But when you try to pin us down to 60 or 90 days to reply, if he's on time, sure we'll agree to 60 or 90 days. If you deliver by May 1st, 2009, on time, we will agree to a 60 or 90 day. But we'll have to split it up because this is not just one book it's a lot of different components where he's working with other writers on a work for hire basis. He's in charge of them. We really do. It's rather complicated. It's not just a one-book deal, Michael.

LENNIE: We can work out the schedule of dates for the other components but for his book, for the textbook, he needs to have time limits so that the publisher acts timely on this also and doesn't just sit on it.

KARDYS: Why don't we with our May 1st delivery date – it's very important because of the various things in marketing and sales and editorial that if we will make sure that in six months before the due date we will check with Izzy to see how he's doing. We will make several phone calls to you and to him. We'll put several things in writing to see how his progress is. We'll also put this in the contract. And if we feel that he's not going to make the May 1st date, at our sole discretion we'll give him an extension of 30 days. If you really are going to insist on this 60 or 90 day period in order for us to make editorial comments on the work.

LENNIE: We'll agree to a 60-day grace period with regard to the date of submission but in like fashion we'll agree to a 60-day grace period for the publisher to publish by May 1st of the following year. As I said what's good for the goose is good for the gander so if you're going to tighten the reins around the author, you're going to have to comply with the dates that we set also.

KARDYS: We will compromise on the dates to get back to you on comments but we can't live with this two, three, four-month, five-month delay.

LENNIE: No we've agreed putting in time is of the essence.

KARDYS: Time is of the essence.

LENNIE: Time is also of the essence for date of publication.

KARDYS: As long as he complies with the delivery date that we come up with on the revisions for the initial book, we will compromise. So we will give you – I'll send you language for a duty to edit clause. We will give you editorial changes. We will give you the opportunity to cure before we just go ahead and terminate. We want you to have a chance to fix the book before we terminate and ask for all the money back.

LENNIE: Right. OK. And –

KARDYS: But you don't have the right to resell it to another publisher because we are helping Izzy brand himself. We gave you a lot of input on your Web site – free of charge, I might add – to help you brand this personality chart.

LENNIE: Well we can't agree to reimbursement of the advances without a provision that those will come out of first proceeds. There's no place else for them to come out of. So we'll be happy to do it in that fashion, but not otherwise. Also if it is unsatisfactory after the second go-through of this, we want all the rights back.

KARDYS: Well we – again, Michael, we do own the series.

LENNIE: No you don't. We're insisting upon copyright on this.

KARDYS: Well that's the thing that I must discuss with the publisher, because this is a major dealbreaker.

LENNIE: That'd be fine.

KARDYS: We don't want to, you know.

KENNEALLY: Well that seems clear. And let me ask you about something that got brought up in the scenario that is above and beyond the book itself or the series and

that was some issues around the marketing plan. What were they and how might they have an impact on any particular clause in the contract?

LENNIE: Well they – ordinarily most authors are not able to get much in the way of a marketing plan discussed in the contract. The most authors will be able to do is to require that the marketing plan be submitted to the author and that the author be consulted with regard to it. But as I pointed out before, consultation legally is nothing. They can say here it is. You say that's terrible, you won't sell five books. They'll say thank you very much, we consulted with you. In Izzy's case he's made so much money for the publisher that he may be able to get more than that. I don't think we want to spend a lot of time on negotiating what he might get but he's going for approval of the marketing plan and part of that is the same sort of thing that Jan is doing and they had promised to spend certain money and do certain things in regard to marketing on the previous series. It wasn't in the contract and they failed to do it. Izzy –

KARDYS: Well we did spend some money, Michael. We did.

LENNIE: They spent some money but it was –

KARDYS: We didn't spend the amount of money we said we were going to and –

LENNIE: You spent about –

KARDYS: – I apologize for that but in this particular case because he's branded himself, due to our help, and we've given them a profile in the academic community that he wouldn't normally enjoy. We are requiring all of our leading bestselling academic authors to now provide a marketing plan on what that author will do for us. We want to see what things you will be doing for us. We will definitely spend money but we're not going to put that in the contract. But we want to see what will you do to help market your book for us.

LENNIE: But this is a textbook not a trade book so I don't imagine –

KARDYS: But we're doing crossovers, as you – maybe they didn't discuss this with you or Izzy forgot to mention this but we're taking your personality chart and we're shrink-wrapping it with some other leading psychology authors in the academic. And then we have a few trade authors who do psychology-related books and we want to give that in, shrink-wrap it in with the book as a giveaway.

LENNIE: And what will Izzy get per copy?

KARDYS: He's not going to get anything. We're helping to give him publicity in the trade market, which you normally wouldn't get.

LENNIE: Well why would that be of advantage to us? We'll keep the trade rights and we'll do our own trade books. If you want to use this chart, which has been wildly successful – as you know, it's been written up in *Psychology Today* and various other trade magazines – then you're going to have to come across with a substantial – not just a nominal but a substantial permission fee for each one of those that's placed with another book.

KARDYS: But Michael –

LENNIE: If not then we'll retain the trade rights.

KARDYS: Well Michael again your author has already struck a deal with us before you were hired and he –

LENNIE: Drop that one. There's no previous deals.

KARDYS: We consider this – we're going to do a print run of 100,000. We're laminating it. You could not afford to do this. We're shrink-wrapping it as a giveaway with these other trade authors and a few of the academic authors. He's going to be in markets that he hasn't touched before.

LENNIE: For free.

KARDYS: This is promotion. Promotion for him. How about this? We will mention on the chart his Web site.

LENNIE: Woo.

KENNEALLY: Well if I could say here listening to this I've learned two things – whatever you do, don't submit a manuscript any later than the date in the contract and don't ever have negotiations with your editor before you get a representative because you'll be hung out to dry if you do. We're almost toward the end of the session and I want to leave some time for discussion and questions from the audience here but I've enjoyed the back-and-forth and am thankful that I'm not in the middle of this most of the time. Is there any other clause, Jan or Michael that –

KARDYS: Sub-rights.

KENNEALLY: – you wouldn't end this conversation without bringing up. Sub-rights?

KARDYS: Sub-rights and out of print. Michael are you –

LENNIE: What page are you on?

KARDYS: We feel the out of print clause on page 20 is an excellent clause.

LENNIE: Well it really is from your perspective. It's a wonderful clause because –

KARDYS: Should you read it?

LENNIE: Should I read it?

KARDYS: Yes.

LENNIE: Yeah sure. If at any time after 15 years the work is out of print and if after author request the work is not put back in print within 12 months, author may request a reversion of rights. In order for the work to be out of print, it must be out of print in all editions or version of the work. And any previous editions within the series must also be declared officially out of print by the publisher. So let me see if I understand this correctly. If you have an electronic edition – which you're asking for – and you have one CD somewhere with Izzy's work on it. And you haven't sold anything for five years, and that's five years after the first 15 years, he still doesn't have the right to ask for a reversion of rights. Do I read that correctly?

KARDYS: You are 100% correct. But remember this is a series –

LENNIE: I don't know why you waste our time with something that far out.

KARDYS: Well we have to think of the future. Again we've helped Izzy brand himself and market himself. We've given him so much input on his Web site. I personally, because of my Google experience, helped him to do cross-marketing – which he's grateful for. I just feel that if the hardcover and the paperback are out of print, we also have outstanding sub-rights and we must go back to those licensees and say do you want those books back in print? We have automatic renewals on some of those agreements, Michael. I can't make a change to boilerplates.

LENNIE: We'll agree that any sub-rights that are under license at that time and that are not out of print themselves can remain for the remainder of the term of the license. But as to the North American print rights, those are going to have to revert if we have less than 1,000 in sales in two consecutive accounting periods.

KARDYS: We will consider something similar. We do have our own compromise out of print clause which deals with electronic rights. We would give you back – let's say for example the hardcover and the paperback, the audio, the e-edition is out of print but we have 20 or 15 subsidiary rights licenses and they're still in print – we'll give you back all of those rights except for the outstanding sub-rights. But you must give us a time period to try to reactivate the books and get them back in hardcover and paperback.

LENNIE: We'll give six months on that but –

KARDYS: Well six months is not enough time because again, Michael, those books are going to require some revisions. And we know Izzy is always late. So that's why I put in 12 months. Just for Izzy.

LENNIE: Well let's do it this way. You'll have three months to advise us in writing that you are doing a reprinting and you'll have an additional nine months after that to complete the – get back in print. As far as the e-rights, you say if they're out of print we'll revert them to you. E-rights don't go out of print. So that's –

KARDYS: Well how about a threshold? How about 50 or 100 – let me check on – because it's Izzy I have to do check with the publisher on this. So I can't just –

LENNIE: Well check on 1,000 copies, not on –

KARDYS: Well 1,000 is out of the question, Lennie.

LENNIE: The 15 years is not going to be agreed to. Maybe six months or something you could get out of me after publication but 15 years is not in any publishing contract I've ever seen.

KARDYS: All right. Well we'll get back to you on what we want to give on this clause. I have a few compromises but we are concerned right now about the series language, so we might give you a trade. OK Michael?

LENNIE: I'm willing to look at anything you want to present.

KENNEALLY: That's a definite maybe I think. I'm beginning to think, too, that his name should be not Izzy Smart but Izzy Late.

KARDYS: Do we need to talk about the sub-rights, Michael? Are you quite happy with them?

LENNIE: No I'm not happy at all. Do we have time to discuss the sub-rights?

KENNEALLY: Well let's see if there's one or two high points for that because again I think we may have some questions or not or a hand to ask a question either of Jan or Michael. Sure. So I think yeah subsidiary rights covers a multitude of sins but there are some that are more critical than others. Jan.

KARDYS: Right. We care very much about being able to adapt, do adaptations, abridgements, digests because we have a division now that we just bought where we can take part of Izzy's book, condense it, and put it in print with three or four other academic authors. So commendations, abridgments, digest rights are very important to us, Michael. And we're making money here and we're making money for Izzy.

LENNIE: Well we certainly agree that there is that potential. But anything that changes the original text other than punctuation, spelling, normal standards of grammar is going to have to be approved.

KARDYS: We will give you that. We also care about electronic rights, merchandising rights. We put in TV and motion picture because as you know, there is a production company right now that's interested in doing a story about Unicorn Press and the life of a book, of a textbook author with ancillary rights and they will be interviewing Izzy and the publisher and they want to learn about the publishing process and how a book is put together. We would like Izzy to take part in this so we would like –

LENNIE: When's it's scheduled for?

KARDYS: When is this schedule? About a year to two years.

LENNIE: Well he's going to be a little late for that so we'd want to have within three months.

KARDYS: But how many times do you get an author to be on TV? This is great publicity, Michael. You should be bending over backwards for us.

LENNIE: Well if we can free up a date in our schedule of TV appearances we certainly will be happy.

KARDYS: It will be filmed in advance. We will work on a schedule with you. That's not an issue. This is a very exciting thing. We're going to try to get the promotion material from the production company, the TV studio. We're trying to get marketing papers as a handout with his Web site and information. We're extremely excited about this. It's great for Unicorn and it's great for Izzy. So merchandising rights here are very important to us.

LENNIE: What do you have in mind?

KARDYS: Merchandising could be anything. Mugs, calendars, t-shirts. The chart. And by the way, we came up with the idea of the chart.

LENNIE: The chart again.

KARDYS: I didn't know if you knew that. That was our idea.

LENNIE: Well you would think he would have known it if it was your idea but it wasn't and that's why he sold 20,000 on his own.

KARDYS: Well merchandising rights will be then a question mark. And I will have to go back to the editor and the publisher if you're trying to retain those rights.

LENNIE: Well depending on what we agree – if we come to agreement on a permission fee per use, then the rights don't become as important. We're not going to agree to have it put out, for instance, with other psychology books that are going to compete with his.

KARDYS: As far as the chart goes with other psychology we do care about his name, his reputation. He is a Brown professor and quite famous and how about if we give you prior consultation if we decide to shrink-wrap this chart with another academic author?

LENNIE: Well we've discussed consultation and its value as being valueless twice already so it would have to be approval.

KARDYS: Well let me check on that and we might compromise.

KENNEALLY: Well with that I think the final word being compromise that seems like a good place to stop to allow people to ask any questions. We don't have a microphone to pass around but if you stand up I'm sure they can both here you. Yes.

M: What about Izzy's royalties?

KENNEALLY: What about his royalties? Well there was that problem with the e-book royalties.

LENNIE: We haven't discussed that. And probably I would go in asking for something a little bit ridiculous like 18%. She'd offer 10. I'd want to get to a compromise of 15. I would compromise further from that, possibly, to 12.5% for the first 5,000, maybe even 10,000 but then I'd want a 17.5 to make it up for sales more than 10 or 20,000.

KARDYS: Well Michael we can discuss this and we are open but as you know, publishing today is not like the olden days. We do profit and loss. We have a CFO. We have a whole department that calculates down to the penny what we can afford. Our print run is going to be expensive. We're doing some different things in this book to make this book more interesting. We're doing crossovers in the trade area. We don't have a lot of leeway here for the royalties. We did give you good rates.

LENNIE: What'd you give me?

KARDYS: Let's go look in the contract. I don't remember. Any more questions?

KENNEALLY: Any more questions, yes, back there, David?

DAVID: I'm experiencing both déjà vu and schizophrenia as I listen to you. I have actually had Mr. Lennie represent authors of mine when I was at Prentice-Hall. I have the utmost respect for his level of detail and granularity and I've seen what it does to the legal staff at Prentice-Hall so I really – I appreciate his respect. That said I have always been surprised when I've been in those negotiations that authors aren't asking for things that will help drive the sales of the book. The sad truth is, most of the things that you're talking about for the majority of authors are never an issue because the books just don't sell. I hate to (inaudible). What I've seen some authors do that I actually got behind as a publisher and editor in textbook publishing is they want to go the sales meeting. They want to be guaranteed that they can go to one sales meeting per year. That they want the publisher to guarantee that they're going to do a preliminary edition of the book or they're going to do some kind of class testing or they're going to put money in the budget to ensure that there will be 50 reviewers or 100 reviewers.

And again in the context of maybe what I was talking about earlier today, as you look at building your own network, those are things that I really am curious about (inaudible) experience – and we talked about this a few years ago – if you tried to get any of those kinds of things on paper for authors (inaudible) publishers are still a little recalcitrant to do this. It's a statement and a question.

LENNIE: Thank you David.

KENNEALLY: Great question.

LENNIE: We only have so many things we can discuss here today but those are the sorts of things that most authors would not be able to get too much of. Izzy probably could and would include it in his list of things that he wants. He wants – we talked very briefly about a marketing plan and approval or consultation on the marketing plan. For most authors of a textbook, the best way they can assure that the publisher's going to work hard for them is to get a very high advance. The publisher's not going to let the book go once he puts that money out. But the sort of things that Chris is – that David is suggesting are excellent.

And I have negotiated clauses where authors have had the right to go to – once a year to a sales meeting, depending on the author. Somebody who is a good salesman, a Bill Passwork (sp.?), he could go to a sales meeting and he could get those sales reps energized. There are other authors who write well but don't speak well or don't represent themselves well and it'd be a disaster. But certainly those are neglected areas, David, and those are things that authors should be thinking more about.

KENNEALLY: Jan do you ever see anything like that?

KARDYS: Well I can tell you because most of my experience – I did work at Prentice-Hall, Upper Saddle River and Harcourt Brace Jovanovich and Macmillan school

and college contracts, I did that as well as trade – today marketing plans are really important in the trade area. You need a literary agent and you need a marketing plan before you even submit a book. But in the academic area, publishers don't spend a lot of money on marketing. So what can you do? You can have your own blog. Go on Google. There's something called Blogger. Put up information about your book. Do cross-marketing. Use a product called AdSense, which is free.

KENNEALLY: But can you get anything (overlapping conversations; inaudible).

KARDYS: What it will do is – AdSense is – if you use AdWords, you do ads on your book. But AdSense, even if you don't spend money on advertising, find other academic authors who have a Web site and try to do cross-marketing. Say I'll advertise my book on your site and you can advertise your book on my site. AdSense brings advertisers to your site.

KENNEALLY: But Jan what about trying to get anything in the contract (overlapping conversations; inaudible).

KARDYS: Well publishers are going to fight tooth and nail. You really won't get that. I've given marketing plans in the 30 years I've been in publishing maybe three or four times to bestselling authors in the trade area. Never have I ever given that in the academic area. You really have to come up – if you come up with a great marketing plan, and you find out who the sub-rights directors are at your publishing house – who handles permissions – send them a little gift, do something unusual. Send a little gift to the salespeople. Even put together your own little audio or video on your book. You can run it for free on Google and then link it on your site. There's a lot of different things you can do which are not costly to help promote your book.

KENNEALLY: But aren't necessarily part of the contract.

KARDYS: Not part of the contract.

M: You can ask the publisher, and I've seen this done before – you can ask the publisher for a grant of three to \$5,000 to be payable to you to be used for development of a Web site. That gives you control and allows them to pay. Now I realize that's tied to P&L, how much will the book sell. And I've seen some authors where (inaudible). But those are the kinds of things that I'm personally encouraging people push a little bit more for because in that sense it's a win/win for the author and the publisher.

KARDYS: I agree.

M: I would be more than happy to give an author \$3,000 if they're going to do the kinds of things you were just (inaudible).

KARDYS: If you put together a marketing plan as you're submitting your book project to your publisher and you break it down – print, advertising, Internet, all different areas of the media – and you clearly have it defined and you figured out how many postcards you're going to do, whatever, publishers are incredibly impressed by that. And if you do that right up front you might be able to get, as you said, a three to \$5,000 grant.

KENNEALLY: Michael last word.

LENNIE: Jan gave me an opening also when she said we want you to prepare a marketing plan. Now she couched it in terms of what the author would do for us, but I would take that and put together a complete marketing plan of what each party's going to do for one another.

KARDYS: Right. But we won't – we won't put – we'll put that we require a marketing plan from Izzy in the contract but we will not put the amount that we're going to spend in the contract for Izzy.

M: I would then suggest that Izzy say that he will submit the marketing plan to you and allow for consultation from your marketing department.

KARDYS: Right.

LENNIE: And also an author of Izzy's stature, I may well want to meet with the manager of sub-rights before we enter into this contract and just –

KARDYS: In marketing and promotion.

LENNIE: Yeah. Discuss what it is they plan to do in the way of sub-rights.

KENNEALLY: Well unless there's any more questions, I want to thank you on behalf of Michael Lennie and Jan Kardys. My name's Chris Kenneally. Appreciate your attention. Appreciate the really thoughtful way they've both gone at it and let you know that when we do post this as a podcast, we will also include a transcript. There was a lot of facts and information flying around here and I'm sure it was hard to keep up. So if you want to look at something more closely, don't forget there will be a transcript there for the program when it is posted. Again thank you all.

APPLAUSE

LENNIE: Good job.

KARDYS: That was fun.

LENNIE: That was fun.

END OF FILE