

Electronic Rights

They're the future – which is cloudy as can be

By Erik Sherman

Magazines and newspapers create web sites. Book publishers consider making titles searchable on Google or Amazon.com. Databases sit filled with articles going back decades. And to do all this, publishers need electronic rights from authors.

Negotiating electronic rights has become a minefield for writers, publishers, editors, and lawyers. The set of rights, and what uses they actually allow, is incredibly complex. Yet any writer can start to get a grasp of the issues, with some patience and work.

The very term *electronic rights* is confusing. Does it mean database archives? Web use? Database contents delivered *over* the web? Publication on CDs or DVDs? Standalone electronic documents delivered to cell phones? All of these? Some of these?

No single set of terminology has won out, largely because the legal industry proceeds at a glacial pace while technology skitters like quicksilver on ice. Often, two people can use the same term with different meanings. A writer must be careful in agreements, and the first step is to understand some basic technologies:

- Writing can appear in a number of formats, including Word documents, HTML pages, PowerPoint presentations, spreadsheets, Adobe Acrobat PDFs, files from specialized publishing programs, or entries in a database.
- CDs and DVDs can hold files of any type.
- Web sites might display articles written for those sites, for associated periodicals, or syndicated from third parties.
- Databases can make work available to many at the same time on web sites or, via CDs or DVDs, at companies, schools, or public libraries.
- Organizations might post material on a social networking site, such as MySpace or Facebook, for potentially huge audiences.
- E-documents can work on computers, PDAs, or specialized hardware.
- For greater exposure, publishers could distribute work to blogs, which in turn get distribution through such technologies as RSS and Atom, allowing people to subscribe and get delivery over the Internet.

All these examples – which aren't an exhaustive set, by the way – are “electronic.” Agree to electronic rights in a contract, and you could be authorizing all these and more. You're better off with contracts explicitly spelling out rights. The more exact the language, the less likely you are to open the door to continuing unpaid future uses.

Even terms that you might think to be explicit could need further elaboration. For example, what do “web rights” mean? Display on the magazine's site? Display on any or

all sites run by the publisher? On any site run on behalf of the publisher? On any site at all? Some publishers try to give away content to other sites for a link back, as a form of marketing, which cuts the potential online resale market for you. A publisher could host content and let others link in so that your writing displays on third party sites without them technically “publishing” it or you getting paid. Specificity can help. You might change a contract’s “web rights” wording to “right to display the article on the magazine-branded web site owned by the publisher.”

Two other major rights considerations – exclusivity and sublicensing – have particular relevance for online uses. Exclusivity means that no one else, including you, can use the same rights, while non-exclusive rights means you can also sell them to others as well use them yourself. Exclusivity can come back and bite you in the thesaurus. Grant exclusive web rights to one publisher and you are legally unable to display the article on your own site. You might link to the publisher’s site – until the link changes or the publisher takes the article down and it is no longer available. But because you sold exclusive rights, you still can’t let anyone use the article on the web. With so many print publications interested in putting their contents on their web sites, that could mean the difference getting and losing a resale. Non-exclusive rights will also restrict you, in that you cannot then sell exclusive rights to another publisher, but at least they don’t lock the work away.

Sublicensing is the right to grant rights to third parties. If you grant me the right to publish your article on a web site as well as the right to sublicense, I could charge other sites to display your article without paying you another penny. Depending on the contract wording, I might even be able to allow those other publishers to also sublicense. This becomes particularly dangerous with database companies that try to further license rights. If you’ve ever wondered why Amazon.com has electronic copies of your article for sale, it’s because the site has made a deal with a database company that has the content.

And this is an example where confusion of rights becomes even more dangerous. The database company may actually not have the legal right to sublicense. There are so many mistakes in this area that it’s appalling. I’ve seen many contracts where a publisher demanded database rights but not the right to sublicense to the companies that compile and produce the databases, even though that is exactly what it will do.

Because electronic rights are a maze that no one navigates easily, all you can do is learn as much as you can and be as specific as possible. Read through contract language and parse it carefully, because often it doesn’t say what either you or the publishers assume. Research business and technology developments, and negotiate carefully. Once you lose control of your writing, it’s gone.

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