## INJURE By Michael Lennie

A typical phone call to my office gives the following account:

Three years ago the author signed a contract with his or her publisher for a college textbook. The author worked diligently for two years meeting all deadlines. The final reviews were very encouraging, and several suggested improvements were incorporated into the final manuscript submitted eleven months ago. Since then a series of delays has resulted in the manuscript still awaiting assignment to a production editor. In the last several months the author has heard many rumors and seen several signs that the publisher may put off publication indefinitely.

Variations of this chain of events are played out frequently. The results vary substantially depending on the language of the author-publisher contract. Too frequently the contract language is slanted to favor the publisher in such a fashion that the publisher both avoids liability for failure to publish, and is able to hold onto the manuscript for a year or two, or more, thus defeating the author's chances of being published through a second publisher.

Much of this frustration and loss of financial opportunity can be mitigated if not avoided by careful negotiation of the contract.

#### IMPORTANT CONTRACT CLAUSES

All textbook contracts have a Delivery of Manuscript clause that in essence directs the author to deliver by a date certain the completed manuscript "in

form and content satisfactory to the publisher." [NOTE: The "satisfactory clause" will be the subject of the IN JURE column featured in the July TAA Report.] But few contracts obligate the publisher to notify the author of the publisher satisfaction or acceptance, and virtually no contracts currently place a time limit within which the publisher must so notify the author.

"Notice of Satisfaction (or Acceptance)" clause requiring the publisher to notify the author in writing of its satisfaction (or acceptance) of the completed manuscript within ninety (90) days of its delivery by the author.

It is also prudent to include a definition of "completed" manuscript" as manuscript that has undergone final reviews and revisions pursuant thereto. [NOTE: There are publishers who will abuse the review process thus suggesting that cautious drafting should include a description of the review process that will be utilized.]

A few contracts currently provide that the publisher "shall publish the Work within a reasonable time after the receipt of satisfactory manuscript." This clause, if coupled with the "Notice of Satisfaction" clause, above, may be satisfactory in many situations. A court, given testimony by industry experts as to the meaning of "a reasonable time" in the industry, will likely conclude that twelve to fifteen months is reasonable.

However, if you are the author of an EI-Hi text targeted for an important state adoption, you will want to attempt to negotiate a "Publication Date" clause which obligates the publisher to publish by a date certain that will comply with the state adoption schedule.

#### THE REVERSION CLAUSE

Perhaps most importantly, to avoid the state of limbo (defined as a state of oblivion or neglect) so often occupied by delivered manuscripts, you must negotiate a "reversion clause." In its simplest form the reversion clause will read:

"In the event the publisher has not published the Work within one year of the Notice of Satisfaction, the work and the copyright thereto shall automatically revert to the author."

A reasonable modification of this clause would require the author to first give a 30 or 60 day written notice to the publisher, at the end of which the reversion would occur. This modification would allow the publisher 13 or 14 months from notice of satisfaction to publication, and would allow the author the "option" of requiring a reversion.

An additional refinement can be fashioned to trigger the reversion clause in the event the publisher does not put the Work into production within 60 days of the Notice of Satisfaction.

#### CONCLUSION

The appropriate clauses will of necessity vary from contract to contract. Many related clauses are not addressed by this article by reason of space limitations. However, the theme that I hope to have conveyed is to keep the work moving toward publication. The use of these clauses will not guarantee publication, but it will assure decision making within a reasonable period of time. And in the event your work is not published, at least it will be timely returned allowing you to try again with another publisher.

### Used Books Rankle ... (continued from page 1)

ning of this quarter, the bookstore apparently filled the entire order for the Math 158 course with complimentary copies. This caused several students in my class to assume that I, or my publisher, had somehow connived with the bookstore to prevent the students from reselling their texts at the end of the quarter. This was a very embarassing situation for me. I had to explain to them that I was in no way involved with your purchasing and that in spite of the markings on the books that stated they were "not for resale" you would probably buy them back! . . I have generally contributed any royalties I earned from sales of my textbooks locally to scholarships to benefit our students. I am sorry that I will be unable to do so this year."

# TRINITY WESTERN RESPONDS TO CANADIAN PUBLISHERS'PLEA

At Trinity Western University in Langley, B.C., Dr. Deane Downey wrote the following memo to the faculty. "At the request of the Canadian Book Publishers' Council, I am bringing to your attention the attached concern regarding the illicit sale of desk or examination copies of textbooks. This is so obviously an unethical practice that I believe our faculty hardly need such a reminder, but I wish to assure this publishers council that I have brought this matter to your attention. Your continuing vigilance will be appreciated."

Downey was responding to a November letter from Scott Burns, president of the Canadians Book Publishers' Council

college group, in which the problem of selling comp copies was explained and in which colleges were asked to formulate and/or enforce a policy against such sale. Said Burns "I am writing to enlist your cooperation in resolving this distressing situation before the practice of reselling desk copies becomes endemic in institutions of higher learning. The CBPC requests that you review your institution's policy regarding the disposal of examination and desk copies that publishers have sent to faculty. If no such policy exists, we respectfully request that you formulate one. In either case, we request that you inform faculty of the seriousness of this issue."

At Trinity Western there is a policy banning buyers from soliciting on campus, as reported by TAA member Richard J. Sutcliffe, ". . . anyone attempting to solicit a professor's desk copies is requested to leave the campus immediately. Despite the fact that this policy is well known, there are numerous such attempts every year. It must be a lucrative business!"