IN JURE
The Royalty Clause

By Michael R. Lennie

Michael Lennie is an attorney in California who devotes a good deal of his practice to the representation of textbook authors throughout the Country. (He may be contacted at his offices by dialing 800-TAA-LAWS or 619-749-1033. Be sure to advise that you are a TAA member for member discounts.)

We have in past In Jure columns reviewed the "satisfactory" clause, the "revision" clause, the "reversion" and the "competition" clause. We have observed that all standard publishing contracts are enormously lopsided in favor of the publisher, and have suggested negotiating points by which the contracts may be improved.

To date we have avoided discussion of the very purpose of entering into publishing contracts, that which is stated to be the "consideration" to the author as a quid pro quo for relinquishing his or her rights in the work. With apologies in advance to those who may consider the subject too crass or mercenary to soil these pages, I shall endeavor to discuss royalties with both probity and profundity.

First let me say there is no such thing as standard royalty provisions. Having said that, review of over 100 TAA author contracts in my file does disclose some common "ranges".

The "Standard" Ranges

The concept of "Standard" royalties is less common in textbooks than in trade books. So much so that it is almost counterproductive to state ranges. I am concerned that a young author may put too much stock in a so-called standard range, while the more seasoned author may find it contrary to his or her experiences. Accordingly, view the following as indicators only, and don't be afraid to push for royalties appropriate to your stature, leverage and revenue generation for your publisher even though outside the ranges discussed here.

Total royalties for a team of authors working on a text for grades K-6 might range between 4-6% of net receipts. For grades 7-12 the range is 4-8% or 4-10% depending on who you believe. I have seen contracts (more than one) for secondary textbooks with 2% royalties and no break points. A publisher of a basal text for grades K-8 might pay eight authors 1% each, or it might do something with all kinds of break points, different at each grade level. A college text has a range of 10-18 3/4%. I've seen a low of a 7% basic rate (with break points) and an occasional 20-21% A 15% royalty for a college text is quite common.

I am told that publishers used to pay royalties based upon the list price. Now it is common to pay royalties on the publisher's net receipts. Net receipts from sales of the student edition of the work minus only returns, exchanges, discounts and other allowances, and excluding packing and shipping charges and sales or excise taxes. Assuming a 20% common discount rate an 18-3/4% royalty rate applied to net receipts is the equivalent of 15% of list.

Negotiate Break Points

If you are unable to obtain an 18-3/4% basic royalty rate for your college text, bargain with the publisher for break points (also known as a "sliding scale") that give a more generous royalty rate as sales increase. A publisher who has recouped his costs, may be more generous in sharing the profits. By way of example, if your first edition calculus text is expected to sell 40,000 copies a royalty rate structure with break points that allow the publisher to recoup his costs more quickly may ultimately favor the author over a flat rate:

Rates With Break Points:

First 10,000 copies x\$32x12.5% = \$40,000
Next 10,000 copies x\$32x15% = \$48,000
Thereafter (20,000) x \$32 x 18.75% = \$120,000

Total Royalties \$208,000

Flat Rate

40,000 copies x \$32 x 15 = \$192,000

Advances

Although some treatises say advances are rare for el-hi publishing, don't believe it. Negotiating a good advance is an important step in the negotiation of any textbook contract regardless of academic level. Advances depend on the bankability of the author based on prior publications, the anticipated revenue, whether it is a first or subsequent edition, negotiating skill and fortitude.

Some treatises speak in terms of 1/2 to 2/3 of the anticipated royalties from first year sales, as a reasonable advance. While I consider that figure to be low, it nonetheless points out the importance of knowing what your publisher expects in the way of first year sales. Your editor is a good source for this information since he or she had to put together projected sales to justify signing you to a contract.

Advances for a textbook author are particularly important. Since a textbook author is (at least initially) simply a moonlighting professor or schoolteacher, it is often necessary to take a sabbatical leave to accomplish the rigors of authoring a text. At the very least, a reduced teaching load and passing up income from summer school are often necessary. Accordingly, negotiating an adequate advance is often a matter of economic survival.

The author who has several books in print in second, third and fourth editions, of course, is not in the same economic position. Such

continued on page 8