

McHugh Publishing Reprint

Twelve Tips for Protecting and Acquiring Electronic Rights

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The managing of electronic rights (e-rights) presents a challenge for publishers. However, e-rights need not cause excessive problems, if a few simple rules are followed. Publishers should follow a number of prudent practices when either acquiring or licensing electronic rights.

The following 12 tips are divided into licensing rights, acquiring rights and protecting copyrights at your Web site.

WHEN LICENSING E-RIGHTS:

1. Require a precise definition of "online rights" from the requestor. Never grant "electronic rights" without requiring a precise definition of what type of "electronic rights" will be licensed.
2. Grant only nonexclusive, nontransferable rights. Avoid any broad grant of rights.
3. Set a specific term for rights licensed. "Term" refers to the time limit set on the license. If the rights are not used within the term, then the rights revert back to the publisher.
4. Require your company's credit line and copyright notice on each page reproduced electronically.
5. Limit the use to specific media and platforms. Ask the requestor: "Will the use be posting on a Website, CD-ROM, DVD, electronic database or what?"
6. Develop a company permissions policy and fee schedule for e-rights.

WHEN ACQUIRING E-RIGHTS FROM AUTHORS AND DEVELOPERS:

1. Use a work for hire agreement (WFH). WFH is the cleanest way for the publisher to acquire all rights and to acquire copyright.

2. Use an all encompassing provision in your agreements. Use language such as "exclusive right to use adapt or otherwise exploit the Work, or any portions thereof, in electronic data entry, storage, processing, transmission, retrieval, display on output systems of any and all kinds, whether now known or hereafter invented."
3. Acquire electronic rights from all contributors to your magazine or journal. According to the *Tasini v. New York Times* decision, a publisher cannot publish a contributor's article in electronic format or license electronic rights, unless electronic rights have been licensed by the contributor to the publisher.
4. Always consult with a qualified copyright/publishing law attorney before using any agreement. Inquire specifically about the attorney's experience in the field of copyright and publishing law. Publishing and copyright law is entire legal specialty onto itself.
5. Acquire electronic book rights from book authors. Define precisely what e-book rights are in your book contract.
6. Consider a robust definition of digital media like the one used by Random House:

Digital Media means any digital format or distribution technology, including but not limited to the Internet, World Wide Web, electronic download streamed formats, shared file distribution, disc, electronic book, magnetic, optical, or other storage media, satellite, cable, wireless distribution, digitally printed or published 'on demand' format, audio book (that is, book-on-tape sound recording) flash memory, CD, CD-ROM, DVD, and other method, means, process, or technology for delivering digital content, whether now known or later developed.

SUGGESTIONS FOR TO PROTECT COPYRIGHTS AT YOUR WEB SITE

1. Post a copyright notice, at your Web site, such as the following

Copyright © 2001 by XXX. The contents of all material on this Web site are copyrighted by XXX unless and otherwise indicated. All rights are reserved and content may not be reproduced, downloaded, disseminated, or transferred, in any form or by any means, except with the prior written permission of XXX.
2. Post copyright usage terms at your Web site. The following are suggested terms of usage:

- Copyright notice and other proprietary notice must be included with any material reproduced.
- The use of the material is solely for individual, noncommercial use and will be for informational purposes only.
- You cannot alter or modify any of the material found at this Web site nor represent any of these materials as your own.
- You cannot reproduce or publicly display or perform or distribute any material within this Web site for any commercial or public purpose unless we give prior written consent to do so.
- The material will not be copied or posted on any network computer or broadcast in any media now known or hereafter devised.

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McHugh's Rights/Permissions Workshop™

The rapidly changing publishing environment requires a thorough and comprehensive knowledge of rights and permissions. To help understand the nuances of this important area of publishing, John B. McHugh has used his many years of experience in the field to develop the *McHugh's Rights Permissions Workshop*. This invaluable 1-day intensive training session, presented at your place of business, teaches your staff all the major copyright and permissions concepts using numerous unique case studies.

Features of McHugh's Rights Permissions Workshop include:

- ◆ Topics customized to meet your staff's needs to include such areas as copyright, subsidiary rights, fair use, public domain, infringement, permissions requesting and granting, rights management and strategy, and electronic publishing
- ◆ Forty original case studies presented by McHugh and analyzed by your staff
- ◆ Complementary copies of McHugh's Rights Publications provided to participants

McHugh's Rights Permissions Workshop provides a broad overview of the information your staff needs to function effectively when managing your organization's publishing rights. This workshop is perhaps the most cost-effective method available for educating staff in the complex and rapidly changing field of rights and permissions.

McHugh's Management Audit of Rights and Permissions

Another valuable service offered by John B. McHugh is a comprehensive audit and assessment of your organization's management of rights and permissions. McHugh interviews your staff, and evaluates agreements, processes, and procedures. After the evaluation, a comprehensive management report is provided to you outlining recommendations and suggested improvements.

To request a free brochure describing *McHugh Rights Permissions Workshop* or for more information on *McHugh's Management Audit of Rights and Permissions* call 414-351-3056 or e-mail j.b.mchugh@att.net

OTHER MCHUGH RIGHTS PUBLICATIONS OF INTEREST

For more information, call 414-351-3056 or email j.b.mchugh@att.net.

- Book Publishing Contracts: An Introduction*, 68 pages, 1996, Publication M-12
- Electronic Publishing: Managerial Analysis and Recommendations*, 56 pages, 2001, Publication PD-10
- Copyright and Electronic Publishing*, 31 pages, 2001, Publication R-13
- Permissions Management: Dealing with Copyright and Fair Use*, 62 pages, 1996, Publication M-14
- Managing Publishing Rights: Acquiring, Protecting and Selling*, 156 pages, 1997, Publication M-16

About the Author, John B. McHugh

John B. "Jack" McHugh is a 30-year veteran of the publishing business and a successful publishing management consultant. McHugh is also the author of the **McHugh Publishing Management Series**—48 publications on various aspects of publishing management.

McHugh is an experienced association-publishing executive. For 7 years, he was the Publisher and Director of Programs at the American Society for Quality (www.asq.org), a 120,000-member professional association located in Milwaukee, WI. For a 2-year period, McHugh served as Interim Publisher at the Project Management Institute (PMI) (www.pmi.org), a Newtown Square, PA-based, 80,000-member professional association. In the private sector, he worked for Houghton Mifflin and Wadsworth, Inc. McHugh has owned and operated his own independent publishing company.

McHUGH'S SPECIALTIES INCLUDE:

- Association Publishing Management
- Book Publishing Management
- Copyright/Permissions
- Contracts/Publishing Agreements
- Executive Recruiting
- Journals/Periodicals
- In-House Education Workshops
- Organization Design/Structure
- Preparation of RFPs
- Publishing Management Audits/Process Improvement

Jack McHugh is one of a few consultants serving the association-publishing sector, providing advice on both the business management and organizational aspects of nonprofit publishing. He also provides management consulting service to the "for-profit" publishing market place.

Call Jack at 414-351-3056 or email j.b.mchugh@att.net to ask any questions or to discuss your consulting needs.

Other McHugh Publications of Interest:

Managing Publishing Rights: Acquiring, Protecting and Selling, 158 pp., 1998. \$90.00. Item M-16

Permissions Management for Requestors and Grantors: Dealing with Copyright and Fair Use, 62 pp., 1996. \$70.00. Item M-14

Publishing Management for Nonprofit Organizations: Principles for Associations, Foundations and Societies, 162 pp., 1997. \$85.00. Item M-15

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Electronic Rights for Publishers: Protecting Your Interests, 31 pp., 1996. \$22.00. Item MP-7

Book Publishing Contracts: An Introduction, 68 pp., 1996. \$70.00. Item M-13

Managing Book Acquisitions: An Introduction, 100 pp., 1995. \$65.00. Item M-12

College Publishing Market, Third Edition, 100 pp., 1995. \$65.00. Item M-11