

# BAPLA Rights Working Group

## Book Publishing Survey August 2010

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### Introduction

As a trade association BAPLA has a responsibility to its members to continually review and monitor the picture industry. In the past this has included a comprehensive but very time consuming pricing survey; however this year it was decided to holistically investigate the market by interviewing key individuals in the industry; attend various seminars; review industry reports and hold group discussions.

In order to produce these reports the BAPLA Rights Working Group has been expanded to 8 members, who include individuals from long established niche photo libraries and from the larger picture agencies to form a collective with a wealth of picture selling and rights negotiation experience across all market sectors.

Feedback from the Working Group and BAPLA members made Book Publishing an obvious choice as the first market sector to focus on. The industry's recent plight is well documented and as the publishers quickly adapt to the new digital landscape it is expected that the picture industry is already well settled into the surroundings, based on its many years of experience handling digital content. However reaction from some members indicates that this is still new territory to them and they are trying desperately to adapt whilst trying to establish the rules and predict the impact it has on their future.

This report aims to address the predominant issues surrounding rights for e-books and new digital devices such as the iPad, the demand for digital use to be included within the printed licence fee (bundled rights), unlimited print runs, longer licence terms and an overview of the US market and its challenges.

The information contained within it is to provide an outlook on the market and to highlight current issues in rights negotiation.

### Current Market & Trends

Book publishing in the UK continues to be a highly significant contributor to the domestic economy. Over 133,000 new or revised titles were published in 2009 in the UK, and the nation exports more than any other publishing industry in the world. It is, as The Publisher's Association suggests, "...at the heart of the knowledge economy on which the UK's future is increasingly dependent.". There can be no doubt that publishing is an industry in transition. New formats

have and are being developed to meet the changing demands of the digital age and the new methods of delivery of the product that are becoming the norm in the 21<sup>st</sup> century.

In bare statistics, the current state of the UK publishing industry as reported by The Publishers Association is thus...

Counting those companies registered for VAT, there were 2,510 book publishers in 2008-09, compared with 2,610 in 2007-08 and 2,330 in 2006-07. Of the 2,510, over 75% (1,980) employed four or less people, and at the top end, fifteen employed 250 or more staff.

In terms of the volume of sales, UK publishers sold an estimated 763m books in 2009, of which 463m were for the home market and 300m for export. These figures represent a 9% downturn when compared with the previous two years - total volume sales for each of 2008 and 2007 was 836m.

This downturn in volume was not reflected in the invoiced value of book sales, which remained relatively consistent over the three years - £3,053m in 2009, £3,052m in 2008 and £3,047m in 2007. Nevertheless, the value of the UK book market in 2009, when judged by end purchaser prices, showed a decrease on previous years. The estimate for 2009 is £3.4bn, a 3% drop on 2008's figure which in turn was marginally lower than 2007's estimate.

This trend is clearly of concern to publishers. The end of the printed book has been predicted before, most notably by Peter Kindersley when it seemed that the CD-ROM had the potential to replace it. While that did not happen, there is no doubt that new digital formats are making inroads into printed book sales, as we will report later in this survey. Book publishers have to make decisions about which formats to use to present their wares to the market, and the options open to them are increasing. For example, with particular relevance to academic publishing, digital publishing makes it feasible to sell individual chapters from a publication rather than an entire book, and the possibilities for interactivity mean that the line between books and apps is blurring. In the coming years, our concept of what constitutes a book may evolve considerably. Distribution methods too have and are changing and these factors are of course already having an impact on the rights required by publishers. No longer are rights requirements quite so clear-cut as they were twenty years ago.

Beyond the question of formats, the future of traditional book publishers themselves is now being questioned. Google, Amazon and Apple now have a major influence over the distribution of books and similar works. In July 2010 the US literary agent Andrew Wylie announced a move into digital publishing, setting up Odyssey Editions to sell ebook editions of modern classics exclusively via the Amazon Kindle store, provoking the ire of major US publishers who represent the works of the authors involved. This example may at first glance have little direct impact on picture agencies, but tremors in the world of publishing will inevitably have a long-term impact on the book publishing industry and in turn those who work directly with them.

To further examine this impact the report now focuses on two key areas of concern for BAPLA members; EBooks and US Book Publishers:

## **1. EBooks**

According to the Publishers Association, from 2007 to 2009 there was a 27% increase in digital book sales. 2009 sales were estimated at approximately £150m, which represented nearly 5% of overall print & digital sales. The majority of this £150m was in the academic and professional publishing sectors. (Source - PA Statistics Yearbook 2009) However with the arrival of Apple's iPad and reports that US thriller writer James Patterson has become the first novelist to sell more

than one million electronic books (according to his publisher, Hachette), the retail sector may already be experiencing its own iPod moment!

Currently in the US, digital books already account for 6% of consumer sales (Source: Guardian) In April 2010 Goldman Sachs forecast that sales of e-books in the U.S. would rise by 47 percent each year sequentially until 2015 at which point they expect eBook sales to be worth \$3.2bn. This would imply e-books taking 12.8% of all book sales. Over the same period Goldman expects physical book sales to fall 1 percent each year. (Source – Hubpage.com).

The gradual change of format and huge growth potential makes it imperative that image libraries not only understand the rights publishers may need, but also protect the long term value of their images. This can be complicated further by the fact that publishers will not simply wish to clear a single new format “the e-book”, but more general electronic rights that cover a range of platforms.

Listed below are some key areas you may wish to focus on when negotiating eBook rights: -

- The swing to digital publishing has seen a shift from content, to content plus experience i.e. the development of interactive material. Are the rights you’re negotiating for interactive products where images may be movable or used in different designs? Or simply an exact replica of the print title in electronic form? The outcome may affect how you look at pricing the image.
- Rates charged for ebook rights in addition to print vary widely between different image sources, typically in the range of 0% to 50% depending on the unit run and whether licensed together with print.
- Publishers may require the ability to issue the same material across all eBook reading devices. Are you quoting for a single format? Or multiple platforms?
- Is the publisher capable of monitoring the print run or units sold? Is this suitable as a licence limitation? Is the eBook part of a combined run alongside a print version? Can the rights be bundled together under a single print run?
- Many publishers will use the fact that eBooks are an untested market and that sales cannot be accurately predicted as a negotiation point for lower rates. Whilst this is true, there are advantages for publishers in the forms of reduced printing, storage and returns costs. The eBook should also herald possibilities of easier and more frequent updates, particularly relevant in areas such as travel guides and reference books. This may cut development costs in the long term.

For further reading, an informative survey on eBook production was recently conducted by US digital content publisher Aptara. The survey can be found on the Aptara website at: -

[http://www.aptaracorp.com/eBookSurvey1/Aptara\\_eBookPub\\_Survey.pdf](http://www.aptaracorp.com/eBookSurvey1/Aptara_eBookPub_Survey.pdf)

As Aptara puts it, “the road to eBook success isn’t well travelled; eBooks are relatively new publishing products, potential eBook distribution channels are not fully understood by publishers, and there’s not much historical data with which to make eBook business decisions or projections. To be successful, publishers will need to better understand the digital publishing landscape.”

As the industry becomes more developed, so will our knowledge of the rights required. The more information we’re able to collect from each individual deal, the faster this knowledge will progress.

## **2. US Book Publishers**

The Association of American Publishers estimated in April 2010 that US publishers had net sales of US\$23.9 billion in 2009, down from US\$24.3 billion in 2008, representing a 1.8% decrease. Meanwhile e-books overtook audiobooks with sales reaching \$313 million, up 176%. Educational sales in the Elementary and High School category fell 13.8% to \$5.2 billion while Higher Education sales were up 12.9% to \$4.3 billion.

2010 figures show signs of recovery. April sales increased by 24.8% to \$629.8 million and were up 11.8% for the year to April. Higher education sales increased 28% for the year while elementary/high school sales showed 8% increase. This may in part be a result of the \$80 billion investment in K-12 education which was part of the US Stimulus Package.

The ASPP (American Society of Picture Professionals) conference in Boston in April 2010, held in conjunction with PACA (Picture Agency Council of America), included a session on the Future of Content Licensing, which gave some useful pointers about the general state of the US market, and especially the key educational publishing sector. Publishers tend to produce smaller units in a wider variety of media, while cost-savings have reduced budgets for pictures and picture research, some of which is pushed offshore. There has been much consolidation amongst the major publishers (with 4 of them dominating the educational market), and budgets are key, streamlined permissioning increasingly important, and price is now more important than quality in image selection. US publishers are using more RF images than previously and are also starting to license footage. In the educational sector electronic rights are essential, but the media of use are swiftly changing. Latest digital formats of educational products use large numbers of images, and these are likely to be changed and updated more frequently than previously. Partly as a result of this trend, the current accepted percentage change to qualify for new edition status has grown to 25%.

There are current tensions between publishers and picture agencies in the US, as reported by industry commentator Jim Pickerell in a Selling Stock posting of 16<sup>th</sup> June 2010. US educational publishers are admitting to more and more unauthorised uses and exceeded licences and have been subject to court actions in this regard, most of which have been settled in favour of the plaintiff.

Meanwhile US publishers are trying to negotiate new deals which reduce penalties for such unauthorised use and allow in effect retrospective licensing. The typical print-run limit on US book licences was previously often 40,000 but some successful school books, if adopted by large states, may have hit print-runs in excess of 1 million.

BAPLA informal discussions with PACA in the last few months have revealed the perception that publishers now have the edge in the publisher/agency dynamic, and that smaller and medium sized agencies are suffering due to very competitive deals cut by the very large agencies. It was considered important to add in print-run limits in book publishing licences and fee agreements, due to potentially very high runs, and also to include ebook units in the total unit run. There was much talk about preferred vendor agreements and their effectiveness. Smaller agencies should consider carefully whether such a deal works in their favour, and should not undervalue their specialist material that cannot be obtained elsewhere. Retrospective licensing due to exceeded rights is quite commonplace, but with wide variation in approach to negotiation and fees charged.

US book publishing fee agreements have changed considerably in recent years, with a strong trend to flat fees and wider rights, including multiple use and electronic rights as standard. Single edition rates and repermissioning are becoming a thing of the past, as publishers are tightening their budgets and streamlining their procedures. Publishers are also tending to use a smaller list of suppliers, to reduce administration costs and to benefit from volume deals.

### **The Future of Publishing Rights**

The publishing industry is made up of a number of distinct sectors - educational, academic, consumer and business. We asked both the big and small book publishers in the UK a series of questions covering issues with both print and electronic rights negotiation.

It is unlikely that books will cease to be published in the near future, but the industry needs to adapt to the fast changing market and realize the value of digital products. The key business issue for the industry is finding ways to grow and the digital revolution provides this opportunity.

Here are some of the answers we received to the industry's burning issues:

General overview of the past 12 months:

- Successes : Good overall performance in the market during the recession.
- Challenges: sales, budget cuts, projects on hold, quicker production times, recession-driven market, new electronic formats and e-rights negotiations with photo libraries.

Challenges over next 12 months:

- Budget cuts, harder environment in schools and academic institutions, e-rights negotiations, technological challenges and related strategy problems, online authoring tools, maintaining the balance between cost effectiveness and quality.

Most of our respondents from publishing houses told us that developing digital products, and clearing rights for images used in them, will be one of their key focuses in the coming year. Most publishers are already clearing digital rights as standard alongside print rights or are beginning to do so now. Rights fall into three categories: retrospective, unchanged e-book and digital spin-off, and the needs of educational publishers are different from those of trade publishers.

Educational publishers have been clearing digital rights for some time as their customers expect a digital component to their products as part of the package. Typically educational publishers clear digital spin-off rights, i.e. relatively broad rights for use of an image in materials related to the print original but which may be different (for example an image used in a student book may be repeated in online extension work). For these rights they expect to pay a supplement of 25-50% of the print fee for a reuse, and where the usage is standalone they expect to pay 50-75% of the print fee. Although they clear these rights to allow themselves flexibility, one educational publisher reported that in fact 95% of their digital usage is in unchanged digital versions of print books (for example a pdf on a CD within the back of the textbook or a digital version of the book viewable within a school library system). A significant minority of educational publishers are undertaking digitisation of their backlist. Where they have previously cleared only print rights they expect to pay up to 25% of their current print rates to extend rights.

Trade publishers are much more newly arrived in the digital world, but all large publishers and increasingly medium-sized and smaller publishers are now clearing digital rights as standard. The newest arrivals here are illustrated reference publishers who report a new enthusiasm for clearing digital rights since the launch of the iPad. Almost always they clear rights for an

unchanged digital facsimile of the print original (i.e. unchanged e-book). For this they do not expect to pay any additional fee provided the sales volume falls within the print run for which they have traditionally cleared print rights. Digital spin-offs, i.e. products such as apps for the iPad where sections of content from books are repackaged, are in their infancy, but a number of publishers are experimenting with these. Rights and pricing models are not yet firm, but a fee equivalent to 50% of the print fee is not untypical for first use or reuse.

Sales of digital products are low but rising fast. One respondent told us that their American division was budgeting for 20% of its sales volume in financial year 2010-2011 to be digital. Another told us that their digital sales volume was "tiny, so tiny I am not allowed to tell you". Another respondent in the same company was more enthusiastic saying that this was exciting because it was a wholly new revenue stream. One respondent quoted a private industry report as saying digital sales make up 5-10% of the total volume of books and journals sold worldwide, but privately he thought that 5% was optimistic if journals are excluded. Publishers also report that sales revenue is relatively low from e-books and digital products as they typically retail at a lower price than print products. On the other hand, production costs are currently high as publishers invest heavily in new workflows. Publishers are not currently making significant profits from digital endeavours, but see them as vital to maintaining their revenue in years ahead.

Publishers point to a range of challenges raised by digitisation:

- Fear of piracy and inadequacy of rights protection: this is a cause on which BAPLA members may have common ground with publishers.
- Difficulty of obtaining author rights, with some authors' agencies holding out to publish their authors' work direct.
- Heavy costs of production not yet offset by revenue.
- Difficulty of predicting the future: publishers watch their competition closely, seeking to produce matching products but not to invest too heavily in developments which may not show a return.

Our respondents referred to a number of specific challenges with regard to digital image rights:

- Lack of knowledge among many photo agencies leading to fear when it comes to granting rights.
- An unrealistic expectation from some photo agencies that digital rights represent a major new revenue stream.
- Some agencies requesting the negotiation of e-rights by units sold. These figures are available within publishing houses but are not shared with picture people and tracking them would place a heavy administrative burden.
- The need to clear broad rights to future-proof themselves against unforeseen developments (conflicting with the traditional rights managed model of granting usage rights for a specific clearly defined use with the opportunity for re-licensing later).
- The time and effort needed to clear rights, especially on retrospective products now being digitised. "Clearing e-book rights has been a *massive* project, both the backlist and new titles," said one.
- Internet retailers such as Amazon allowing for sale of books across borders breaks down the territoriality of sales. If an image is licensed for a book cover in the US, that image may appear on amazon.co.uk, so there is no effective protection offered to the UK publisher meaning they do not want to clear exclusivity on that image.

Surprisingly, even in the economic downturn, microstock is being used only in a minimal way, but it has increased the range of choices (typically representing some 10% of total image usage in books). Some of the respondents said they might use it more in the future although the point has also been made that RF images are not turning out to be very cheap in comparison to rights managed images when all the required rights are cleared.

Footage seems to be an area that publishers are only now discovering, with educational publishers taking a lead. Some publishers commission their own footage and some are looking into ways of incorporating it within their products.

#### Observations and comments regarding the picture industry:

Publishers are keenly aware of the problems facing the book industry. The digital revolution, changing trends, bookshops disappearing are all a big concern. One respondent predicted a probable polarization of the book market for trade illustrated titles between cheap and expensive books, with little middle ground. Another likened the book publishing digitization revolution to the picture library revolution, when picture agencies had to digitize their analogue stock, or risk going out of business.

On the other hand picture libraries need to adjust to the digital revolution and stop treating it with fear. There is still very little understanding on how to charge for electronic usages. Some consider the old licensing rules are becoming redundant and new rules should be introduced. Publishers have also expressed concerns that many libraries are carrying the same collections; staff have limited knowledge and expertise and the smaller libraries are often less flexible when negotiating fees.

#### **Conclusion and BAPLA Rights Working Group Recommendations**

Based on our recent feedback from publishers, members and other picture agencies, we would recommend to members that they approach digital rights with care and that they research new media uses and follow recent trends closely. The Rights Working Group will continue to research and highlight industry sites, book publishing and bookfair forums and reports, so that we can keep the BAPLA membership as well informed as possible on this crucial subject.

Book publishers are feeling their way in a rapidly changing landscape. BAPLA members should work with them through informed discussion to work out fair and appropriate rights structures to facilitate the move forward into a publishing industry where the electronic component is likely to grow rapidly, but is currently in its infancy. Essential to the future of the picture agency/book publisher relationship is a clear understanding of publishers' needs and challenges in a marketplace where they have a great deal of choice in terms of picture supply. While specialist and niche collections may not be able to cut the volume deals of large general agencies, they must also strive to streamline the permissioning process and to adopt realistic pricing strategies, or they risk being left behind.

Lisa Wren from Pearson Education gave a thought-provoking summary of the current state of the picture industry:

"I believe that time is running out for the industry to apply, collectively, some consistent and relevant rules around the licensing of photography. There is still an incredible amount of fear about publishers using images digitally or in new ways as technology evolves. Photo agencies still rely on their clients to dictate terms, explain use and apply terminology. We feel there is very little attempt to get to grips with it; instead there is a

resistance. It is only a matter of time before images are commissioned direct with photographers by publishers so that use is not restricted and admin can be removed.

The requirements of the client are changing – for example, images need to be used on digital systems rather than individual products. Customers want to have image banks to draw on and be able to use, images will 'float' rather than be rigidly attached to text. We all need new rules, models and boundaries – a new framework in which to work.

The old rules about use (platform, territory, size, print run) are redundant or becoming redundant quickly and if new rules are not in place third party images will be viewed, by publishers, as a barrier to producing and managing their content and therefore as a barrier to doing business."

The key conclusion of the Rights Working Group research is that we are at a turning point in the move from print to digital book publishing, and the established rules and definitions are changing and blurring rapidly.

On the one hand, we must be wary of giving content away, while e-publishing is in its infancy, but has the potential to become the predominant future delivery method. On the other, we must be keenly aware of the pressures on book publishers (especially on budgets and administration) and we must be realistic in our pricing and as well informed as possible regarding the new media for which we are licensing.

Finally, here are some specific pointers which may help in negotiating digital use with book publishers:

1. When digital rights are requested, clarify which digital rights are required - eg. unaltered ebook, ebooks with changes/additions, all electronic media, subscription website, dvd, apps etc. Avoid vague rights terminology.
2. Digital use may be limited now but is likely to grow rapidly. Specify limits wherever possible - include ebooks in unit runs if you can or specify a percentage of ebook use allowed if agreeing a fee for print plus ebook. Include a time limit for web use or if there is no unit limit. Don't grant rights in perpetuity for electronic products, especially if the type of product is not specified. This approach will enable you to review developments at regular intervals and to regularly reassess your pricing for digital media.
3. Think of sensible and fair percentages of print fees for both additional or stand-alone use in digital media, and itemise the digital fee separately to make the point that it is a separate medium. Since print fees for book publishing have declined steeply in recent years, it is not advisable to give away digital rights - add some kind of percentage (even if minimal) on top of print fees and separate it.
4. Be careful re retrospective licensing, as digital rights cleared cheaply now may turn out to be significant revenue earners for publishers in the future. Remember that by definition as the supplier of images you are in a strong negotiating position with regard to licensing retrospective rights and you always have the option to say no if the deal offered does not seem fair.
5. Always check when licensing use in books whether digital rights are required and if so for what media.
6. Examine publishers' permission letters with care before signing them to ensure that the rights requested do not exceed those you have agreed. For example, with regard to



publicity rights, while the use of images within the context of the book page or cover design is considered acceptable by many members, some publishers now include a clause seeking permission to use the image(s) for any publicity purposes including book reviews and press releases. Our recommendation would be to not accept such a clause without additional payment, whether it be a one-off payment to cover the additional rights, or payment for each such use.

7. Beware of agreeing any terms that include digital media “yet to be invented”. BAPLA members shouldn't be expected to include uninvented and potentially lucrative media within current licences.

### **Appendix – Useful Sources of Information**

Here are some useful links to sources of information about book publishing and the digital future:

[www.thebookseller.com](http://www.thebookseller.com)  
[www.publishersweekly.com](http://www.publishersweekly.com)  
[www.booktrade.co.uk](http://www.booktrade.co.uk)  
[www.publishers.org.uk](http://www.publishers.org.uk) (The Publishers Association)  
[www.publishers.org](http://www.publishers.org) (Association of American Publishers)  
[www.futureofthebook.org/blog/](http://www.futureofthebook.org/blog/)  
[booktwo.org](http://booktwo.org)  
[paidcontent.co.uk](http://paidcontent.co.uk)  
[www.bookbrunch.co.uk](http://www.bookbrunch.co.uk)

and about the stock photo industry generally:

[www.fastmediamagazine.com](http://www.fastmediamagazine.com)  
[whichstockagency.com](http://whichstockagency.com)  
[www.selling-stock.com](http://www.selling-stock.com) (subscription required)  
[www.stockphototalk.com](http://www.stockphototalk.com)

### **The BAPLA Rights Working Group are:**

Mark Abbott, Science Photo Library  
Gemma Dewhurst, Press Association Images  
Tim Harris (Chair), Nature Picture Library  
Toby Hopkins, Corbis  
Nick King, Alamy  
Mike Markiewicz, ArenaPAL  
Mark Vivian, Mary Evans Picture Library