

nearly 37 years. Before joining Random House I was employed at Prentice-Hall for four years and held positions of Senior Editor and Publicity Director. I have been working in the publishing business for more than 43 years. My responsibilities in my current position at Random House include editorial and management functions.

3. Over the years I have been at Random House, book publishing contracts, which establish the respective rights of authors and publishers, have generally included certain key elements in remarkably similar language. The contracts describe: (1) the book that the author will write; (2) the rights that the publisher is acquiring from the author; (3) the financial arrangements between publisher and author; and (4) legal provisions governing the timing of publication, which party is responsible for legal claims, whether the publisher acquires an option for the author's next work, and other issues not relevant here.

4. At a minimum, the publisher acquires the right to publish the work in the English language in North America (the U.S. and Canada). In many cases, the publisher may acquire the rights to publish in all languages in all parts of the world.

5. Most contracts, such as the contracts at issue in this action, contain language stating that the publisher acquires the right to "publish and sell the Work in book form." The words "in book form," which appear in virtually every contract, necessarily imply the right of the publisher to transmit the author's words to the reader in a linear text fashion.

6. Based on my review of the contracts at issue, it is clear that the authors granted Random House, or its predecessor in interest, the rights to deliver such works in "electronic" or "eBook" form. When the parties used the standard language in these contracts, as identified above, they clearly contemplated that the publisher was being granted

a broad grant of rights to distribute the full content of the work in a linear text fashion -- as opposed to as an audio recording, motion picture or multimedia presentation. Whether a work is read on printed paper, on a computer screen or on a handheld eBook reading device, it is the same book with the same linear text delivered to the reader and provides the same reading experience.

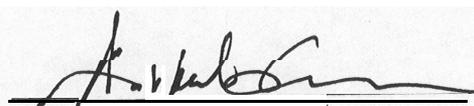
7. In support of the publisher's acquisition of broad content distribution rights, most contracts contain a non-compete provision, which prohibits the author from doing anything which might interfere with the sale of the publisher's editions of the book. Since the eBook provides the reader with the same reading experience as the hardcover or paperback and is sold in direct competition with these editions, the eBook will naturally take sales from the hardcover or paperback editions of the same book in violation of this provision.

8. If the publisher were found not to control the eBook rights, the publisher clearly would be hurt by a competing edition of the same text, particularly when one considers that the publisher invests substantial resources developing a work into a viable commercial property, including both significant editorial input as well as marketing efforts.

9. Publishers generally pay authors an advance against royalty earnings from the sale of copies of the book. For instance, an author may receive an advance of \$100,000. Assume the royalty rate is 10% (often going up to 15%) of the cover price of the book for each copy sold. If the book sells for \$20, then the author's royalty account is credited \$2.00 for each copy against the \$100,000 advance. When the author's royalty account is credited with \$100,000 in royalties, i.e., after the sale of 50,000 copies, the author begins to receive additional royalties on each copy sold. Authors are never required to refund their advances

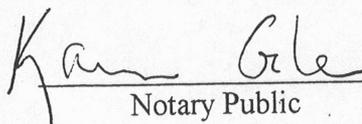
even if the book never sells enough copies to cover the advance. Often, authors do not earn out their advances.

10. Were the court to decide that one method among many to deliver the written word to the reader was not included in the publisher's grant -- particularly one which has the potential to interfere with the publisher's other editions -- it could severely damage the value of the publisher's investment in the book.



ASHBEL GREEN

Sworn to before me this
26th day of February 2001



Notary Public

KAURA GALE
Notary Public, State of New York
No. 01 GA6002867
Qualified in New York County
Commission Expires February 17.2002