



Australian Society of Authors

## *E-books: Royalties and Contracts*

### **Part I – REVIEW**

#### **Introduction**

Our aim here is to analyse current e-books royalty arrangements and inform authors of the ASA's recommendations regarding e-book royalty clauses in (a) new print/digital publishing agreements, (b) revisions to current publishing agreements, and (c) digital-only publishing agreements. We also set out some of the possibilities and risks for authors who are considering self-publishing e-book versions of their works.

E-books are becoming a significant distribution channel for publishers and authors. Although e-books account for only an estimated three to five per cent of the total book market at this time, based on US figures their sales increased 177% in 2009. Projections indicate that within 15 years they will account for between 25 and 50% of all books sold. Recent figures for Australia show that e-books represent five per cent of all books sold, with an estimate that within five years they will account for 20–25% (Australian Booksellers Association, April 2010).

The major driver of e-book sales online to date has been Amazon. Listing e-books from major publishers at prices between US\$12–\$25, in 2009–10 Amazon was actually selling them for much less; they were prepared to lose money to dominate the market and to sell their electronic reading device, the Kindle. By the end of last year, Amazon accounted for an estimated 80% of all e-book sales, and US\$9.99 seemed to be established as the most common price of an e-book. (Frank Auletta, *New Yorker*, 21 April 2010). Other retailers of e-books include Barnes & Noble, Kobo, The Book Depository, Apple and (very soon) Google.

Because electronic publishing and e-book online retailing are still works in progress, the ASA suggests caution in contract negotiations with publishers regarding e-books. The following sets out some of the issues and challenges for authors in receiving adequate remuneration and suggests certain negotiation strategies and minimum payment standards.

## **Background**

In their dealings with regular bookshops, traditional print publishers are for the most part not direct sellers of their titles. The same holds in selling their e-books online, where they are utilising the services of the large online retailers. To give an indication of scale, Amazon has around 500,000 individual titles available for download as e-books, while bookdepository.com, a UK-based operation, has approx. 350,000 titles. In comparison to print books, however, the amount of physical space these e-book titles take up is negligible as they sit on computer hard drives and servers.

As they have done with 'bricks and mortar' bookshops for decades, publishers are striking deals for the sale of their titles ('their' because authors have licensed those titles to 'own' them for this purpose). And as with traditional bookshops and book chains, these publishers are negotiating and agreeing terms of trade with these new sellers. Authors should be familiar with the discounts offered to book retailers: books to regular bookshops are accepted by those bookshops at somewhere around 45-50% off the recommended retail price (RRP); the discount and department stores can often negotiate deals up to 70% off where substantial quantities are involved.

This is where the similarity ends between online e-books and hard copy sales, however, as there are serious departures from what both publishers and booksellers have been used to for the past fifty or so years. Following are some key points to keep in mind in your negotiations with publishers in the near future.

### **Key point 1: E-books are cheaper to buy than print books**

The prices of e-books online vary, but do so within a narrow band. Currently they can be found and purchased for between US\$7 and US\$20. This band may change over time, but there are no indications that price points above US\$20 are going to be feasible for most narrative-based texts in the immediate future (colour and illustrated titles may eventually push the figure higher, once the e-book technology for these is further advanced and they become more available online). This reduction in price has occurred because of the clout and market power of the online sellers: a few big players have effectively locked up the major (obviously not all) sales channels already and can more or less dictate terms. If cheap e-books become a more substantial part of a print publisher's business in the future, revenues and profits are not likely to be what they have been used to, which is not good news for authors.

### **Key point 2: 'List' price and 'Sell' price**

Online, there is a difference between 'list' price, something like the old RRP, and 'sell' price, ie the price to the consumer. While a sell price of US\$9.99 is very common for e-books sold by Amazon, the list price is usually higher than the sell price. For example, in April 2010 the e-book version of Hilary Mantel's *Wolf Hall* had an Amazon list price of US\$18, but could be

purchased by a customer at US\$12. At present, Amazon is remitting amounts to publishers for their e-books based on the list price.

On the long-standing royalty arrangements for print books, based on standard trade discount and an equally standard 10% of retail price to the author, a paperback novel which sells in Australia for \$25 brings a return to the author per unit sold of \$2.50. But because e-books are lower priced, and mostly transacted in US dollars, this unit return in raw dollars cannot be matched by an e-book sale on any basis less than a minimum US\$13 list price point (assuming an exchange rate of approx US\$1=AU\$0.80), a 65/35 publisher/seller split (ie US\$8.45 to the publisher), and a 25/75 split of that to the author. If the online list price were higher – which doesn't seem likely in the foreseeable future – this would not be nearly so problematic.

### Key point 3: Distribution model vs Agency model

Authors and book publishers have available to them two main kinds of sales arrangements with the online resellers – a 'distribution' model, and an 'agency' model. The two competing models have the potential to return differing amounts to authors, so it is important that these are understood.

The Amazon distribution model works on the basis that publishers are allowed to nominate a list price, as above, and Amazon then splits the proceeds based on that price. There are various splits in place between individual publishers and Amazon, but a 'common' one is 60% to the publisher, 40% to Amazon. The table below illustrates what is potentially generated as income according to this percentage split, across a range of prices. (This table assumes the author is receiving a fixed percentage of 100% of what is remitted to the publisher from the seller, with no further deductions by the publisher – however, the publisher may want to deduct further 'costs' or charges from this 100% in calculating 'net receipts'.)

Online retailer list price (US\$)	Percentage of list price paid to publisher by online retailer	Amount paid to the publisher by the online retailer (ie, the publisher's receipts) (US\$)	Amount paid to author by publisher (@ 25% of publisher's receipts) (US\$)	Percentage of the online retailer list price received by the author
\$10.00	50%	\$5.00	\$1.25	12.50%
	60%	\$6.00	\$1.50	15.00%
	70%	\$7.00	\$1.75	17.50%
	80%	\$8.00	\$2.00	20.00%
	90%	\$9.00	\$2.25	22.50%
\$12.00	50%	\$6.00	\$1.50	12.50%
	60%	\$7.20	\$1.80	15.00%
	70%	\$8.40	\$2.10	17.50%
	80%	\$9.60	\$2.40	20.00%
	90%	\$10.80	\$2.70	22.50%

Online retailer list price (US\$)	Percentage of list price paid to publisher by online retailer	Amount paid to the publisher by the online retailer (ie, the publisher's receipts) (US\$)	Amount paid to author by publisher (@ 25% of publisher's receipts) (US\$)	Percentage of the online retailer list price received by the author
\$15.00	50%	\$7.50	\$1.88	12.50%
	60%	\$9.00	\$2.25	15.00%
	70%	\$10.50	\$2.63	17.50%
	80%	\$12.00	\$3.00	20.00%
	90%	\$13.50	\$3.38	22.50%
\$18.00	50%	\$9.00	\$2.25	12.50%
	60%	\$10.80	\$2.70	15.00%
	70%	\$12.60	\$3.15	17.50%
	80%	\$14.40	\$3.60	20.00%
	90%	\$16.20	\$4.05	22.50%
\$20.00	50%	\$10.00	\$2.50	12.50%
	60%	\$12.00	\$3.00	15.00%
	70%	\$14.00	\$3.50	17.50%
	80%	\$16.00	\$4.00	20.00%
	90%	\$18.00	\$4.50	22.50%

The 'agency' model promoted by Apple meanwhile differs from Amazon's approach in that Apple (a) allows publishers to set the online list price and (b) remits to the publisher 70% of that price. This approach is more favourable to authors and publishers, even if Apple also imposes maximum prices, thereby restraining the potential returns. To illustrate the latter, here are the terms that Apple required of online publisher Smashwords – an 'author friendly' e-book publisher/seller – for distributing their authors' e-books (from a memo to Smashwords authors, March 2010):

If your book is not available in print, you can price your book at any price you like. Free is an acceptable price at Apple. If you do have print editions, here are the rules you must follow:

For ebooks, if you publish print counterparts elsewhere as mass market paperbacks (small, airport size) or trade paperback, then allowable pricing bands are as follows:

For all print books published with a list price of \$22.00 or less, your Smashwords ebook price cannot be greater than \$9.99 during the first twelve (12) months after publication in those print formats. Thereafter, you, the publisher may set whatever price you want, provided Apple doesn't deem it unrealistic.

For any mass market or trade paperback books with a list price greater than \$22.00, you can set whatever price you want.

If your book is only available in Hardcover, and the Hardcover price is under \$22.00 (U.S.), then the maximum allowable price for your ebook is \$9.99.

If your price is \$22.01–\$24.00, the maximum ebook price is \$10.99;

\$24.01–\$25.00 is \$11.99;

\$25.01–\$27.50 is \$12.99;

\$27.51–\$30.00 is \$14.99;

\$30.01–\$35.00 is \$16.99;

\$35.01–\$40.00 is \$19.99.

If your hardcover book is priced above \$40.00, you can price your Apple ebook at any price you like.

Referring to these prices, commentator Guy LeCharles Gonzalez (Digital Book World, April 2010) said, ‘Based on this pricing structure, 12 of the 14 New York Times Bestselling Fiction titles currently featured in Amazon’s Kindle store would be priced higher in the iBookstore. One would be the same price (Apple Turnover Murder @ \$9.99), and one would be cheaper (Union Atlantic, Kindle @ \$14.30; iPad @ \$12.99).

Nevertheless, as the following examples show, the potential return via Apple (in this case using Smashwords to upload to the iBooks store) to the authors is a significantly greater amount than would have been the case either through the Amazon ‘distribution’ model or the traditional royalty return on a print copy.

	RRP for physical book (bookstore price)	Max. list price Apple allows Smashwords to nominate	% / amount of Apple list price to Apple	% / amount of Apple list price to Smashwords	% / amount of Apple list price author receives
No print edition	N/A	<i>No maximum price</i>	30%	10%	60%
<i>(worked examples)</i>		\$12.00	\$3.60	\$1.20	\$7.20
		\$15.00	\$4.50	\$1.50	\$9.00
If there is a paperback print edition	>\$22.00	<i>No maximum price</i>	30%	10%	60%
	\$0.00–\$22.00	\$9.99	\$3.00	\$1.00	\$5.99

## Self-publishing

Not everything has to be done through a conventional publisher of course. Authors may want to retain their e-book rights and act as their own publisher. Typically in this scenario you would convert your work into the e-pub file format (increasingly accepted as the ‘standard’ format), for example, then deal directly with online sellers to make it available for sale.

It is possible already for an individual author to enter a direct deal with Amazon and others, who offer terms on their sites for just this purpose. This may make theoretical commercial sense, but in practice large questions remain regarding the visibility of your work and how to market

and draw attention to it when there are tens of thousands of other titles on the same website.

It is also possible to deal directly as an author with dedicated online digital publishers, such as Smashwords (though often these too will use the services of the online giants for distributing their titles).

Digital publishers offer hypothetically more control over the processes of 'make ready' for e-book distribution, as well as potentially greater remuneration to the author. Some are very clever and creative businesses, but authors need to take care when they offer digital rights management (DRM)-free e-books to such publishers; without 'locks', the e-book or samples of it will not be protected from misappropriation. Remember, copyright is the author's primary right and protection.

## **Part II – GENERAL RECOMMENDATIONS**

### **What's a good deal? What's a bad deal? Where are the royalty traps?**

If your publisher has a deal where the online retailer remits to the publisher 85% of an online 'list price' (list price being the rough equivalent of RRP for print books) for a book, and that list price is something like a print book price, say \$20, and assuming the publisher has a 100% of net receipts deal (which most of them seem to be at present) with the author, then 25% of 100% is a very good deal. That would mean \$4 to the author. If this was a print book, it would be the equivalent of receiving 20% of RRP. It's more likely, however, that the publisher would receive 60% of the online list price. But even at this rate, it's still not a bad result. 60% to the publisher, with 25% of that to the author, means \$3, or 15% of the \$20. (See table for this and other examples.)

For locally authored print books also selling as e-books, between US\$10 and \$20 online (or their equivalents in Australian dollars), the ASA recommends that authors should aim for a minimum royalty return to the author of 35% of 100% of every 60/40 (ie publisher/retailer) split of the list price OR, any equivalent mix of percentages that will achieve at least or better than the same dollar return as the print book version at standard trade discount in conventional bookshops.

There is a large problem obviously in a publisher/author split which offers too small a cut to the author. The ASA has evidence of royalty rates for e-books as low as 7% of the publisher's net receipts. This is simply unacceptable in any e-book clause from a conventional publisher, whether trade, children's or educational. Although it is not the strongest argument against low royalty returns to authors, e-books are less expensive to produce than print editions; while they have their own costs, they are simply not subject to the same cost-of-sales formulas that publishers use for those editions – a fact recognised by the majors who offer at least 25% of net receipts.



Problems also arise for author remuneration on these royalty models when (a) the split is overly favourable to the online seller, and (b) when the list price, the price on which a royalty is payable, is too low – or some poor combination of the two variables. If the publisher's split is a weak one, favouring the online retailer, that is not the author's problem. Authors should not be expected to compensate or make up for shortfalls in publisher income due to the arrival of e-book retailing.

## **Advances**

Should there be an additional advance component if and when a publisher commits contractually to an e-book edition to be released either simultaneously or after the print edition? The answer is yes. These editions will each draw revenue to the publisher, and they should do the same for the author. If e-books prove to have a shorter lifespan than print books, that is another reason for advance payments up front for e-books. A typical minimum advance for a print book is half the author's expected earnings on the sales of the first print run. An advance for an e-book should be at least equivalent, and set out as a separate, identifiable component of the advance sums to be paid.

## **'Adaptation' and 'enhancement'**

In addition to questions regarding royalty rates, e-books impact publishing agreements in other ways and there will be other clauses that need attention during negotiations. It is very important not to lose control of your content and the right to full remuneration due to any 'adaptations' undertaken by the publisher in order to make the work acceptable and saleable online. Make sure that your contract has clauses referring to adaptations and additions related to your e-book.

If you have provided the publisher with additional material to run alongside the text, or 'enhance' it in some way – examples being an interview, reading notes or questions, sound or additional graphics – you should as author have some say over their inclusion, and, if these are included, be remunerated for them.

Such material should not be discounted as merely promotional, a marketing 'freebie' from the author, but as legitimate additional, produced work which improves and adds to the reading experience, and should therefore be paid for. If this kind of material has been created by others for you as the principal author, those parties should be compensated for it, or be paid a part royalty as proportionality dictates. If an app has been produced for mobile devices, full royalty splits should also apply to payments to the author for access to and use of this app.

## **Rental and pay-per-view**

If a publisher proposes to make a pdf of your work viewable online for a fee, the author should be entitled to at least 50% of the proceeds. A pdf is a simple electronic file, converted from a

pre-existing Word document and with the addition of page formatting and design elements. Where a pdf has been produced for a print book, there is no additional cost to the publisher in technical terms for making it available online, whether for rental or pay-per-view purposes. Pay-per-view pdfs are not as complex to produce as epub format e-books.

## **Integrity of work**

Educational publishers routinely produce interactive materials for classroom and student use. That students and teachers be free to interact with learning materials is an important pedagogical principle. It is not, however, a principle which overrides copyright and which authorises the free rearranging, sampling and reuse of an author's work. Digital works may have features that allow for copying and extracting of material, a facility which, when material is saved and passed on, may have the effect of damaging reputation or reducing the author's earnings.

There is a particular need to pay attention to the possibility of both unintentional and intentional 're-versioning' of your work through the extraction of any 'unlocked' material that may be incorporated. In addition to the property right aspects of copyright, authors have moral rights, very importantly the right not to have your work treated in a derogatory fashion such that your authority or reputation as an author is diminished. The moral right clause or associated clauses in your publishing agreement should reflect the possible extraction and misuse of material in electronic download or e-book formats.

## **'Out of Print' and termination clauses**

Print book termination clauses usually allow reversion of rights to an author when sales of a book have fallen below an agreed threshold over a period, and/or when the book has been listed as OP for a period and the publisher concedes that they do not intend to reprint (in practice, a concession not readily granted). Termination of an e-book will require other criteria.

For instance, there is no such thing as a 'reprint' of an e-book – an e-book is either available from a server(s) somewhere in the world, or it is not. The author's principle concern should be that a print-on-demand version or an e-book is available for sale, and visibly so. If it is not, or if the publisher ceases to make it available and for whatever reason it can't be seen or purchased (eg, the publisher's contract with their online retailer might expire and not be renewed), a termination clause covering availability should be in place to be invoked by the author. Such clause should state clearly what is meant by availability, what constitutes a breach of availability, and, if the criteria have been breached, that all rights previously granted are hence to be reverted to the author.

It is reasonable to nominate a realistic minimum-sales-per-year point, which when reached automatically terminates the agreement and returns the e-book rights to the author. The figure and time period may vary according to the genre – specialised reference books may be subject to



slower sales per year and over a longer period than popular culture titles or commercial fiction. A ballpark figure for termination of fiction or general narrative non-fiction e-books might be 50 or less downloads over a twelve-month period.

Notwithstanding the above, the fact of an e-book should not become a back-door means for publishers to hang on to either general or specific print book rights when the print book is OP. Authors should take care that the e-book and the print book are not somehow 'linked' in favour of the publisher's interest in OP'ing slow-selling print books.

### **Limited license**

It is not unknown to ask for and have set a time-limited, not full-term-of-copyright license for a print book. It would make even more sense to seek these for e-books, given the 'churn' that e-books will be subject to in the volatile digital environment. Some publishers may be prepared to accept a shorter period of control, say two years, after which all rights revert to the author. If one publisher can't sell your e-book or ceases to make it available through an online e-tailer, then you should be free to find someone else who can.

### **Rates, terms & conditions review**

Due to the rapidity of change in e-books publishing and retailing, authors are within their rights to request a periodic review of conditions in the relevant clauses of their contracts, and to seek parity with whatever the prevailing terms are upon review. A clause requiring a periodic review every 12–24 months would be advantageous.

### **'Digital only' contracts**

Right now the most common release pattern is for a print book to be issued first, to be followed by an e-book when print sales have dropped off significantly, perhaps 12–36 months later. Another release pattern has come to appear recently, with some publishers making print and e-book editions available simultaneously. The time is not far off when e-books will be the initial form of publication, ie, they will be 'born digital'. In this form, and to complete their life cycle, they may also 'die digital'; in other words, they may never have any form of print publication. Authors, again, need to be aware of and prepared for the implications here.

Not many books are currently being issued by trade or children's publishers directly and solely in digital format. But the day is coming when some books will only be contracted for e-book publication. This will have additional impacts for publishing, bookselling and retailing. At present we only have early figures for the sales of e-books online, but from the early patterns we know that they will be very high, perhaps as high as 50% of all books sold within a generation.

As we don't have sufficient data for the moment to establish what a 'born digital' book's 'life' will be in terms of ultimate number of sales and revenues to publisher and author, it's difficult

to make projections or say what authors might reasonably expect their financial returns will be. But the first principle for authors still holds: you are entitled to be paid adequately for your work.

Although a contract for a digital-only book will differ from present joint-form contracts, some things will be the same. An author should be paid an advance for an e-book: if the book is to be 'born digital' and only ever have a digital life, there is no argument for holding back advances or paying reduced advances due to the sometimes argued need to amortise investment costs, such as the cost of paper, print and binding. Furthermore, as there are no such costs for e-books (which is not to say there are no costs – there are), the phasing of any advances payments should reflect this; in other words, more of the total advance could and should be paid earlier than for a print edition.

## 10 Negotiation tips

Effectively managing e-book royalties and getting a fair return for e-books (of which hundreds more, literally, appear each day online) from mainstream publishers depends on having the facts and being prepared to negotiate. Seeking detailed information and putting questions to be answered before contract terms are settled is the first and most important strategy for authors.

1. Get to grips with (a) 'list' and 'sell' prices, and (b) terms of trade struck between a given publisher and their e-book online retailer, then insert yourself as much as possible into the 'mix' of these two factors as a negotiating party before terms are commercially settled. It is this mix that has the greatest potential to enhance or undermine author income. Both of these elements tend to be no-go areas as far as publishers are concerned – that's our business they say – but as these impact on your personal economics you are within your rights to challenge and seek terms favourable to yourself.
2. In terms of publishing agreements and licensing of rights, you should assert that full e-book royalties are a primary right, alongside standard royalties for print books. They are not 'subsidiary' rights. Not a kind of 'sub-license'. Not one of the 'non-volume' rights (though an e-book may well be classified as a non-'volume' form of publication). Until recently, e-books have been considered a less serious form of publication, or a secondary-only form of publication by publishers. This thinking came to a dramatic halt in 2010 and should not be reflected in contracts from now on. Ask your publisher to insert e-books royalties and terms clauses alongside full royalty-on-retail-price at standard discount clauses in the agreement.
3. Remember that because publishers expect e-books to evolve quickly, and no-one knows what e-publishing will be in even five years time, there's no advantage in hurrying to sign a contract with clauses covering e-book sales without having all the facts made available to you. If you've signed a print book contract which lets the print publisher publish a book of yours as an e-book, you're bound by it unless the terms are demonstrably unfair (and they may be).

4. As a member of the ASA, if you are offered an e-book royalty of 25% of net – a common offer – or something else, you're entitled as a matter of ordinary commercial courtesy to know what it means in dollar terms per unit sold. What will you earn per copy/download? If the offered contract doesn't tell you, ask the publisher. If the publisher can't or won't tell you, don't sign.
5. Any periodic review clause that is negotiated with the publisher should include as part of the review terms, a provision to review the royalty rate – but only if this includes the vital proviso that the rate cannot be reduced below the original.
6. Be clear about territorial rights and the phasing of your work. For Australian authors the territorial copyright regime still holds. If your publisher contracts for a print book and also wants world rights for an e-book, ask them why, and how exactly they intend to stage publication so as to exploit these rights to your advantage. E-book rights need to be managed carefully so that they don't undermine your sales chances in other territories, or for print editions; these rights should be managed in conjunction with print rights.
7. When you're offered a contract with e-book as a form of publication, or an addendum to an existing contract, be sure it covers (a) a reasonable royalty, no less and preferably more than the equivalent of the print royalty of 10% of RRP; (b) an (approximate) date of publication; (c) the form and format of publication, including associated pictures, video, sound and web-links; (d) term-of-license and terminations clauses.
8. Because of uncertainty in the relationships between publishers and online book retailers, it is inadvisable at this stage to sign a publishing contract with 'all-time' implications for the e-book. Argue for a limited electronic rights term of, say, five years, with a periodic review at 12 or 24 months, and stress the fact of uncertain publishing and market conditions surrounding e-books.
9. Retaining e-book rights. You don't have to absolutely and in all instances bundle e-book rights in with print book rights. However, if you sign a contract for a print book only, also make sure that any Competing Edition rights clause doesn't prevent you from signing an e-book separately.
10. Finally, consider a do-it-yourself approach, as outlined above. There are now many more sites offering an e-book publishing and distribution platform for e-book authors, small publishers and readers and these may well work for you.

## **Part III: GUIDELINES FOR E-BOOKS ROYALTY AND CONTRACT CLAUSES FOR VERBATIM E-BOOKS**

### **Introduction**

The royalty rates and contract clauses outlined here are offered as guidelines and suggestions only. These clauses cover main terms but not all relevant areas of an e-book publishing agreement. Please see the earlier section ('Recommendations') for further information.

The terms for e-book publication are a work in progress, with further changes anticipated over the next period. The ASA will therefore monitor developments and review this advice as needed.

These suggestions are intended as a revision and complement to the Suggested Clauses published in *Australian Book Contracts* 4th Edition (Keesing Press, 2009).

### **A. CONTRACTS WITH PRINT PUBLISHERS**

These draft contract clauses are relevant where a print publisher commits to producing an e-book later than, or alongside, the print edition.

The royalty rates in this section have regard to current UK/US trade publisher e-book royalty practices. Along with the UK Society of Authors and the US Authors Guild, the ASA acknowledges that a 25% net receipts base for royalties for an e-book is currently being offered by some large publishers. The ASA considers this a minimum, but we do not recommend it. We recommend 35% of net receipts as the minimum authors should aim for.

#### **NEW CONTRACTS AND ADDENDA TO CONTRACTS WITH PRINT PUBLISHERS**

(electronic editions published with print editions)

#### **ELECTRONIC EDITIONS - Additional Grant of Rights**

- (i) The Author grants to the Publisher for [two to five] years from the date of this contract, the exclusive right to copy and publish the Work in electronic text form and to communicate the Work to the public, including publication designed for an e-book reader or any device designed to be read by electronic or digital means ("electronic edition rights").
- (ii) The Publisher will utilise reasonable technological protection measures to safeguard against unauthorised copying.

[NOTE: Delete this clause if you choose to retain your electronic/digital rights.]

[NOTE: This contract does not grant any electronic Subsidiary Rights – these are to be negotiated as each proposal is made.]

## OBLIGATION TO PUBLISH

Where a licence is granted for electronic editions, the Publisher will publish the Work in electronic form within [specified time] of the date of delivery unless prevented by circumstances beyond its control, but in no circumstances later than [specified time] from the date of delivery. [Alternatively: within twelve months of the publication of the first print edition].

## ELECTRONIC EDITIONS - ROYALTY

- (i) Where electronic book form editions (e-books) are licensed, the Author will receive an amount of [35–50]% of Net Receipts on each copy sold, OR 10% of the RRP of the Primary Australian Print Edition whichever is the greater.
- (ii) After two years from first publication of the Work in electronic book form either party may require the other to renegotiate this royalty rate, having regard to the then prevailing industry standards. In the event that the Author and Publisher do not agree on a rate within three months, the Author may give 30 days notice, upon the expiration of which the Electronic Edition Rights will revert automatically to the Author.
- (iii) “Net Receipts” means gross receipts of the Publisher from sale or licence of the Work less returns and any GST component.
- (iv) “Primary Australian Print Edition” means the edition with the highest Recommended Retail Price.

## NON-COMPETING WORKS

The Publisher agrees that a licence for an electronic edition granted by the Author to any third party is deemed not to be a breach of any competing work clause in this contract (if one is included).

*[NOTE: Delete where Electronic Edition Rights are licensed exclusively to the Publisher.]*

## OUT OF PRINT REVERSION

*[For the purposes of the termination and reversion clause]*

Unless otherwise mutually agreed in writing, where sales of the Electronic Edition have been fewer than [50 copies] in the preceding 12-month period, the Author may terminate this contract on one month’s notice in writing, provided the advance has been earned out or more than [three years] have passed since the first publication, whichever is the sooner. The Work will not be deemed in print by virtue of the reproduction of electronic formats, by print on demand or reprographic processes or through sub-licences.

## B. CONTRACTS WITH ELECTRONIC PUBLISHERS

The royalty rates in this section are higher than found in the previous section. Though they will have their own costs, digital publishers have reduced overheads compared to print publishers, which theoretically allows for a greater return to the author.

### ELECTRONIC EDITIONS - GRANT OF RIGHTS

- (i) The Author grants to the Publisher for [two to five] years from the date of this contract, the exclusive right to copy and publish the Work in electronic verbatim text form and to communicate the Work to the public, including publication designed for an e-book reader or any device designed to be read by electronic or digital means (“electronic edition rights”).
- (ii) The Publisher will utilise reasonable technological protection measures to safeguard against unauthorised copying.

*[NOTE: This contract does not grant any electronic Subsidiary Rights – these are to be negotiated as each proposal is made.]*

### ELECTRONIC EDITIONS - ROYALTY

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Angelo Loukakis, 9 July 2010 *Note: The above includes contributions from all members of the 2010 Executive and Committee of Management of the ASA, and additional work from staff members Susan Bridge and Jill Dimond.* © Australian Society of Authors Limited, 2010



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