

TO: Copyright Office, Library of Congress, Washington, DC
FROM: Miryam Ehrlich Williamson
RE: Comments on FR Doc. 2011-27824, January 16.2012

I welcome the opportunity to submit comments in response to the Notice of Inquiry, "Remedies for Small Copyright Claims," FR Doc. 2011-27824, published at *76 Federal Register* 66758-66761 (October 27, 2011).

This comment is meant to encourage the Copyright Office, the office of the Intellectual Property Enforcement Coordinator, and Congress to provide copyright owners with an effective and economically feasible means of enforcing their intellectual property rights in the face of infringement by entities with virtually unlimited techniques and resources to defend themselves in the face of a challenge in a court of law.

Given the situation that exists today, copyright in the hands of an individual is virtually meaningless and effectively unenforceable. The Copyright Office, the office of the Intellectual Property Enforcement Coordinator, and Congress have the means and, I believe, the responsibility to rectify the present inequity.

What follows are the facts of an indisputable infringement on the part of an international publishing conglomerate relating to my book *Fibromyalgia: A Comprehensive Approach* (henceforth *Fibromyalgia*).

1. The Contract

On May 11, 1995, I executed a contract with a small publishing house to publish *Fibromyalgia*. The contract was amended July 20, 1995, with a side letter pertaining to indemnity that has no relevance to the matter at hand. The contract was also signed by the president of the publishing house. Subsequently, after the turn of the century, this publisher was acquired by the conglomerate referred to above, and the president of the acquired company became president of the acquiring company's American subsidiary.

The relevant clause in the 1995 contract is reproduced here:

1. (a) The Author hereby grants and assigns to the Publisher and its licensees, during the term of copyright including renewals and extensions thereof:
 - i. the right to publish and sell the Work in book form in all languages. If the Publisher fails to sell foreign language rights within five (5) years, such rights shall automatically revert to the Author;
 - ii. the following subsidiary publication rights: publication or sale by book clubs; publication or sale by reprinters; condensation or abridgements; publication in magazines (whether before or after book publication and whether in one or more installments; publication of the complete Work or selections therefrom in print anthologies, compilations and digests; quotation in other works; microprint and microfilm versions; Braille versions and recordings for the print-handicapped; and large type editions;

(b) Such grant shall be exclusive throughout the world.

2. **The Author reserves all rights not specifically granted to the Publisher, whether now in existence or hereafter coming into existence.** (Emphasis added.)

2. The Infringement

In June, 2011, I discovered that the publisher had released *Fibromyalgia* in electronic book form (hereafter eBook) in 2009, which clause 2 above specifically prohibited since it was not listed in 1.(a)ii. I wrote to the president of the American subsidiary to protest this infringement. I received no reply. Shortly thereafter I received a royalty statement listing eBook royalties of 25%, but not specifying whether the percentage referred to the cover price or to the publisher's arbitrarily-determined net cost. Obviously I had not consented to that rate, having not been consulted on the release of an eBook. Although the printed book had been out of print since 2009, the publisher in 2011 claimed books had been returned during the covered royalty period and deducted the cost of returns from the royalties on the eBook, leaving no royalties due me.

I searched for the eBook on the World Wide Web and found advertisements for it in four different formats. Family matters prevented me from following up until early December, 2011. At that time I wrote again to the subsidiary's president, providing him with an electronic copy of the contract and four printout web pages confirming the infringement. In that letter I pointed out that the

company had agreed to a royalty of 50% for an eBook on a subsequent book I published with them, and that in no case would I accept less than that. I asked for a full accounting of eBook sales and receipts since the publication of the first eBooks in 2009 and immediate payment of the arrears. And I demanded that any eBook sales be treated separately from print book sales, since the former were not part of the contract to publish the latter.

The president of the subsidiary replied on December 9, 2011, saying he would give an accounting and response in full within two weeks. When that deadline passed without further contact, I wrote to the Authors Guild, of which I am a member, asking for assistance. In the first week of January, a staff attorney at the Authors Guild wrote to the publisher reiterating my requirements. The president of the subsidiary replied promptly, saying he would furnish the accounting and arrears at the rate of 50%. He said he was ordering a check for the arrears and would continue to pay royalties at 50%, but that the company could not treat the eBook as a separate publication because the firm's accounting system would not accommodate that modification.

In a subsequent phone call from the president to me, I told him I would not accept payment as he proposed until I had thoroughly explored my options in enforcing my copyright. That is where matters stand at this writing.

3. The Prospect of Resolution

Economic damages in this case are minimal, but statutory damages, if I am able

to collect them, are not. However, unless I can find an IP lawyer willing to take the case on contingency, I am powerless. I lack the resources to pay a retainer. Additionally, the publisher's demands for documents in discovery, should I sue, would further deprive me of income, since I could not write and meet those demands at the same time.

I will watch closely the progress of the contemplated "alternatives to the current legal system that could better accommodate" my claim. And I will hope that any measure that emerges will extend its benefits retroactively to me and others similarly situated.