

RIGHTS OR DISTRIBUTION :
AN ANALYSIS OF FACTORS INFLUENCING
PUBLISHERS' ABILITY TO SELL RIGHTS OR TO
DISTRIBUTE INTO A FOREIGN REGION

by

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Chapter 1: Introduction

Publishers aim to make the content of their books public. Most publishers seek to reach a public in other nations than their own – whether this is because the revenue from their home market is not sufficient to be financially viable and so they want to make more profit, or they simply want to make the content of their book available to a wider audience. Whatever the reasons, publishers today often aim to reach an international readership. In order to do this, the publisher has two main options: (1) to sell foreign rights and allow another (often local) publisher publish their publications in the foreign market, or (2) to distribute their books into the foreign region themselves. The factors influencing a publisher's ability to choose between these options have not been previously clearly analyzed. This report reviews the various criteria that publishers consider when confronted with this choice and the factors that influence their ability to make this choice. This report concludes by proposing a scheme to guide decision makers whether to sell rights or distribute within a foreign territory.

In the summer of 2006, I worked as the Rights Assistant at Raincoast Books in Vancouver, Canada. At the time of writing, I have been working as the Children's Rights Coordinator at Simon & Schuster U.K. in London, England for over a year. While I worked at with these firms, both Raincoast Books and Simon & Schuster sold foreign rights and distributed their titles into foreign territories. I

decided to analyze the reasons they choose one option over another in given circumstances. Raincoast Books are primarily known as a distribution agent (i.e., they distribute books in Canada for international and some Canadian publishers), but until January 2008, Raincoast Books also included a publishing operation, which had a policy of preferentially selling the foreign rights to their adult titles. In contrast they distribute their children's books internationally and these rights were never put forward for sale. Like Raincoast Books, Simon & Schuster both sell rights and distribute their titles into foreign territories. The two firms that otherwise are starkly different (as will be described later) approached selling rights and distribution in a similar way.

When I discussed this project with my colleagues at Raincoast and later at Simon & Schuster U.K., I learned that the factors influencing the decision to sell foreign rights or to distribute oneself were poorly defined and unclear even to industry insiders. These discussions highlighted to me that a report analyzing the factors influencing publishers' decision and ability to sell foreign rights or to distribute into a foreign region, using contrasting publishers as case studies, would help illuminate an important aspect of the publishing industry.

Research Methods

My research is based primarily on my experience as Rights Assistant at Raincoast Books and as Children's Rights Coordinator at Simon & Schuster U.K. I discussed the various aspects of this project in depth with my colleagues at Raincoast, Jesse Finkelstein, Emiko Morita, and Kevin Williams, several times.

By the end of my time with Raincoast, I had discussed the topic extensively with these individuals and had researched as much relevant literature as I could locate.

In September 2006, I moved to London, U.K., where I attended a three-day intensive *Selling Rights* course at The Publishing Training Centre to further my knowledge of this area of publishing. In November 2006, I was appointed Children's Rights Coordinator at Simon & Schuster U.K. Here I again discussed my project on several occasions with Alexandra Maramenides (Children's Rights Director), Stephanie Purcell (Children's Rights Manager) and Jonathan Atkins (International Sales Director).

From my discussions with these experienced publishers and my own comprehensive review of the literature, I discovered that there was relatively little written on this specific topic. Therefore, the basis for this report is primarily my personal experience combined with the information gained from several in-depth discussions with experienced publishing professionals on both sides of the Atlantic, as well as a review of the limited literature available on the topic.

Case Studies: Raincoast Books and Simon & Schuster

The two key case studies for this report are Raincoast Books in Vancouver and Simon & Schuster International, including the U.S. "mother company" and the U.K. and Canadian branch plants.

Until January 2008, Raincoast Books was a Canadian publisher *and* distributor based in Vancouver and Toronto.¹ Raincoast Distribution continues to be the exclusive Canadian distributor for several publishers from the United Kingdom, the United States of America, and Canada. It is regularly cited as the best distribution agent in Canada.

In January 2008, Raincoast ceased its publishing operations and now works only as a distribution agent. The publishing division included the Polestar imprint and key titles from Press Gang Publishers, and produced a wide range of fiction and non-fiction titles for adults and children. The publishing arm, which was relatively small, prospered hugely because of their ownership of the Canadian rights to the *Harry Potter* series (originally published by Bloomsbury U.K.), earning Raincoast the title of “the house that Harry built”.

The financial success of *Harry Potter* enabled the Raincoast publishing division to maintain very healthy profits and profile. However, titles originated by Raincoast Books itself were not as commercially successful, and as a result, the publishing operation was cut. Raincoast Books was in a difficult position. Firstly, their titles were competing for sales in Canada against international bestsellers (which oftentimes Raincoast Distribution would be marketing and promoting). This meant that, at times, Raincoast Books was competing against itself.

¹ See MacDonald, Scott, “Raincoast Drops Publishing Program, Plans cuts across the board” *Quill & Quire*, January, 2008) (hereafter cited as MacDonald).

Secondly, the currency fluctuations of 2007 did not help Raincoast Books. When the U.S. dollar fell against the Canadian dollar, U.S. titles became very cheap for Canadian consumers. And so, Raincoast Books attempted to make their retail prices competitive by reducing them by 20%. This did not help enough, and profits continued to drop. Meanwhile, the drop in the U.S. dollar meant that Raincoast titles sold in the U.S., seemed extremely expensive to U.S. consumers. Consequently, the revenue from this market most likely also dropped. Raincoast Books were cornered, and finally in January 2008, they were squeezed out of the market.²

This report focuses on how, prior to January 2008, Raincoast Books attempted to increase revenue by selling rights or distributing internationally.

Simon & Schuster was founded in New York in 1924 by Richard L. Simon and M. Lincoln Schuster and now is part of the CBS Corporation. It is a major force in today's consumer publishing industry, bringing an extensive cross section of information and entertainment, in all printed, digital, and audio formats, to a worldwide audience of readers. Simon & Schuster publishes approximately 1800 titles annually, has 1500 U.S. based employees and can distribute its titles in more than 100 countries and territories around the world. The firm has publishing and distribution capabilities in the United States, Canada, the United Kingdom and Australia, as well as an international sales presence in every major market. In January 2007, Simon & Schuster began a

² Ibid.

local publishing program in India: the first title published under the new program was *Planet India* by Mira Kamdar. In all, Simon & Schuster titles have received 54 Pulitzer Prizes, 15 National Book Awards, 14 Caldecott and 18 Newbery Medals.

Raincoast Books and Simon & Schuster are contrasting publishers. One is Canadian and one is American (with a U.K. branch plant). Both are highly commercially focused but achieve this in very different ways. Simon & Schuster are unabashedly “cultural exporters” in that they create global products. Their books are originally aimed at a wide, international readership. They create titles that are not culturally specific to the U.K. or U.S., and could find a readership in most Western nations. They see their titles as “entertainment products” rather than art. This attitude is consistent with Simon & Schuster’s role as the publishing division of a major media conglomerate, CBS. Their global outlook is also reflected in the establishment of branch plants in many different regions.

Raincoast Books had an international commercial focus. The key part of their business is based on distribution for international publishing houses. Raincoast Books therefore had a strong sense of internationalism, but *they viewed it in an importing sense, rather than an exporting sense*. This is a crucial difference to the two firms, and is reflected in their lists and in their operations up to January 2008. The list generated by Raincoast Books up to January 2008 was very Canadian-centric. Key titles included *Amongst The Inuit*. But, they also published (i.e., not just distributed) *Harry Potter* perhaps the most global title of

modern publishing history. *Harry Potter* illustrates that in a very real sense, Raincoast Books was commercially dependant on cultural importation for viability. Raincoast Books & Distribution first consider the Canadian market: accessing the international market through rights sales or international distribution is an additional consideration, not an assumed revenue stream (unlike Simon & Schuster). Raincoast are not part of a massive media conglomerate nor do they have branch plants in foreign territories.

Our two case studies therefore have contrasting histories – and futures – in books and the international publishing industry. Their experiences of selling foreign rights and distribution show the factors influencing a small local publisher and a large multinational publisher. Their contrasting attitudes allow us to sample two opposite points on a spectrum of global publishing, thus making the analysis of the findings greater than the sum of its individual case studies.

Structure of Report

This report is focused on an evaluation of the reasons why a publisher might decide if they can and should sell foreign rights or distribute their books into a foreign market.

In order to understand the framework where these decisions are taken, we must first develop an understanding of what copyright, rights and distribution are, and then how international trade in rights and international distribution developed. We will then look at our various case studies' experience of selling rights and distribution as “real life” examples of how international trade in rights

and international distribution function in 2008. Both rights and distribution are discussed in terms of advantages and disadvantages, with both Raincoast Books and Simon & Schuster used as examples throughout. We will find that the decision to sell rights or to distribute is based on the ability to do so; this ability is based on a combination of factors, including availability of dedicated sales and marketing teams, production costs, need to recuperate initial investment and much more. We summarize our findings and conclude with a proposed guide for publishers on the decision of whether they can and should sell rights or distribute into a foreign region.

Chapter 2: Copyright

The term “rights” refers to the variety of copyrights assigned to a work. These rights can include volume, serial, same-language, book club, paperback, reprint, digest, translation, anthology, audio and electronic rights. These individual types of rights will be discussed in further detail later in this chapter, but for now, it is sufficient to say that each of these terms refers to a method of communicating content, and the content is covered by copyright. It is important to note that copyright covers only the “form of material expression”, it does not cover the actual idea, concepts, facts, styles, or techniques that may be embodied in the copyrighted work. Once an individual creates a work, this work is their “intellectual property”. Intellectual property is the set of rights belonging to an author because their work expended in the creation of a literary, dramatic, artistic, or musical work.³

The concept of copyright developed in France in the 17th century, and at the close of that century, Britain created the Licensing Act (1694), which granted perpetual protection to anyone who registered a work with the Stationer’s Company (the guild of the London, U.K. book trade).⁴ The first British Copyright

³ Lorimer, Rowland. *Vibrant but Threatened: Book Publishing in Canada*, (Vancouver, BC: Canadian Centre for Studies in Publishing, 1995) 41 (hereafter cited as Lorimer).

⁴ Owen, Lynette. *Selling Rights*, (Oxon: Routledge, 2001) 12. (hereafter cited as Owen).

Act in 1710 was originally called “An Act for the Encouragement of Learning” and was the first British law to recognize the concept of intellectual property.

Enshrined in this was the “basic recognition that books originated with authors not booksellers, and that the booksellers were merely the purchasers of a property which an author had created”.⁵ When the British asserted that authors were intellectual property owners, they allowed authors to carve a new role for themselves in the content producing industries (i.e., publishing, printing, bookselling) of their time. The roles of publisher, printer and bookseller were still intertwined at this time, and it was not until the early 19th century that the role of publisher was fully distinct from the role of printer or bookseller. However, by the mid 18th century, the author was a fully established professional. The law allowed an author to sell their intellectual property to another content producer (printer, bookseller or publisher). This law made being an author a potentially lucrative endeavour. “The author who wrote the right kind of book for the right kind of publisher and got himself established with the public was now able to live on his royalties”.⁶ The modern commercial relationship between the publisher and the author can be seen as a direct result of the Copyright Act of 1710.⁷

The publishing industry is based on copyright. It is copyright that allows publishers and authors to make financial gains on the back of a creative product.

⁵ Feather, John, *A History of British Publishing*, (Oxon: Routledge, 2006) 55 (hereafter cited as Feather).

⁶ Steinberg, S.H., *Five Hundred Years of Printing*, (London, U.K.: Oak Knoll Press and The British Library, 1996) 108 (hereafter cited as Steinberg).

⁷ Steinberg, 107.

However, copyright is far more complex than simply the protection of intellectual property and the commercial exploitation of a creative work, as 18th century publishers were soon to discover. The Copyright Act of 1710 resulted in a complex, and unexpected, chain of events. The law stated that copyright (i.e., the ownership of intellectual property) lasted for 14 years, could be renewed once, and that existing titles had a copyright of 21 years. Therefore, implicitly after 21 years, anyone could legally print these “out of copyright”, or public domain, works. Therefore, in the 1730s, provincial printers in Scotland and Ireland began taking commercial advantage of this loophole, and of the London printers’ lack of interest in the provincial markets. They produced reprints of public domain titles, which had until recently been covered by London copyright. “To the Londoners these were illegal piracies; to the Scots they were the fruit of legitimate competition”.⁸ The London publishers and booksellers believed that copyright was perpetual, arguing simply that when an individual buys “property”, whether it is physical property such as a house, or abstract property such as copyright, it was theirs for perpetuity.

The Copyright Act of 1710 was instigated primarily to protect the London book trade, and to protect their monopoly on book sales in Britain. However, when the Irish and Scottish reprints began to make their way into some of the more remote parts of England, where the London distribution network failed to reach, the London content producers were forced to react both commercially and

⁸ Feather, 63.

legally. Commercially, the London trade began to take account of the provincial market. They worked on developing a distribution network for their titles, which allowed for the spread of ideas and education.⁹ The development of this distribution network will be discussed in further detail in the second section of this report.

Legally, Londoners brought a case (Donaldson-v-Beckett 1774) against a Scottish printer for importing English language books into England, claiming that the books were piracies. Donaldson maintained the titles he was importing were public domain (i.e., out of copyright), and so were not piracies. Beckett, representing the London content producing industry, claimed that copyright was perpetual. The House of Lords found in favour of Donaldson, the Scot, and stated that perpetual copyright did not exist. The basis for this decision was simply that “since much of the English canon was controlled by the London book trade through inherited and purchased shares in copies, perpetual copyright was seen as an inhibition on cultural as well as economic development”.¹⁰ The Copyright Act of 1710 was instigated primarily to protect the London book trade, and to protect their monopoly on book sales in Britain, but the House of Lords realized that this monopoly was not in the public interest for two reasons. Firstly, the monopoly maintained the price of books at an artificially high level. Secondly, the encouragement of learning, which was the alleged basis of the 1710 Act, may not have best been served by a commercial monopoly. The Donaldson-Beckett case

⁹ Ibid, 64.

¹⁰ Ibid, 68.

was a turning point in copyright law. The assertion that perpetual copyright is an inhibition on cultural as well as economic development continues to be argued. In Canada copyright law still aims to “balance the interests of the community with the interests of the author”.¹¹

International Trade in Copyright

By the 19th century, the publishing, printing and bookselling industries became established in their modern roles.¹² “The turn of the 18th to 19th centuries marks a decisive stage in the history of printing. New inventions lowered the cost of production; mass literacy created further demands, the national and international organization of the trade widened the channels and eased the flow of books from the publisher’s stock departments to the retailer’s shelves”.¹³

Also in the 19th Century, the International Publishing Association was established,¹⁴ and copyright began to be standardized on an international basis. The objective of international standardization was to limit piracy and the infringement of copyright in any region.¹⁵

Attempts to standardize international copyright law were also very difficult. The approach to copyright, and the philosophy behind copyright, is

¹¹ Lorimer, 41.

¹² Feather, 11.

¹³ Steinberg, 136.

¹⁴ Ibid, 148.

¹⁵ Ibid.

starkly different in different cultures. The French and Canadian attitude to copyright is that “copyright should be developed by statute law based on an analysis of all the interests involved, with emphasis on the public interest”.¹⁶ The British and American attitude is far more commercially-minded.

In 1886, the Berne convention was signed. This was a multi-lateral copyright treaty which aimed “to establish minimum standards of copyright protection that would be complied with in the domestic copyright legislation of its member states”.¹⁷ In other words, it sought to establish a basic international copyright agreement, whereby the laws of one country would be respected and enforced in another. The overall objective of the treaty was to limit international piracy and ensure that copyright holders could commercially exploit their product at a global level while being protected by international law.

The key elements of this treaty were that: (a) no formal registration of copyright is required to secure copyright, and (b) the minimum term of copyright protection is the lifetime of the author plus 50 years. The United States did not join the Berne convention for a variety of political and practical reasons. On a practical level, their copyright law did not comply the Berne convention’s stipulations because, at the time, the United States had a shorter term of copyright protection and required formal registration, and as such the U.S. were not eligible to join.

¹⁶ Lorimer, 44.

¹⁷ Owen, 4.

In 1891, Britain and America came together in the realization that “mutual recognition of copyright made negotiations possible and financially worthwhile”.¹⁸ The Anglo-American Copyright Agreement was signed and essentially carved up the English-speaking world into American or British territories. Between the signing of the Anglo-American Copyright Agreement and the end of World War 2, both British and American publishers kept a strong foothold in Canada. By the 1950s, transatlantic rights sales were commonplace. British publishers would happily sell American rights to a U.S. based house, and American publishers would sell British rights to a U.K. based house. The complications arose when territories were disputed. For instance, both American and British publishers considered (and continue to consider) Canada part of their territory. This issue is resolved on a case-by-case basis.

In 1950, another international copyright agreement was signed – the Universal Copyright Convention. This states that there must be formal registration of copyright, that copyright protection lasts for at least the lifetime of the author plus 20 years, and that every work carrying the copyright symbol (©) will be regarded as complying with this convention. “By 20 January 2000, the Berne Convention had 142 member states and the Universal Copyright Convention 98; of these 90 states belong to both conventions”.¹⁹ The United

¹⁸ Ibid, 18

¹⁹ Ibid, 5.

States was one of the original signatories of the Universal Copyright Convention, and became a member of the Berne Convention on 1st March 1989.²⁰

There have been several adjustments to copyright law in Canada and internationally. An entire project report could be dedicated to the development of copyright law, but for the purposes of this report it is suffice to say that Canadian copyright law follows the Berne Convention. There is no formal registration of copyright, the work must be original, the work must be expressed in a physical form (for example, written down on paper), and the nationality of the creator and place of publication must be specified.²¹ American copyright law currently protects the holder for the lifetime of the author plus 70 years. However, the Sonny Bono Copyright Term Extension Act (1998) means that copyright protection can now last from 75 to 95 years from first publication or 120 years from date of creation, whichever expires first.²² There are political, legal and commercial reasons why American copyright law has continued to change over the years.

International trade in copyright is a legally complex field but this report does not seek to explain these intricacies. Instead, this report aims to understand why publishers trade in copyright as opposed to distributing and vice versa. For the purposes for this report it is important primarily to note the following, as Lynette Owen says:

²⁰ Ibid.

²¹ Lorimer, 46.

²² Owen, 17.

Even if two countries both belong to the same international copyright convention, the level of copyright protection in those two countries will not necessarily be equal. Membership merely ensures that certain minimum standards are set, but the provisions of domestic copyright legislation are paramount.²³

The existence of international copyright laws is crucial to the trade of rights and international distribution. Copyright allows the financial exploitation of a book, and international copyright allows the international financial exploitation of books via selling rights or international distribution.

Separation of Copyright into Rights

With the advent of international copyright agreements, international trade in copyright became a lucrative element in the publishing industry. Moreover, greater international communication and a wider variety of media meant that foreign and subsidiary rights sales became a crucial part of both a publisher's and an author's royalties. During the 19th century, authors, publishers and agents had become accustomed to dealing with serial and book rights but by the 20th century, film, sound and radio complicated the matter much further.²⁴ As mass media developed, individual sections of the industry developed specialties. It became clear that a publisher could not fully commercially exploit the copyright that they had bought from an author.

²³ Ibid, 10.

²⁴ Wilson, Janet "Publishing History" (lecture, Simon Fraser University, Vancouver, 17th March 2006) (hereafter cited as Wilson).

A book publisher would not have the necessary expertise to successfully exploit rights for film, merchandise, audio versions, radiobroadcasts or a number of other types of media. The variety of rights available mushroomed and rights sales were so complex that specialist knowledge of the field became necessary. And so, literary agents became key players in the publishing industry. Moreover “literary agents became even more important as individual authors found themselves dealing with multinational companies”.²⁵ To this day, literary agents continue to play a central role in the sale of rights.

Copyright was originally envisaged as the author’s ownership of their work, but as the trade in copyright developed, different purchasers emerged who wanted to exploit only a certain aspect of copyright. For instance, a book publisher would want to exploit the “book” rights – commonly referred to as the volume rights. However, a newspaper publisher would want to exploit the content of the work by publishing it in segments in their publication – they would want to buy serial rights. In short, the multiple purposes for which the copyright was bought resulted in copyright being segmented into various rights as follows:

- Same Language Territorial Rights: e.g., a U.K. book being published in Canada; can be handled under a co-edition with the original publisher or as reprint licenses.
- Book Club Rights: paperback book clubs may sell specially produced paperback editions not comparable with any edition available in the trade.

²⁵ Feather, 224.

- Paperback Rights: traditionally a hardback publisher licensed these to an independent paperback house. However, many books are now acquired for both hardback and paperback publication within the same publishing group (“vertical publishing”).
- Reprint Rights: used when the original publisher allows for the revival of an out of print title by a specialist publisher; the licensing of a low-priced edition of a textbook to a developing country.
- Serial Rights: first serial rights (extracts licensed to newspapers or magazines which start before the publication of the book itself) and second serial rights (extract rights beginning after publication of the book).
- One-Shot Periodical Rights: the license of an entire book (normally a novel) for inclusion in a single issue of a newspaper or magazine.
- Digest and Condensation Rights: right to publish the work in a summarized form in a magazine such as *Reader’s Digest* or to publish the work in a condensed form, as in a compendium edition of several novels.
- Translation Rights: right to translate the work into another language and publish it within an agreed sales territory.
- Anthology and Quotation Rights: “permissions” – the right to reproduce text or illustrations from one copyright source in the context of another works, in print-on-paper or electronic format.
- Rights for the Print Disabled: Braille editions
- Single Voice Reading Rights: right to read from the text of a work in undramatized form on radio or television.
- Dramatization and Documentary Rights: the right to perform the work in dramatized form on stage, radio, TV or film.
- Reprographic and electronic reproduction rights: right to reproduce a work on a medium such as microfilm, microfiche, photocopy or electronic means.
- Electronic Publishing and Multimedia Rights: exploitation of a work through a variety of storage and retrieval systems.
- Merchandising Rights: licensing of copyright character or designs for reproduction on items such as wallpaper, stationery, toys, etc.

- Publisher's Rights –copyright held on the typographical layout of the book, the proceeds are not shared with the author as it represents a contribution towards the design and typesetting costs incurred when the work was first published.
- Public Lending Right: An Author's Right – right of an author to receive remuneration for the loan of their work from public libraries is personal to the author, with the publisher receiving no share from this revenue.²⁶

In the 20th century, new media such as cinema, television and radio invigorated rights sales. Publishers and agents were now able to sell film, television and audio rights. Moreover, prior to 1935, mainstream publishers produced their books in hardback editions only, and viewed paperbacks as a subsidiary right that they rarely exploited. Allen Lane, founder of Penguin Books, was the first publisher to produce mass quantity, high quality paperbacks. His ability to tap a huge international readership did more than heighten the sales of paperbacks for Penguin Books and its competitors, it also highlighted that the social and economic life in Britain and America were very similar in the post war years. Lane's mass paperbacks were a hit both sides of the Atlantic, and this made it "one of the most important developments in publishing in the 20th century".²⁷

The key to Lane's success was his production of high quality product at a cheap rate. He was convinced that there was "a vast new readership waiting to be tapped".²⁸ The success of Penguin books illustrated a *mass international*

²⁶ Owen, 31-36.

²⁷ Ibid, 19.

²⁸ Lewis, Jeremy, *Penguin Special: The Life and Times of Allen Lane* (London, U.K., Penguin Books, 2006) 71 (hereafter cited as Lewis).

readership to the traditional publishing industry. Lane's success drove publishers to create books which would sell to this new international mass market. This resulted in international rights sales and distribution agreements between publishers. Publishers on both sides of the Atlantic began to see the benefit of combining forces, and multinational publishing operations were born. As a result, since the 1960s, international rights sales have become a crucial part of any commercial publishing operation.

This mass international readership followed on neatly from the colonial market that had previously been fed by British literary and educational texts. Britain had long been an exporter of culture, religion and education through their Empire (this will be discussed in more detail in the distribution chapter), but by the middle of the 20th century, America was exporting its version of culture, religion and education in the form of mass entertainment.

Media empires grew in America when firms realized that they could exploit the various forms of copyright through different branches of their own firm. Consequently Britain was superseded as the world's cultural exporter. Technological and social changes meant that "the turn of the 20th century, like the middle of the 15th century seem[ed] to have marked the beginning of a genuinely new era in human communications".²⁹ It is unclear yet how this new era will develop. Now, more than ever, the world has a shared cultural experience and "the book is no longer the uniquely prestigious symbol of (western) culture

²⁹ Feather, 228.

and civilization”.³⁰ Publishers are unsure how to deal with this shift in the book’s role within society, but one thing is clear – to survive, publishers need to exploit as many aspects of the book as possible and to reach the global market. In order to do this, they need to commercially exploit rights (i.e., sell rights) or to distribute. The question is: which?

³⁰ Ibid.

Chapter 3: Selling Rights

Positive Considerations

Publishers sell foreign rights to their titles for two main reasons – first, to recoup investment and split risk (financial) and second, to spread the content of a title to a wider audience and to build an international profile for the author (informational). While a rights sale is important for an author and a publisher’s international profile, it is fundamentally a financial decision. As Lynette Owen says, “some [books] (such as in consumer publishing, especially in adult and children’s highly illustrated color books) earn much or depend on rights deals for viability”.³¹

Case Study:

Among The Inuit: Illustrating the Benefits of Selling Rights

Raincoast Books had titles on their list that depended on a rights sale for viability and this was the first main factor in their decision to sell rights. *Among the Inuit* by Robert Semeniuk was one of Raincoast Books Spring 2007 titles, and “is a spectacular photographic look at Inuit lives, featuring 65 dramatic images of traditional hunters”.³² The high production values required for a photo-book

³¹ Clark, 147.

³² Raincoast Books, *Raincoast Catalogue: Spring 2006*, (Vancouver, Raincoast Books 2006) 22.

meant that per-unit printing costs on a Canadian print-run were prohibitively high.

In order to profit from this title, Raincoast needed another publisher to buy rights and to join in a co-edition print-run. A co-edition can be defined as “printing more than one edition of a book at the same time to achieve savings in print costs”.³³

The second main factor influencing a publisher’s decision to sell foreign rights is the desire to spread the content of a title to a wider audience. While Canada is not typically a cultural exporter in the way that America or Britain have historically been, certain cultural products have an international appeal and should therefore be available to an international market. *Among the Inuit* is an example of this type of publication. Raincoast Books considered the subject of this book culturally important; as their catalogue says, this book “bears witness” to an aspect of Canadian culture. By encouraging foreign publishers to buy rights, foreign readers are given the opportunity to understand the Inuit. The interplay between financial and information factors are important considerations in the decision to sell rights.

In examining why to sell rights, it is important that we approach the subject from the perspectives of the three main players – the originating publisher, the author and the purchasing publisher. Contractually, the originating

³³ Publishing Training Centre, *Selling Rights* (seminar, Book House, London, U.K., August 2006) (hereafter cited as Publishing Training Centre).

publisher is referred to as The Proprietor; the purchasing publisher as The Publisher. For the sake of clarity, I will be referring to each as the originating and purchasing publishers.

Advantages for the Originating Publisher

The sale of rights can hold the following advantages for the originating publisher:

1. **Revenue:** the publisher can earn money with a rights sale because of the advance and royalties. And/or,
2. **Limit financial risk:** the publisher can limit financial risk by selling rights which reduces printing costs and splits risk. And/or,
3. **International profile:** the publisher and author can develop their international profile by selling rights.

If a publisher sells rights to a title they will most often earn an advance against royalties that will be split with the author. A publisher can also gain revenue by selling artwork or by selling digital files. They can also reduce their own printing costs and gain revenue by entering into a co-edition with the purchasing publisher. Publishers are often cash poor, and revenue from a rights sale can be a crucial part of an originating publisher's balance sheet. Originating a title is typically the most expensive part of the creation of a cultural product. Therefore, an originating publisher must invest a great deal of capital quickly. Rights revenue is an excellent way for a publisher to recoup some of their initial investment.

Case Study:

The Jungle Book: Illustrating the Benefits of Co-editions and Splitting Risk

At the time of writing, Simon & Schuster are publishing *The Jungle Book* by Matthew Reinhart. It is one of the world's highest pop-ups, has four-colour illustrations and features touch-and-feel elements throughout. As a result, this title is extremely expensive to produce. The initial investment by Simon & Schuster was large, and so Simon & Schuster are seeking to sell as many foreign rights as possible before publication to regain some of the capital.

Furthermore, titles such as *The Jungle Book* have very high production values and so the per-unit printing costs are very high. In order to reduce the costs, Simon & Schuster are building a co-edition printing with their foreign publishers. As mentioned earlier, a co-edition can be defined as “printing more than one edition of a book at the same time to achieve savings in print costs”.³⁴ When printing a co-edition, the black text of each edition/language is printed as the K plate of the CMYK four-color printing. The printer considers all the different editions/languages as one printing (because he only needs to change the K plate for each edition). Therefore the per-unit costs are calculated on the entire co-edition print run rather than on each individual edition's/language's print run. In this instance, if Simon & Schuster build a run of a certain quantity, it will proportionally reduce their editions and so get a higher return on their original investment. Co-editions also reduce the financial risk to Simon & Schuster by

³⁴ Publishing Training Centre.

bringing in revenue from rights advance and royalties at the same time, although often co-edition deals are royalty inclusive and so there will be no advance or royalties as it is included in the per-unit cost. Originating publishers of co-edition titles charge their publishing partners more than the actual printing costs, so they make a threefold profit – the advance, the royalties and the printing costs.

By selling the rights to *The Jungle Book*, Simon & Schuster are regaining their capital investment and are splitting the financial risk for the title because it is now the financial responsibility of the purchasing publisher. Moreover, if a co-edition deal is royalty inclusive, there will be no advance or royalty. All these factors would be combined into a single price per book. For instance, if a purchasing publisher wants 2000 copies of a hardback edition of a book, the originating publisher would quote them as follows:

2000 copies @ CDN\$2.33 (two Canadian dollars and thirty three cents) per copy.

This price is royalty inclusive and is for a hardback edition as per U.K. specifications. This price includes a 4 color plate change to the cover, black plate change to the interior, matte lamination on the cover, no jacket and delivery CIF³⁵ Montreal port (uncleared).

The originating publisher would base this price on the costs given to them by the printer, but they would also include a 10% royalty for the author, and a profit margin. The key benefit of co-editions for the originating publisher is that they are typically split 90 -10 with the author (i.e., the author will receive 10% of

³⁵ CIF – (cost, insurance and freight): the originating publisher pays for transport and insurance up to a destination port (in this case, Montreal) in the country of the purchasing publisher. The originating publisher is then responsible for all costs in connection with unloading, customs clearance and onward transport to their own warehouse (Owen, 98).

the revenue of the co-edition deal). This is because the profit from a co-edition deal is primarily from the reduced printing costs and so, a co-edition deal is seen as deal driven by the publisher's relationship with printers rather than a deal driven by the author's reputation or product. Authors who are particularly successful can hope to get 15% of a co-edition deal, but this is very rare.

The author and illustrator only get 10% of a co-edition deal because the co-edition deal is seen primarily as a printing deal, made possible by the originating publishers' good relationship with a printer.

Secondly, the author and illustrator could not get a percentage of the retail price because neither they nor the originating publisher have any control over the retail price (or sales) in the foreign markets. Co-edition deals are firm sales (i.e., no returns), and so the author and illustrator are guaranteed 10% of the deal. If they were given a percentage of retail price, it would have to be based on retail sales too, and as such, they would not be guaranteed revenue.

Finally, co-editions would be financially impossible for publishers if an author and illustrator received more than 10-15%. A purchasing publisher looks for a minimum of a four-time mark-up on the per unit cost. For instance, the retail price for the above example would be \$9.32 minimum. ³⁶

So, if the author and illustrator were to receive more than 10-15% of the co-edition deal, the originating publisher would have to increase the per unit cost

³⁶ $\$2.33 \times 4 = \9.32 .

(so as they could maintain their own profits). For instance, \$2.33 is royalty inclusive. Assuming the royalty is 10% (\$0.23), and assuming the originating publisher is making a 35% profit on the deal, the actual manufacturing and shipping costs are \$0.73.³⁷ If the royalty was 50%, the originating publisher would have to charge \$6.67, to keep their 35% profit,³⁸ meaning the purchasing publisher would have to sell the books at \$26.66 minimum³⁹ to make their minimum profit.

Authors and illustrators make guaranteed profit from co-edition deals, and can be confident that the foreign editions are being printed to a good standard.

A co-edition deal offers a four-fold advantage to the originating publisher:

1. favourable royalty split for the publisher,
2. reduced per-unit printing cost,
3. quick return on initial investment and
4. split financial risk.

By selling rights to a particular region a publisher is splitting the financial risk for the title with another party. Simon & Schuster U.S. offers an interesting example of splitting the risk. In 2005, Simon & Schuster Inc. published *House of Bush, House of Saud* by Craig Unger. This title was highly controversial in the United States, and the publishers were threatened with legal action. However because of libel and slander laws in the United States, the offended parties did

³⁷ $\$2.33 - \$0.23 - 35\% = \$0.733$.

³⁸ $\$2.33 \div 15\%$ (i.e. $100\% - 50\% + 35\% = 15\%$) = \$6.67.

³⁹ $\$6.67 \times 4 = \26.67 .

not bring a suit. Libel and slander laws are quite different in Britain such that had Simon & Schuster U.K. published the title, the offended parties could easily and effectively sue. So, Simon & Schuster Inc. had three options: distribute the title through their branch plant in London; sell U.K. rights to another British publisher; or, not publish the title in the U.K. market at all.

Simon & Schuster U.S. decided to sell rights. They realized that the title would sell well because of the controversy in the United States and did not want to miss out on the sales revenue. However, they did not want to publish or distribute it themselves in the U.K. because they were wary of a lawsuit. A small U.K. publisher bought the rights, rationalizing that the offended parties would realize that his firm would not be financially worth suing (which turned out to be the case). This shows how selling rights can split the financial risk *and* the legal risk of a title. Simon & Schuster U.S. gained the financial benefit of the advance and the royalties on all copies sold from the rights sale.

Having seen how beneficial it can be to split the risk for a title by selling rights, we can now understand why co-editions are a good option. As we saw above, a co-edition allows the originating publisher to gain revenue, to split risk and to reduce his or her own printing costs. These three factors mean that co-editions are a good option for an originating publisher. However, co-editions are most successful with global products. This is because co-editions are only financially viable if there is a large print-run, which is only possible through a multi-publisher international printing.

As a cultural importer, Raincoast Books' speciality lay in publishing international books that appealed to Canadians. Conversely, Simon & Schuster specialize in creating global products that sell in the international market. Simon & Schuster therefore regularly generate co-editions and gain revenue, reducing financial risk and gaining international profile as a result. Raincoast Books could not compete with a co-edition specialist like Simon & Schuster in the global market. Moreover, because of the revenue gained from these co-editions, Simon & Schuster can afford to sell *The Jungle Book* (for instance) at a relatively low retail price in Canada.

Raincoast Books could not compete with these prices⁴⁰ and this was one of the reasons why they were pushed out of the Canadian market as well as the international market. Simon & Schuster will continue to make greater and greater profits as a result and their influence in the international market (and in Canada) continues to grow.

Advantages for the Author and Agent

The sale of rights can hold the following advantages for the author:

1. Financial: advance and royalties and
2. Increased profile at home and abroad

The advance and royalties resulting from a rights sale can help an author earn back their original advance and provide long-term income to the originating

⁴⁰ See MacDonald.

publisher, the author, their agent and the purchasing publisher. A significant rights sale can help an agent and author negotiate a higher advance for their next title. An increased international profile can help promote an author at home too, and may in turn attract other rights buyers – for instance, film rights may be snapped up if an author is seen as very successful at home and internationally.

The division of revenue from a rights sale varies from house to house and from trade to educational publishing. Agents generally earn between 10% and 15% of the rights sale as a commission for their work. According to Lynette Owen, who is writing from a U.K. perspective where an agent is involved in a foreign language region, the agents receive up to 20% of the rights sale. Agents receive a percentage of the deal because they have created the deal by liaising local publishers, pitching the title to them, and by negotiating the terms of the deal. In a co-edition deal, the agents will receive 5% of the deal (because it is seen as a printing deal, made possible by the originating publisher's good relationship with the printer). The agent will then play a key part in the smooth running of the co-edition and will often project manage the edition for the purchasing publisher.

Both Raincoast Books and Simon & Schuster had exclusive subagents in various foreign territories, and each of these agents earned a pre-tax percentage of any rights deal in their region whether or not they instigated the deal. Agents are paid a percentage of a rights deal, even if they do not instigate the deal, because it is assumed that they have been generating “a buzz” for the originating

publisher's titles in the local market. And so, they have, in a sense, laid the groundwork for any deal that arises in their region.

In trade publishing, major authors can receive up to 80% or 90% of the rights sale, although generally the author will receive nearer to 75%. Selling rights for a major author is easier than selling rights for an unrecognized author. The major author in a sense "sells themselves", and therefore are due (and will demand) a proportionally greater percentage of the rights sale.

Educational authors earn a lower royalty rate because more often than not, an educational title is developed by an in-house team as a key part of a publisher's list (as compared to a fiction title). Therefore, the publisher will argue that over the course of the title development, they have invested as much time and energy in the title as the author(s). The publisher will therefore be due a greater proportion of any rights sale, because the product is more directly a result of their work.

Case Study:

Walking After Midnight: Illustrating Royalty Splits on a Rights Deal

In the summer of 2006, Raincoast Books completed a rights sale with a U.S. publisher, on a title called *Walking After Midnight*. The final deal provided an advance against royalty. Half of the advance was to be paid on signing of contract, and half on receipt of manuscript. This system of payment ensures that both the originating and purchasing publisher have a financial incentive to keep up their end of the deal. The advance was to be earned back on a percentage of

royalties on each title sold up to 6000 copies, and then a marginally greater percentage on all copies sold thereafter. This sliding royalty reflects a “reward” system for the originating publisher and author – the more copies that are sold, the more money they will earn. Also, the lower royalty rate for the first 6000 copies sold means that the advance will take proportionally longer to earn out. The author, who was relatively new to the literary world, received 75% of the advance and royalty.

Advantages for the Purchasing Publisher

The purchase of rights can hold the following advantages for a publisher:

1. Financial: relatively low investment and risk in a title,
2. Reduced per-unit costs,
3. International profile, and
4. Swift publication of a quality work

Raincoast Books was also a purchasing publisher of co-edition titles. The advantage of reduced per-unit printing cost works for both the originating publisher and the purchasing publisher. Raincoast Books bought Canadian rights to *The Electric Life of Michael Faraday*. This was a co-edition title, and so Raincoast Books received open application files (i.e., In Design or Quark files) from the originating publisher. These files (already copyedited and typeset) only required the creation of a new copyright page. The purchasing publisher thus has reduced per-unit costs because of the co-edition printing, and the added

advantage of swift publication of a quality work. A purchasing publisher may also benefit from what is known as “the ripple effect” from the originating publisher.

Case Study:

And Tango Makes Three: Illustrating “the Ripple Effect”

“The ripple effect” can be explained by the following example. Simon & Schuster are currently successfully selling rights to *And Tango Makes Three*, which has a high public profile in the U.K. and United States. This publicity was initiated by the large marketing and promotion campaign that Simon & Schuster originally invested in the title. Purchasing publishers can benefit from this publicity because their media will pick up on it, and so will generate publicity in their home market. A classic example of “the ripple effect” is a U.S. originated title becoming a New York Times bestseller, thereby boosting the sales of the Canadian publisher’s edition.

Marketing and Promotion

Marketing and promotion are key elements to any rights deal because without it, the title will not sell in stores. Originating publishers want the books to sell in the foreign market after rights have been sold because they will continue to earn royalties on copies sold. In order to ensure a dedicated marketing campaign, it is vital to find an editor who will champion the title in their firm. In some cases, the originating publisher will ask a potential purchasing publisher for their marketing plans for the title before contracts are signed.

Raincoast Books, being fully aware of the importance of a strong marketing and promotion plan, asked Rutgers University Press to provide them with their marketing plans for *Picking Up the Pieces* before U.S. rights to the title were officially signed over to Rutgers. Raincoast Books choose to sell rights in this instance because Rutgers' marketing and promotion plan was strong and implied that sales (and hence royalties) would be higher than if Raincoast were to distribute their title directly into the U.S.

Case Study:

Raincoast Books: Marketing and Promotion from Outside the Target Region

A successful marketing and promotion department can achieve very high sales. Emiko Morita of Raincoast Books argued that the originating publisher needs to develop an enthusiasm and “push” for the title in their home market that will ripple into the foreign market. If an originating publisher can illustrate great confidence in a title with an extensive marketing and promotion campaign, a purchasing publisher will treat the title with equal respect – and this will result in a greater marketing and promotion campaign in the foreign region.

Publishers Group West (PGW) used to distribute Raincoast Books titles in the U.S. Having an agent based in the relevant market is crucial, but it does not equal the publisher being based in the market themselves. Milkweed Books based in St Paul, Minnesota was also distributed by PGW. They had a very similar list to Raincoast Publishing, but their sales in the U.S. are vastly higher. The crucial difference was that being a domestic U.S. publisher, Milkweed was

capable of generating a greater marketing and promotion buzz than Raincoast Books, who were at a logistical disadvantage (because they are based in Canada, away from the U.S. market). For this reason, selling rights to a domestic publisher can make more sense than distribution by a foreign publisher for long-term revenue from royalties.

Authors and literary agents are aware of the marketing and promotional benefits of selling rights over direct distribution. Literary agents are aware of the need for marketing and promotion coming from the domestic publisher and for this reason will usually push for a rights sale. Authors will also consider the prestige of being published by multiple international houses, as well as the obvious benefits of the higher royalty split.

Negative Considerations

Limitation of Export Edition Sales

One of the most commonly cited reasons not to sell rights is that it will limit sales of the export edition. The export edition simply refers to a title distributed directly by the originating publisher into a foreign region. We shall initially look at how the international distribution, or export, of English language books developed and then at how the situation currently stands. The export of English language books from the U.K. to international markets first began in North America, "it was in the very nature of the first English colonies that there

was a book-based culture”.⁴¹ Until the 19th century, Britain had imported the majority of their books from mainland Europe. However, as the influence of the British Empire and consequently the English language grew during the 17th and 18th centuries and Britain slowly became a cultural exporter, rather than a cultural importer, “the balance of trade in books, which had almost certainly been one of imports exceeding exports until the end of the seventeenth century, gradually reversed”.⁴² During the Napoleonic Wars (1793-1815), British publishers developed new markets for their books while Europe was engaged in the war. They targeted their colonies and the newly formed United States. Meanwhile, as Spain lost its imperial power in South America, Britain began to export books to South America for political and economic reasons. As a result of all these factors, when the Napoleonic Wars ended there was a “new and significant demand for English language books. Britain was the dominant power on the continent... the English language began its progress towards being the lingua franca of Europe”⁴³ – and the world.

Britain’s export of English language books into foreign markets was driven by political and economic motivations. By educating the world in English language texts and Anglophile philosophy, the Empire was constantly expanding and colonies were being moulded to the British Empire’s way of life.

⁴¹ Feather, 184.

⁴² Ibid, 185.

⁴³ Ibid, 186.

The development of export markets for British books, and of English language publishing in countries where English was not normally spoken, were both important aspects of the internationalism of the British book trade and of British culture in the 19th century.⁴⁴

Bibles and educational texts were the two predominant genres exported.

Commercial publishers were the beneficiaries of the missionary work in many British colonies, and educational publishing also helped the cultural expansion of the Empire.

The export of English language texts has remained a key part of the British publishing model, and it continues today. However, colonial markets now seek to translate their books into their vernacular language, and so many publishers today are forced to sell rights rather than distribute their English language edition into the given region. For instance, India used to be a huge English language market for distributed titles. However, now Indian publishers seek to buy rights in order to translate the books into their vernacular languages.

Today, English language architecture, art history and “high end” manuals have very high volume sales in mainland Europe. The publishers consider these titles their “export edition”. But the only difference between the domestic and export edition is the price. They are printed together and are otherwise identical. The term “export edition” simply refers to a distributed title. The publisher can therefore build a large print run for multiple markets. This reduces the unit costs, and allows the publisher to maintain high production values. There is a reduction

⁴⁴ Ibid, 187.

in per-unit costs because of the large print run, but the publisher does not make a profit out of the printing costs as they would do in a co-edition scenario. If these publishers were to sell foreign language rights this would have the effect of creating competition in each of the foreign markets, the export edition sales would diminish dramatically with a reduction in profit margins.

Not only would non-English speaking people choose to buy the vernacular edition, but the purchasing publisher would probably require exclusive rights to the publication in their territory and would not allow the export edition to be sold in their region. The originating publisher's edition would therefore become more expensive to print (because the print run would be lower and the per unit printing cost proportionally higher). These reasons help us to understand why some publishers, such as Taschen, refuse to sell rights and thereby maintain their high level of export sales across the international market.

As we saw from the historical review above, the British Empire exported their books for political and economic reasons. Today, while individual publishers may not export their books for overt political reasons, and only officially consider the economic factors, there remains a political element to this policy. This shall be discussed further in the section entitled "current debate on international distribution regions".

Limitation of Book Store Edition Sales by Book Club Editions

There is currently a debate in the U.K. as to whether selling subsidiary rights (i.e., book club rights) limits sales of publisher's edition (i.e., the edition sold in stores). Bookstores argue that by selling book club rights, publishers are facilitating the creation of mass, cheap editions and thereby are making their own editions seem expensive. James Heneage, a bookseller, describes the situation as follows:

Publishers have the right to sell books to whatever parties they choose on whatever terms they choose – but they must recognize both the short and long term consequences of their actions. Short term some of their best customers (i.e. the publishers' customers – the bookshops) have been made to look both expensive and unreasonable to their own customers (i.e. the bookshops' customers – the consumer), when the same title is offered at a third of the high street price through a catalogue that drops out of a Sunday newspaper. Long term, it cannot be in publishers' interests to undermine the value proposition of the parties they rely on to support their backlists and promote their new authors. Books are currently not generally seen as expensive, but by doing these sorts of direct sales deals, publishers are indirectly helping them appear so.⁴⁵

Publishers responded by arguing that book clubs tap a different market than book shops, and that book club sales are non-returnable (unlike bookstore sales), and therefore the discounts offered to book clubs are based on different factors than those offered to retailers. This discussion illustrates the level of frustration within the industry over sale of rights as opposed to distribution.

There is currently no generally accepted formula that publishers use as a basis to

⁴⁵ Heneage, James and Young, David "Head to Head" *The Bookseller*, October 2003 (hereafter cited as Heneage and Young).

decide to sell rights as opposed to direct distribution or vice versa. The decision comes down to a question of maximizing revenue. Publishing is not a highly lucrative field, and many thousands of titles make a loss every year. Therefore when a title is a success, publishers need to cash in as much as possible. There is a conflict in the marketplace between the publisher's edition and the book club edition which mirrors the problems between a distributed title and the purchasing publisher's edition. When the two editions overlap in one market, it causes difficulties for both so the publisher must choose very carefully which edition to prioritize.

Loss of Film Rights

Multinational corporations, such as Simon & Schuster, are often part of a multimedia conglomerate. Simon & Schuster is part of the CBS network, which also owns Paramount. These multimedia conglomerates seek to exploit as many rights as possible for their publications. CBS, Simon & Schuster and Paramount therefore work together to maximize profitability of their rights. Simon & Schuster publish books such as *Nancy Drew* and *The Spiderwick Chronicles*. Simon & Schuster will often refuse to sell film rights to a firm outside their conglomerate and instead Simon & Schuster, CBS and Paramount will work together to produce a feature film or TV series. Because it is an intercompany deal, the revenue is kept in-house. Paramount have recently released a feature film of *Nancy Drew* and another of *The Spiderwick Chronicles*. Simon & Schuster will gain royalties on the revenue of these films and overall CBS will

have gained from these intercompany deals. Not selling film rights to an external agency can thus be a lucrative option for a multimedia corporation.

Multinational publishers such as Simon & Schuster and multimedia corporations such as CBS often distribute directly into foreign regions through their branch plants. Smaller publishers such as Raincoast Books may also distribute their titles rather than sell rights – why? We will now analyze the reasons why a publisher chooses to distribute.

Chapter 4: Distribution

Distribution here refers to the policy decision of a publisher to sell their titles directly to bookstores in a foreign region (i.e., not selling their titles via another publisher) rather than the logistics of physical distribution from an originating publisher's warehouse or the printer's warehouse down to the book store shelves. Before we can fully understand the factors which influence a publisher's decision to distribute directly into a foreign region, it must first be understood how the current distribution system came about.

As previously discussed, the Donaldson-v-Beckett case and the resulting change in copyright law in the 18th century meant that London booksellers and publishers had to take greater commercial account of their provincial markets. By successfully selling provincial editions of London originated titles, the Scottish and Irish publishers had highlighted a lucrative new market to the London publishers. The London publishers and booksellers sought to reach the provinces directly because they wanted to tap this new market and to keep pirated copies out. Their commercial needs were met by technological advances – the railways.

Publishers quickly began to reach their provincial market through the reliable distribution network of the rail and postal service. An avid reading public, combined with a reliable distribution system, resulted in greater sales of titles across the whole of Britain and Ireland.

However, the books were now more expensive for the consumer because these non-pirated editions had to cover origination costs and transport costs. The desire for quick information and for regular entertainment brought into existence the periodical press,⁴⁶ and in 1691 the first daily postal service was established in Britain.⁴⁷ And so the public sought a cheaper means of accessing reading material, resulting in an extensive network of lending libraries. The most successful of these lending libraries belonged to Edward Mundie. “By 1875, Mundie had 125 branches throughout the kingdom, and was regularly ordering new books in quantities as great as 2500 copies”.⁴⁸ Publishers and booksellers at the time worried that their sales would be diminished by lending libraries. However, London bookseller James Lackington (1746-1815) asserted that

Experience has proved that the sale of books, so far from being diminished by them (i.e. libraries), has been greatly promoted, as from those repositories many thousand families have been cheaply supplied with books, by which the taste of reading has become much more general, and thousands of books are purchased every year by such as have first borrowed them at those libraries, and after reading, approving of them, become purchasers.⁴⁹

Mundie’s lending libraries had a major influence on the publishers of the 19th century. This was so strong that when Mundie was on the verge of bankruptcy, several publishers bailed him out. They could not afford to lose this customer

⁴⁶ Steinberg, 121.

⁴⁷ Ibid, 125.

⁴⁸ Feather, 123.

⁴⁹ Ibid, 129.

who “was regularly taking more than half of the print run”.⁵⁰ Mundie’s lending library can be easily equated to a modern book club such as The Book

People (also known as Ted Smart) in the U.K. The Book People is a book club which functions very similarly to The Book of the Month Club in North America. They regularly buy large quantities of books, directly from the publisher, at a major discount. Just as Mundie wanted three volume novels because he could charge more for them, so too does The Book People want an appearance of value for money. So, they work with publishers to bump-up the trade edition of the publisher’s book by adding boxes, shrink wrap or increasing the format. The new book club edition is then stamped with The Book People logo and sold through the book club.

Case Study:

Simon & Schuster U.K. Ltd. and The Book People

An example of this is seen in the following case instance. Simon & Schuster U.K. is the publisher for Nickelodeon characters, including Dora The Explorer™ and has recently sold 50,000 copies of a boxed set of 20 Dora The Explorer™ storybooks. The books are the same as the trade edition. However, Simon & Schuster U.K. and The Book People have created a Dora The Explorer™ themed box, in which all the 20 titles are packaged. This box is cheap to create, but adds to the sense of value for money for the customer.

⁵⁰ Ibid, 123.

While some booksellers today argue that book clubs limit trade sales by making the trade edition appear expensive, publishers can gain a large advantage in per-unit costs from printing their trade editions with the book club edition, and can make a significant profit on these deals. Publishers of the 21st century have become as indebted to book clubs as publishers of the 19th century were to lending libraries.

The lending libraries of the 18th and 19th centuries can also be seen as the equivalents of a modern publisher's distribution market. Geographically, these areas are important for sales, but are not considered core regions. Publishers distribute into these non-core markets because sales from such markets might be plentiful. The sales might also be minimal, but if the title is not available in the region the publisher is forgoing any possibility of making a profit from the non-core market.

Political Implications of Distribution

The British Empire consciously sought to export their English language texts to their colonies and to other regions for political and economic reasons. Through books, the Empire was able to export British culture, and the English language steadily became the lingua franca of both Europe and the rest of the world. The Empire insisted that its colonies study from British texts, and England-based publishers such as Macmillan, Longmans, Cambridge University Press and Oxford University Press established their books in the colonial markets of India, Canada, Australia and Africa.

The history of Macmillan's involvement in India can be taken to typify the changing relationship between British publishers and their colonies. Macmillan established contracts with government agencies for school textbooks in India and appointed local agents to handle the business. However, as the Macmillan business in India grew, the firm decided to control their export market and cut out the middle man (the agent) and to establish the world's first branch plant. By 1900, Macmillan had branches and warehouses in Bombay, Calcutta and Madras.⁵¹

In short, Macmillan did exactly what multinational publishers do today – they established a branch plant in order to make as much profit from an export (or distribution) region as possible. The branch plant allowed Macmillan (and continues to allow publishers such as Simon & Schuster) to market, promote and sell their books directly into a foreign market.

However, the mandate of branch plants has changed since the 1900s. The Indian branch of Macmillan had begun to work as an originating publisher in its own right and to “produce books which had an appeal in the sub-continent as opposed to being [seen as] an agent of the former colonial power”;⁵² as a result, Macmillan India now is cited as the foremost publisher of English language books in the subcontinent. In spite of this change, the purpose of the branch plant, from the home company's point of view, remains essentially the same: to maximize profit.

⁵¹ Ibid, 187.

⁵² Ibid, 188.

“After decolonization, a substantial part of the traditional market for British books was open to competition from new sources”.⁵³ A growing sense of nationalism in former colonies meant that many branch plants began to develop into semi-independent houses. Indigenous publishing operations developed which sought to express and reflect the unique cultures of each former colony – including publishing in their native languages – something which the British publishers simply could not do. In spite of this, by the 1970s, exports accounted for 40% of total sales because of the continuing links between former colonies and because of the role of the English language as the global lingua franca. So, international distribution was traditionally the first choice for English language publishers. However, now in the post-colonial world more and more markets are seeking titles in their own languages rather than in English. Therefore, English language publishers are forced to sell rights, which often takes a cut from distributed titles’ sales.

While the political pressures within the former colonies started to push British publishers out, publishers from the United States began to take their place. This is where Simon & Schuster (and their parent company CBS) come into the equation.

⁵³ Ibid, 192.

Considerations for Major and Minor Publishers

Raincoast Books and Simon & Schuster are two highly successful and commercial businesses. Both are aware of the intricacies of distribution and yet both have suffered major problems when distributing into each others' regions in the last five years. Raincoast Books are Canada's leading distribution agent for both Canadian and international publishers. While Raincoast Books are very adept at providing a reliable and effective system for their client publishers in Canada, they could not maximize their access to the U.S. market in the same way. As of January 2008, they have ceased their publishing operations because this aspect of the business was no longer making a profit.⁵⁴ Simon & Schuster are one of the world's largest and most successful publishers, and they too have had difficulties accessing foreign markets.

Case Study:

Simon & Schuster Canada and Distribution into a Foreign Region

This case study is used to illustrate the difficulties faced by multinational companies in establishing effective branch plants. It does not aim to explain Canada's cultural protectionist laws or Simon & Schuster's interaction with these laws. The experience of Simon & Schuster Canada illustrates how even a massive international publishing house grapples with the logistics of distributing their titles directly in a foreign region.

⁵⁴ See MacDonald.

In 2002, Simon & Schuster International purchased their Canadian distribution agent, Distican. This caused a furor in Canada because this meant that Simon & Schuster, a huge U.S. publisher, had established a branch plant in Canada, which seemed to contradict the cultural protectionist laws established in Canada since the 1960s. Jack Romanos, the CEO of Simon & Schuster Inc., explained why they bought Distican. He said that Simon & Schuster had 3 options: the first was to ship books into Canada from the U.S., the second was to move their distribution to another third party distribution agent (i.e., move away from Distican), and the third was to ship their books from the U.S. into Canada and to establish a Canadian office for sales and marketing. Romanos said that a Canadian publishing operation was not part of the plan.⁵⁵ This opinion is confirmed by the fact that in 2004 Simon & Schuster again moved their distribution system back to the U.S., leaving only sales and marketing office in Canada. Romanos' comments fit perfectly with Rowland Lorimer's image of a multinational branch plant: "they do little to create anything but distribution and retailing employment since title origination and editorial work are most often centralized in the founding office of the multinational".⁵⁶

While Simon & Schuster have been criticized for their approach to the Canadian market, the reality is that Simon & Schuster is a commercial publisher. They needed to access the Canadian market, and need an effective, efficient and

⁵⁵ Anderson, Scott and Weiler, Derek "Simon & Schuster to buy Distican", *Quill & Quire*, November 2002 (hereafter Anderson and Weiler).

⁵⁶ Lorimer, 199.

inexpensive way to distribute within the region. Establishing a branch plant was the best option. By 2004 it became clear to Simon & Schuster that distributing directly into Canada from the U.S. was more financially lucrative than distributing into Canada from Canada. “With the development of faster and more reliable transportation systems, including air freight, there is a movement away from overseas stockholding agents to direct supply from the U.K. [in this instance, the U.S.], giving a greater opportunity to price books competitively in many markets”.⁵⁷

By distributing directly from the U.S., Simon & Schuster are saving costs. They are able to gain economies of scale by warehousing and freighting all the U.S. and Canadian titles together. Because of these savings, Simon & Schuster can afford to price their books cheaply in the retail market in Canada. A Canadian publisher does not have their economies of scale and so must charge more or settle for a lower profit margin. Simon & Schuster thus have the financial advantage of cheaper distribution than the average Canadian publisher *and* they have the all important local marketing and promotion team.

Raincoast Books was typical of a Canadian publisher disadvantaged by this kind of move by the multinational publisher. A multinational publisher like Simon & Schuster has every option open to them. Thus, when Simon & Schuster Canada distribution system ceased being profitable, Simon & Schuster International could move distribution back to the U.S. without a problem. This

⁵⁷ Clark, 157.

move back to the U.S. reflects the same attitudes shown by Raincoast Distribution on the closure of the publishing wing: each segment of operations must be profitable.⁵⁸

Case Study:

Raincoast Books as a Distribution Agent in Canada

Raincoast Books have built a reputation as the foremost distributor in Canada, and have developed an international profile among their client publishers as such. Indeed, selling rights for their own titles seemed to go against their business model.

Raincoast Books were a small publishing house and they distributed their titles directly (via their agent and partner Publishers Group West) into the U.S. However, Raincoast Books did all their marketing and promotion from Canada. As we saw from the Simon & Schuster example, having a local marketing and promotion team is crucial. It is extremely difficult to generate “buzz” from outside the market. Raincoast Books & Distribution are commercially minded and were aware that when a title is big in the U.S., it can account for 50% to 70% of total sales.⁵⁹ They need to have their books available in the U.S. because it is potentially such a lucrative market. However, they were also aware that it is virtually impossible to generate sufficient marketing and promotion buzz from

⁵⁸ See MacDonald.

⁵⁹ Morita, discussion.

outside the U.S. to create large sales. Raincoast Books did not have a branch plant, and so the best option for them may have been to sell rights.

That said, Raincoast Books & Distribution are a distribution agent at heart and they are forever conscious of the better royalty splits which come with distribution over rights sales. So, Raincoast Books attempted to find a balance. Typically, the marketing and promotion of a niche title is easier than the marketing and promotion of a general trade title. Raincoast Books distributed their children's books straight away. The children's titles are for a niche market, which is much easier to tap and to pitch titles. In order to generate rights revenue, they tried to sell rights to all their adult books and if the rights sale did not materialize, they distributed the title.

By both selling rights and distributing, Raincoast Books aimed to have all the advantages of a rights sale and distribution. However, without a branch plant, Raincoast Books' distribution system into the U.S. could never be as financially lucrative as Simon & Schuster's model in Canada. Raincoast Books also had to compete with international publishers, like Simon & Schuster, in the U.S. and in Canada. It was a difficult task, and when the currency rates changed in 2007, the U.S. titles became even more appealing to Canadian consumers.⁶⁰

Simultaneously, the Canadian titles became less appealing to American consumers. Raincoast Books were squeezed out of the market in the U.S. and in

⁶⁰ See MacDonald.

Canada. The question of whether this was inevitable is beyond the scope of this report, but it is certainly an interesting one.

Regional Considerations

Globally there is much debate regarding the division of distribution territories. Commonwealth and dependency countries are often fought over by U.K. and U.S. publishing firms while Canada has attempted to carve a space for themselves by passing Bill C32, which states “book distributors will have exclusive rights to distribute books in Canada for which they have signed a contract, provided they meet agreed upon standards of performance with booksellers and libraries”.⁶¹ This law has allowed domestic distribution agents such as Raincoast to flourish.

Most recently, the U.K. and U.S. have argued over the right to distribute English language titles into mainland Europe. The debate is crystallized by the following example: there is a U.K. edition and a U.S. edition of *Harry Potter*. If a French bookseller wishes to sell an English language edition of the book, which should they stock? Should they be able to choose or must they always buy the U.K. edition? To date, this decision has been based on traditional trade loyalty and EU freedom of trade gives a strong advantage to the U.K. edition.

Recognizing that continental Europe is a lucrative market for sales of English language titles, U.K. publishers have been attempting “to treat mainland

⁶¹ Lorimer, 46.

Europe as an extension of the home market (i.e. U.K. and Ireland) and to compete against U.S. publishers. Some U.K. publishers are using pan-European delivery networks operated by the same carriers as used in the U.K.”⁶² U.K. publishers are thus trying to gain the same economies of scale that Simon & Schuster gained from distributing all U.S. and Canadian editions from their U.S. warehouse. U.S. publishers have accused U.K. publishers of a “land grab”,⁶³ but U.K. publishers assert that their marketing investments will go to waste if they do not have exclusive access to mainland Europe. They are conscious of the ripple effect and do not want the American edition benefiting from it over their own edition. Moreover, British publishers are concerned because they “need to own Europe exclusively to know we own the U.K. exclusively” and are afraid that U.S. editions would trickle into the home market. For instance, an Irish bookseller could choose to purchase the U.S. (probably cheaper) edition over the U.K. edition. This would take a significant volume of sales out of the U.K.’s edition.

Distribution has always had a political element. By distributing their titles directly into a region, a publisher can maintain control of their product, the marketing and promotion and primarily the profits. The history of Macmillan’s branch in India illustrates this perfectly. We have seen how Macmillan’s branch plant in India went from being an agent office, to being a pure branch plant (i.e., taking all direction from the London, U.K. office), to being a semi-

⁶² Clark, 158.

⁶³ Rickett, Joel “The Bookseller: Joel Rickett on the Latest News from the Publishing Industry”, *The Guardian*, February 2007.

independent publisher. The shifts in its roles have resulted from a desire to access a larger market and create a larger profit. Distribution allows publishers to maintain control, but because of political shifts in each market, publishers have not always been able to maintain control.

Chapter 5: Summary and Conclusion

The factors which influence a publisher's decision of whether they can and should sell rights or distribute into a foreign region are multiple and may vary from one publication to another and from one publisher to another.

From an author's point of view a traditional rights sale is best because on a typical rights deal, the author will get around 75% of the advance and royalties of a rights agreement. However, the publisher is usually the prime instigator of the deal and they are conscious that an author would get only 10% of the overall revenue of a royalty inclusive co-edition deal, and 18% royalty on a distributed title.⁶⁴ So, co-editions and distribution offer great appeal to a publisher because they retain a greater portion of the revenue than on a straight rights sale.

Co-editions allow a publisher to recoup initial investment, split risk and reduce per-unit printing costs, and keep 90% of the revenue. However, not all publishers are capable of generating global products which result in co-edition deals.

Distribution is appealing to publishers because although the costs are kept in house, so too are the vast majority of the profits. If a publisher has the ability to distribute into a region they are inclined to do so. However, the publisher has

⁶⁴ Williams, Kevin (Raincoast Books and Distribution, Vancouver) in discussion with the author, July 2006.

to work with the political, financial and cultural elements at play in each market. Raincoast Books experience of distributing into the U.S. is a clear example of how publishers based outside their target export are at a continual logistical disadvantage.

Apart from the difficulties small publishers experience in distributing into a market, large publishers do not always distribute directly into a foreign region because of the risk element. If a book is a failure in multiple regions in a distribution deal, the originating publishing house takes all the losses. If a book is a failure in multiple regions in a rights sale deal, multiple houses take the losses and the originating publisher will still make a profit from the advance and royalties paid by the purchasing publishers. Decision to choose selling rights over distribution often comes down to the confidence a publisher has in their ability to make a profit from either option.

Multinational conglomerates such as Simon & Schuster have an advantage over small publishers such as Raincoast when faced with this question because they can choose on a case-by-case basis with greater flexibility and confidence because of their greater resources. Each choice is open to Simon & Schuster, and they can be confident in each decision. Simon & Schuster are not dependant on either distribution or selling rights. They have spread their risk.

Nonetheless multinational firms, like Simon & Schuster, still must consider certain basic elements carefully when making the decision whether to sell rights or to distribute. Taking the many factors discussed into consideration

and based on the various case studies in this report, a table has been constructed to summarize the variables that publishers should consider.

Table 1:

Criteria for a Publisher to Decide Whether They Can and Should Sell Rights or Distribute Their Title Internationally

Major Criteria	Minor Criteria
Does your firm have a branch plant in the region?	Have your English language editions traditionally sold well in the region?
Does this book have low production costs?	Can you wait to recoup your financial investment?
Is your firm a member of a multimedia conglomerate?	Will sale of rights limit the sale of your own edition in the region?
Is your firm a success cultural exporter?	Is your author internationally recognized?
Do you have a dedicated sales and marketing team in the region?	Can your firm create a ripple effect in the region from your home market?

Note. This table is proposed as a guide only and do not apply to all books or publishers. Individual circumstances may dictate that exceptional decisions are taken. It is important to remember that royalty splits favor distribution by the publisher. However, as we have seen there are many other factors at play that can influence the decision. The criteria are purposely general in order that this table may be applied to as many publishers and books as possible.

How to use this table:

Positive responses to three or more Major Criteria *and* to three or more Minor Criteria indicate that distribution is likely to be successful. Fewer than three positives responses to these criteria indicate that selling rights is the better option.

We can use one of our previous examples to illustrate how the table should be used. Let us consider whether Simon & Schuster should sell rights or distribute *The Jungle Book* in France.

Looking at the Major Criteria first, we can say: (a) Simon & Schuster do not have a branch plant in France; (b) the book does not have low production costs; (c) yes, Simon & Schuster is a member of a multimedia conglomerate; (d)

Simon & Schuster is a cultural exporter; (e) Simon & Schuster does not have a dedicated sales and marketing team in France.

Now let's look at the Minor Criteria: (a) Simon & Schuster's English language editions have not traditionally sold well in France; (b) Simon & Schuster can wait to recoup their financial investment; (c) the sale of rights will not limit the sale of their own edition; (d) the author is well recognized internationally; (e) Simon & Schuster are not capable of creating a strong ripple effect in the French market.

There is a negative response to three Major Criteria and a negative response to three Minor Criteria. So, Simon & Schuster should sell rights to this title – in fact, this is precisely what they have done and because *The Jungle Book* has such high production costs, they have sold rights for a co-edition. Simon & Schuster have therefore split risk, recouped initial investment, reduced their per-unit printing costs and made a profit on the co-edition deal.

Overall the table indicates that a multinational publisher is at a continual and distinct advantage because selling rights and distribution both have advantages and disadvantages. The case studies in this report, and demise of Raincoast Books publishing program in January 2008, shows that the ability to choose on a case-by-case basis means that the multinational publisher is never totally reliant on either selling rights or distribution and can maximize their commercial gains across all titles while maintaining a role in multiple markets. A small publisher cannot risk the same level of investment in their titles and so

their options are limited internationally. Simultaneously, their domestic market is being crowded with the multinational publishers who are also crowding them in the international arena.

Simon & Schuster are part of a huge multimedia conglomerate. In January 2008, they were a billion dollar business, and had thousands of employees worldwide. Because of their financial and people power, Simon & Schuster have all the options open to them. They can sell rights to a foreign publisher who will dedicate a marketing and promotion campaign to the title. Simon & Schuster therefore can regain their initial investment, split the risk and gain royalties on titles sold in the foreign region. Or, Simon & Schuster can distribute their title through one of their many international branch plants, using their dedicated marketing and promotion teams, and keep the all the revenue (and the lion's share of the royalties) in house.

Raincoast were and are cultural importers whose skills lie in importing titles into Canada. They do this fantastically well and have an outstanding reputation internationally for their distribution system. But, when it comes to their own originated titles, they are dwarfed by firms such as Simon & Schuster. Raincoast Books did not have any of the international advantages of a multinational company. They were fighting an uphill battle exporting into the U.S., and meanwhile multinational companies were taking bigger and bigger bites out of their home market. With the American market already tough,

Raincoast could not survive in a squeezed Canadian market. Finally, in January 2008, the publishing wing was culled because it was no longer financial viable.⁶⁵

Now Raincoast operates only as a distribution agent for foreign publishers into Canada. Was this inevitable? It would take a further project report to answer this question. In any case, the result is that Raincoast's days as an originating publisher are over. Simon & Schuster's days as an originating publisher and cultural exporter are booming. It seems that the ability to succeed internationally with your own titles is paramount to succeeding in your home market.

A multinational publisher like Simon & Schuster is at a continual advantage over smaller publishers because selling rights and distribution both have advantages and disadvantages. The ability to choose on a case-by-case basis – with full confidence in both options - means that a multinational publisher is never reliant on either selling rights or distribution. As Raincoast said “each segment of [a publisher's] operations must be profitable.”⁶⁶ Having the ability to choose between rights and distribution is crucial to remaining profitable.

⁶⁵ See MacDonald.

⁶⁶ Ibid, final ¶.

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