

RUSSELL & VOLKENING, Inc.

*Literary Agents*

551 FIFTH AVENUE  
NEW YORK, N. Y. 10017

DIARMUID RUSSELL  
HENRY VOLKENING

MURRAY HILL 2-5340

June 26, 1968

Mr. Eliot Porter  
Great Spruce Head Island  
Sunset, Maine 04683

Dear Mr. Porter:

I had another session with Mr. Brower yesterday, and he states that I misunderstood him about agreeing to the terms for GALAPAGOS -- he thought I was referring to the printed terms in the contract and not to the altered terms, which he says were made by you as suggestions. Going further into this, he says the costs of GALAPAGOS are going to be so great that he does not think the royalty rates can be made greater, but that if the production abroad produces savings he is willing to enlarge the royalty rate as much as is possible. He also says that you have assented to the proposed rate -- that he saw you on November 27 of last year and wrote a letter in your house about various matters connected with the work which you saw and agreed to verbally. Dear me, I do wish all was down on paper.

He also produced something which he had not mentioned before -- he had said he was not going to take his 10% share, but he did not say then what he said yesterday, that he was giving up his share because the Conservation outfit who sent a man down to Galapagos and who is writing a substantial amount of text expect to recover some of their expenses from the book -- so the sharing arrangements still stand at 70% to you and 10% each to three other people.

He went on to amplify matters by saying these people were not taking shares of what belongs to you, but of what is their proper share for their contribution to what is a joint production, packaged by Sierra. I can see this point -- a fair few books are done this way. Still, as I said in the first letter, these things and sharings should be covered from the start -- and I think better covered by separate contracts with each person who is involved, not only for the sake of clarity but also for some of the financial arrangements.

Mr. Brower insisted on having First Serial rights, said what they had sold of these so far were photos, and that the possibility of the sale of these existed on account of their plates and color separations. We did not discuss sharing on this, but it does relate to the nature of the contract and the last sentence of the last paragraph. If all sold is photos by you, after whatever the split may be, all moneys should come to you since only your work is involved. As it is, with the arrangements made in the present contract, you would get 70% of this money and 30% would be paid to the other three people. It would work more unfairly and to your benefit if, for example, some of the Loren Eiseley introduction was sold for First Serial rights; although all his work, you would get 70% of the money, Eiseley 10%, and two other people 10% each. We have a large number of contracts with authors and illustrators each sharing, and this problem is specifically dealt with.

*no, two days ago*

June 26, 1968

One other point remains for the moment unsolved -- foreign rights. Sierra evidently contemplates making their own translations and paying for them, presumably after evidence that some foreign publisher will be receptive; what should be their share in this is unknown. I suggested that all foreign rights should be left to mutual discussion. They said they couldn't go ahead with any arrangements unless they had the right to do so. I said they certainly couldn't have foreign rights without some agreed share of the proceeds -- so this rests for the moment, but hopefully some clause can be drawn up to cover this contingency.

Outside these points, I think all other points you or I have raised have been agreed to, but the royalty on GALAPAGOS and others' sharings are still matters that may or may not have been agreed on verbally, and this I have to hear about. It is clear that both you and Mr. Brower are honorable; still, talks can lead to misunderstandings, as is obvious from my first discussion with Mr. Brower and perhaps with any discussions the two of you have had in the past.

I must add here that with such figures as Mr. Brower gave me, about text and numbers of color plates, and also about their expenditures, I have called up three friends of mine in the publishing business and asked what they thought they would charge for the books and pay in royalties. Of course, the full facts are not known but the guesses were \$30 a volume and 5% or 6% rising to 8%, and none of them feels 10% would be possible at any time -- they all indicated they knew Sierra productions and that color work of their books was obviously going to be expensive.

So not all is settled at the moment, and I do wish there was some chance you would be down so we could talk, for it's obvious to me that relationships in the past are blurring affairs.

Going back to costs for a moment, Jack Macrae tells me his contract with you provides for 48 color plates and some black & white, and that he is paying 8% flat on a book that will sell for \$25, or \$2 per copy, whichever is the greater. Sierra say they will have 69 color plates in each volume, and they will be selling the two volumes for \$27.50 each, so I doubt very much if the book can stand a higher royalty.

I might add that I seem to be involved with Paul Brooks and Mr. Wilentz in a meeting next Thursday in trying to draft some clearer contract for Sierra which I trust will mean fewer troubles in the future. There's nothing but trouble in projects which go ahead without a contract, with nobody knowing clearly what's involved in work or terms or sharings.

I've just got your letter, and I enclose here a copy of a letter I was writing to Mr. Brower. I did indeed investigate Kenneth Brower and his work -- made David Brower a little angry. But what he said was that K.B., quite apart from routine editorial work, was putting together material that would be incorporated in the book -- in short, for practical purposes, he was a part-author. I doubt I can go further than this -- D.B. said K.B. would have about 17,000 words in the work, as much as you or Eiseley or the Conservation man -- hence the share. I think this should all have been decided beforehand and assented to -- certainly I would think Eiseley, who is well-known, might have objected to a similar sharing by K.B. for the work he will be doing, which I gather is looking through other material for suitable and relevant text.

Your query about Clause 9 is covered in my letter to Mr. Brower, as is also the matter of the royalty on posters and the question of the 2% on Ballantine paper editions. I do find it odd that if they make, with some justification possibly, a charge for their supervision, that they should ask you to pay a share for what seems to be their failure to supervise. But we will hear about this.



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The royalty clause about discounts of 50% or more is a standard one for just about all publishers' contracts. It simply means that as they grant larger discounts, the royalty rate gets scaled down little by little, rather than just being cut in half. There have been cases in the past where publishers could make more money by granting large discounts and cutting the royalty in half -- so the clause is intended to stop this practice.

I hope to hear from you about all this, for at some point there ought to be signed contracts.

Yours sincerely,

*Diarmuid Russell*

Diarmuid Russell

P.S. Could I have one of those contracts back, since I will need to refer to clauses?

Enclosure

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25% COTTON FIBER

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MURRAY HILL 2-5340

June 26, 1968

Mr. David Brower  
Sierra Club  
Mills Tower  
San Francisco, California 94104

Dear Mr. Brower:

I am just getting a letter off today to Eliot Porter about our last conversation. In it I have told him that I have inquired around with such figures as you gave me, and that my publishing friends think your royalties are perfectly fair -- indeed, they might not go as far themselves. I also had to tell him I was upset that in our first conversation, when you said you were giving up your 10% share, you did not then tell me it was going to be given to the Conservation outfit -- since they were not mentioned in your original contract at all, and if at that time they did not desire a share, then it ought to stand that way now.

Apart from the royalty rate and this sharing, there seem to be only two points unsettled. One is foreign rights, which you want since you expect to pay for the translation and make special arrangements. Well, if you feel you can't go ahead and make arrangements without having the right to deal with foreign rights, then the clause must run that you own the foreign rights but will make no arrangement without prior discussion with the author, since there can be no way of settling terms and sharings now.

Two is the question of First Serial, in which you say that the First Serial use of Eliot Porter's photographs can't be made without the use of your plates and color separations. I suggest that no more than 20% be taken for this and the rest of the money should be paid to Mr. Porter direct (no sharings for the other people involved in the book, since their work is not being used.) I might remark that while this can be covered in some reworking of the present contract, it would be far better if each person involved had his own contract; -- I can't see that if you sold a First Serial use of Elseley's work in the book he would be at all happy at having to pay 70% over to Eliot Porter.

So much for those two points -- and now I have a letter from Mr. Porter. He raises the question of what he would have to supply under Clause 9 -- color prints or black & white prints. I have a feeling we covered this, but have no contract here -- and that it was left as being he did not have to supply anything. Am I wrong?

Mr. Porter is also questioning the merit of a 2% share in the Ballantine paper reprints. I have already told him some editorial charge for insuring good reproduction is probably justified -- but I gather he is irritated by the charge, since on Glen Canyon the work was bad and much had to be destroyed, and then he was told he had to share in this expense. This seems to me quite unjustified.



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There is also the matter of the royalty on posters after the permitted period of free use. I don't have a copy of the contract here, but if not covered then we ought to have a proposal as to what moneys would be paid for this use. Perhaps you would propose.

I'm sorry if I seem questioning, but the whole manner of arranging for this book is an invitation for trouble and doubts -- apparently nobody was told beforehand what would be in the work, how many people would be participating, or what share they might be having.

So I had better have a letter about all of this -- and I think a letter and not a conversation, so that we all have something to refer to.

Yours sincerely,

Diarmuid Russell

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