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Literary Agents

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DIARMUID RUSSELL
HENRY VOLKENING

June 18, 1968

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

Dear Mr. Porter:

I enclose here a copy of your letter to Mr. Brower of March 4, 1968 and also copies of proposed contracts for BAJA CALIFORNIA and GALAPAGOS so that you can refer to both as regards my comments on your points and the various clauses in the contracts.

I must say, at the start, that the contract as a contract, seems to me rather vague and some new one should be redrawn. It leaves too much unexplained and also mixes up (1) an idealistic desire of Sierra Club about conservation which is transferred to the author without his consent. Publishing contracts should be a pure commercial deal which gives the author what he can obtain from other publishing houses. If he wishes to give money to conservation projects this is his own private concern. And (2) reflects in several clauses the fact Sierra Club feels their operation adds sales value to the books they publish and that without their name and the markets they have pioneered in, books would not do as well--this is a more justified claim.

In regard to the financial terms of BAJA CALIFORNIA as to royalties and their division, your letter on page 3 indicated you have agreed to the proposed royalty rate of 6% to 10,000; 8% on the next 5000 copies and 10% thereafter, and that you have also agreed to the proposed sharing of this royalty as indicated in Clause 29. As regards GALAPAGOS, Sierra Club has agreed to a royalty rate of 8% to 15,000 copies and 10% thereafter. In regards to the sharing of these royalties, Mr. David Brower gives up his share of 10%, but strongly feels Mr. Kenneth Brower is entitled to his 10% share on account of his contribution. This seems to me a rather delicate affair--and I must leave this to you, since you will know more as to what Kenneth Brower may have to do over and above the required editorial work that editors everywhere in publishing houses are required and expected to do. I would suggest here that in all future contracts where such proposed sharing of royalties is desired by Sierra that the nature of the work to be done by any Sierra employee who is going to share be fully discussed beforehand, and assented to by the author. It would be more desirable to get rid of this practice, which is unusual--and likely to cause irritation with authors, as it has with you.

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Does Ken Brower receive pay for his work

So much for the few direct financial arrangements and now I come to points in your letter--which refer to clauses common to both contracts. Some of the comments you make--and some are my own.

Clause (1) I find it very odd the Sierra Club can go ahead and pay money for a project--and then have to submit to a Publications Committee for acceptance or refusal; if refused the author being required to pay any moneys received back. The Publications Committee is part of Sierra--and authors must have firmer commitments than this. No book should be encouraged unless all sections of Sierra involved agree beforehand as to the worth of the project--and a contract should exist before the start of any project. If there is some uncertainty about the project, it can be covered in clauses in the contract, allowing either author or Sierra to opt out and the financial arrangements for such options can be covered beforehand. The situation in which Sierra can go ahead and then have the Publications Committee turn down is too uncertain.

Clause (2) It is probably reasonable, for such books as Sierra brings out, that they have world rights--but this should be limited to the English language. Translation rights may not exist now--but they may exist in the future and my feeling is that translation rights should be covered by some clause which says the disposition of these rights will be decided by mutual consent between author and publisher. The question of copyright, since Galapagos is being printed abroad, is probably best left to being covered by a Sierra Copyright, which will not confer U. S. protection for a U. S. citizen, but will cover the countries of the Berne Convention--but there should be some part of this clause to indicate if necessary this copyright will be transferred to the author without altering the terms of any contract.

Clause 4(b) Mail order sales have always been at half the regular royalty rate with all publishers and while I don't think Sierra is going to use this in any odd way, there can be an addition that any proposed mail order operation shall first be discussed with you. It would be wrong of Sierra to send out 1000 postcards about the book to people likely to buy and then give you one-half royalties. They would be quite justified if they prepare a brochure on color about a work and mail to 100,000 people. The returns on direct mail solicitation run between 2 and 4%, so 3000 sales would be nice--but that's achieved at the cost of the brochure and any other material and mailing charges for 100,000 people.

Clause 4(d) should be cut out since it is vague. If they contemplate some educational edition, they can discuss the matter with you. It's a routine clause in most publishers' contracts--but is intended to cover the bringing out of an edition at say $2.39 when the original edition costs $5.75.

Cut

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Clause 4(f) is OK. This covers sales to all corners of the world, usually done by Pfeiffer and Simons who will be selling to Bali and Japan and odd places. They get books at a very cheap rate, their own expenses being heavy--the operation makes little money for publisher or author, but spreads American literature and also allows the publisher to recover some money he has invested, rather than having it locked up in a warehouse, a costly affair if carried on too long.

Clause 4(g) Sierra's own paperback editions--they should have the right to do this but terms should be arranged by consultation. Hard to tell what kind of paper edition might be done and at what price, and so something to be discussed when it arrives.

Clause 4(h) should be cut out. Sierra doesn't know what they might do and if the occasion arises, it can be talked about.

Clause 4(i) out too--there is no reason why a book that sells steadily and has to be revised should drop to this royalty rate. The sentence in parentheses at the end of this clause is so vague it must go--or else be fully explained. I gather Mr. David Brower feels it can be struck out in both contracts.

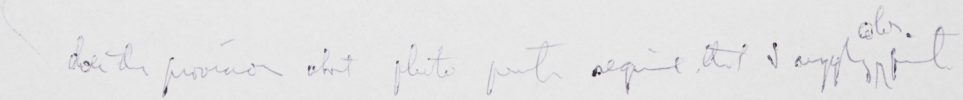
Clause (5) Sierra's rights under this clause must be confined to digest, abridgement after consultation with the author, reprint rights etc.--the clause contains many rights I have cut out so look at clause for what is permitted and what not.

Clause (6) This should be worded to read "net receipts"--net profits is an iffy item.

Clause (7) This should be worded specifically to mention places where free permission will be given-- as to the Blind and uses in Braille or records for the blind. But if no specific uses are to be mentioned, free use should only be granted with the author's consent.

Clause (8)--On this I think you are wrong. All publishers have to have a fixed date when royalties will be paid and cannot alter dates for different authors. I gather in the past their dates are what you mentioned but now all books are calculated to the dates in the Clause 8 and though four months after this date seems a long time to wait for payment, this would in general be the time lapse for most publishers--some are longer, very few indeed shorter.

Clause (9) Considering what Sierra is doing and having talked about it, the best I can recommend here is that Sierra gives an accounting of all moneys taken in and precisely details and accounts for moneys spent on promotion--Mr. Brower agreed with this.



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Clause (11) This clause must clearly state that if the work is not in print and on request from the author is not put in print in 6 months, all rights under the contract revert to the author. The arrangements for selling stock and metal are all right--but under no circumstances can Sierra dispose of the copyright.

Clause (14) Mr. Brower agrees that all you ask for will be done--though I must remark here that it is standard with all publishers to demand authors supply the material requested here.

Clause (16) Mr. Brower agrees that you will be consulted on any change or alteration Sierra thinks desirable.

Clause (17) You are wrong here. If a book after time needs revision or updating, reasonable evidence of the need being supplied, then it ought to be done. The author, if able, can do it--but he may be old, ill or dead and unable to do it; then it is reasonable the publisher finds an able person and charges the cost against royalties--the publisher will have to reset and pay this. Note the objections to 4(i).

Clause 18(c) I think you are wrong here. One has to put some trust in the publisher to bring out a book well, and Sierra has, I think, given evidence of this. The requirement that you will be consulted and have to agree could offer terrible burdens on a publisher. You might be away or sick and production can't be held up--makes costs pile up for the publisher and leaves him with money locked up in various forms of production and, of course, this clause would carry on after you died so that some heir, who might not know anything of the matter, could cause trouble. I think the clause should stay. I fancy Sierra will not leave you unaware of what is going on, since they will need you on the colour work.

Clause 18(e) This should come out. An author can grant free use of his work, if he wishes, but the publisher should not have a free hand to do so.

Clause (19) Mr. Brower agrees to cut out the option.

Clause (21) Some clause of this kind exists in all publishing contracts-- but here it can be made specific by stating no other work on Baja California or Galapagos.

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supervision done by S.C.

Clause (23) Mr. Brower explained to me that this clause at the moment only has relation to their arrangement with Ballantine for their series of paper reprints--in which Ballantine pay a 10% royalty and Sierra takes 2% for supervision in seeing high quality is maintained. I think there is possibly some justification for this. A large number of publishing houses have series in which some general editor has a small percentage royalty for supervising. Since this money is split 50/50 it means that if there were no supervision, you would get 5% as against 4%--but the supervisions probably make for higher sales. However this clause should be made specific for this Ballantine operation and the charge stated. The general way it is written lays open chances for misuse. I think Sierra forget that while people now may act in good faith, it is hard to know who might be dealing with these affairs in the future.

So much for specific clauses. The paper reprint matter is covered in Clause 5. As to the $8000 loan, Mr. Brower says this was conditional on publication and that it would be paid back in installments after publication-- I might suggest they do this by paying $2000 on publication and $2000 a month for the next 3 months. Mr. Brower agrees that the $5000 withheld from royalties should be repaid promptly and I suggest that this be done in two payments of $2500, payable July 1 and August 1--though, of course, this is something you may wish to settle in some different manner.

I have just had a letter today regarding royalty dates and no reason not to agree to this--but I don't agree about the provision for reducing the royalty to one-half for discounts of 50% or more being routine trade practice. I enclose here a copy of the almost universal clause for dealing with larger discounts--and this is what ought to be used. Perhaps you could show this to Mr. Brower and get his assent and perhaps I can hope to hear from you and Mr. Brower if all that I say is acceptable to both of you.

Yours sincerely,

Diarmuid Russell

Diarmuid Russell

DR:hw
cc: Mr. David Brower
Mr. Paul Brooks