A GUIDE TO COPYRIGHTING, PUBLISHING, AND LICENSING PLAYS

By Jina Jang & Manasi Raveendran*
IBM Corporation

October 2013

This publication is available online at
www.probonopartnership.org

* We would like to thank Sally Lake for all of her help and guidance as we prepared this memorandum for our pro bono client; Pro Bono Partnership and IBM Corporation for the opportunity to serve our first pro bono client; and to our manager, Kevin Halloran, and Theresa Mohan for their support and encouragement. The views and opinions expressed in this article are those of the authors and do not necessarily reflect or represent the views and opinions held by the IBM Corporation.

INTRODUCTION

Recently, Pro Bono Partnership assisted a nonprofit theater group which creates original plays and performance art based on stories in the community. Because all their work is original, the group asked for help understanding the legal issues involved with copyrighting, publishing, and licensing its plays. This article (the "Guide") stems out of the memorandum written for the theater group regarding this matter.

The Guide discusses various legal and business considerations presented by the copyright, publication, and licensing of plays. Section I addresses general copyright issues, providing brief explanations about different aspects of copyright as well as step-by-step instructions on registering a copyright. Section II addresses various issues related to publication of a play, including some key contract terms that an author should consider when entering into an agreement with a publishing house. Section III discusses licensing and royalties and provides, via an addendum, some sample licensing agreement language.

This memorandum is not intended to provide legal advice, nor to create an attorney-client relationship between the Pro Bono Partnership and any recipient. No person should rely on the contents of this memorandum in making any legal or business decision. Rather than replace advice of counsel, this memorandum aims to enable organizations to identify and understand basic issues related to the copyright, publication, and licensing of plays, and to determine when seeking the advice of counsel is appropriate.

I. COPYRIGHT

A. General

Copyright protects "original works of authorship" that are fixed in a tangible form of expression, including dramatic works. Generally speaking, for works originally created on or after January 1, 1978, copyright protection is automatically secured when the work is "created". "Creation" is when something is fixed in copy for the first time. A "copy" is a material object from which a work can be read or visually perceived, such as a book or a manuscript. Therefore, when an author writes a play in manuscript form today, he or she automatically secures copyright protection for the work because it has been created after January 1, 1978.

B. Copyright Notice

Although a notice of copyright is not necessary, it is beneficial for several reasons: 1) it informs the public that the work is protected by copyright; 2) it identifies the copyright owner; and 3) it shows the year of first publication. Additionally, if a copyright is infringed by anyone, the proper copyright notice acts as a defense for the copyright owner to claims of "innocent infringement" by the infringer.

Obtaining a copyright notice is the responsibility of the copyright owner. One does not need permission or any form or registration from the Copyright Office. A copyright must include three elements: 1) the symbol "©"; 2) the year of first publication of the work; and 3) the name

of the owner of copyright in the work, or an abbreviation by which the name can be recognized. A sample copyright notice would look like this: "© 2013 Playhouse Y, Inc."

The copyright notice must be placed on every copy of the work in such a way as to "give reasonable notice of the claim of copyright." All three elements of the notice should appear together. For example, for a manuscript, the copyright notice will normally appear on: 1) the title page; 2) the page immediately following the title page; 3) the front or back of the cover; or 4) the first or the last page of the main body of the work.

Generally, the duration of the copyright is for the author's life, plus an additional seventy (70) years after the author's death. Duration for works made for hire is ninety-five (95) years from publication or one hundred twenty (120) years from creation, whichever is *shorter*.

C. Copyright Registration

Like copyright notice, copyright registration is not required, but it is beneficial. Registration serves many functions: 1) it makes a public record of the copyright; 2) it is required before one can bring an infringement case regarding a work of U.S. origin; 3) it is *prima facie* evidence of the validity of the copyright if the work was registered within five (5) years of publication; 4) it allows the copyright owner to win statutory damages and attorney's fees from an infringer in litigation, rather than just actual damages; and 5) it allows one to register with U.S. Customs to prevent the importation of illegal copies.

Only the author or the "copyright claimant" can file an application for copyright registration. For example, if Author X writes "Work," but Playhouse Y would like Work's copyright in *its* name rather than Author X's, Playhouse Y would file the application as a "copyright claimant" rather than allow Author X to copyright Work in his or her name.

D. Registration Process

The registration process is quite simple. One can register by paper or online. There are three components for registration: 1) the completed application form; 2) a non-refundable filing fee; and 3) a non-returnable copy of the work being registered. Some pointers:

- The applicable form required for literary works is called "TX" and it is available at http://www.copyright.gov/forms/formtx.pdf. There are other forms for different kinds of works available on the Copyright Office's website.

- The fee for the TX form is $65 payable to the "Register of Copyrights" if applying via paper. Again, the fees for other kinds of works are different and can also be found on the Copyright Office's website.

- A registrant should send the appropriate form, check, and the copy of the work to the following address: Library of Congress, U.S. Copyright Office, 101 Independence Ave. SE, Washington, DC 20559.

- The same information is required for online registration. Registering online has the benefits of a lower filing fee, faster process, online status tracking, and secure payment features.

E. What Happens Next?

After the copyright registration process is complete, the Copyright Office will issue a registration certificate. The Office assigns the effective date of registration as the date it *received* all of the required information/elements in acceptable form, no matter when the application was actually processed. One does *not* have to receive the copyright certificate before publishing or producing the work, and one does *not* need permission from the Copyright Office to place a copyright notice on the work. However, the Copyright Office must have acted and accepted your application before you can file a copyright infringement suit, because this affects the remedies available to you (see Section C above).

II. PUBLICATION

A. General

Works published in the United States are subject to mandatory deposit with the Library of Congress. This is a physical deposit of a copy of the published work. Failing to deposit a copy of the work with the Library of Congress results in potential fines and other penalties.

The choices of publisher and the medium of publication are intrinsically business decisions, not legal decisions. But in this section, we provide an overview of some of the issues that an author may wish to consider when choosing how and with whom to publish.

B. Types of Publications

The methods of publication can be categorized under two main umbrellas: publication by a publishing house and self-publication. Each option has its own advantages and disadvantages.

	Pros	**Cons**
Publishing House	- Marketing resources - Professional formatting, artwork, etc. - Advance in royalties	- Longer time to publish - Lack of power in decisions - Difficult to implement changes - Publisher may not use marketing resources effectively - Poor royalty rates - Difficult to break into
Self-Publishing	- Total control over format, artwork, price, etc. - Quick turnaround time for publishing - Retain more or all revenue	- Fewer marketing resources → less exposure and fewer sales - No professional formatting, art, etc.

i. Publishing Company

The traditional option is to publish scripts with a publishing company, such as Samuel French, Dramatic Publishing, Dramatist Play Service, Baker's Plays, Pioneer Drama Service, or Eldridge Plays and Musicals. In addition to these well-established and highly regarded drama publishing houses, there are many other smaller publishing companies. As noted previously, the choice of publisher is largely a business decision, but we provide here some non-legal guidance on issues an author may wish to consider.

It is helpful for an author[1] to start by researching each publishing company's target audience, especially with regards to age group and genre. A publisher who specializes in comedic plays will not be interested in a dark dramatic piece. An author looking for the right fit for his/her play can review each publisher's catalog or recent acquisitions. The author should also read the company's submissions requirements. Not only will they provide information on how to submit a script, including any formatting specifications, they can indicate whether a company will even consider a work. For example, some larger publishing companies do not accept unsolicited manuscripts, and most major publishers require that a script have been produced completely at least once before considering publication. In contrast, a small publisher may not require a full production, but may still wish to see only manuscripts that have been produced in some way. Some publishers also require registration of the copyright, which, again, is not legally required but beneficial.

The greatest benefit of publishing with an established company is its resources. Among other things, this traditional method of publication allows for wider distribution and greater exposure due to greater marketing power. Nearly every theater in the country looks to the big powerhouse publishers — particularly Samuel French and Dramatic Publishing — for scripts. But an author is well-advised to research how much and what kind of marketing a publisher will actually provide.

A publishing company can also provide professional formatting services and artwork to help present the script in a more polished manner. However, the company will generally require total control over such decisions and the author may find it difficult to make changes. As part of the publication contract, the author may be able to negotiate for and retain greater artistic control, but also may be faced with choosing between artistic control and other important rights (e.g., larger royalties).

There are other tradeoffs to publishing with an established company. In contrast to the immediate gratification of self-publication, it may take a relatively long time for a script to be published by a publishing company. Some publishing companies offer very low royalty rates or push for greater subsidiary rights from new authors (discussed in more detail in Section II.C.ii below). Before signing any contract with a publisher, an author is strongly advised to consult a third party who is knowledgeable in the field, such as a literary agent or an attorney with copyright and/or publishing experience.

[1]The term "author" is used throughout this Section II to describe the person or entity who is seeking to publish a work. Though the dramatist may write the play, another person or entity (such as a playhouse) may be the party seeking publication.

ii. Self-Publication

The other major method of publication is self-publication. This option affords the author full control of production decisions regarding artwork, pricing, and marketing. The turnaround time for self-publication is also quicker than with a publishing company, and the author is likely to retain a greater percentage of any revenues. On the other hand, the author assumes all costs of production in self-publication, and the presentation of the script may be less polished since there are usually fewer artistic and production options available. The script also may suffer from less exposure and, consequently, fewer sales.

There are many forms of self-publication. One option is for an author to enter a play into playwriting competitions which offer publication as a prize. A good resource for such competitions is the American Association of Community Theater. A second and similar option is submission to journals, such as *Paper Theatre*. While these methods can provide first-time exposure to readers, the submission terms of such publications may require the author to sacrifice licensing control and other similar rights. As such, the author should read carefully through any competition or journal submission guidelines to understand the implications of publication. A third option is to publish the play by technological means, such as online or as an e-book. Be aware that most e-book retailers will retain a percentage of the script sales. For example, Amazon gives writers approximately 70% for sales on direct publications on Kindle and keeps 30%. It is very important to read and understand the terms of the publication agreement.

There are two other self-publication methods that are primarily used for book publications but may be adapted for publishing a play: vanity publishing and print-on-demand. Vanity publishing is an arrangement in which an author contracts with and pays a fixed fee to a publisher to print and bind a book, register the copyright, and include the book on its website and catalog. This makes publication relatively easy for the author. However, vanity publication may affect the perceived quality of an author's work, since the only criteria for publication is the author's willingness to pay the publisher's fees. A print-on-demand (POD) publisher creates and provides digital copies to buyers. This makes production much less expensive than print publication, but the retail price may be relatively high and the digital copies may not be of the best quality. Vanity publishers and POD publishers also generally do not provide marketing or promotional services.

C. Rights in Publication

All publication and production rights are negotiable. While this section outlines some of the basic rights and issues an author will want to consider in a publication contract, it is by no means a comprehensive summary. Before signing any agreement, an author is strongly advised to consult at least one knowledgeable professional, such as a literary agent or an attorney with copyright and/or publishing expertise. A good general resource is the Dramatists Guild of America, whose website includes information on frequently asked business questions and provides sample standard contracts, but is accessible by Guild members only.

The most common rights addressed in a publication contract include grant of rights, exclusivity rights, subsidiary rights, indemnification clauses, and option rights. Each is discussed below.

	Definition	Protections an Author Should Consider
Grant of Rights	Transfers ownership rights to publisher (e.g., publisher can publish in Spanish)	- Avoid transferring "all rights"; consider and limit specific rights you want the publisher to have and others you want to reserve for yourself
Exclusivity & Subsidiary Rights	Exclusive rights to publish or use by that publisher for a certain time	- Consider: writer's/copyright holder's reproduction/distribution rights; length of time; subsidiary rights - Breaching has serious consequences
Indemnification	Writer may have responsibilities to accept liability and pay for any claims of torts, infringements, or civil wrongdoings	- Inclusion on insurance policy or limit to claims not covered by policy - "Best of knowledge" standard - Require publisher to give notice and consult - Only final judgment amounts
Option Rights	Writer must give the publisher the first right to buy or make an offer on the "next work" created by the writer (and other, subsequent works)	- Ask to eliminate clause entirely OR - Limit opportunity window (time span) - Eliminate requirement to submit complete manuscript - Retain right to refuse publisher's offer or to sell to other publishers - Limit definition of "next work" - Eliminate any clauses that maintain same terms

i. Grant of Rights

A grant of rights clause transfers certain ownership rights and control over certain parts of the work from the author to the publisher – for example, the right to print, publish, and sell the work in certain formats or languages. As a general rule, an author will want to avoid language that transfers or assigns the copyright or all rights in the work to the publisher. The author should also carefully consider the publisher's capabilities, and appropriately limit any grant of rights to those rights that the author is satisfied that the publisher will handle adequately.

In addition, note the difference between rights to sell the scripts and rights to sell production rights. This may be significant, because if theaters or schools stage a production of a playwright's work with sufficient alterations, it may not fall under the "production rights" clause in a contract, meaning the author could subsequently receive nothing. Please also note that for musicals, there are separate rights associated with music, songs, and books.

ii. Exclusivity Rights & Subsidiary Rights

Exclusivity rights give a publisher the exclusive right to publish or use a work for a certain amount of time. Specific considerations include: 1) whether the author can reproduce, distribute, or further publish the work in other formats and/or with other publishers, theaters, or third parties; 2) how long the exclusive rights will last; and 3) whether the exclusive rights attach solely to the published product, or whether subsidiary rights are also being granted exclusively.

On the last point, a publisher may use subsidiary rights to create both print-related and non-print-related products from the original work. Print-related subsidiary rights can include, for example, printing abridgments in textbooks, publishing in magazines, and other types of reprints. Non-print-related subsidiary rights include movies, television, merchandising, and electronic rights. Some publishers may ask new writers for subsidiary rights, but as previously noted, all rights are negotiable and even first-time authors can (and will want to) negotiate to retain subsidiary rights.[2]

If an author signs a publication contract granting exclusivity rights to the publisher and then breaches the exclusivity clause, the consequences can be severe. In addition to direct damages relating to the contract, the author may be liable to the publisher for potential economic damages, such as loss of future profits and business. Therefore, it is important for an author to understand and adhere to the obligations of any exclusivity clause in a publication contract.

iii. Indemnification Clauses

An indemnification clause states the responsibilities of author and publisher in situations where a third party has accused either or both of certain torts and/or intellectual property infringements (e.g., defamation, invasion of privacy, copyright infringement).

Often, the indemnification clause in a standard publishing contract will be overbroad and will heavily favor the publisher. While an author will probably not be able to negotiate away indemnification entirely, he/she may be able to negotiate for limiting language that will protect him/her against undue or complete liability. Major publishers usually carry insurance to cover damages from these types of claims, so the author may be able to amend the indemnification clause to limit his/her liability to only those losses, injuries, or damages the publisher incurs and is unable to recover through insurance. The publisher also may agree to add the author to its insurance policy.

Other ways to reduce an author's potential liability include: 1) limiting warranties with a "best of the parties' knowledge" standard; 2) requiring the publisher to give the author timely notice of any claims; 3) prohibiting the publisher from settling any claims without consulting the author; 4) agreeing to indemnify only final judgment amounts; and 5) limiting indemnification obligations only to claims brought by a third party.

[2] As a side note, there has been a movement since the 1980s for certain theaters, particularly in New York City, to not ask for subsidiary rights.

iv. Option Rights

Option rights give a publisher the first right to buy or make an offer on the author's next work. Option rights clauses are typically one-sided, favoring the publisher and providing the author no assurance regarding the publisher's obligations to effectively edit, produce, and market the optioned work(s). Publishers are often willing to delete an option rights clause from the contract, but if this is not the case, the author should try to limit the publisher's option rights as much as possible. For example, the author may request that: 1) the publisher's option rights be limited to a specific period of time (e.g., one to two years); 2) the author be required to submit only a proposal and not a complete draft of any future work; 3) the author has the right to refuse the publisher's offer, or to sell the work to other parties if the publisher is not interested; 4) the definition of "next work" be limited to those works in the same genre, series, etc.; and 5) that any subsequent terms be negotiated at a later date.

III. LICENSING AND ROYALTIES

A. General

The most important issues to note in a licensing agreement are: 1) the extent and scope of the license; 2) the Licensee's obligations; 3) the payment terms; 4) names and publicity in relation to the licensed materials; 5) disclaimers and liabilities; and 6) the term and termination of the licensing agreement.

We have provided some sample language for a licensing agreement in Appendix A (attached).

B. Extent and Scope of License

An author should consider what kind of license he/she wants to grant to entities that stage his/her plays. The standard is for an author (the "Licensor") to grant worldwide, non-exclusive, non-transferable, and revocable rights to entities that stage his/her plays (the "Licensee" or "Licensees"). This means that the author can license a play to others and can revoke the license for particular reasons, and the staging entities have the non-exclusive ability to perform the play anywhere in the world and cannot transfer that right to others without the author's permission.

Additionally, the Licensor can give Licensees the right to use, execute, display, reproduce, perform, and/or distribute the licensed work, and to create specified derivative works. These rights are generally standard, but can be limited, especially with regards to derivative works. Derivative works can include another play that is derived from the licensed play, videos of the play, CDs or other digital media of the play, or music from the play.

C. Licensee's Obligations

The Licensor can ensure that the Licensee follows certain rules and obligations under the Licensing Agreement. Such obligations might include requiring the author's copyright notice to

be placed on any copies of the work and disclaiming any liabilities and warranties under the agreement.

D. Payment Terms

The decision about how much to charge for licensing and royalties is a business decision, one that may involve consulting playwriting guilds and other sources. Once that decision is made, the Licensing Agreement should address the terms of payment, including payment for the license itself, the payment of any royalties from performances, the payment schedule, and the consequences for late payments or non-payment. It should also address the obligations of the Licensee to account for any derivative works that result from the licensed material.

If the author chooses to publish with an established publishing company, he/she may find it more difficult to negotiate the percentage and price of royalty payments. In general, royalties can range anywhere from a 50-50 split to an 80-20 division in the author's favor, depending on the playwright's reputation or experience and the type of production. For example, for professional productions, royalty percentages may favor the playwright, whereas for amateur productions, percentages often favor the publishers.

E. Names and Publicity

Sometimes a Licensee will want to use the Licensor's name, logos, slogans, etc. in connection with the licensed work – for example, to promote a performance or advertise the collaboration between the Licensor and the Licensee. Whether and to what extent the Licensee is granted publicity rights depends on what the Licensor agrees to allow or limit.

F. Disclaimers and Liabilities

Generally, in any publishing contract or agreement, the author will want to limit his/her warranties and liabilities. In a licensing agreement, limiting warranties and liabilities will reduce the Licensor's liability for any issues with the licensed material (the play), including any third party claims regarding misuse of the licensed material.

G. Term and Termination

A licensing agreement typically ends for one of a handful of reasons: because either the Licensor or Licensee has breached the agreement, because one party has decided to terminate the license in accordance with the agreement's termination provisions, or because the agreement has run its agreed term and expired. Term and termination provisions are largely dictated by the author's business decision as to how long he/she would like someone to have the rights to produce the play.

CONCLUSION

This memorandum was intended to provide an overview of the legal considerations related to the copyright, publication, and licensing of plays. This memorandum was not intended to provide legal advice, nor to create an attorney-client relationship between the Pro Bono Partnership and any recipient. No person should rely on the contents of this memorandum in making any legal or business decision. Rather than replace advice of counsel, this memorandum was intended to enable organizations to identify and understand basic issues related to the copyright, publication, and licensing of plays, and to determine when seeking the advice of counsel is appropriate.

* **

October 2013

APPENDIX A

SAMPLE LICENSING AGREEMENT LANGUAGE[3]

The parties to this agreement are _____, a [not-for-profit/for-profit] [NAME OF STATE] corporation with an address at [ADDRESS] ("Licensor") and _____, a [not-for-profit/for-profit] [NAME OF STATE] corporation with an address at _____ ("Licensee"). The parties enter into this agreement on [DATE].

Licensor has developed [e.g. script, publication, music notations, etc.]. Licensee [e.g. performs plays and other dramatic works for a fee]. Licensee wishes to make Licensor's [e.g. script, publication, dramatic work available to the public through performance.] This agreement provides the terms on which Licensor will make [the script, publication, music notations, etc.] available to Licensee.

1. Licensed Materials

Within [____] days of both parties signing this agreement, Licensor will provide Licensee with [e.g. the script, publication, notations] ("Licensed Materials"). At its discretion, from time to time Licensor may provide Licensee with updates to the Licensed Materials, which will become part of the Licensed Materials when provided. Licensee agrees to implement the updates within [___] days of receipt.

2. License

By signing this agreement Licensor grants Licensee a [e.g. worldwide, nonexclusive, nontransferable, revocable right to use, execute, display, reproduce, perform, distribute, and create specified derivative works] of the Licensed Materials. Licensor also grants Licensee the right to do some or all of the foregoing with derivative works. [Licensee may create the following derivative works of the Licensed Materials: e.g. videotape, ___]. The Licensed Materials are licensed, not sold. The rights granted in this agreement may not be sublicensed for distribution of the Licensed Materials by any third party. Except as explicitly provided in this agreement, Licensor does not grant any licenses to the Licensee under any patent, copyright, or other intellectual property right.

Licensee grants Licensor a [e.g. worldwide, nonexclusive, nontransferable, revocable and royalty-free license] to its derivative works of the Licensed Materials, to [e.g. use, execute, display, reproduce, perform, distribute, and create derivative works]. Licensee also grants Licensor the right to do some or all of the foregoing with derivative works. For the rest of this agreement, "Licensed Works" includes their derivative works.

3. Licensee's Obligations

Licensee will clearly mark each of the Licensed Works distributed in any form with this copyright notice: "Copyright © [2011-2012] [Licensor's Name]. All rights reserved." Licensee may also mark its derivative works with its own or another appropriate copyright notice.

[3] This sample agreement is provided for educational purposes only. Please seek the advice of an attorney before contracting.

Licensee agrees to distribute the Licensed Materials under an agreement which (a) says that Licensor assumes no liability for claims concerning the Licensed Materials, and (b) disclaims all express and implied warranties from Licensor regarding the Licensed Materials. Licensee will notify Licensor if any intellectual property claim has been or is about to be made against the Licensed Materials.

4. Payment

Licensee will pay Licensor a [$____U.S.] nonrefundable fee within [_____] days of both parties signing this agreement. In addition, Licensee will pay Licensor a royalty of [__] %, in U.S. dollars, of the end user price for each copy of the Licensed Works that it distributes. If Licensee distributes any copies of the Licensed Works at a discount or for free, it will pay Licensor [__] % of the full price for the same items. Licensee will provide an accounting for copies of the Licensed Works distributed during a calendar quarter and pay royalties on them within thirty days after the end of that quarter. If no copies were distributed during a quarter, Licensee will inform Licensor in writing. Licensee will pay interest of [__] % on all late payments. Licensee will be responsible for all fees, withholding, taxes, and other costs or charges on its payments to Licensor, exclusive of taxes on Licensor's net income.

Licensee will keep detailed records on royalties for three years after each payment. Licensor, at its own expense, on reasonable notice, and not more often than once a year, may have an independent third party audit Licensee's records related to royalty payments. Licensor will provide that its auditor hold Licensee's financial information in confidence. Within [____] days of the end of the audit Licensee will pay Licensor royalties and fees found by the audit to be owed. If the shortfall of payments by Licensee is [__] % or more, Licensee will pay for the audit.

5. Names and Publicity

With prior written approval, each party may publicize its relationship with the other and use the name of the other in connection with the Licensed Materials. Licensee may use Licensor's [e.g. earth] logo and [e.g. "Theatre For A Change"] slogan in connection with marketing or publicizing the Licensed Materials, provided that Licensee does not change the color, proportions, or any other detail of the logo or slogan or combine it with any other logo or slogan or graphic material. Licensor may do the same with Licensee's [e.g. any other] logo on the same conditions. Licensee may not use the logo or slogan in a way that is pejorative, illegal, or otherwise portrays the Licensor negatively or in false light. Neither party will publicize the terms of this agreement. Neither party will claim any interest in the name, logo, domain name, or service marks of the other or attempt to register any of them to protect them. Promptly after the end of this agreement for any reason each party will stop using the other's logo and name.

6. Term and Termination

Once signed by both parties, this agreement will begin on the date in the first paragraph above and end [__] year[s] later. The parties may by written agreement extend the agreement for [___] additional one-year period[s]. Either party may terminate this agreement for breach by the other which is not cured within [__ (generally 30 days is the norm)] days of the written notice of breach, or for the dissolution, insolvency, or bankruptcy of the other, as determined by a court of competent jurisdiction.

Licensee agrees to stop using the Licensed Materials, and Licensor agrees to stop using Licensee's derivative works within seven (7) days of the end of this agreement for any reason.

7. Disclaimers and Liabilities

Licensor represents and warrants that the copies provided to Licensee contain the Licensed Materials, exclusive of derivative works, and that the copies will work for their intended purpose. The intended purpose is to serve as the source for Licensee's production, performance, and modifications of the Licensed Works. Licensee's sole remedy for breach of this representation and warranty is for the Licensor to replace the copies within seven (7) days of notification by the Licensee that the copies do not function as represented and warranted.

Except as provided in the previous paragraph, Licensor licenses the Licensed Materials, exclusive of derivative works, AS IS, without warranty of any kind. Licensor also DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. LICENSOR WILL NOT BE LIABLE FOR ANY DIRECT DAMAGES OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF IT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH A LOSS. Licensor will not be liable for the loss of, or damage to, Licensee's records or data, or any damages claimed by Licensee on its own behalf or based on a third party claim.

Licensee agrees to indemnify Licensor against all third party claims and liability arising directly or indirectly from any use of the Licensed Materials by Licensee, its customers, or related parties.

8. Confidential Information

This Licensing Agreement is confidential to Licensor, and Licensee may not disclose them for [YEARS, e.g. five (5) years] from the date of this agreement. If Licensee needs to disclose its confidential information to Licensor, it will tell Licensor the nature and extent of the information to be disclosed before disclosing it. These obligations of confidentiality do not apply to information which already is or becomes public through no fault of the recipient or is released with the discloser's written permission.

9. Miscellaneous Terms

a. The terms of Sections 3, 4, 5, 7, and 8, survive this Agreement until they are fulfilled. This contract will be interpreted under the laws of the State of Connecticut without regard to its conflicts of laws provisions.
b. This Agreement may not be assigned by either party without the prior written permission of the other.
c. The parties are independent contractors and neither may represent itself as the agent of the other.
d. Notices sent under this Agreement will be delivered by hand, fax, or overnight courier.
e. This Agreement may only be amended by a written agreement signed by both parties.

f. This Agreement is the complete and exclusive statement of the parties' agreement about the Licensed Materials and supersedes all prior oral and written versions and understandings. By signing below, each of the parties agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to by the parties,

_____	_____
Signature	Signature
_____	_____
Name, Title [Insert Name]	Name, Title [Insert Name]
_____	_____
Date	Date

_____

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or any other U.S. federal tax law or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

This document is provided as a general informational service to volunteers, clients, and friends of Pro Bono Partnership. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does distribution of this document create an attorney-client relationship.

October 2013