

IBPA Podcast Ellenberg interview

[00:00:00] **Ethan Ellenberg:** That story is no longer a hardcover book printed by a single publisher as it was in the old, old days, but it's now the hub of this wheel with the many spokes of intellectual property, a slicing and dicing, if you will, or that story into multiple formats, multiple technologies, multiple languages, and things we really haven't even thought of yet.

Peter Goldman: That's literary agent Ethan Ellenberg. Talking about the evolving rights situation in today's publishing world, and today we're speaking with Ethan about some of the potential for any publishers to sell rights for their book titles and in some cases to exercise those subsidiary rights themselves.

And we'll also be finding out about a new and exciting IP management tool for tracking the rights you've sold. But first, let me welcome you to insight independent publishing with IBPA. Thanks for streaming in. I'm an independent publisher and I'm your host, [00:01:00] Peter Goodman. Inside independent publishing comes to you from IBPA - the independent book publishers association. IBPA's mission is to lead and serve the independent publishing community through advocacy, education, and tools for success. For more about IBPA and how it can help you be a better publisher and sell more books, whatever kind of publisher you are, go to [IBPA hyphen online.org](http://IBPAhyphenonline.org). And you can also tweet questions and comments to me at the handle's at Peter Goodman or at IBPA. Okay, let's get started.

Well as I mentioned today, we're talking with Ethan Ellenberg on the subject of intellectual property rights. Uh, welcome, Ethan. Thanks for coming.

Ethan Ellenberg: Thank you.

Peter Goldman: Uh, Ethan, uh, opened his literary agency in late 1984 after holding jobs both Bantam and at Berkeley JoVE.

Uh, he is an acknowledged expert on the practical aspects of publishing, including the publishing agreement and [00:02:00] royalty accounting. And he is also a long time industry observer and an author advocate. His new company is called Royalty Reminder, and it's an IP management software tool that helps authors stay, organized and to enhance the value of their titles.

So, uh, congratulations, Ethan. On Royalty Reminder. Um, you know, I'm a small press publisher and I'm well aware of the phenomenon of losing track of licenses and addresses. So having a tool like this can be very helpful. But you know, what I really mostly want to talk about today is IP rights in general.

And you recently wrote a really wonderful article on Jane Friedman's blog about IP, and you titled it The Big Picture. So what is the big picture, especially for publishers and authors?

Ethan Ellenberg: Well, the biggest part of the picture is that the story, um, written as a novel or even in a certain sense of word, it's nonfiction [00:03:00] now, is the, uh, the hub of a wheel with many spokes in it.

That is the potential to sell that story in so many ways and so many avenues. And, uh, so let's start at the beginning. Print book writes in three formats or more, hardcover trade, paperback, mass market, electronic book rights. The ebook version of that same story. Audiobook rights a audio book based on that story.

Translation rights. That story translated into dozens of languages in all those formats all over the world, film and television rights, boom time in Hollywood. Now we were seeing maybe, uh, literally hundreds of new television and films because of the streaming platforms and all the rest of it.

Graphic novel rights. Podcast rights, I could go on. That story is no longer a hardcover book printed by a single publisher [00:04:00] as it was in the old, old days, but it's now the hub of this wheel with the many spokes of intellectual property. A slicing and dicing, if you will, of that story into multiple formats, multiple technologies, multiple languages, and things we really haven't even thought of yet.

Peter Goldman: I guess the advantage of being a, uh, like an author publisher. Uh, is that, uh, from the get go, you own all the rights to, to everything. Uh, but on the other hand, being an author, publisher, you're probably very under-capitalized so how do you really go about taking advantage of all those opportunities?

Ethan Ellenberg: Well, that, that really is a complex struggle. And it partly depends on what kind of author publisher you are. Um, if you actually have a publishing house in place, you have a platform to sell those rights. Uh, you can attend the trade fairs. You can, uh, be part of the eager of selling rights by having sub agents.

Uh, you are an address and Hollywood does chase material all the time. It's [00:05:00] better to be found than to find, uh, in the Hollywood model, cause you're most interested in finding you than in you finding them. They have screens in place to prevent people from getting in their door.

Peter Goldman: Right.

Ethan Ellenberg: Also, if you are an established publisher or establish author, you will most like be part of an ecosystem.

Where between your own website, your own agent, uh, your own activity, you were being approached about those rights. So you have the, the, the ability to both license out to a mainstream big five publisher, to an audio publisher, to your translation partners or now, and this is even more complex. You have the right, you have the ability to (inaudible) yourself. And you can create your own additions of, of the book, uh, from a print and ebook perspective. And you can even create your own audio on translation additions. So, uh, I think the really intimidating and difficult thing is that

we are now in an environment where there are so many choices and the choices create both opportunity and also [00:06:00] obstacle. Because it is not easy being a self-publisher. It is not easy making these decisions and then actualizing the actual hard work of producing, marketing and publishing a book and that that really is a struggle.

Peter Goldman: I mentioned a small publisher with a property that they know maybe has a, has legs or as it has a lot of different, uh, angles that they could pursue.

But on the other hand, you're, you're just like one little fish in a vast, vast ocean. Um, how does a, uh, how's a publisher like figure out exactly how to get started if they don't want to wait around to be found by somebody else, but they want to very proactively start moving those, those rights around?

Are there any. First steps that you would suggest?

Ethan Ellenberg: Well, the most important things to have successful publication are the primary edition. Um, I dunno whether you're a primary, if your primary edition is print or audio, the goal is to launch the book. That that really is the first step. I think pre-publication is a very, very difficult thing. If [00:07:00] you successfully publish the book, if you're getting some attention, you're getting some reviews, the next phase is licensing out most likely to sub rights. That means looking for, hopefully you have co-agents in place, but looking for translation partners. Um, it is dealing with these subsidiary or additional rights and basically building off the initial success of that primary.

Whether it's a print edition and ebook edition or an audio edition and using that as the leverage to market these rights. But you would be actively marketing, marketing those rights. And of course again co agency to reach translation. Having your own subsidiary rights approach. You know, finding an audio partner if you do not have one.

It is, you know, marketing and merchandising those rights.

Peter Goldman: You know, before we go into that cause, cause I do want to pursue that a little bit, but, um, before you actually are in the process of selling those rights, you kind of have to make sure that you have the rights to sell. If you're the sole author and you've written [00:08:00] every word to yourself, you don't have to worry about that because it's yours.

But if you've had collaborators or people who've done maps or illustrations or contributed poetry, or if you yourself have, uh, pulled material from other books and used it, uh, in your own, you may have some. Like third party permissions issues, right? And you need to get those squared away before you even think about sellinguh, rights to another third party.

Ethan Ellenberg: Well, there's, there's no substitute for clear deals, clear contracts and clear understandings of who owns what. If you are a publisher that has a, a

publishing agreement with an author, you need to look at exactly how the rights were divided and, and on what basis.

Um, if you are selling something that is more complex than that. You have to understand exactly who owns what and what the obligations are. So there's no substitute for that. Uh, you need very, very clear contracts. You need a clear understanding of, of who owns what. Um, most publishers should be adept at, at, at, at handling that.

And if you do not own a sub [00:09:00] right. Uh, basically you'd pass it on to the author, the author's agent, and ask them to pursue any of the leads that you wouldn't, that you would get.

Peter Goldman: Yeah. You'd hope that people would have their stuff in order, but as you know, uh, sometimes things just sort of happen in a, it kind of evolves on its own without anyone going back and like cleaning up after the horse, you know?

Ethan Ellenberg: Well, I say the right environment is more difficult than ever. Because the contracts are more complex, people are more worried about future technologies. Uh, there's kind of a rights, a land grab going on, now, to some degree. Hollywood is extremely aggressive about rights. The performance con, the movie contracts we are seeing really cover all kinds of things.

We're worried about how they're looking at audio, how they're looking at voice. Uh, what kind of digital and electronic rights they're talking about. Uh, so it's, it's more difficult, but again, there's no substitute for clear thinking and for clear contracting. Uh, I'll give you an example of something that alarmed me recently.

[00:10:00] I read, uh, a new contract offer to me, and, uh, there was a provision from the publisher that, uh, no other audio version of the work would exist other than the audio rights that they were gaining. And I realized that they were trying to forbid podcast rights. Uh, this is frankly a fresh thing to think about.

Audio licenses going to preclude podcasting cause that is a audio product that is competitive with the audio rights that a publisher is buying. I don't have the answer for you right this minute. This is only a, I'm trying to illustrate how complex this environment is, uh, because of the amount of rights involved and the amount of, uh, cross, uh, uh, the amount of confusion that's possible considering how electronic, digital, print, down, film, TV, internet are becoming so blended in the creation of all the wonderful products and entertainments that we are, that we are [00:11:00] watching.

Peter Goldman: I had heard, I heard somewhere that, uh, the foreign rights situation has changed for a lot of publishers. It used to be that you would sell, you know, rights very, very specific to languages and countries.

Uh, but that, because publishers now have access to a lot of these markets that they didn't have before, that some of these foreign rights are now being withheld or split up in ways that hadn't happened before? Or is that a, is that an accurate reflection of what's happening and are there other changes that are happening in the world of foreign rights as well?

Ethan Ellenberg: Well, I'm just back from Frankfurt. I'm certainly happy to share, you know, my, my thoughts on that. Yeah. Translation is still a robust market. Uh, the work of American Anglo American novelist and, uh, still remains very, very popular. That said, uh, fiction is emerging in all of the world markets, uh, the way it never had before in my experience.

France and Germany and Italy are getting their own novelists. It's a little bit harder to sell fiction because, [00:12:00] uh, the novelists are emerging at, at the world craft level and in the entertainment of fiction industry. So we're seeing some of that. Of course the translation is a concern.

So people are looking at at their own local talent. That certainly is the change. 20 years ago, no one spoke about how by an American, a thriller writer or a British crime novelist because one of the local guys was doing it as well. So that, that's interesting that we're saying, I think that translation is, is, is a little bit harder than it's been.

Uh, we are seeing, uh, ebook market when the audiobook market emerge in foreign countries. Uh, and, uh, finally to some degree, uh, Germany is beginning to have a robust audiobook market. There are a lot of countries that are just very, very beginning in the audio world. eBooks are pretty much have been adopted worldwide now.

But if you think back to the evolution of the ebook that also wa, uh, emerged first in the American market and that has been adopted worldwide. I think there's a lot of ferment [00:13:00] in, in these markets. And I wouldn't want to say too much. Um, you know, it's interesting that, uh, translations are subsidized by government.

Uh, it's on a translator that you could split revenue with and create your own translations, which is another interesting factor. Um, so I think that the translation market remains a stable market and an important market, but there's definitely a lot going on. But you know, honestly, there's a lot going on in book publishing.

You can't underestimate how much ferment there is in the market. Well, let me give you another example in the audiobook market. Audiobooks originated as a recorded version of the print book now, audio books means creating, entertainment. The large publishers are creating all kinds of audio entertainments that go well beyond reading a book.

It's very much absorbed some of Broadway. It's creating new versions of all kinds of things, [00:14:00] and I'm I, who knows where that market's going to go? You know, the ear is getting a little closer to the eye in people's desire to be entertained.

Peter Goldman: So, uh, I've heard a lot about, um, people talking about blockchain as being some sort of salvation for the international rights market.

Do you have any thoughts on that?

Ethan Ellenberg: Um, I really don't per se. Um, I think that these new tax GS are great. I think they're going to evolve in a good way. Um, I think one of the issues is gonna be that, uh, it's unclear how much, how many books can be absorbed in any market at, at the level where they can be marketed and promoted.

On the other hand, I think they'll be freely available and individual people will be able to find things to their individual taste. But, um, I think it's a little premature to look at blockchain. Uh, it's mainly seems to be emerging in the financial markets, et cetera. I think for now. A translation rights will mainly be invented by [00:15:00] a large publishers to each other through the co-agencies and perhaps eventually from platforms.

Peter Goldman: Right. Um, I, I've had the experiences of publisher of selling foreign rights and getting what I thought was sort of a, a mediocre advance, but I was, I was happy to accept it. And then never, ever hearing from the publisher again and wondering, in fact whether the book had ever been published or whether they just like, you know, gave up on it and, you know, abandoned it.

And then it's like, well, do I have the rights back? Should I write to them? Uh, um, so question number one is, when you're dealing with a foreign publisher or that is actually anyone that you don't know, but especially overseas where you, where you have limited ability to communicate and enforce any contract, how do you know who to trust?

Ethan Ellenberg: Well, Peter, you know what you're comment really resonates with us because we've been struggling this for, for, for many years. [00:16:00] Uh, the first step hopefully is to have a good co-agent and to ask them to look into the situation at the local level. Call, right? The publisher, find out what's going on.

Um, beyond that. Uh, you will have a few stinkers along the way and you will have people who don't pay royalties and go bankrupt and other things. But it's also true that some of the publishing and foreign countries is kind of magazine style publishing where they publish the book, they do two or 3000 copies and they never reprinted and they don't stock it and it really just fades away.

Getting information in this market is, is a real challenge. And, uh, luckily we live in 2019 because the tools that exist now didn't exist. you know, 20 years ago in 10 years ago. Uh, so what we do is, um, Amazon is a great place to look, to investigate foreign additions. You know, they, they have their market in 12 plus countries now, and we have a created over time.

We have a special memo here and at the Ellenberg agency that's three pages long. [00:17:00] How do find a foreign book published by one of your authors? And that's our, our secret sauce that we use to find additions. And we do this all. Our co agents are busy. We don't always hear from them. Information is hard to get.

Some publishers are a little dicey. So we internet research, we play internet detective and we chase down a books and this is really also an opportunity because some books are renewed. We, we do get renewals every year. A foreign translation licenses are often three, five or seven years and books will expire.

And for our more classic and stable authors, we will get renewals and we will get new advances and new royalties and all the rest of it. So, um, this is an area where the reason why software tools become so important is because the size of the task is gigantic. Keeping track of books is a gigantic task.

Keeping track of hundreds and even thousands of contracts. It's a gigantic task. [00:18:00] Getting real time information about all these books, all these additions is a gigantic task. And unfortunately, fortunately, this is the job of small publishers and literary agents and authors. You have to go out there and be diligent and discover this information.

Peter Goldman: And so that's a great segue, I assume, into a Royalty Reminder, which is your, uh, your new, uh, product. Uh, why don't you tell us a little bit about that?

Ethan Ellenberg: I realized five plus years ago that I would not be able to do my job without a, a software tool that would allow me to, uh, inventory, manage and exploit the 2,500 plus contracts that, uh, I was my obligation on behalf of my clients to manage.

And I realized from day one that I wanted a public facing tool that could be available to all my authors and their own accounts into other people. Of course, the industry. So we built Royalty Reminder to be an intellectual [00:19:00] property management tool. Basically, you enter every contract you've ever done.

Um, it goes into Royalty Reminder. It's, it works in a data matrix that's been ideally built to manage book publishing agreements and other publishing agreements. So it's a custom based tool built for this industry and not to manage hardware and anything else. And we need a digital version of the contract.

It has a reminder service built into it. And, uh, we have found it to be a literally a game changer for us. It's not an accounting program. It allows me, my employees and staff to go in every day, every day. Look up any contract ever by any author, to look up any rights by any contract, any author, and to also use it across platforming.

So if you put in translation Serbia or translation France, you can look at every single contract we've ever done in Serbia or France. And this gives us the strategic

advantage of being able to track advance royalties and publishers, and it's basically a, exactly that. [00:20:00] It's a digitally based cloud based system that is a software tool to manage all of your agreements.

Peter Goldman: And it will nag you.

Ethan Ellenberg: It sends you reminders in two ways. It will send you an email six a month before a contract is going to expire. So you could start, I was sharing an extension of license or think about reversion republication and it shows up in red. So if you're ever browsing your portfolio of you doing, uh, a, uh, looking at the entire portfolio, or if you're looking at only for the contracts of a single author, you will see two or three or four red bands across the screen.

And you'll know that Old McDonald's is going to expire in February of 2020 and you better get to work making sure that book is bought, brought back into print or reverted and republished.

Peter Goldman: It sounds great. Sounds very useful. I know I could use it cause I'm a. You know, I, I have my, uh, I have all my information in an Excel spreadsheet, which I suppose a lot of people do, but it's completely worthless unless I actually open it [00:21:00] up and look at it. So, you know, having, having a reminder tool, a nag, or if you will, would be really, really great. Uh, well, good. Well, uh, we've been talking with, uh, Ethan Ellenberg of, is your agency named the Ellenberg agency, is that right?

Ethan Ellenberg: It's Ethan Ellenberg Literary Agency.

Peter Goldman: He's an Ellenberg literary agency, and you have, do you have a website that you're using giver?

Ethan Ellenberg: You'll find it very easily under the Ethan Ellenberg Literary Agency where mainly fiction specialists and, and do children's books as well. And we're big fans of genre fiction and a, were happy to still consider submissions and uh, we continue to, uh, primarily be involved in that. But Royalty Reminder is definitely a pet project here. It's an independent company with its own employees and we continue to work on that as well.

Well

Peter Goldman: great. I invite everybody to check that out and once again, thank you very much Ethan Albert for talking with us today.

Ethan Ellenberg: Thank you very much, Peter.

Peter Goldman: Now, after our interview was over, I continued talking to Ethan about this and that. But at one point we returned the [00:22:00] core idea of keeping track of your rights, and obviously that's very important to your current business but there's another aspect which probably most of us don't think about so much.

And here's what Ethan had to say, are.

Ethan Ellenberg: You know, I, I went to the romance writer's convention in May in New York and I bumped into a very top bestselling author I have known for for a number of years. And she said, uh, Ethan, I never, you were doing anything like this. I need this. I just wrote my will this week.

I mean, it's just beginning to happen. That authors are realizing that they have estates and that their books are not going to end up on a ping pong table at a garage sale. That they actually have things that will outlast them, that will have value.

Peter Goldman: What a great point, and one of the whole reasons that many of us go into book publishing is to create intellectual properties of lasting value and lasting here means lasting after we're gone.

Uh, what a waste to have all of our hard work evaporate or get entangled in bewilderment and lack of [00:23:00] clarity among our heirs and successors. Once our own book closes on us. Elsewhere in speaking with me, Ethan called this a spiritual obligation that you have to your authors and to your family, and that's really a great way of thinking about it.

It doesn't just go for keeping track of all your sub rights deals. Maybe you don't have any sub rights deals or you just have one or two, but you've got a business. You owe people money and people you money. If you publish other authors, you have an obligation to them. And if your distributor has a pallet load of your books, what are they supposed to do with them if you suddenly aren't there to make decisions? This is not a pleasant subject to think about, but you know, everyone knows how important estate planning is and your publishing enterprise, large or, small, it needs the same attention to its legacy. Uh, leave a set of written directions for those who remain behind or better yet, find a publishing colleague that you can rely on to help wind things up after you're gone.

You can give them power of [00:24:00] attorney or if that worries you, just leave a letter to your spouse or children advising them that your colleague should be relied upon to make decisions about how to wind up your business affairs and that they should listen to his or her advice. Because chances are your kids or relatives and certainly not your banker, are gonna know very little about publishing customs and conventions and someone who understands how publishing works and how rights are managed and how obligations survive beyond termination, whether it's yours or your companies is going to have to be there in order to make good decisions.

You may not live forever, but your book might. And I guess you might say that's really taking a longterm view. Do you have further thoughts? Well, let me hear from you at at Peter Goodman door at IBPA on Twitter. And that does it for this edition of inside independent publishing with IBPA. Check the podcast notes for details on the

topics and websites covered today [00:25:00] and be sure to check out
ibpa@ibpahyphenonline.org.

I'm Peter Goodman, and as my bosses in Japan used to say, let's have publishing fun.