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I. Introduction

This paper provides a detailed analysis of syndicate contracts and the business factors which shape them. Particular attention is given to claims made by both creators and syndicates about issues of bargaining power, “fairness”, artistic control, business pressures, enforcement, and extra-contractual power.

The Goal Of This Paper

The goal is to provide syndicates, creators, and their attorneys with the information necessary to draft fair and efficient contracts.

The Need for This Paper

Creators need this paper because most cannot afford a lawyer and must therefore represent themselves. This paper provides self-representing creators with enough legal guidance to handle typical negotiations. The lawyers who represent the few wealthy creators tend to practice general law and so need this paper for its in-depth review of issues unique to the syndication industry.

Syndicates have expert lawyers, so admittedly have less need for this paper than the creators do. Moreover, the paper contains more suggestions in the creators’ favor than in the syndicates’ favor. Even so, the paper offers recommendations for numerous pro-syndicate improvements in the contract. Syndicates may also benefit from the suggestions for contract language that educate creators about their rights and responsibilities; this

educational element is important to reducing the misunderstandings that poison many creator/syndicate relationships.

Overall, this paper fills a recognized void in the legal community's analysis of creator contracts.

Writer's Bias?

This paper is intended to be a dispassionate analysis of the legal and business considerations which affect the contract drafting process between syndicates and creators. However, the reader may note an emphasis on the creators' perspective. This tilt stems from two factors. First, most creators are unpracticed negotiators and can afford little or no legal advice. Thus, creators are likely to rely on the paper, and it is written so that they can use it easily. Second, at least as of this version, I have been substantially more successful in obtaining information from the creators than from the syndicates. Thus, by extension, I understand and can write about the creators' concerns more thoroughly. If this paper generates the hoped-for interest among the syndicates now that it is a completed document in the hands of creators, future versions will likely benefit from substantial comment by the syndicates.

Some creators and syndicate executives will undoubtedly wish to challenge certain factual assertions, legal interpretations, and determinations of "fairness." I welcome comments, and hope for a lively debate which will benefit future versions of this paper. Please feel free to contact me at stu@stus.com.

Current Negotiations: Focus on Distributing Value, not Creating Value

Most contract negotiations between creators and syndicates focus on distributing the value of the comic feature. This paper provides a detailed analysis of each contract provision and is therefore useful in such negotiations over the distribution of value.

An equally important goal for this paper is to find ways to ADD value through the contracting process rather than merely distribute it. This is done in three ways. First, the paper details how changed ownership or changed incentives can encourage the more efficient use of several important resources. For example, the very low use of merchandising rights by the syndicates in non-blockbuster comics suggests that the syndicates may not be the best caretaker of merchandising rights to non-blockbuster comics. Second, the paper shows that the creators and syndicates value the same contract provisions differently. This creates the opportunity for mutually-beneficial trades even when there is no prospect of generating additional revenue. For example, syndicates seem to care more about contract duration for the syndication to newspapers than about the merchandising rights to non-blockbuster strips. (NOTE: syndicates obviously care about both, but for a typical 250-newspaper strip most syndicates would fight harder against losing three years of contract duration than they would about losing the merchandising rights. Creators, on the other hand, may be willing to grant three more years in return for retaining the merchandising rights.) Third, the paper provides syndicates and creators with the tools both to better draft and to better interpret contracts. From better drafting, both parties gain because the possible sources of litigation over the meaning of contract terms decline. From better interpretation, the creators gain because they understand the true

meaning and effect of each provision--something that even the few well-represented creators probably do not. For example, the allocation of copyright ownership is not all-or-nothing: in fact, various pieces of a copyright can be carved out in the contract such that the technical "owner" of the copyright has signed away most of its value. In this and other matters, creators need the tools to understand the non-obvious differences in contract language.

The Research Process

The extremely difficult process of conducting research for this paper illustrates the very reason why the paper is important and long overdue.

The first problem is the lack of information available directly from the syndicates. Many of the key syndicates are privately held and, therefore, are not required to provide meaningful public disclosure. The other syndicates are only a small piece of giant public company conglomerates, so the information in public reports is too general to be of significant research value.

The second key problem is that the newspaper comic strip industry is small; it has an annual revenue of less than \$200 million. The industry's small size has contributed to a complete lack of meaningful studies concerning either the law or business of cartooning. The art and cultural influences of cartooning are heavily studied, but these are off-topic.

No reported court cases between creators and syndicates are helpful.

There are two good sources of print information. One is the self-help books which teach aspiring creators both the business and art of cartooning. [Your Career In The Comics](#) by Lee Nordling is one particularly good self-help book. It is designed to help aspiring

creators by presenting the (often-conflicting) thoughts of important industry personnel on a wide range of issues which affect creators, including contract terms and the need for a lawyer or agent. This paper uses Your Career In The Comics extensively. The other important source of information about the syndicate industry is the weekly article in Editor & Publisher Magazine about the syndicate industry written by David Astor.

There is some other miscellaneous written material such as newspaper articles, company reports, magazine articles, and World Wide Web sites, but all of these are of only modest importance even as a group.

Because published information so scarce, most of the research material for this paper comes from two primary sources: personal interviews and creator contracts. The response of syndicate executives and creators to my requests for interviews and contracts differed greatly.

Syndicate executives often were willing to answer specific questions in interviews. Unfortunately, only Universal Press Syndicate sent out its “boilerplate” contract.¹ The other four major comic strip syndicates² and some smaller ones refused, generally citing as a reason one or both of the following: “each contract is different, so we really don’t have a boilerplate contract,” or “we don’t release that information as a matter of policy.” These stated reasons have three fundamental motivations. First, the creators typically sign the offered contracts with very little negotiation, so the syndicates see very little upside to promoting an exchange of information. This paper is dedicated in significant part to

¹ Universal has not been contacted since it sent the contract. None of its executives were interviewed for this paper.

² King Features Syndicate, United Media, Tribune Media Services, and Creators Syndicate,

showing the syndicates how to draft better contracts, but it admittedly took a lot of hard thinking to create material improvements for them that are fair to creators. Second, creators constantly criticize the syndicates about their contracts, which are seen as unfair and possibly illegal. Since I am unknown to the syndicates, they may worry about this paper turning into a “hatchet job.” This fear should subside when syndicate executives actually read the paper, and it is hoped that future versions of the paper will benefit from substantial syndicate input. Third, several syndicates seemed concerned that their contract might look harsher than the other syndicates’ contracts. This concern may or may not be justified, given that the syndicates also differ in the services they provide and the degree to which they are willing to negotiate from their boilerplate. Nevertheless, being seen as relatively harsher is a very real and valid concern in such a small industry where reputation is vital. This may also explain why Universal Press was willing to send out its contract: judging by the contracts from other syndicates reviewed for this paper, Universal has a very reasonable boilerplate. This is especially true after factoring in that they offer a strong syndication capability and an unmatched book publication division.

Unlike the syndicates, the creators were astoundingly forthcoming both with interviews and contracts. Approximately twenty have granted interviews, and a significant number have provided their contracts. This overwhelmingly positive response to discussing private contract issues is surprising for three reasons. First, the creators are petrified of the syndicates. Criticizing the syndicates publicly is seen as similar to an employee in any other industry criticizing his boss in a press interview. Second, most people do not feel comfortable talking about their financial affairs with anyone, especially

a stranger. In particular, asking for someone's contract seems only a couple of small steps removed from asking for his tax return. (In some senses it is worse. There is very little downside to showing a tax return, whereas showing a contract might poison a creator's relationship with his syndicate.) Third, creators are busy people, and interviews mean extra time working for no pay. Despite these good reasons for not helping with this research project, most creators did help. Creators have several motivations for cooperating. First, many and perhaps most creators feel exploited by the syndicates. These creators are frustrated and want to talk. Second, this project is the first serious study of contract issues in the syndication business. Creators hope that the paper's findings may have the strength to motivate positive industry-wide change. Third, many creators hope to learn something from this study which will help them in their future negotiations. By helping with the research, these creators rightly believe that the issues they raise will be addressed.

Although they generally resolved their conflicting feelings about providing help in favor of doing so, creators unanimously demanded anonymity. Thus, all of the information they provided is on background or for unattributed quotation. Further, I have deliberately omitted any references to anecdotes or contract terms that might reveal the creators' identities. In all cases where a story about a specific creator is mentioned, the information was received from another party. These precautions have resulted in some loss of clarity and the weakening of supporting examples, but the changes were necessary. All attributed quotes from creators or executives are from print sources such as Your Career In The Comics by Lee Nordling.

II. The Newspaper Features Syndication Business

Contracts for syndicated creators are heavily influenced by the business environment. This section of the paper discusses that environment in terms of the industry structure and its competitive pressures. The goal of this section is to frame the Chapter III discussion of contract provisions.

If this section seems somewhat long for a law school thesis on drafting contracts, it is because the considerable space devoted to understanding the business of syndication serves three important purposes. First, it assures industry participants that the law-related contract analysis is grounded in their business reality. Second, it provides attorneys with an understanding of the unique business factors affecting syndication contract negotiations. Third, it helps creators to understand the logic behind the syndicates' goals. The creator can then make his own decisions about what's important to him and where the syndicate can afford to be flexible.

Of the three reasons, providing the creator's attorney with industry knowledge may intuitively seem like the least important goal. After all, isn't an attorney capable of advising on a wide range of topics? Not all attorneys are created equal, just as not all graphics artists can perform equally in various specialties: animation, editorial cartooning, comic strips, comic books, caricatures. While a good attorney who understands copyright law, merchandising, and contracts could learn the industry in a relatively short time, creators generally do not earn salaries which support large legal bills, and they cannot

afford for their attorney “to go to school about the industry.”³ Thus, an attorney for a creator must know this industry, or at least have a primer such as this paper.

Another important reason for teaching attorneys is that they actually *create* problems when they offer advice without understanding the industry. Both creators and syndicate executives become frustrated when the attorney offers “canned” advice that may pertain to other entertainment industries, but not to comic strip syndication. According to a leading self-help book for creators,

It is vital that your representative have a working knowledge of the business of newspaper syndication. A contract attorney who is familiar with book publishing or the entertainment industry, but unfamiliar with newspaper syndication, may introduce aspects of the negotiation that are based on his experience but are not germane to syndication. Since this could be intrusive to the negotiations and the retaining of rights that are far more important, it is important to have an informed adviser.⁴

Numerous creators and agents have echoed these sentiments, as the following quotations show.

The fact is there are few if any attorneys who specialize or understand syndication. And there are few agents.

-- David Hendin, Literary Agent (former executive at United Media)⁵

I think there is an absolute lack of good legal advice available in the country today for creators’ syndicate negotiations. I don’t think the average lawyer knows much about syndication, or the personal possessiveness that is involved when a cartoonist creates something that is his property. Attorneys don’t have a feel for what a cartoonist can’t get and should get. They need to know a lot about the newspaper syndication business and about licensing, or have the ability to learn on the job. They need to be strong on negotiations, but not unreasonable, because a syndicate must be left with an incentive.

-- Bil Keane, The Family Circus⁶

³ Anonymous Creator.

⁴ NORDLING, *supra* note 2, at 169-170.

⁵ *Id.* at 169.

⁶ *Id.* at 168.

A creator who can afford an attorney but who cannot find an attorney who understands the industry will probably hire an attorney just to make sure that the contract is well documented. This is a good idea, but the creator should read all of the documents carefully and not assume that the attorney knows what he is doing—he doesn't, he's just doing his best with the limited information he has.

The Industry Structure

Each of the following subsections describes a key feature of the newspaper comic strip syndication industry's structure: blockbusters drive the business, the role of the syndicate, markets and market share, economies of scale, customer demand, vocal readership, syndicates' resources, and increasing value with increased use of the comic property in merchandising.

Blockbusters Drive the Business

The syndication business relies on its five to ten blockbuster comic strips for most of its profit. In particular, these blockbuster comic strips create the licensing opportunities from which one half to three quarters of a syndicates' revenues are derived.⁷ Not surprisingly, each syndicate crafts its contracts with new creators so that the syndicate can capture a sizable amount of the profit should the new feature become a blockbuster.

⁷ Boehne, Richard. Vice President of Shareholder Relations, Scripps Howard Company. Personal Interview. 24 Apr. 1996.

The Role of a Syndicate

The syndicates are perhaps best described as the intermediaries between creators and the two purchasers of cartoon rights: newspapers and licensees. Each creator and each syndicate, however, has its own view about the specifics of the role that syndicates should and do play. The following thoughts of Johnny Hart about Creators Syndicate reflect the ideal.

I don't know about other syndicates, but at my own, if the syndicate was a person he would be a counselor and a lawyer and a mailman and a researcher and an editor and an adviser and a salesman and a diplomat and a go-between and a paymaster and --above all—a good friend, all rolled up into one person.

--Johnny Hart, B.C. and The Wizard of Id⁸

Johnny Hart is a major creator who undoubtedly commands the best contract terms and the most attention. Still, the functions he describes are the ideal services and attitude for a syndicate to offer. A syndicate's functions can also be viewed at a higher level of abstraction; according to the founder and president of Creators Syndicate,

[a] syndicate is a hybrid between a literary agency and a publishing company.

--Richard Newcombe, President of Creators Syndicate⁹

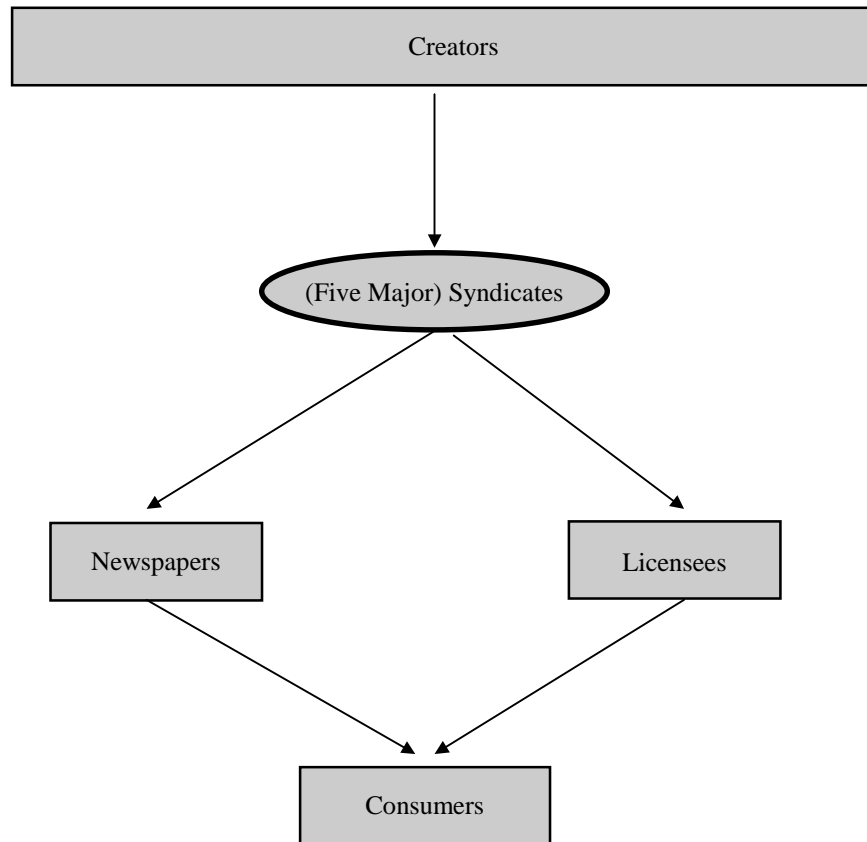
As the quotations imply, the comic strip industry divides itself into four sellers of products and services: creators, syndicates, newspapers, and licensees (which includes merchandisers, manufacturers, advertisers, and book publishers). Thus, the flow of cartoons from creation to consumption looks as follows:

Figure 1

⁸ NORDLING, *supra* note 2, at 72, 73.

⁹ *Id.* at 70.

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Although best described as intermediaries, the syndicates actually drive the entire process because they provide direct services to all three of the other main industry participants: the creators, the newspapers, and the licensees. For the creators, the syndicates handle all of the business aspects associated with developing, marketing, distributing, and administering the comic property. This includes selecting the creators, making sales calls to newspapers, advertising and promotion, selecting among competing bidders, determining price (and all other terms), evaluating licensing opportunities, editorial supervision (often including some training), production, distribution, contracting, art design, billing, collection, accounting, reporting, and some legal services. This set of services can be very expensive, although the appropriate allocation of these costs among

features generates considerable debate, as does how effective the syndicates are at each function. Both issues, and how they affect the design of the contract, are discussed below.

To the newspapers, the syndicates offer good quality products at low cost. The high-quality, low cost offerings result from the scale economies created as the production cost of each comic feature is spread among one hundred or more newspapers. Also, the syndicates are the taskmasters who make sure that the comics are on time and do not contain offensive material.

For the licensees, syndicates generate a national audience for comic properties and thereby build a sufficiently large customer base to generate significant merchandise sales. Licensees also value the fact that syndicates manage the amount and type of exposure comics get so that licensing is mutually reinforcing, or at least not inappropriate (*i.e.* United Media probably will not license Snoopy for tobacco advertising).

Markets and Market Share

Newspaper comics reach a very large number of Americans. Approximately fifteen hundred U.S. newspapers include daily comics pages, and six hundred-odd of these also carry Sunday funnies. Thus, the total potential readership is close to every person who gets a newspaper. Among this potential readership, comics are very popular; they are frequently the second or third most-frequently read section of the newspaper.¹⁰ Many comics are also strong sellers internationally.

Due to a period of consolidation in the 1980's, the top five syndicates control roughly ninety-six percent of the comic features syndication market.

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TABLE 1
SYNDICATE

	Market Share (1)
King Features Syndicate (2)	30%
Universal Press Syndicate	20%
United Media (3)	20%
Tribune Media Services	14%
Creators Syndicate	12%
Other Significant Syndicates	3%
Minor Syndicates & Self-Syndicators	1%
Total	100%

(1) Rough estimates by David Astor, the leading journalist on syndication, based on the limited public information available. Market share is based on the number of features carried and their circulation as of August 1997.

(2) Includes King Features Syndicate, Cowles Syndicate, and North America Syndicate.

(3) Includes United Feature Syndicate and Newspaper Enterprise Association.

These syndicates also sell text features, but those are not part of this study.

Three¹¹ of the five key syndicates are part of major publishing and broadcasting conglomerates. In these cases, the corporate parent owns a syndicate, some newspapers, and often other media businesses. Surprisingly, the syndicates operate entirely separately from the other businesses of the conglomerates. For example, United Media's salespeople must make sales calls on its corporate parent's newspapers. Although one would suspect that a syndicate's salesperson stands a better chance of making a sale to a sister company newspaper, both creators and syndicate executives universally refute such logic.¹² There are, of course, exceptions where senior personnel get involved on a particularly important decision. But the rarity and extreme circumstances of these stories supports rather than

¹⁰ Hatch, Steven. Copy Editor, *Boston Globe*. Telephone Interview. 20 Mar. 1996.

¹¹ King Features Syndicate (The Hearst Corporation), Tribune Media Services (Tribune Company), United Media (Scripps Howard).

¹² Anonymous Creator.

undermines the claim that the syndicates are almost entirely on their own within the conglomerate. Universal Press Syndicate and Creators Syndicate are the two standalone syndicates among the five leaders. They are also the newest major syndicates, started in 1972 and 1987 respectively.

Economies of Scale

The five giant syndicates freeze out most smaller syndicates because there are large scale economies in sales forces, marketing plans, contacts, and mailings.¹³ Furthermore, the large syndicates are able to hire the highest quality editorial and managerial personnel. Also, in the search for the next blockbuster strip, a higher volume of new strips means a better chance of landing a winner, the security to take larger risks, and the power to support a winner that is starting slowly. Finally, when a smaller syndicate such as Chronicle Features discovers a blockbuster, as it did with *The Far Side*, the creator is likely to move to a larger syndicate for the better sales force as soon as the initial contract expires.

On the other hand, once a syndicate reaches the minimum efficient scale of approximately 15% of market share, the scale economies to additional size decline dramatically. In fact, King Features' leading 30% market share may create *diseconomies of scale* because newspaper editors want to diversify their comics in order to prevent any syndicate from developing undue power over the newspaper. Fear of syndicate power is justified; most syndicates provide features on a short term contract, typically 30 days, so newspapers editors in a competitive business environment rightly worry about whether a

¹³ Anonymous Syndicate Executive.

syndicate will continue to supply critical features. Hence, syndicates need to be big enough to get in the newspaper editors' doors but not so big as to scare the editors.

Customer Demand

Comic strips have withstood other forms of entertainment because comic strips are different in two key ways: comics are a *quick read* and comics are *delivered in the newspaper*.

The *quick read* fits many peoples' breakfast or other daily routine and differs markedly from the time commitment of movies, TV shows, books, sports, and video games. In a world of seven-second attention spans, comic strips are a five-second read.

The *delivery through newspapers* means that comics are free and are actively put in front of the consumer every day. On the downside, the delivery through newspapers means that customer demand for newspapers more or less determines the audience for comics readers. This is important, given that newspapers have faced sluggish sales growth for years. (Ancillary markets such as the World Wide Web may become significant but at the moment are very underdeveloped.)

Vocal Readership

Casual observers might expect that all but the blockbuster strips are replaceable at the whim of the editor. In fact, even longstanding minor comics have a vocal readership which complains when newspapers drop the strip. In interviews, several newspaper editors commented on how remarkably loyal comics readers are. Simply moving comics to a different slot on the comics page throws people off enough to provoke complaints, despite the fact that a quick look would reveal the new location of the comic. People even

complain when the newspaper carries strips the readers dislike, regardless of the fact that the readers can just ignore the unwanted strip. An example of intense reader loyalty is animal strips, which may survive even after their quality declines. As Sue Smith of the Dallas Morning News states, “[o]nce an editor buys an animal strip—like a cat or a dog strip—God, it’s hell to get rid of. The readers come out of the woodwork.”¹⁴

Dovetailing with the vocal readership is newspaper editors’ generally high aversion to reader complaints. The result is that the resistance to dropping comics is greater than it theoretically should be. This is great for longstanding minor strips, cult strips, and mediocre comic strips, all of which might otherwise get replaced. New strips, however, suffer because newspaper editors will kill them quickly if they are not superb—the editors often realize that if they do not kill a strip quickly, it will develop a following that makes dropping it harder in later years.

Syndicates’ Resources

Syndicates bring to the contract negotiations an important basket of resources, including a sales network and financial strength. A better understanding of the advantages and limitations of these resources can help both syndicates and creators design effective contracts. What’s more, some of these resources are employed by the syndicate on the creators’ behalf, whereas other resources are primarily used by the syndicates to compete with one another. Often these pro-creator and pro-syndicate resources are the same, such as an effective sales network; in other key areas they actually conflict.

¹⁴ NORDLING, *supra* note 2, at 122.

The syndicates resources can be roughly categorized as tangible and intangible, although the intangible assets dominate.

Tangible Assets

Major syndicates' principal tangible asset is financial strength. This resource is obviously vital considering the high cost of developing, selling, and servicing strips. Small syndicates and self-syndicating creators are at a large disadvantage relative to the major syndicates simply based on differing financial capabilities. Of course, this standard resource provides the major syndicates with little competitive advantage relative to each other.

Intangible Assets

Syndicates' intangible assets include:

1. *Copyrights and Trademarks*: Each syndicate either owns or has a long term contract for each comic strip and its licensing rights. This is by far the syndicates' largest resource. Copyright and trademark law protect both the actual published strips and the characters which appear in them.

Since only *expression* and *characters* are protected by copyright and trademark, many creators try to imitate the *idea* behind the blockbusters. This imitation is usually unsuccessful because a blockbuster's humor flows from its creator's expression and characters rather than his general idea. For example, *Dilbert* is not the only strip about an office setting nor is *Peanuts* the only strip populated with child characters.

2. "*Shelf Space*": Once a comic strip makes it to the comics page for a few years, it develops a following. Newspapers become reluctant to pull it because fans complain.

Hence, comics become almost an annuity. (As mentioned above, newspaper editors try to prevent this entrenchment by dropping new strips very quickly if they do not live up to expectations.)

3. *Accumulated Learning:* Key company personnel are experts in the syndication business.

4. *Company Reputation:* The big syndicates are well known as quality businesses. Because these major syndicates screen new cartoons well and ensure timely delivery, busy newspaper editors are far more likely to receive salespeople from them than from small syndicates or individual creators.

5.: *Relationships:* Another reason newspaper editors will see salespersons from the large syndicates is established business and personal relationships.

6. *Syndicate Power:* Newspapers have come to rely on the syndicates for a significant percentage of their popular text and comic features. This dependence has grown over recent decades as newspapers trim costs by shifting from in-house production to the much cheaper syndicated material. Sometimes a newspaper will have a contract to purchase a certain dollar value of features from a syndicate. This arrangement with major content providers is yet another reason the newspaper editors limit sales calls primarily to the major syndicates.

Increasing Value with Increased Use

Comic strips share with several other entertainment products the remarkable trait that they often increase in value with increased use or time in existence. This pleasant

feature has been expressed in academic research using three slightly different concepts: *capacity*, *durability*, and *specificity*.¹⁵

Capacity is the most obvious of the three and relates to the brand-name enhancement that comes with careful use. Comics such as *Garfield* exemplify this tendency of increased publicity to enhance the recognition and, consequently, value of a comic property. Of course, there is always some risk of overexposure, so the possibility exists of a tension between increasing the number of endorsements and decreasing the value of each endorsement.¹⁶

Durability relates to the strength of the product over time. Many entertainment products possess notoriously short lives and must generate most of their income within weeks or a few months of initial release. Movies are a particularly extreme example where the first month at the domestic box office accounts for a large percentage of revenue. Comic strips stand apart from these fleeting products; people often become emotionally attached to their favorite comic strips and will read them for life.¹⁷ For an example of this longevity, one need only look at the top selling features.¹⁸

TABLE 2: Top Selling Newspaper Comic Features

Rank	Feature	Newspapers	Start	Age	Syndicate
1	Peanuts	2,600	1950	47	United
2	Garfield	2,550	1978	19	Universal
3	Blondie	2,000	1930	67	King
4	For Better or Worse	1,900	1979	18	United
5	Beetle Bailey	1,800	1950	47	King

¹⁵ DAVID J. COLLIS AND CYNTHIA A. MONTGOMERY, *CORPORATE STRATEGY: RESOURCES AND THE SCOPE OF THE FIRM* Chapter 2 (1996).

¹⁶ Anonymous Creator.

¹⁷ Of course, a single installment of a newspaper comic strip usually has a duration of about one day. Single day's installments are not relevant because the true product is the stream of comics.

¹⁸ Astor, David. *Journalist, Editor & Publisher*. Several telephone interviews.

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Rank	Feature	Newspapers	Start	Age	Syndicate
6	Hagar The Horrible	1,800	1973	24	King
7	Dilbert	1,700	1989	8	United
8	Doonesbury	1,400	1970	27	Universal
9	Andy Capp	1,300	1963	34	NAS (King)
10	The Family Circus	1,300	1960	37	King
11	Cathy	1,250	1976	21	Universal
12	B.C.	1,200	1957	40	Creators
13	Wizard of Id	1,200	1964	33	Creators
14	Frank and Ernest	1,200	1972	25	NEA (United)
15	The Born Loser	1,200	1965	32	NEA (United)
16	Dennis the Menace	1,000	1951	46	NAS (King)
17	Hi and Lois	1,000	1954	43	King
18	Shoe	1,000	1977	20	Tribune
19	Barney Google and Snuffy Smith	900	1919	78	King
20	Foxtrot	800	1988	9	Universal

No strip started in the 1990s made the list, and only two are there from the 1980's.¹⁹ The intense loyalty of comics readers is the most important explanation for the continuation of many of these old strips which are well past their prime, and not as funny as many newer-but-unestablished strips. Moreover, while a strip may seemingly have the opportunity to last for generations, the creators themselves may burn out as has happened with some of the most popular strips from the 1980's: *The Far Side*, *Calvin & Hobbes*, *Bloom County/Outland*. A downside is that, although high *durability* may benefit the owners of successful comics, high *durability* creates problems such as increasing the difficulty fresh talent faces in landing space on the comics page. As a result, the comics page as a whole tends to become stale.²⁰

¹⁹ If the 1980's blockbusters *The Far Side*, *Bloom County*, and *Calvin & Hobbes* were still in production, the total of 1980s strips would rise by two after *Foxtrot* dropped out.

²⁰ Turek, Sonja. *Boston Herald*. Telephone Interview. 22 Mar. 1996.

Specificity refers to ease with which a product can be leveraged out of its original form and into other products. Comic strips vary in subject matter and characters, but in general benefit from a low specificity. The multitude of licensing opportunities for popular strips is a good example of the low specificity of comic characters. For example, Garfield endorses cat food, coffee mugs, stuffed dolls, greeting cards, and endless other goods.

Overall, the capacity, durability, and specificity of comic strips show very positive traits as business products. These strongly affect contract drafting because the allocation of rights between the syndicate and creator determines both parties' compensation and incentives. If this paper is to succeed in suggesting new contract terms which on average make both parties better off, it will be in considerable part because the realignment of rights encourages better use of the favorable features of comic strips' capacity, durability, and specificity.

Why is the Syndication Business So Competitive?

The preceding analysis focuses on the largely neutral or positive structural traits of the comic strip syndication industry. Unfortunately, the syndicate business suffers from two major problems: 1) the limitations imposed by the newspapers and 2) the supply of creators.

Limitations Imposed by the Newspapers

The syndicates are squeezed both by the ways in which the newspaper industry is changing and by the ways it is not. For years the newspapers have faced stagnant sales volume and rising costs. A large portion of the rising cost is attributable to price increases

for newsprint. As a result, newspapers have continuously cut the size of comic strips in order to fit more features into the same space. Other responses include actually shrinking the space devoted to comics, especially the Sunday funnies.

The Sunday is almost always printed out of house. It has a printing contract. We're buying the newsprint retail, basically. It's extremely expensive and going up, so when a publisher looks for a place to cut, Sunday comics is the first place they cut.

Jane Amari, The Kansas City Star²¹

What's worse, whereas major cities typically had numerous competing newspapers fifty or a hundred years ago, now but one or two survive.²² With both the budget and the space for comic strips declining in real terms, and with the total number of major papers seeking strips declining, the syndicates face extreme pressure in their primary market. At best, the syndicates compete in a zero-sum game for slots on the comic page. In many respects, this competition is similar to the fight for "shelf space" in grocery and retail stores.

This situation might be resolved if the newspapers raised revenue through advertising in the comics section. For legitimate formatting and administrative reasons, as well as for less legitimate historical and visceral reasons, the funny pages remain non-revenue generating Monday through Saturday. Of course, the funny pages are very popular and increase newspaper sales. But these positive effects are difficult to measure directly, whereas the costs of producing a comics page are quite well defined. Thus, many newspapers view comics as a cost item.

Pundits also regularly make the argument that editors of high quality newspapers resent "lowbrow" "kid's entertainment" stuck in the middle of their fine paper. For this or

²¹ NORDLING, *supra* note 2, at 69.

other reasons, neither The New York Times nor The Wall Street Journal, the two most highly-respected (and serious) newspapers in the country, offer a comic page. At newspapers which have comics, many editors simply choose to ignore and under-budget them.

Newspapers further restrict the flexibility of syndicates by content control. Each newspaper picks the cartoons it wants from the portfolios offered by the various syndicates. Consequently, the comics page has traditionally reflected the tastes and lifestyles of the older middle class that made up the newspapers' target market. The assumption by most editors is that the funny pages should be an oasis from the harsh reality carried in the newspaper's other sections. Readers, whether as a result of being conditioned to expect the "family" orientation or because of an innate desire for it, generally support the editors' choice. *Doonesbury*, and the few similar comics which address controversial topics take an inordinate amount of criticism for expressing opinions.²³

Newspapers' new desire to appeal to a broader range of ethnic groups and the 20-35 year old age category has led to some shift in the comic product mix, but not much. Comics which appeal to other demographic groups still reflect the same middle class family values and issues as most other strips.

²² BILL WATTERSON, *THE CALVIN & HOBBS TENTH ANNIVERSARY BOOK 7* (1995).

²³ *Doonesbury* was listed as the least favorite strip out of forty two in the 1997 New York Daily News Comics Survey reader's poll. It was also listed as the seventeenth favorite strip in the same poll. This is the largest reader survey in the nation. Readers were asked to list three "Favorites" and three "Least Favorites." The final listing was determined by counting the positives and subtracting the negatives. Only features which run in the New York Daily News were included. *1997 New York Daily News Comics Survey*, New York Daily News, Mar. 30, 1997.

This homogeneity of strips and tame subject matter perpetuates itself because it dictates the type of new comic that the syndicates seek: creators outside the mold stand no chance, even when they are more talented than existing creators.

Overall, the limitations of selling to newspapers show that there are substantial downsides to reliance on newspapers.

The Problem of the Supply of Creators

The problem of the supply of creators is that there is an overabundance of pretty good ones but very few blockbuster-level stars. Each year more than 5,000 creators submit their portfolios to the five major syndicates, and as many as 500 are recognized to be of pretty good quality. Because syndicates face high costs for launching each strip and compete for limited space on the funny pages, there are at most twenty syndication openings annually among the five major syndicates. As a result, at best four percent of qualified creators (and 0.4% of all hopefuls) get contracts. Of the twenty new comics, only five or so survive five years. Perhaps three or four each decade become blockbusters. This brutal numbers game is frustrating and a great waste of time for both syndicates and aspiring creators. Also, the next section shows the enormous impact that this difficult business environment has on the drafting of syndicate contract contracts with unknown creators.

The scarcity of blockbuster creators is exacerbated by two structural problems. First, since it is very difficult to tell at the outset which strip will be a blockbuster, the fact that very few new creators get a syndication deal means that many strips which would have been blockbusters never get a chance. Second, high quality strips that the syndicate

executives believe would be popular with the public are never signed because the syndicates feel that the newspaper editors will not buy risky or different material.

The Cost of Launching a Feature

There are actually two ways to measure the cost to a syndicate of launching a feature: the financial cost and the opportunity cost. The financial cost is the dollars and time spent on developing and promoting the comic. Launching a new strip requires a significant commitment of resources from the syndicate in relation to the immediate prospect for profit. The key expense is making sales. A syndicate's sales staff makes three or four calls annually on each major client, and during these calls the salesperson highlights two or three new products. These sales calls reportedly average \$1,000 for time and expenses, so keeping 4-8 salesmen on the road is extremely expensive.²⁴

The opportunity cost that syndicates face is using one of the three or so slots each major syndicate has on its annual release schedule. Syndicates know that only one or two of their strips each decade will become blockbusters, yet each launch carries with it the hope that this will be that special strip. Even if the new comic is a modest success, the syndicate editors must wonder whether a different pick from the pile of 5,000 submissions would have been a bigger success or even a blockbuster. Although it seems somewhat less than credible, several interviewees stated that syndicates often select strips without focusing on the possibility of creating a blockbuster and spin-off merchandise.

III. THE CONTRACT

²⁴ Anonymous Syndicate Executive.

The following contract analysis walks the reader through the November 1996 version of Universal Press Syndicate's boilerplate contract, which is reproduced in Appendix I and should be read now in its entirety as an overview. This contract is compared and contrasted to signed contracts sent by creators from Universal and other syndicates. Appendix II contains a sample "fair" contract which incorporates this paper's recommendations.

The Calvin and Hobbes Battle: An Illustration of Contract Disagreements

Calvin and Hobbes creator Bill Watterson wrote a fascinating essay²⁵ examining his contract battle with Universal Press Syndicate, the same syndicate whose boilerplate contract this paper analyzes. As an introduction to the operation of syndication contracts, this essay serves the purpose of showing what happens when the syndicate and the creator fight in later years over contract interpretation or allocation of rights. Such a case study highlights the important issues at stake during the negotiation and drafting of the contract. It also provides a feel for the emotions involved.

Watterson's perspective is particularly fascinating because he grew from a typical aspiring creator into a veteran superstar who was locked into an unfavorable long term contract. Moreover, this contract did more than give the syndicate huge profits: its merchandising provision offended Watterson's need for artistic control. Consequently, the case of the *Calvin and Hobbes* raises succinctly many of the key issues that must be addressed in drafting any syndicate contract: bargaining power, fairness, artistic control, business pressures, enforcement, and power from non-contract sources. It is also one of the

rare instances of a creator going public with a detailed account of his dispute with his syndicate.

Unfortunately, the more popular Calvin and Hobbes became, the less control I had over its fate. I was presented with licensing possibilities before the strip was even a year old, and the pressure to capitalize on its success mounted from then on....

Undermining my position, I had signed a contract giving my syndicate all exploitation rights to Calvin and Hobbes into the next century. Because it is virtually impossible to get into daily newspapers without a syndicate, it is standard practice for syndicates to use their superior bargaining position to demand rights they neither need nor deserve when contracting with unknown cartoonists. The cartoonist has few alternatives to the syndicate's terms: he can take his work elsewhere on the unlikely chance that a different syndicate would be more inclined to offer concessions, he can self-syndicate and attempt to attract the interest of newspapers without the benefit of reputation or contacts, or he can go back home and find some other job....

I had no legal recourse to stop the syndicate from licensing. The syndicate preferred to have my cooperation, but my approval was by no means necessary....

By the strip's fifth year, the debate had gone as far as it could possibly go, and I prepared to quit.... My contract was so one-sided that quitting would have allowed Universal to replace me with hired writers and artists and license my creation anyway, but at this point, the syndicate agreed to renegotiate my contract. The exploitation rights to the strip were returned to me, and I will not license Calvin and Hobbes.

As mentioned above, these excerpts raise the issues of bargaining power, fairness, artistic control, business pressures, enforcement, and power from non-contractual sources. These issues are relevant to all creator contracts.

²⁵ WATTERSON, *supra* note 25, at 11, 12.

Initial Thoughts

The first thing to notice about syndicate contracts is that they are always written by the syndicate. This makes sense because the syndicates know the business best and can spread the drafting costs by using the same template with all creators. Still, as noted throughout this section, the creator must be aware of the meaning behind numerous word choices. Possibly even more important than analyzing what's in syndicate contracts, this paper notes the many instances of the syndicates leaving out important issues which work against them; even a sharp creator who understands the legal impact of each provision in his syndicate contract may well miss subtle issues which never make it into the contract.

The suggestions in this paper may appear unrealistically detailed. Many creators might state that they lack both the negotiating strength (and the money for an attorney) to revise boilerplate contracts so substantially. With regard to the creator affording the time of an attorney to negotiate the contract, the hope is that this paper is thorough enough to permit creators to handle many issues personally, as well as to know when legal advice is truly needed. With regard to negotiating strength, it is certainly true that no creator could fully implement these suggestions. Nor is that this paper's goal. This paper covers all issues with the understanding that creators with modest bargaining power may choose to use it to get concessions on different issues, so all issues need to be covered. Further, thorough analysis improves the chance that the different possible contract terms of each major syndicate will be addressed. Finally, full implementation of this contract's suggestions might make the contract unfair to the syndicate in some cases.

Italicized text indicates an excerpt from the Universal contract. All sections of the contract are in precisely the same order as in the actual contract, but these sections are often cut into smaller pieces in order to isolate specific legal issues. Underlined text indicates suggested alternative wording. The contract refers to the creator as “Producer” and Universal Press Syndicate as “Syndicate.” The Universal contract was compared to that of many other syndicates. Material differences among the syndicates are discussed in detail.

Section 1: Preparation of the Feature

The first provision of the contract is an innocuous identification of the feature.

1) PREPARATION OF THE FEATURE. *The Producer shall prepare and furnish to the Syndicate each week during the term of this agreement, at such time prior to the Syndicate’s date of release as is specified in Section 12 or otherwise as the Syndicate may reasonably specify from time to time, the following material (which, with its drawings, ideas, subject matter, format, continuity, plots, themes, characters and characterizations, is sometimes referred to as the “Feature):*

The reason Universal seems to over-define the feature as anything conceivably related to the strip is so that it is clear that the agreement encompasses all rights. Otherwise, a creator might feel that certain tangential elements of the strip fall outside the contract, such as spin-off characters. This is the first example of the syndicate using the contract not only to allocate rights, but also to explain them to the creators.

The next provision addresses concerns of both the syndicate executive and newspaper editors; they worry about either a drop in the quality of the cartoon or a change in its subject matter.

The Producer shall maintain for the Feature a quality of work consistent with that previously submitted and with the Syndicate's reasonable requirements.

This is the first of several provisions through which the syndicate seeks to exert some editorial control. The syndicate can point to the clause in order to browbeat the creator into working harder or modifying the subject matter. In more extreme cases, if the syndicate has the right to have other creators prepare the strip (see Section 4), then the syndicate could use the two provisions together to bypass the creator. Syndicates are unlikely to take such dramatic anti-creator measures, but it is possible and may be threatened if relations sour. If the issue were to go to court, proving either a drop in quality or the reasonableness of a syndicate's requirements would be an extremely difficult factual investigation. On the other hand, even successful creators would be hard pressed to defend a court action against a wealthy syndicate. Overall, this provision sets the tone for the type and quality of work a creator should produce, but it would be employed only as a last-ditch weapon.

The next provision recognizes that the creator and the syndicate are likely to have a vested interest in the title of a feature. From a business standpoint, the title of a comic is like a brand name or trademark. From an artistic standpoint, titles may be a part of the creator's artistic expression. The following provision acknowledges the "mutual" interest of both parties.

The title of the Feature may be changed by mutual agreement of the Producer and the Syndicate.

Other syndicates merely require that the syndicate consult with the creator but do not seem to give the creator veto power. Adding the word "only" to the Universal contract language would clarify that the consent of both parties is necessary to make a title change.

The title of the Feature may be changed only by mutual agreement of the Producer and the Syndicate.

This type of modification may seem of very small importance, and it is. It is also costless to make the clarification, so there is no reason not to be clear.

The next provision addresses ownership of the original artwork drawn by the creator. In recent years, sales of original comic strip art have begun to occur in art galleries and by special request. The price typically ranges from \$100 to \$500, so the issue is nontrivial. Here, Universal releases any claim to these originals.

The original of any drawing delivered by the Producer to the Syndicate shall be the property of the Producer, and, after any such drawing has served the Syndicate's purposes, it shall be returned to the Producer. No drawing so returned shall be published or otherwise used in any way or form which conflicts with the Syndicate's rights under this agreement, and the return of any such drawing shall not in any way affect such rights.

Many syndicates follow Universal's lead, recognizing that creators have a fairly strong moral claim to their actual art. But the practice is not industry-wide. Some syndicates reportedly still retain over fifty percent of originals in typical contracts.²⁶ These originals are used as promotional gifts to newspaper editors and others.

The only significant issue with the Universal language is that a new clause should clarify that the creator retains the right to possession at all times when his method of delivering the feature is electronic rather than through the mailing of original art.

Although one might be inclined to quibble over the lack of precision in the language "*after any such drawing has served the Syndicate's purpose,*" this will likely become a negligible issue as electronic submission becomes standard.

After incorporating the electronic submission change, the paragraph would read as follows:

The original of any drawing delivered by the Producer to the Syndicate shall be the property of the Producer, and, after any such drawing has served the Syndicate's purposes, it shall be returned to the Producer. In the event that the Producer makes electronic delivery of the Feature which is satisfactory to the Syndicate, the Producer shall be entitled to continuous possession of his original artwork. No drawing so returned or retained shall be published or otherwise used in any way or form which conflicts with the Syndicate's rights under this agreement, and the return or retention of any such drawing shall not in any way affect such rights.

Overall, the negotiation over ownership of original artwork ranks as of moderate importance. Some creators and syndicates may feel more or less strongly about the issue, but on average the creator appears to have an unusually strong moral claim to the ownership of his art.

It is interesting to note that Universal includes a sentence to state that creator's ownership of the original artwork does not affect the transfer of any other rights to the Syndicate. This is an obvious attempt to educate the creators as to the operation of copyright law, which states that ownership of original art does not give the holder the right to publish reproductions. This is effective draftsmanship. By stating the law, the syndicate prevents any later misunderstandings with the creator.

Section 2: Syndication

This provision, which fixes the duty owed by the syndicate to the creator, is one of the most important parts of the contract.

²⁶ Anonymous Creator.

2) SYNDICATION. The Syndicate shall, in a manner consistent with customary practice in the conduct of its business, use its best efforts to sell the Feature to newspapers (both print and electronic) and shall take such other action, if any, to exploit the Feature as the Syndicate in its sole discretion deems appropriate.

Many serious creator complaints boil down to a claim that the syndicate is not properly managing the feature with regard to either syndication sales or licensing.

The exact duty owed by the syndicates to creators varies among the syndicate contracts. A few syndicates grant an unqualified “best efforts” clause. On the other end of the spectrum, many syndicates promise only “reasonable effort.” Universal’s wording is substantially more complex; it is divided into a section regarding syndication sales and a section regarding everything else, such as licensing and reprint rights sales.

The first half of the Universal sentence addresses syndication sales. The difference from the other syndicates is that Universal ties its duty to the “*customary practice in the conduct of its business.*” The first ambiguity is whether Universal means the customary practice of Universal or the customary practice of the syndicate industry. This is probably an unimportant question given that the syndicates all operate in a roughly similar fashion and, in either case, the creator is prevented from demanding special attention. The important point here is that Universal recognizes that a “best efforts” clause can have real teeth. A good lawyer for a creator could make a strong argument for judging the syndicate’s efforts on some objective scale which is stricter than common syndicate industry practice. Thus, Universal wisely inserts language which prevents such claims. Universal’s “best efforts” clause actually means: “The Syndicate shall sell the Feature to

newspapers (both print and electronic) in a manner consistent with good practice in the syndication industry.”

The second half of the Universal sentence is even more interesting because it disavows any duty for work other than newspaper syndication, such as licensing and reprint rights sales. To someone unfamiliar with the industry this denial of any standard of duty may seem surprising, but to insiders it makes sense based on the way the syndicates operate. A few passages from interviews with creators explain this.

UPS [Universal Press Syndicate] is principally a syndicate (with an extremely small licensing dept that's headed by the VP of syndication sales) and considers licensing something that flows effortlessly from the success of syndication.²⁷

UPS has flatly stated that they are first and foremost a syndicate. Licensing is merely 'gravy'.²⁸

[T]he syndicate only wants the money. They are not in the t-shirt, coffee cup, calendar, or pencil box business. They have very little to do with the actual selling of licensed product when there is an outside arrangement. Traditionally, syndicates do a very poor job of selling anything beyond features... A syndicate's main responsibility is to sell features to newspapers.

That's what they do, or do not do... As I said before, the syndicate is an agent, i.e., the less they do, the better they like it.²⁹

The syndicates answer the telephone. They would have a hard time showing any effort [in licensing], much less best efforts.³⁰

Universal recognizes that its strength and interest lies in selling to newspapers and not in merchandising. The question is whether the creator should be granting exclusive

²⁷ Anonymous Creator.

²⁸ Anonymous Creator.

²⁹ Anonymous Creator.

³⁰ Anonymous Creator.

merchandising rights to the syndicate if the syndicate does not intend to make “best efforts” use of them.

The next provision addresses the syndicate’s main function of selling to newspapers, so is less controversial.

The Syndicate shall have absolute discretion in selecting purchasers of any rights in the Feature and in determining prices and all other terms of sale in any media.

All syndicate contracts have similar language regarding the syndication of their features. It make sense that the syndicates feel strongly that their creators should not be second-guessing the syndicates or pestering them over the details of each sale. Many creators actually like the fact that they get to do the “fun” part of creating the strips and can pass off the business details to the experts—the syndicates.

However, Universal’s contract language goes one step further into more controversial territory. The contract also allows the syndicate to license any merchandise without creator approval. With the notable exception of Bill Watterson, virtually all creators want the revenue generated by license contracts. However, like Watterson, most creators feel attached to their creations and want approval rights to ensure the integrity of their art. Some syndicates grant such rights on the condition that approval not be unreasonably withheld. Even syndicates which typically have absolute rights to license are often sensitive to issue of artistic control.³¹ A revised provision which is fair to both parties might look like this:

The Syndicate shall have absolute discretion in selecting newspapers and other purchasers of the Feature and in determining prices and all other

³¹ Anonymous Creator.

terms of sale. The Syndicate may license or sell subsidiary rights in the feature, such as merchandise, provided that the Producer approves or fails to disapprove the proposed contract within ten (10) business days. Producer shall not unreasonably withhold such approval.

The syndicates may not want the annoyance of having to ask permission of creators for each licensing deal, but at least they understand the creator's position and are less likely to be offended by this request than by others.

The syndicate also wishes free transferability of its rights in the event that another party can perform the job better or will pay highly for the opportunity.

All or any part of the Syndicate's rights under this agreement may be delegated or redelegated from time to time to any sales, syndication, publication or other agency or firm, each of which may act with respect to the delegated right in its or their own name or names.

This free transferability provision may help the creator. For example, smaller syndicates sometimes enter a sales agreement with a large syndicate that has a better sales force, as was the case recently with Chronicle Features before it was sold. On the other hand, the creator may have entered into the contract with the particular syndicate because he liked its personnel, capabilities, or atmosphere. Subcontracting by the syndicate may ruin any or all of these.

In this era of corporate restructuring and outsourcing, the syndicates are likely to feel very strongly about such provisions. Granting the creator any right of approval would create barriers to both the sale and the most efficient operation of the syndicate. Very few creators have the power to negotiate such a concession, and those that do should probably save their bargaining chips for other issues. The best creator remedy for ownership or

personnel problems is to own his copyright and have a short enough term on the contract to permit escape within a reasonable number of years.

Another issue with the clause is that the specific legal terminology used in Universal's provision does not observe the formal distinction between *delegation* and *assignment*: the contract permits the syndicate to "delegate" its "rights." If the contract used precise legal terminology, it would allow the syndicate to *delegate* its *duties* on one hand and *assign* its *rights* on the other. A leading contracts treatise explains:

At the outset, it is vital to distinguish the *assignment of rights* from the *delegation of performance of duties*. An obligee's transfer of a contract right is known as an *assignment* of the right. By an assignment, the obligee as *assignor* (B) transfers to an *assignee* (C) a right that the assignor has against an *obligor* (A). An obligor's empowering of another to perform the obligor's duty is known as a *delegation* of the performance of that duty. By a delegation, the obligor as *delegating party* (B) empowers a *delegate* (C) to perform a duty that the delegating party owes to an *obligee* (A).³²

Despite the fact that the language in the Universal contract does not distinguish between rights and duties, the parties' intention is otherwise clear. From the context of the contract provision, the language obviously grants the syndicate the right to use third parties to carry out portions of the syndicate's work. Thus, the syndicate is actually allowed to *delegate* any of its *duties*. Because the intent is clear, courts will ignore the imprecision:

No particular language is necessary for an effective delegation of performance. Thus, the parties may not observe the distinction between the terms *assign* and *delegate*, and language by which one purports to "assign" one's duties may suffice to effect a delegation.³³

³² E. ALLAN FARNSWORTH, CONTRACTS § 11.1 at 778 (2d ed. 1990) (citations omitted).

³³ *Id.* at § 11.10 at 824 (citation omitted).

Syndication contracts differ somewhat from general commercial contracts in that in order for the syndicate to have a third party to carry out most of its duties to the creator, the third party must also own the related contract rights given by the creator. This odd circumstance arises because all rights given by the creator have an associated duty to pay the creator fifty percent of what is earned through their sale or license. This means that the syndicate must be able to *assign* its *rights* as well as *delegate* its duties.

Under common law, this discussion and the provision are irrelevant since the syndicate will automatically have the right to transfer. Since it is costless, the syndicates should confirm this with a variation on the Universal wording:

The Syndicate may assign all or any part of its rights and may delegate all or any part of its duties under this agreement from time to time to any sales, syndication, publication or other agency or firm. Each such agency or firm may act with respect to the assigned rights and delegated duties in its or their own name or names.

This provision prevents the creator from claiming under common law that the syndicate's personal performance of the contract was a material element of the deal. As importantly, this provision provides notice to the creator as to what common law permits unless overridden by a provision in the contract. This prevents misunderstandings. From that standpoint, the provision reflects a key theme of this paper, which is that the contract can be used to educate the parties about their rights and duties. Such knowledge improves efficiency and fairness by avoiding unnecessary conflicts that consume resources and leave at least one party disappointed.

The flip side of the syndicate's right to delegate is that the syndicate remains responsible for any delegated duties unless the creator actually releases the syndicate. The following treatise passage explains:

Even an effective delegation does not relieve the delegating party (B) of its duty; that requires either consent by the obligee (A) or performance by the delegate (C). As the Uniform Commercial Code puts it, "No delegation of performance relieves the party delegating of any duty to perform or any liability for breach." While an obligee can rid itself of a right merely by making an effective assignment, an obligor cannot rid itself of a duty merely by making an effective delegation. If obligors could do so, they could discharge their duties simply by finding obliging insolvents to whom performance could be delegated.³⁴

Thus, if the third party exercising the syndicate's rights or servicing the syndicate's duties violates the creator-syndicate contract, the syndicate remains liable to the creator.

Section 3: Rights Granted Syndicate

This provision allocates ownership of the copyright and defines the scope of the syndicate's rights. This is the heart of the contract.

3) RIGHTS GRANTED SYNDICATE. *(a) The Syndicate shall have, and the Producer hereby transfers and conveys to the Syndicate, all copyright, proprietary and exploitation rights whatsoever in the Feature produced for the Syndicate by the Producer during the term of this agreement, including but not limited to the following exclusive rights: to reproduce the Feature in copies or phonorecords; to prepare derivative works based on the Feature; to distribute copies or phonorecords of the Feature to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform the Feature publicly; to display the Feature publicly; to trademark any name or title used in connection with any services rendered or Feature prepared or furnished under this agreement; to copyright any such Feature and to secure any renewal of copyright permitted by law; to communicate the Feature by radio broadcasting, rebroadcasting, wired radio, television, cable, telephone, satellite or by any*

³⁴ *Id.* (internal citation omitted).

other methods or means (now or hereafter existing) of transmitting or delivering ideas, sounds, words, images or pictures; and to vend and otherwise dispose of, and to otherwise exercise with reference to said Feature any and all rights and privileges now and [sic] in existence or which may hereafter accrue. As used in this Section 3(a), the term "Feature" includes any derivative work based on the Feature.

The simple interpretation of the provision is that the syndicate is allowed to hold the copyright and exercise it in any way during the course of the contract, although the ownership reverts to the creator at the termination of the contract.

For most creators, ownership of the copyright to their comic is the single most important part of the contract. Retention of the copyright by the creator is now common, whereas as ten years ago it was very rare.

Today the pendulum has swung in favor of talent owning his or her work. I don't think that bothers the syndicates too much now. In the old days syndicates demanded ownership of everything, including the ownership of the feature even after the contract expired or the talent died.

--Robert S. Reed, Former President, Chairman
and CEO, Tribune Media Services³⁵

Creators must realize that this is a major concession by the syndicates. Not all syndicates may offer copyright ownership in their boilerplate contracts. Further, syndicates which grant copyright ownership prefer to hold it in their name during the contract term, subject to the agreement to return the copyright to the creator at the termination of the contract.

The usual argument goes as follows:

During the contract period it is easier and less expensive to let the syndicate take the copyrights and trademarks.

--Robert S. Reed, Former President, Chairman
and CEO, Tribune Media Services³⁶

³⁵ NORDLING, *supra* note 2, at 156.

³⁶ *Id.*

This is not a strong argument. Since works are automatically copyrighted upon being fixed in a tangible form, the copyright burden is nonexistent. Furthermore, a trademark filing is usually trivial. The real issue is the ownership of exclusive rights to exploit the feature during the term of the contract. The syndicate has these key rights, and ownership of the copyright in the syndicate name is one more way for the syndicate to impress that fact upon creators. Otherwise, creators unfamiliar with copyright law might believe that holding the shell of the copyright somehow reserves rights that were signed away in the contract. For example, a creator who owns both the original art and the shell of the copyright might feel that he could republish that art.

The next provision states that the syndicate may hire other companies to perform services the syndicate owes to the creator.

The Syndicate may, at its option, appoint an agent or agents to exploit one or more of the rights so granted.

It is unclear how this provision differs from the delegation of duties and assignment of rights permitted under Section 2. It is likely just a redundancy, which can be beneficial if it reinforces an unclear point.

Even when the syndicate has broad rights by contract, potential licensees often feel nervous about dealing with just the syndicate. Therefore, the syndicate inserts the following provision in order to ensure the marketability of its rights.

Whenever requested by the Syndicate, the Producer shall execute any instruments which in the judgment of the Syndicate may be necessary or desirable to secure to the Syndicate the rights granted by the agreement.

This is a reasonable provision. Potential licensees may request that the creator also be a party to the agreement even if the syndicate claims to have full legal authority. This

prudent risk management protects the licensee from becoming a party to any later fight between the syndicate and the creator. Moreover, it assures the licensee that its rights will survive a termination of the syndicate/creator contract.

However, creators should consider certain risks associated with this provision. Any grant by the syndicate of a license which exceeds its authority will become valid if the creator also signs it. A creator who expects substantial licensing may wish to insert a clause which indemnifies him in the event that the license exceeds the syndicate's authority. Such a provision might read:

Whenever requested by the Syndicate, the Producer shall execute any instruments which in the judgment of the Syndicate may be necessary or desirable to secure to the Syndicate the rights granted by the agreement. In the event that any such instruments grant rights in excess of those contemplated by this agreement, the Syndicate shall indemnify the Producer for any losses he may suffer.

If the syndicate will not agree to this modification, the syndicate is essentially retaining an option to violate the agreement at will.

The next portion of the contract addresses the fact that publicizing the creator can be an important part of selling the feature. Scott Adams, for example, has been the subject of many newspaper articles. Such exposure generates excitement about the product and may lure readers to the funnies pages in general. Most syndicates include a provision to facilitate such publicity.

(b) The Syndicate, and its subscribers, agents and appointees, licensees and successors shall have the right to use the Producer's name, picture (color and black-and-white, provided by the Producer) and biography for promotion, trade and advertising purposes in connection with the rights granted the Syndicate hereunder.

Because of the potential importance of publicity to a creator's career, the creator may wish to ask for final approval rights over his biography.

A few creators dislike some or all aspects of publicity. If this is an issue, the creator ought to seek the deletion or modification of this provision. Syndicates are unlikely to be particularly stubborn on this minor point.

Section 4: Editing: Failure To Deliver

The right of the syndicate to edit or reject a creator's cartoons occasionally flares into a source of significant tension. Syndicates head off many arguments by including an unambiguous editorial provision.

4) EDITING: FAILURE TO DELIVER. The Syndicate shall have the general editorial supervision of the Feature, but the Syndicate shall make no substantive changes to the Feature without the Producer's prior approval. If the Syndicate determines that a particular installment of the Feature is not suitable for publication, it shall return it to the Producer for revision and resubmission.

All syndicates require a similar provision. The provision is balanced in the sense that the syndicate is prevented from changing the comic, but is not under any obligation to run a comic the syndicate cannot support.

Many syndicates feel they need to be the final word...This feeling extends from two considerations. Most syndicates want to make certain "inappropriate" editorial content will not jeopardize sales. Also since the syndicates are distributors of the material, they feel it needs to be material they can support and defend.

--Lee Nordling³⁷

A third reason for the provision is that if the syndicate releases an objectionable comic, then the newspapers must choose between the unattractive options of running a

questionable strip or omitting it for the day. Newspaper editors would rightly feel unfairly burdened by such problems and may be less inclined to purchase other features from a syndicate that cannot control quality. This would unfairly hurt the other creators in the syndicate.

Some creators are very possessive about their cartoons and do not want anyone touching their art. These creators need to define what they consider “substantive” changes so that there is no misunderstanding with the syndicate. A number of creators interviewed for this paper objected strongly to re-sizing and colorization of their work. Such issues will all be resolved in favor of the syndicate unless very specific provisions are in place.

The next section addresses deadlines. Many creators interviewed for this paper stated that deadlines are what motivates them.³⁸ The following provision provides the penalty for missing a deadline.

Upon the inability (whether due to disability, death or otherwise) or the failure of the Producer to submit the Feature, suitable for publication, as determined by the Syndicate, within such time in advance of the date of publication as the Syndicate specifies pursuant to Section 1 or Section 12, the Syndicate shall have the right, in addition to any other rights and remedies hereunder (a) in the case of late submission, to deduct from the amounts payable to Producer under this agreement all costs and expenses occasioned by such late submission (including without limitation freight, mailing and handling and overtime of personnel),

Not only is it fair to permit the syndicate to charge back additional costs, but also the creator benefits in that it increases his incentive to stay on schedule. On the other hand, there have been some horror stories, such as enormous overnight delivery bills of

³⁷ *Id.* at 160.

³⁸ Anonymous Creators.

questionable necessity.³⁹ The possibility of unfair charges can be tempered with a couple of extra provisions. First, since a portion of the syndicate's job is effective editing, a problem arising from a failure in the syndicate's editing process should be the syndicate's responsibility. Second, expedited delivery charges to a large number of newspapers could seriously hurt a creator financially, so such charges must be truly necessary. Many business routinely overuse such services, and there would certainly be a strong inclination to do so in the event of a late change that the syndicate was not paying for. Reasonable language might look as follows:

(a) in the case of late submission, to deduct from the amounts payable to Producer under this agreement all costs and expenses occasioned by such late submission (including without limitation freight, mailing and handling and overtime of personnel). Notwithstanding the foregoing, the Producer shall not be required to pay such costs if they are a result of the Syndicate's editorial oversight. Further, overnight delivery and other forms of expedited delivery are subject to a reasonableness limitation based on actual necessity and not mere convenience.

Other possibilities include some sharing arrangement for costs or a cap, but these are more a matter of individual preferences or negotiating strength than of fairness or efficiency.

The following provision serves as the key contractual remedy available to a syndicate.

and (b) in the case of non-submission, to have the Feature prepared by others, deducting the expenses incurred by it in this connection, including the compensation of a substitute writer or artist, from any amounts payable to the Producer under this agreement.

This provision is tremendously important to both the creator and the syndicate. The wording covers both the case in which the creator is unwilling to submit material and

³⁹ Anonymous Creator.

instances in which he is unable to submit, such as due to disability or death. Many creators regard the preparation of their feature by syndicate “henchmen” as abhorrent for artistic reasons. The provision also seriously weakens a creator’s potential threat to “go on strike.” On the other hand, the syndicates have a strong fairness claim to the full benefit of the contract as compensation for their work in launching and supporting the feature. If a creator were unable or unwilling to produce after the first year, then the syndicate would lose both its financial investment in the publicity campaign plus the opportunity cost of having launched a different feature.

Several middle range solutions could narrow the scope of disagreement. First, the creator might request the authority to select a substitute creator who would take over in the event of death or disability. This could be made subject to the syndicate’s reasonable right of approval. In cases where the creator refuses to submit a cartoon, the syndicate would retain the right to select its own replacement creator. Second, the amounts paid to another creator should be limited to revenue generated by the actual substitute cartoons. Thus, if the syndicate owes the creator for the previous month’s strips or licensing revenue, the syndicate should not be allowed to offset against that income. Future income should be likewise protected after the creator resumes production. A provision including these changes might look as follows:

and (b) in the case of voluntary non-submission, to have the Feature prepared by others chosen by the Syndicate, deducting the expenses incurred by it in this connection, including the compensation of a substitute writer or artist, from amounts payable to the Producer for the substitute installments. In the case of involuntary non-submission for such reasons as death or disability, to have the Feature prepared by a substitute artist or writer of the Producers’ selection subject to the Syndicate’s right of approval, which shall not be unreasonably withheld. The Syndicate may deduct the expenses

incurred by it in this connection, including the compensation of the Producer-selected substitute writer or artist, from amounts payable to the Producer for the substitute installments. If the Producer is unable or unwilling to select a substitute artist or writer, the Syndicate may make the selection.

The above phrasing permits the involuntary continuance of the feature after the death or permanent disability of the creator. Syndicates obviously prefer this. So, too, a creator may want his family to receive the income that results from continued production.

On the other hand, many creators abhor the thought of their feature continuing after their death or disability. Some syndicates' boilerplate contracts apparently do not require continued production, and other syndicates are willing to negotiate. A provision reserving more rights to the creator might look as follows:

In the event of the Producer's death or permanent disability, the Syndicate may continue to release those unpublished installments of the Feature then in existence. The Syndicate may not employ substitute artists or writers to continue production of the Feature without the consent of the Producer, his estate, or his representative. If the Producer, his estate, or his representatives do elect to continue the Feature, it must be with the Syndicate and pursuant to the terms of this agreement.

The last sentence ensures that the death or disability do not become an opportunity to escape the contract with the syndicate or to demand renegotiation.

Creators who definitely wish their strip to end at their death face yet another problem. If the creator owns the copyright to the strip, then such rights automatically flow into the estate. Because it is property, the copyright may be sold to satisfy the creator's debts or by relatives who are more interested in the profit than the deceased's desire to see the strip end for artistic reasons. Any attempt through the syndication contract to restrict the creators' heirs or creditors from selling the rights to a syndicate or merchandiser would

be awkward and possibly unenforceable. An estate planning attorney or corporate attorney may be able to devise a trust, corporation, or other suitable vehicle that would ensure that the strip ends at the creator's death.

Section 5: Producer's Warranties and Indemnification

The following requirement that the creator warrant originality and non-infringement of others' rights is one of the most surprising provisions to new creators, but it is absolutely standard and relatively fair.

5) PRODUCER'S WARRANTIES AND INDEMNIFICATION.

The Producer represents, warrants, and agrees, to and with the Syndicate and its assignees and agents, that (except to the extent attributable to editing by the Syndicate which was not approved by the Producer) all material furnished pursuant to this agreement will be original with him and that the use of such material as contemplated by this agreement will not constitute libel or conflict with or infringe upon any copyright, right of privacy or other rights of any third person or firm.

Contracts from other syndicates often list the "other rights," such as: unfair competition, trademark, trade name, conflicting contract obligations, plagiarism and literary piracy.

According to one creator,

All of the syndicates are unwilling to negotiate on this issue. In practice, the syndicate is the deep pocket so they are responsible anyway. What is outrageous is that the syndicate can edit a cartoonist's work and then claim not to take responsibility for their own changes.⁴⁰

A syndicate not taking responsibility for its own changes certainly would be unfair.

Universal and most of the other syndicates accept responsibility in their boilerplate for their own unapproved changes.

⁴⁰ Anonymous Creator.

Also, despite the fact that the syndicates are the “deep pockets,” the indemnification provision makes sense. Syndicates and creators alike should fear the possibility of lawsuits given the many theories of liability mentioned above. By keeping the creator responsible, at least on paper, the syndicate encourages the creator to take great care to prevent claims. In the event of a claim, the creator’s interests are more closely aligned with those of the syndicate. Finally, if the creator is uncooperative, then the provision provides the syndicate with extra leverage.

The next part of the provision merely states that the effect of the warranties is that the Producer must indemnify the syndicate.

The Producer will indemnify the Syndicate (and any sales, syndication, publication or other agency or firm to which the Syndicate has delegated rights under this agreement) against any expenses or damages (including reasonable attorneys’ fees) resulting from any breach or alleged breach of such representation and warranty.

The problem is that the “expenses and damages” provision needs greater precision in its definition. Payments to the claimant are obviously covered, as are attorneys fees.

Presumably, court costs are also included. Other issues are not so clear. How are the time and expenses of syndicate personnel to be handled? Is the creator responsible for damage to the syndicate’s business? Even if the syndicate would not pursue the creator for such non-obvious costs, the current wording permits the syndicate’s delegates who are damaged to do so. An additional sentence taking care of these problems might look as follows:

The Producer will indemnify the Syndicate (and any sales, syndication, publication or other agency or firm to which the Syndicate has delegated rights under this agreement) against any expenses or damages (including reasonable attorneys’ fees) resulting from any breach or alleged breach of

such representation and warranty. Provided, nevertheless, that the Producer shall be responsible neither for consequential damages incurred by the Syndicate or any other indemnified party nor for the time of personnel employed by the Syndicate or other such indemnified party.

This language strikes an appropriate balance between the syndicate's reasonable need for indemnification and the creators' need to prevent overreaching.

The next section of the indemnity provision can be seen justifiably as either outrageous (by the creators) or perfectly reasonable (by the syndicates). The provision provides the syndicate with total control of all disputes.

The Syndicate and any such indemnified party shall have the right, at their discretion, either to defend any claim or suit by counsel of their choice or to settle the same on such terms as they deem advisable.

Since almost all civil liability cases are settled out of court, if the indemnity provision did not include settlements, then the syndicate would face the unattractive choice of taking the case to court or settling and paying the loss itself. Taking a case to court might well be uneconomical after attorneys' fees and it could expose the syndicate to the risk of a large award, including punitive damages, that exceeds the creator's ability to indemnify.

On the other hand, it seems unwise for the creator to hand over a "blank check" to a syndicate, permitting it to settle on whatever terms it likes. It creates a very odd set of incentives encouraging settlement, especially for smaller cases in which the syndicate believes that the creator could actually pay. Lawsuits are inherently uncomfortable and distracting to senior management, so why would the syndicate fight a plausible \$5,000 claim if the creator can pay it? At least one syndicate routinely accommodates the creator concerns by omitting the settlement language. A reasonable provision here might look as follows:

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The Syndicate and any such indemnified party shall have the right to defend any claim or suit by counsel of their choice but shall not be entitled to indemnification payments from the Producer for a settlement unless the Producer agrees to the settlement in writing.

Creators are likely to be frightened of litigation, so this provision merely protects them from overreaching by the syndicate and permits the creator the right to fight if he feels strongly and can afford it.

Another unusual part of the broader indemnity provision is the following one-half reimbursement clause for a successful defense.

In the event that a final judgment dismissing any such claim or suit without liability to the Syndicate or any such indemnified party, the obligation of the Producer shall be limited to reimbursing the Syndicate and such indemnified party for one-half of all expenses incurred by them in connection therewith.

The one-half indemnity for a successful defense in court is subject to several interpretations. It looks like a generous offer by the Universal (an offer not matched by many syndicates) to share costs in the normal 50/50 fashion that revenue is shared. It also makes sense to wait until final judgment before the syndicate agrees to a limited indemnity. Under this logic, however, it is unclear why the language appears to exclude instances where the adverse party abandons the claim. This may be an unintentional oversight. To correct it, the creator might use language such as:

In the event of (a) a final judgment dismissing any such claim or suit without liability to the Syndicate or any such indemnified party, or (b) the claimant withdraws the action prior to adjudication, then the obligation of the Producer shall be limited to reimbursing the Syndicate and such indemnified party for one-half of all expenses incurred by them in connection therewith.

Another downside to all of the above options is that they leave the creator solely responsible for the Syndicate's expenses in the event that a court finds some small liability but clears the creator of most claims. Only an absolute victory triggers the reduced indemnity. It might be possible to cap expenses at some negotiated figure, such as twice the award, but this is an issue of low importance and likely to not be worth wasting time or bargaining leverage over unless there is reason to believe that an harassment suit is likely.

Many of the syndicates also require a separate representation that the creator has authority to enter into the contract and has no related contractual obligations to others. This is substantially the same issue as in the above warranty. Creators who are switching syndicates need to be careful here because many of the provisions that allow early release from a contract also grant the syndicate some form of option. For example, if the creator has exercised his termination option due to the failure of the strip to reach a certain gross revenue figure, syndicates usually have the right to make of the difference between the hurdle rate and the actual amount of receipts. The wording of the contract often does not restrict the syndicate from exercising the option.

Other syndicates' contracts occasionally mention the creator's responsibility as a journalist. It makes sense that a syndicate would be concerned that the creator might use his strip as a platform to communicate with millions of people about inappropriate personal beliefs. On the other hand, creators' experiences and beliefs are often woven into their cartoons in legitimate ways that add to or personalize the feature. Reasonable language accommodating both syndicate and creator concerns might look as follows:

The Producer acknowledges that he is a member of the journalistic profession and shall be governed by its ethical standards. The Producer

shall bring to the attention of the Syndicate any actual or potential conflict of interest between the subject matter of the Feature and the Producer's personal dealings, including social, religious, financial, professional, and other issues.

The wide latitude granted to creators is not threatened by this language, but the creator also may not insert a product placement for Burger King without approval. This provision also protects the creator in the sense that readers often complain to newspapers when creators bring personal biases into their comics. Since newspaper editors hate complaints, a creator risks moving up in the potential “drop list” if the editor can reduce complaints by dropping the strip.⁴¹

Critics of lawyers might assert that adding the above provision is “overkill” in light of the fact that the syndicate is allowed under Section 4 to refuse to syndicate installments of the feature. Further, self-preservation would logically seem enough incentive for creators to self-edit their material of all subjects likely to annoy readers or newspaper editors. In reality, the issue does arise: Johnny Hart reportedly has a specific exception to this provision which allows him to express his strong religious views. Most creators do not have his negotiating power, and so for the majority of creators the provision serves two useful purposes. First, the provision helps to educate and sensitize the creator to possible conflicts of interest. Conflicts of interest are often surprisingly complicated and not mere “common sense.” If the provision simply prompts some creators to ask the syndicates questions about what is appropriate material, the provision has served its purpose. Second, the provision settles in advance many potential disputes over questionable material.

⁴¹ This is the other edge of the sword of reader complaints, which usually protect strips because people complain when a newspaper drops a strip.

Creators may understand the conflicts of interest issue but disagree with the syndicate on a particular installment of the feature. Contract disputes are best resolved with specific language covering the issue—the more general the provision relied upon by one party, the more likely the other side is to see room for argument or be taken by surprise. Here, resolving a specific conflict of interest dispute under the general editorial supervision clause in Section 4 of the Universal contract seems heavy-handed. Undoubtedly this provision is irrelevant to many creators. Just as certain, however, is that it will serve one or more of the useful functions described above for some portion of each syndicates' portfolio because creators vary in temperament and in knowledge of legal and business issues.

One of the more surprising aspects of the indemnity provisions in syndicate contracts is that most syndicates fail to include a clause clarifying that the indemnity and warranty provision will survive the contract. For example, it appears an open litigation question as to whether the warranties and indemnities in Universal's contract would survive based on the existing language. A survival provision may prevent some strategic moves where the creator terminates the contract in order to improve his chance of escaping from a large claim. More realistically, such a provision permits the syndicate to terminate a contract without worrying about the effect on the indemnity. Reasonable language might look as follows:

The Producer's above-described warranties and indemnities shall survive termination of this Agreement and shall be binding upon the Producer's estate or representative.

As the creator quoted above mentioned, the syndicates have the “deep pockets” and will probably be held liable if anything goes seriously wrong. Short of a serious problem, however, the above provisions provide effective management tools.

Section 6: Exclusivity; Rights of First Refusal

Syndicates include the following provision in order to make sure that they have control over both the feature and the creator.

6) EXCLUSIVITY; RIGHTS OF FIRST REFUSAL. *During the term of this agreement, the Producer will not, without the prior written consent of the Syndicate, produce or consent to be produced (under his name or any other name or names), or advise or assist in any way with the production of, any material of similar name or appearance to the Feature for publication in any newspaper, periodical, book, or other publication. The Syndicate shall have the option to meet any bona fide offer for the services of the Producer with respect to material suitable for syndication during the term of this agreement, provided, however, that such option shall be exercised by the Syndicate within 90 days after receipt of written notice of such a bona fide offer.*

This provision, which is common to all syndication contracts, has three important effects. First, it provides the syndicate with an exclusivity on anything the creator does related to the feature. Second, the creator grants the syndicate a right of first refusal on other syndication concepts. Third, by negative inference, the creator remains completely free to pursue non-syndication ideas which are not related to the feature. However, it is far from clear that the provision covers all of the important sub-issues or strikes a fair balance of interests between the parties. Each issue deserves further study.

The heart of the exclusivity provision reads as follows:

During the term of this agreement, the Producer will not, without the prior written consent of the Syndicate, produce or consent to be produced (under his name or any other name or names), or advise or assist

in any way with the production of, any material of similar name or appearance to the Feature for publication in any newspaper, periodical, book, or other publication.

Syndicates feel that they are partners with their creators in creating the value of the feature. This belief leads to four reasons for this provision. First, syndicates feel entitled to share in the revenue generated by the feature whether directly or indirectly. Second, syndicates wish to prevent the creator from somehow damaging the feature. Third, an additional similar feature could “cannibalize” the first feature because of the limited amount of space in newspapers. Such an effect could occur because at least some newspapers will only take one of the strips. Fourth, the creator’s good ideas would be spread among two strips. For example, all of the above four issues would arise if Scott Adams were allowed to spin off from *Dilbert* a second strip named, say, *Cubicle Man*.

The main problem with the provision’s “similar name or appearance” language is that the “similarity” requirement defies objective definition. Any attempt to articulate standards defining “similar” is likely to be clumsy and imperfect. Consequently, the provision should probably be left unchanged since it already provides enough guidance so that a wise creator can avoid problems by simply staying outside of the gray area. Note how the language performs a guiding function which helps both parties by steering them away from conflict; the provision preserves the relationship and neither party wastes time or money in fighting.

In contrast to the first half of Section 6, which merely serves to protect the syndicate’s interest in the existing feature, the second half extends the syndicate’s claim to a right of first refusal on the creator’s other syndication ideas.

The Syndicate shall have the option to meet any bona fide offer for the services of the Producer with respect to material suitable for syndication during the term of this agreement, provided, however, that such option shall be exercised by the Syndicate within 90 days after receipt of written notice of such a bona fide offer.

There are five possible explanations why a syndicate should care about the creator's other projects. First, syndicates want to have the first opportunity on great ideas or great creators. After investing time and money, as well as foregoing the possibility of promoting other creators, a syndicate feels entitled to an option on the creator's other concepts if the creator becomes a star. Second, syndicates are very image conscious; losing a creator's new idea is often seen as a vote of no confidence in the syndicate by the creator. Third, there are possible economies in publicity and administration to keeping creators under one roof. Fourth, the syndicates face no significant downside to getting the contract right, so the provision might as well be included. Fifth, the syndicate may wish to discourage a second strip. A key concern among the syndicates of a creator launching a second syndicated strip is that the creator may not have enough time to do both to the best of his ability.

I think doing a seven-day comic strip is more than a full-time job. I'm sure that some people can do two comic strips, and more power to them, but it's got to be a grind. I'm not opposed to it, but we all do our best work when we concentrate on one project. Are there exceptions? Certainly. But generally, it's just a case that we do one thing best.

-- Alan Shearer, Washington Post Writers Group⁴²

Other syndicate executives express the same basic concerns.⁴³ Creators can respond that the syndicate already has editing power under Section 4 and an explicit promise to

⁴² *Id.* at 207.

⁴³ *Id.* at 208, 209.

maintain quality under Section 1. Further, creators argue that restricting a creator from other work in such an artificial manner and without covering all of the other manners in which a creator can overburden himself is both ineffective and unfair. These five reasons explain the syndicates' interest in obtaining a right of first refusal, and at least some of the reasons are good ones.

Because rights of first refusal are so standard, creators with limited bargaining power should focus on ensuring that the rights granted do not exceed what the syndicates need for valid reasons and should also focus on eliminating the syndicates' ability to abuse the provision. In particular, the right of first refusal acts as a time barrier and may discourage other syndicates from pursuing the opportunity if they believe that it will be taken from them. Thus, creators need to reduce the ninety-day decision period. Syndicates argue that purchasing a new strip is a major decision. They assert that a long response time is needed so that they may research the proposal and filter it through the decision-making process. On the other hand, there are good reasons why syndicates can probably respond very quickly to any proposal that is so good that the syndicate would legitimately care about having a right of first refusal on it. In particular, this provision is more to ensure that the syndicate keeps its few Bill Wattersons than it is about keeping the average cartoonist in the syndicate's lineup. Any creator's new proposal plus his past work for the syndicate should provide the syndicate with vastly more information than it normally has when signing a new creator. Combining these facts with the reality that syndicates are experts at analyzing proposals, the initial review should take a few days at most. Then add a few weeks for market research and the formal decision making process. Overall,

according to several creators, thirty days squeezes the syndicate whereas forty five days is generous.

Section 7: Payment to Producer

The Payment to Producer provision is crucial and contains many hidden deductions that reduce the ultimate dollars to the creator.

7) PAYMENT TO PRODUCER. *(a) In consideration of the satisfactory performance by the Producer of his obligation under this agreement, the Syndicate shall pay to the Producer, not later than the twentieth day of each month:*

This introductory part of the provision contains two issues: payment date and condition of payment. The entire syndication industry works on a payment schedule of approximately twenty days after the close of the month. This is reasonable. The condition of payment upon “satisfactory performance,” however, raises the possibility of undue leverage over the creator. Under this clause, the syndicate could withhold all or a portion of payments in the event of a dispute. Thus, the syndicate seems to create a powerful and free remedy for any possible breach by the creator of any contract provision. The creator, in contrast, for this and all other disputes can only seek redress from a court. Other syndicates rarely include a “satisfactory performance” provision. A fairer drafting might look as follows:

7) PAYMENT TO PRODUCER. *(a) The Syndicate shall pay to the Producer, not later than the twentieth day of each month:*

This revised language puts the syndicate and creator on more equal footing with regard to remedies for a breach of the contract.

The following provisions detail the split of revenue and sharing of costs with the syndicate. **This is the most heavily-revised section of the contract; the suggested revisions to the language are given at the end of the discussion.**

(i) with respect to the sale for newspaper publication within the continental United States of the rights to the use of the Feature, 50% of the net domestic newspaper collections during the preceding month (derived by deducting from the gross collections from such sales the Syndicate's cost for in-paper promotion, sales and promotional kits, sales and commissions [not in excess of 2%], production, transportation by wire or other mechanical or electronic means, securing and protecting trademark and copyright in connection therewith);

The standard split for new creators is 50% of the net revenue, although a few syndicates may offer 50% of the gross revenue (or something close to gross revenue). Obviously, a share of gross revenue is far more favorable to the creator both financially and in terms of monitoring. The expense deductions in Universal's contract cover the same issues typically found in other syndicates' contracts. The main difference is that other syndicates' contracts sometimes use a more detailed list. For example, "production" in the Universal contract is a general catch-all, while other syndicates list the costs, such as of mats, proof sheets, camera work, digitalization, reproduction, engraving, and cuts. A detailed list is better because it prevents misunderstanding as to what expense charges are legitimate. When the language merely lists "production costs," no standard exists for determining what constitutes a production cost. Moreover, whether listed generally or specifically, there is no agreement on how much, if any, overhead should be allocated to the easily-traceable costs.

Creators cite two main sources of concern. First, syndicates generally have poor information and tracking systems. As a result, many are not able to substantiate what work

is done or why a particular amount is charged. Second, syndicates try to defray overhead costs through expense reimbursements. As one creator put it,

Accounting is the syndicate's responsibility. Unless we have our own accountant at the syndicate, there are all kinds of ways we can lose money. For instance, the cost of camera work and proof sheets, which I believe are billed at a profit to the syndicate over and above their traditional 50 percent. They are always looking to make an extra buck. A syndicate is like a record label, it charges for everything.⁴⁴

Some syndicates offer a cap on production expenses, and some creators negotiate for it if the syndicates do not offer. Most expense caps are fixed dollar limits. The usual cap on production costs appears to run between \$110 and \$200 per week for the six daily installments.⁴⁵ Further, syndicates generally hire specialists to produce the Sunday installment. This is a separate reimbursable expense of approximately \$450 per month. A percentage cap makes sense from the creator's viewpoint as a way to ensure a living wage, but few syndicates are likely to grant it because the result is almost a "guaranteed minimum." If the creator is not earning enough to carry his costs on an ongoing basis and to compensate for his time, then the strip probably should not survive in the syndicate's view and in no way should be subsidized.

The expense deduction for "*in-paper promotion plus sales and promotional kits*" needs more explicit definition. In particular, there is a question as to whether the costs are limited to direct costs or include a charge for the syndicate's services such as the time of employees. The promotional kits are fairly standard:

⁴⁴ Anonymous Creator.

⁴⁵ More research is necessary to establish exactly what services are provided and where on the wide \$110-200 range of expenses is most reasonable. Creators are more sensitive to discussing income issues, so that data was not requested although it was accepted when offered.

Typically syndicates will do a four color, heavy stock folder, 9"x12" with two pockets for holding sample release sheets and the salesman's card. They may do the art themselves or ask the artist for help, if the artist is likely to make a helpful contribution. These are mailers or leave behinds.⁴⁶

Getting this material right and printing in high volumes costs several thousand dollars. The contract should therefore state who will perform the services and what is reimbursable. A common format is for the syndicate to receive reimbursement for the cost of materials and transmission, but not for overhead or salaries.

Another major issue is the timing of any of these expenses. Typically the major promotional push occurs at the launch of a feature. As a result, a fledgling creator who earns very little can have a several thousand dollar obligation to his syndicate. Some limitation is needed on the timing of the syndicate's collection of this money, as well as a provision for forgiveness of the obligation in the event that the feature is discontinued. Creators may be tempted to limit the total amount reimbursable, but this reduces the syndicate's incentive to promote the feature. Since it actually costs the syndicate considerable overhead and personnel expense to create and distribute the promotional material, the creator who pays a dollar for materials and mailing costs actually receives much more than one dollar of services. Dollar limits to expenses should therefore only reflect the creator's need to generate sufficient and regular income to maintain a reasonable lifestyle during the building of his client list. A limit of \$300 per month seems reasonable, subject to a cap of ten percent of the creator's share of gross collections. This may be insufficient to fully reimburse the syndicate during heavy promotional years, but it should reduce the balance to zero quickly in future years if the strip survives

⁴⁶ Anonymous Creator.

A limit on promotional expenses differs fundamentally from the limit on production expenses because promotional expenses are very large, can be classified as a capital investment, and occur only at the launch of the feature. All of these reasons suggest that a payment plan form of reimbursement is fair, effective, and will result in full repayment. The production expenses, on the other hand, are small and ongoing and serve little investment purpose.

Several creators mentioned that the syndicates provide the creators with very poor expense tracking.⁴⁷ Some creators claimed that the syndicates are deliberately vague about costs so as to obscure the inclusion of personnel salaries and overhead.⁴⁸ Others suggested that the syndicates merely fail to keep good records even for themselves.⁴⁹ On the other hand, a few interviewees contended that the syndicates sometimes do not charge the creators for certain allowable expenses because it is not worth the effort.⁵⁰ Regardless of which is true in a particular instance, creators are entitled to know exactly how much they are being charged and for what. Further, an increasing number of creators are able to provide certain production services with the computer equipment in their studios, often at a savings. To the extent that the creator provides his feature to the syndicate in a more advanced state of production, he should be contractually entitled to a reduction in the expenses charged to him. Some syndicates already accept this simple and fair proposition on a creator-by-creator basis; others do not. An issue such as expenses rubs against syndicates' historical resistance to any attempt to pry into their financial status. Also,

⁴⁷ Anonymous Creators.

⁴⁸ Anonymous Creators.

⁴⁹ Anonymous Creators.

creating a price list and keeping records on a creator-by-creator basis may entail additional work by the syndicate. However, any syndicate which is unable track its expenses sufficiently to create a price list for creators is out of sync with modern business practices and should be intensely interested in enhancing its information system. If the syndicate resists modern business practices, that is probably a bad sign for the services the creator can expect over the course of the long contract.

The provision granting the syndicate reimbursement for “*securing and protecting trademark and copyright*” is minor since both copyright protection and trademark status are easy to achieve.⁵¹ A minor issue such as this is probably best decided on pure fairness grounds in order to prevent resentment over an immaterial item. In cases where the creator owns the copyright or is entitled to its return, he is the ultimately-benefited party so it appears fair that he should pay for the expenses of establishing and protecting the copyright. Where the syndicate has true ownership of the copyright, making the creator pay for protecting it seems unjustifiable. A few syndicates do not require any reimbursement for such expenses since the total amount is so small.

A much greater issue regarding the “*protecting*” of copyrights and trademarks is whether this means that the creator must pay litigation costs incurred by the syndicate in pursuing infringement claims. Since several appellate-level cases have occurred concerning such claims, this type of litigation is a very real possibility. Several other syndicates have provisions which expressly provide for reimbursement. The specific terms

⁵⁰ Anonymous Syndicate Executive.

⁵¹ Note that allowing the syndicate to file, register, renew, and otherwise maintain the existence of the copyright makes sense because syndicates do this routinely and it should be part of their services. This

of reimbursement, however, differ among syndicates. These differences give rise to a number of important considerations in drafting the recovery provision.

First, what control does the creator have over the syndicate's expenditures?

Syndicates almost always want free reign to decide how they should pursue the litigation.

Second, how are costs allocated in the event that the syndicate enforces the work of multiple creators in a joint action? Do the creators pay by their proportionate share of the value protected or by the number of violations? What about the case where the syndicate brings several claims but not all of the creators benefit from each claim? What if the syndicate wins based on the claims of some creators but not others? Must the winning creators subsidize the losing creators?

Third, may a creator decide not to pursue a claim or decide to drop it part-way through? It seems fair that the person paying the bill should have the right to decide whether to pursue the litigation.

Fourth, does the individual creator have different interests than the syndicate. The syndicate may want to develop a reputation as a tough enforcer of its rights, whereas the creator may want to maximize his return or minimize his effort on this case alone. For example, Disney spent many years building a reputation as an all-out litigator on behalf of its character properties. Now, potential infringers know that Disney will fight far beyond the value of the dispute. This means that people contemplating infringing on Disney's rights are dissuaded, which in the long run means that Disney has fewer cases to fight and more people deciding to license rather than risk infringing. Syndicates do not have the

helpful right is common to other syndicate contracts and is separate from Section 3's determination of

luxury of creating such a reputation because, even though it might benefit the average creator, it would be an unfair burden to the creators who pay for its development.

A middle-range resolution, which also appears the fairest overall allocation of rights and responsibilities, is for the syndicate to bear all litigation costs subject to reimbursement out of any recovery or settlement. Under this formula, the creator should permit the syndicate reasonable discretion over when and how to pursue claims and over the allocation of costs and compensation in any joint recovery. This solution does not eliminate the problems with allocating awards among creators, but it is more fair to give the syndicate discretion when the syndicate bears responsibility for the costs of failed litigation.

Under both the current Universal boilerplate and the revised formula, cases may occur where either the syndicate or the creator exercises discretion not to pursue the litigation. If so, the other party should be permitted to pursue the litigation at its own expense and retain all settlements or judgment damages. This power encourages the protection of creator rights in as many situations as possible, which will in the long run discourage infringement.

Combining all of the above comments, an equitable version of the provision might look as follows:

(i) with respect to the sale for newspaper publication within the continental United States of the rights to the use of the Feature, 50% of the net domestic newspaper collections during the preceding month. Net domestic newspaper collections shall be derived by deducting from the gross collections of such sales the Syndicate's cost for

whether the creator owns the copyright.

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A Guide for Syndicates, Creators, and Their Attorneys.

(A) production expenses, subject to a monthly limit of \$ _____ for daily features and the actual cost of third party preparation of Sunday features. Production expenses shall be limited to mats, proofs, film negatives, digitalization, reproduction, engraving, and cuts. The Syndicate shall provide an itemized list of such expenses together with each remittance. The Producer may chose to provide such services in the future, and in return the Syndicate shall not charge the Producer for those services. In recognition of the Syndicate's administrative needs, the Producer must provide such services for the entire month that Producer wishes to receive credit, and the Syndicate shall be entitled to reject such services if they are materially inferior to those supplied by the Syndicate or its agents.

(B) the direct costs of in-paper promotion solely for the benefit of the Feature and not for the benefit of the Syndicate in general or any of its other text or comic products. Direct costs shall include the costs of materials, printing or reproduction, and distribution by mailings or electronic means. Such direct costs shall not include design work, overhead, salaries, or any other indirect cost of the Syndicate. These costs, together with those of subsection C, shall not exceed the lesser of \$300 per month or ten (10) percent of gross collections.

(C) the direct costs of sales and promotional kits solely for the benefit of the Feature and not for the benefit of the Syndicate in general or any of its other text or comic products. Direct costs shall include the costs of materials, printing or reproduction, and distribution by mailings or electronic means. Such direct costs shall not include design work, overhead, salaries, or any other indirect cost of the Syndicate. These costs, together with those of subsection B, shall not exceed the lesser of \$300 per month or ten (10) percent of gross collections.

(D) sales commissions [not in excess of 2%],

(E) transportation by wire or other mechanical or electronic means,

(F) securing and maintaining the trademark, copyright, other literary property, and any other rights covered by this agreement in connection with the Feature and its title. Such expenses shall not cover the costs of enforcing these rights against third parties, as such costs are provided for under (a)(v) of this Section;

The last subsection, (a)(i)(F), removes reimbursement of litigation costs from the category of expenses deductible from the monthly payments due to the creator. For two reasons, this is the creator's preferred option for reimbursing the syndicate.

First, the option means that the huge expenses of litigation are not directly removed from his paycheck. This ensures a steady cash flow. Second, the option makes

payment contingent on winning the case. The expenses would therefore arise only if there were a corresponding damage award to pay for them. Several syndicates may already have policies for expense reimbursements similar to the requirements of this revised provision without being contractually required to be so generous. If so, then they should not be concerned about a creator's request to put it in writing. If not, the creator should raise the issue.

The following alternative to (a)(i)(F) leaves litigation cost reimbursement within the category of expenses deductible from the monthly payments due to the creator. The syndicate prefers this because it may deduct the legal expenses automatically and thereby ensure timely collection of the reimbursement. However, this exposes the creator to cash flow problems and reduces his leverage in the event of a dispute over the bill. Also, the creator pays whether or not he wins the case.

(F) securing and maintaining the trademark, copyright, other literary property, and any other rights covered by this agreement in connection with the Feature and its title. Further, Syndicate shall be entitled to reimbursement for the costs of legal action (including attorney's fees) in which the Syndicate asserts against a third party any of the rights granted to the Syndicate in this agreement, provided that the Producer authorizes such action and has not withdrawn such authorization. In the event that either the Syndicate or the Producer declines to pursue an enforcement against a third party, the other party shall remain free to pursue such enforcement at its own expense and shall be entitled to retain all settlement payments or judgment damages;

(Note that this alternative version of (a)(i)(F) covers a greater number of issues. This is merely for ease of structure; the same issues are addressed later in the contract for the first (a)(i)(F) option.)

The next provision in Universal's contract differs from the first of this section only in the sense that it covers foreign sales and the related special expenses. All syndicate contacts have some version of such a provision.

(ii) with respect to the sale for newspaper publication outside the continental United States of the rights to the use of the Feature, 50% of the net foreign newspaper collections during the preceding month (derived by deducting from the gross collections from such sale the Syndicate's costs for agent's fees and commissions, in-paper promotion, production, trademark, copyright, and all other expenses and payments in connection therewith);

The key differences from (a)(i) are the additions of an unlimited "*agents fees and commissions*" and a catch-all provision of "*all other expenses and payments in connection therewith.*" Other syndicates typically offer a more detailed clause and frame the charges as additional expenses rather than as a separate provision. The generality of the Universal provision works against the creator because the syndicate receives the power to make unlimited charges, many of which are very difficult to review. Furthermore, the long revisions to (a)(i) suggested by this paper mean that (a)(ii) now reads better as a list of additional expenses.

Fortunately, the additional costs associated with foreign sales are easily specified. The main additional expense is the cost of foreign sales commissions. Syndicates usually cap these expenses somewhere in the range of twenty five to fifty percent of gross collections. Other expenses unique to foreign sales may include costs of translation, currency conversion, agents' fees, and foreign sales taxes. A provision covering such differences might look as follows:

(ii) with respect to the sale for newspaper publication outside the continental United States of the rights to the use of the Feature, 50% of the net foreign

newspaper collections during the preceding month. Net Foreign Newspaper Collections shall be derived by deducting from the gross foreign collections of such sales the Syndicate's costs as provided for in Section 7(a)(i)(A-F), subject to the following adjustments:

(A) Sales commissions paid to foreign agents shall be limited to fifty (50%) of collections directly attributable to such foreign agents.

(B) The Syndicate may deduct the additional costs attributable principally to doing business outside of the continental United States, including but not limited to costs of translation, currency conversion, agents' fees, and foreign sales taxes.

These revisions are more of a clarification of the additional foreign expenses than a limitation of them.

The next provision relates to a specialty business and is of no material consequence.

(iii) with respect to the sale of pamphlet compilations of the Feature by advertisements in the syndicated newspaper version of the Feature, 15% of the retail list price of each such pamphlet sold; and

Other syndicate contracts do not even address the pamphlet sales issue separately.

The range of sales and licensing opportunities outside of syndication and pamphlet sales means that the syndicate has a difficult time predicting the expenses associated with generating such income. The following provision provides broad leeway to the syndicate:

(iv) with respect to the sale of any other rights to use, in any media or form other than newspaper publication or pamphlet sale of the Feature, or of its drawings, continuity, ideas, format, plots themes characters or characterizations, 50% of the net collections (derived by deducting from the gross collections from such sales all of the Syndicate's expenses [including without limitation agency fees and commissions] in connection therewith).

Although granting such unrestricted authority to deduct expenses troubles creators, it is probably necessary and less damaging than equal discretion elsewhere. Here most of the expenses are to third parties, unlike for syndication expenses where the syndicate was often reimbursing itself and could include overhead. Thus, the syndicates really do receive half

of any cost savings and few benefits to higher costs. Also, inclusion of restrictions on the recovery of costs would reduce the syndicates' interest in pursuing outside opportunities. This would be counterproductive, given that creators interviewed for this paper almost universally condemned the syndicates' poor licensing record for non-blockbuster comics.

The following provision is the part of the cost reimbursement for legal expenses which was removed from Section (a)(i) and (a)(ii) under the preferred option for reimbursing the syndicate for legal expenses. This section was moved here because it is now a deduction from any settlement or recovery rather than from the creator's regular income stream.

(v) The Syndicate shall bear all litigation and other enforcement costs associated with protection of rights granted to the Syndicate under this agreement. The creator grants the Syndicate absolute discretion over when and how to pursue such claims. Should the enforcement result in a settlement payment or a damage award, the Syndicate shall be entitled to deduct from such payment all out-of-pocket costs associated with achieving such payment. The Producer shall be entitled to fifty (50) percent of any portion of the payment remaining after reimbursement of the Syndicate's out-of-pocket costs. The Syndicate shall have reasonable discretion over the allocation of out-of-pocket costs, compensation, and punitive damages in any joint recovery among the Producer and other claimants. In the event that the Syndicate declines to pursue an enforcement against a third party, the Producer may pursue such enforcement at its own expense and shall be entitled to retain all settlement payments or judgment damages;

The result of the provision is to enhance creator control over the amount and timing of enforcement costs.

Section 7(b) covers the syndicate's reporting responsibilities and the creator's auditing right.

(b) The Syndicate shall render to the Producer monthly itemized statements (with remittances) of the income and disbursements of the preceding calendar month with regard to the Feature; and the Syndicate's

records relating to the Feature shall be available to the Producer or his authorized Certified Public Accountant for inspection at all reasonable times during business hours.

The access to information granted here is a bare minimum. The creator should also wish to see an updated list of clients and the weekly or monthly pay rates for each. Further, there should be some notation of changes from the prior monthly period such as new clients and cancellations. The syndicate's willingness to provide a list of clients may depend on whether the creator's strip is sold individually or as part of a package. Evidently, syndicates prefer not to give a client list for sales as part of a package. One reason mentioned by creators is that the syndicates fear that the creators will attempt to sell the feature individually to those papers after the current contract expires.⁵² Other interviewees suggested that tracking individual paper use of each feature would cause administrative problems.⁵³ A third area of sensitivity is that the syndicates often report as sales all strips included in a package, even if the papers do not run them. It is unclear from the available information which is the predominant reason or whether the syndicates would be willing to negotiate on the point.

The inspection right needs revision for the benefit of both parties. First, in light of the fact that financial books are not always current, the syndicate should require some advance notice of a creator's exercise of the inspection right. Second, as some syndicates already provide, there should be a restriction on the frequency of such inspections so as to prevent their use as a nuisance. Third, the creator should seek greater flexibility in terms of who may carry out the inspection. Syndicates dislike giving outsiders access to financial

⁵² Anonymous Creators.

information and therefore wish to restrict the review to the creator or his Certified Public Accountant. CPA review has the advantages of competent work with less disturbance of syndicate personnel, as well as of ensuring adherence to ethical standards such as confidentiality. The creator, on the other hand, may have reasons to prefer that his financial advisor, attorney, agent, or one of their employees conduct the review. Fourth, because proving errors can be expensive, the creator should also receive reimbursement for the related costs in the event that the syndicate made material mistakes. This remedy provides the syndicate with an incentive to ensure accurate accounting, and reduces the disincentive for the creator to monitor in the event that he feels something is wrong.

(b) The Syndicate shall render to the Producer monthly itemized statements (with remittances) of the income and disbursements of the preceding calendar month with regard to the Feature. Such statements shall include a list of current newspaper and other clients, as well as their scheduled pay rates and the amounts actually received. New clients and cancellations recorded during that month shall be conspicuously noted. The Syndicate's records relating to the Feature shall be available to the Producer, his attorney, his Certified Public Accountant, agent or other personal representative for inspection during business hours twice annually with five (5) business days notice. If such review determines that either the expenses or gross collections are misrepresented by five (5) percent or more under Generally Accepted Accounting Principles, then the Syndicate shall pay the direct cost of such review and any other related expenses including attorney's fees.

This provision ensures that the creator has access to basic information that many creators currently do not receive.

⁵³ Anonymous Creator.

Section 8: Personal Appearances

Some creators achieve celebrity status and receive requests for paid speaking engagements. This provision covers income from such requests.

*8) **PERSONAL APPEARANCES.** The Syndicate will act as the Producer's non-exclusive representative in connection with requests for personal appearances or personal services by the Producer, such as lectures, speaking engagements, television or other media appearances or advertising, product endorsements and the like, and the Syndicate will not arrange any such appearances or services for the Producer without first securing his approval, which he will not withhold unreasonably. The Producer will notify the Syndicate promptly of his approval or disapproval of the terms of appearances or services submitted to him. The Producer will pay to the Syndicate 20% of all amounts, after deducting therefrom his direct and necessary expenses incurred, which he receives for any such personal appearances or services, such payments to be made promptly after receipt of such amounts by the Producer.*

Not all syndicate contracts overtly cover the contingency of income from personal appearances and personal product endorsements. One reason is probably that only a very small number of creators receive requests for paid appearances, and those paid appearances which are requested are low-paying. This question was raised in correspondence for this paper:

Q. How are requests for personal appearances handled in your experience? Universal gets 20% for arranging them. No other contract I have mentions personal appearances. Are they handed over to you free when the syndicate gets an inquiry, or does the syndicate try to take half?

A. This is unusual. Typically cartoonists are not paid for appearances.⁵⁴

Since there is very little money at stake, the syndicates accord such a provision either little to no attention. The significant money in appearances and endorsements is earned through direct association with the feature and its characters. For example, Met Life pays for

Snoopy's endorsement, not that of Charles Schulz. One important ambiguity is how much a creator may refer to his feature in any endorsement without it becoming an endorsement covered by the syndication contract. For example, would the following endorsement by Scott Adams be a personal appearance or a use of *Dilbert*? "Hi, I'm Scott Adams, creator of the *Dilbert* comic strip. I urge you to buy the "Zap Your Boss" video game and strike a blow for the cubicle class." Different creators and different syndicate executives could legitimately answer either way.

Defining the limits of a creator's reference to his feature can eliminate such ambiguities. The fair limit seems to depend on what is being promoted: media opportunities or product endorsements. Media appearances help to publicize the feature, and so the creator should be permitted to mention his creator status, discuss the comic, and display samples. Product endorsements, however, may compete against the syndicate's work, so the creator should be limited to a simple announcement of his status as creator of the feature and should not be permitted to endorse anything too closely related to the feature (*i.e.* the "Zap Your Boss" video game mentioned above would not be allowed, but Florida orange juice would be).

The fact that the syndicate only requests "non-exclusive" representative status makes sense because the contract covers only the feature and not the creator. Moreover, the syndicate is unlikely to want to take on exclusive agent responsibility for the creator's career. The main effect of this provision is that when the syndicate receives a phone call requesting the creator's services, the syndicate receives twenty percent of the net in

⁵⁴ Anonymous Creator.

exchange for administering the transaction. Unlike agents, the syndicates do not seek out such opportunities but rather merely respond to offers. One downside to this provision is that a very successful creator who hopes to earn money through personal appearances will probably want to hire an agent to actively promote the creator's career. Such agents will prefer to work on an exclusive basis, so the non-exclusive status granted to the syndicate will prove an irritant to the agent. It may also be in the creator's best interest to let the agent manage all possibilities so that a publicity strategy can be developed. Overall, for the Scott Adams-level stars, it would be better for the syndicate to refer any calls about personal appearances to the agent. For the vast majority of creators who do not expect significant personal appearance opportunities, granting non-exclusive representative status probably make sense to encourage the syndicate to pursue and document the rare opportunities which become available.

It is unclear why Universal inserts the "*he will not withhold unreasonably*" language. One reason might be that publicity helps to sell the feature, which benefits the syndicate. Also, the syndicate stands to earn a twenty percent commission. Perhaps one effect is to encourage shy creators to do what they might not do if they were not contractually bound. On the other hand, a creator has a strong moral claim to protect his privacy. Further, it is very difficult to determine when the creator is withholding approval "*unreasonably.*" To some creators, flying across the country might be an unacceptable burden, whereas other creators might see the trip as a free vacation. Overall, it seems to make sense to keep the language but permit the creator to be the final judge of whether or not he is being "*reasonable.*"

Fair language incorporating each of the Section 8 concerns discussed above might look like one of the following two options, the first of which is for creators with agents:

8) PERSONAL APPEARANCES. They Syndicate shall refer to the Producer or his agent all requests for personal appearances or personal services by the Producer, such as lectures, speaking engagements, television or other media appearances, as well as product endorsements. In connection with lectures, speaking engagements, and television or other media appearances, the Producer may refer to the Feature and use samples of the strips or merchandise. In connection with product endorsements, the Producer may refer to his status as creator of the Feature but may not make other references or use samples without the permission of the Syndicate. The Syndicate may condition such permission on payment of a licensing fee under Section 3 as if the Producer were a third party.

The language of this first option frees the creator from the syndicate but limits the creator's ability to use the feature outside of the contract.

The second option probably serves better the majority of creators who have no outside agent.

8) PERSONAL APPEARANCES. The Syndicate will act as the Producer's non-exclusive representative in connection with requests for personal appearances or personal services by the Producer, such as lectures, speaking engagements, television or other media appearances, as well as product endorsements. In connection with lectures, speaking engagements, and television or other media appearances, the Producer may refer to the Feature and use samples of the strips or merchandise. In connection with advertising, product endorsements, and the like, the Producer may refer to his status as creator of the Feature but may not make other references or use samples without the permission of the Syndicate. The Syndicate may condition such permission on payment of a licensing fee as if the Producer were a third party under Section 3. The Syndicate will not arrange any such appearances or services for the Producer without first securing his approval. The Producer shall not withhold such approval unreasonably, but Producer's determination of reasonableness shall be conclusive. The Producer will notify the Syndicate promptly of his approval or disapproval of the terms of appearances or services submitted to him. The Producer will pay to the Syndicate 20% of all amounts, after deducting therefrom his direct and necessary expenses incurred, which he receives for any such personal

appearances or services, such payments to be made promptly after receipt of such amounts by the Producer.

By clarifying the parties' rights, both options offer substantial improvement over the existing provision.

Section 9: Term and Termination

The term and termination provision of a syndication contract is **extremely important**. In fact, aside from the ownership of the feature's copyright, the term and termination provision is the most important section of the contract.

***9) TERM AND TERMINATION.** (a) The term of this agreement shall commence on the date hereof and end on the date ten calendar years from the date of first publication of the Feature in a newspaper, except that such term shall be automatically renewed for an additional period of ten years if the Syndicate's gross weekly billings during the first six months of the last year of the original ten-year term for the sale of the Feature and other rights granted pursuant to this agreement average at least \$.*

There are two giant issues here. The first issue is the ten-year length of the contract. Over the last decade, contracts have been reduced to approximately seven to ten years. Creators generally argue that long contracts are unfair because they tie the creators to harsh deals signed when the creators were unknown and without bargaining power. Syndicates and even some creators counter that syndicates invest heavily in launching and selling each feature, so they must be allowed to recoup that investment over time. As the president of the largest syndicate put it,

If a syndicate makes an enormous investment in launching a strip, they are entitled to some protection for having worked with the creator, having brought him along, having launched the strip, and more importantly, having made a success of it. So for this effort, it really has to be viewed as a partnership. They couldn't do anything without us and we could do even

less without them. So it is in the true sense a partnership, and it should be viewed as a partnership.

So if the cartoonists own the copyright, they should at least be willing to give to the syndicate a reasonably long-term distribution deal, which means we syndicate it, with fair options to renew beyond the initial period.

There are all kinds of contracts out there right now. There are five-year contracts, with an option to renew for ten to fifteen, depending on performances. There are contracts out there for ten, with options to renew.

The important thing is the concept of partnership. God, the worst thing you can do to a syndicate is have them invest all that money, go out and kill themselves getting you in three hundred newspapers, and then leave, because somebody hiding in the bushes says, "You got a fifty/fifty deal. Give me your list, and I'll give you seventy/thirty."

To me that's piracy. For the syndicate that says, "I'll give you seventy/thirty," it's one sale, a sale to the creator. But we made three hundred sales, and every one to a tough newspaper editor. And that's effort, that's money, that's time. That's blood, sweat and tears.

Joseph D'Angelo, President of King Features Syndicate.⁵⁵

From this quotation, it is easy to see why the term of the contract is driven by the up-front nature of the expenses of launching a feature. Creators understand that it is in their best interest to have the syndicates motivated to sell their features:

Keep in mind that the only equity a syndicate has is the length of their contracts. If a syndicate has all short contracts, what incentive do they have to invest in selling a strip? As it is, with most cartoons failing and the successful ones taking more than five years to mature, even the now standard seven years can be considered short.⁵⁶

Despite the agreement on the concept of allowing syndicates to earn a fair rate of return on their investment, many creators challenge Mr. D'Angelo's substantive claims about fairness. The creators claim that the syndicates' investment in each strip is significant but nowhere near as large as the syndicates claim it is. In fact, both parties are correct but miss the bigger hidden dispute.

⁵⁵ NORDLING, *supra* note 2, at 158.

The hidden dispute is over who should subsidize the cost of the approximately seventy-five percent of features that cease publication within five years at an almost total loss to the syndicate. Even though the syndicates release no detailed analysis of their finances, it is obvious that the bulk of their profit comes from the blockbuster strips like *Dilbert* and *Peanuts* (and, even more specifically, from the licensing deals for those strips). One high-level executive of a major syndicate stated, “[s]yndicates are very profitable, but ninety percent of the features aren’t that profitable.”⁵⁷ Since the syndicates’ main hope with each release is that they have found the next blockbuster, the non-blockbuster creators can make a credible argument that the syndicates should pay for the search for new blockbusters through the massive profits earned from existing blockbusters. The blockbuster creators, in turn, can argue that they should not be forced to subsidize anyone.

Another important factor to creators in determining an acceptable term length is the amount of work that the syndicates do over the course of the contract. Creators almost universally complained that once their features’ first year sales campaign ended, the syndicates ignored their features and moved on in search of the next blockbuster. One syndicate executive even stated that they are just throwing comics “against the wall to see what sticks.”⁵⁸ This makes sense from a business viewpoint. The syndicates’ goal is to get the strip into enough newspapers so that the creator has a chance. In the end, a comic must sell itself and the syndicates do not want to put the time into salvaging a weak comic. Under this business strategy, it may take blockbusters a little longer to separate themselves

⁵⁶ Anonymous Creator.

⁵⁷ Anonymous Syndicate Executive.

⁵⁸ Anonymous Creator quoting a syndicate executive.

from the pack, but very few are likely to actually cease publication if the syndicate created at least a moderate initial book of business. From a creator's standpoint, however, this lack of follow-up effort means that he wants a shorter contract so that he can get the new publicity push which usually accompanies a re-signing or switch of syndicates.⁵⁹

Another factor affecting the term and termination of a syndicate contract is the odd fact that almost all of the strips that survive are profitable, even the small ones. The seventy-to-eighty percent split major creators sometimes receive in contract renewals indicates that the marginal cost of servicing existing newspaper clients is less than twenty to thirty percent of gross revenue. Thus, the syndicates make money in two businesses. The average comic which survives is profitable on a marginal cost basis because servicing such comics is a minimal burden. The blockbusters are wildly profitable and pay for both their costs and the costs of all the failed features which were introduced in the search for the next blockbuster.

A related issue is that at the time when they sign the initial contract, most creators are risk averse—they would probably be willing to earn a little less should they produce a blockbuster in return for earning more if they produce just an averagely successful strip. This compromise can be accomplished through manipulation of the term of the contract. The income hurdles that are typical of syndication contract option provisions are so low as to be essentially automatic extensions. By instead granting the syndicate an option only based on a very high hurdle rate of income, the creator agrees to receive fifty percent (rather than, say, seventy percent) for several extra years in the event that the feature

⁵⁹ Anonymous Creator.

becomes a blockbuster. This means that the blockbusters are subsidizing the average strips. This accomplishes the goal of creators pooling risk in order to increase the median income. If done correctly, this provision could be profit-neutral for the syndicates. Such a provision might look like this:

9) TERM AND TERMINATION. (a) The term of this agreement shall commence on the date hereof and end on the date seven calendar years from the date of first publication of the Feature in a newspaper, except that such term shall be automatically renewed for an additional period of five years if the Syndicate's gross weekly billings during the first six months of the last year of the original seven-year term for the sale of the Feature and other rights granted pursuant to this agreement average at least \$300,000 when annualized.

All of the above numbers are subject to negotiation, but this appears like a fair compromise in line with industry standards, other than the extremely high hurdle.

Renewing creators are in an entirely different position than beginning creators, especially when negotiating the term and termination of the new contract. Renewing creators have a track record and an existing book of business. Thus, there is much more information, a stream of income, and (possibly) competition among the syndicates. Conceptually, the creator is now paying the syndicate for two different tasks: servicing existing clients and selling to new clients. Creators often argue that these services should be *unbundled* (vary the percentage according to the task) rather than *bundled* (pay the same percentage for existing and new customers). Under the creators' proposal, the syndicate would get a minor servicing fee (say 20%) on existing clients but a large percentage (say 80%) on all new sales for several years.⁶⁰ The term of the contract is then set at the number of years which repays the syndicate's investment with a reasonable rate of return.

Syndicates strongly dislike such unbundling. They prefer to view themselves as partners with the creators, and unbundling makes them feel like they are being turned into mere servicing organizations. Also, from a practical standpoint, unbundling also annoys the syndicates because it makes them much easier to monitor. This means that the syndicate must constantly prove itself for each of its main activities. While this accountability might actually encourage improved business practices that increase their long term profitability, the syndicates follow most other businesses in preferring to insulate as many decisions as they can from market pressures. Straight bundling is the syndicates' preference. Here, as with new creators' contracts, the syndicates get a flat percentage. At the traditional 50/50 split, a term of five years would probably reimburse the syndicate the cost of the sales campaign and provided for a reasonable profit.

The second, and vastly less significant portion of the term provision, is that both the contract and the creator's work commence well before the beginning of publication in newspapers. This uncompensated pre-publication period of from three months to over a year results in an additional duration for the contract. Arguments as to its reasonableness cut both ways. This pre-publication period includes time for the creator to hone the feature and for the syndicate to pre-sell it to newspapers. However, it is possible that a syndicate might delay the launch date solely to fit its scheduling needs. In fact, in the early 1980's United Media had three strips, including *Calvin & Hobbes*, signed. Since a syndicate can only sell one feature efficiently at a time, United Media conducted a focus group with the goal of determining the most promising strip and then launching it first. The focus group

⁶⁰ Anonymous Creator.

“dumped on *Calvin & Hobbes*” and so it was scheduled to be released last among the three strips. Thus, *Calvin & Hobbes*’ introduction was delayed many months even though it was ready from an artistic standpoint.⁶¹ Bill Watterson was unhappy at the delay, so he took *Calvin & Hobbes* to Universal Press Syndicate.⁶² Finding a slot on the syndicate’s release schedule is not just a question of meeting the syndicate’s legitimate needs, it is also a question of making sure that the syndicate is able to put its selling organization fully behind each new feature. If features are launched too closely together, they may cannibalize each other. Although some creators may view the syndicate as causing its own scheduling problems by launching too many features,⁶³ that is a completely different discussion. Overall, it is probably in both the syndicate’s and creator’s best interest to grant the syndicate this extra time. Note, however, that many other syndicates start the contract term at the time of signing, so the issue is an open negotiating point.

The next provision provides both the syndicates and creators with a way to terminate the contract if the feature is failing.

(b) Beginning with the thirteenth month after the date of the first publication of the Feature in a newspaper, if the aggregate payment to the Producer (prior to any deductions pursuant to Sections 4 and 7) under this agreement during any calendar month averages less than \$ per week, either the Producer or the Syndicate may cancel this agreement upon at least 30 days notice to the other given within the month following the month of such occurrence.

⁶¹ Anonymous Syndicate Executive. The strips were introduced in the order that a test group of readers liked the three strips.

⁶² Anonymous Syndicate Executive. As a side note, it is interesting that United Media was under no contractual obligation to allow Bill Watterson to switch to Universal Press. Though not contractually obligated to do so, United Media stepped aside when the creator wished to get out of the contract so that he could get his feature launched earlier. The subsequent runaway success of *Calvin & Hobbes* may make United Media wish that it had not let that one get away, but from a fairness standpoint United Media deserves credit.

⁶³ Anonymous Creator.

This is a reasonable provision. Note that the dollar figure per week tends to be far below that of a decent living wage. As one creator stated, the syndicates can make money at \$300 gross billings each week, but the creator cannot. Creators need to decide for themselves what the minimum should be. Some creators may want a low minimum so that they can keep doing a feature they love or believe in. Other creators may wish a higher minimum so that they can take their feature and ideas elsewhere if the syndicate does not generate a list of clients which can support the creator.

Syndicates often request a provision which will allow them to make sufficient advances to keep the Producer in production even if the feature has a slow start.

Should the Producer elect to so terminate, the Syndicate may continue this agreement by advancing to the Producer a sum equal to the difference between \$ and the aggregate payments due to the Producer (after any deductions pursuant to Sections 4 and 7) for the month upon which such election is based,

As mentioned above, syndicates can make money at a lower level of gross billings than the creator can. One reason the syndicates want a low figure as the termination is that any payments under this provision are lower. This provision is reasonable and common to all syndicates. If the syndicate is optimistic or believes the creator is unduly pessimistic about the future of the feature, the syndicate should be allowed to keep the feature going long enough to have a fair chance of establishing itself and earning back the syndicate's start-up investment. So long as the payment amount is not set too low, both parties stand to benefit. The one clarification needed is the amount of time that the syndicate has to decide whether it wants to make the payment. If the syndicate could wait until the last day of the 30 day period, then it would be impossible for the creator to sign with another syndicate or

prepare for the transition of administrative responsibilities. Thus, the syndicate should be limited to a five business day window in which to make the decision on whether to make the supplemental payments and thereby keep the creator on staff. The provision would look like:

Should the Producer elect to so terminate, the Syndicate may continue this agreement by advancing to the Producer within five business days a sum equal to the difference between \$ and the aggregate payments due to the Producer (after any deductions pursuant to Sections 4 and 7) for the month upon which such election is based,

This change clarifies a possible ambiguity. This helps both sides since the possibility of litigation over the reasonableness of a syndicate's response time is removed.

Most but not all syndicates explicitly limit repayment for such advances to future income under the agreement.

and repayment of any such advance shall be made solely from subsequent payments due the Producer hereunder.

Both here and elsewhere in the contract, creators should insist on limiting any downside to the termination of the contract. This means that the syndicate should not collect negative balances from the creator if the feature is terminated. Creators need to watch this issue carefully since most features fail and costs can add up quickly.

Although the syndicate wishes to have the right to keep the feature going, the syndicate also wants to prevent any legal claim of reliance by the creator, as the next provision states.

No such advance shall constitute a waiver of either the Producer's or the Syndicate's right to cancel upon subsequent recurrences of the contingency provided for herein.

This provision recognizes that in the business world transactions are often carried on without specific contracts or in violation of contract provisions. This is relevant here because the law states that under certain circumstances a later course of dealing between two parties can override pre-existing contract provisions. By including this provision, the syndicate reduces the creator's ability to use arguments such as, "I relied on the syndicate's waiving of termination." This provision therefore simply clarifies the agreement and gives notice to the creator. Therefore, it is fair.

Once the contract ends, a set of very complicated post-contract rights spring into existence.

(c) Upon any termination of this agreement, whether by expiration or otherwise:

This introduction merely recognizes that the contract may end by the finishing of the term, by cancellation for not meeting income hurdles, or by other reasons such as bankruptcy.

Depending on its interpretation and operation, the next provision may be the most potentially abusive one in the entire contract.

(i) If there are at the time of such termination any outstanding contracts to third parties respecting any rights hereunder, the Syndicate shall continue to receive the proceeds therefrom, and shall make payments to the Producer in accordance with Section 7, until such contracts are terminated. Section 9(b) shall not be applicable.

This provision can be read to grant the syndicate the power to make third-party licensing (or even newspaper) contracts which extend beyond the scheduled termination of the syndication contract. Under this reading, the syndicate can grant a twenty-year license in the last year of the syndication contract and thereby effectively grab an extra twenty years of licensing income. It appears that this is the syndicate's interpretation. For those strips

with substantial licensing income, such a provision can dramatically undercut the advantage to obtaining the copyright at termination of the syndicate contract. On the other hand, without such a reading the syndicate has little incentive to make attractive long term licensing deals near the end of a contract. The obvious way around such a dilemma is for the creator to authorize the longer licensing contract on a case-by-case basis. Although the syndicate might fear that the creator and licensee will strike a side deal, this should be only a moderate concern: since many licensing deals are time-pressured, the syndicate is unlikely to have many cases where a creator holds out an extra year or two just so that he can strike a better bargain after the syndication contract ends.

A more restrictive reading of the provision allows the syndicate to license through the scheduled end of the term. In the event of an earlier termination, the longer contracts are still valid. It is unlikely that the syndicate had this in mind when drafting the provision.

The creator should attempt to rewrite Section 9 in order to remove any ambiguity. Ideally, a middle ground should be struck between the two possible readings. Reasonable language might look as follows:

(i) If there are at the time of such termination any outstanding contracts to third parties respecting any rights hereunder, the Syndicate shall continue to receive the proceeds therefrom and shall make payments to the Producer in accordance with Section 7 until such contracts are terminated. Section 9(b) shall not be applicable. Provided, nevertheless, that such right shall not extend past the initial term of the agreement together with any renewal right. Licensing through the end of the renewal period shall be presumptively valid even in the event that the Syndicate does not eventually qualify for or exercise such right.

Although somewhat of a compromise, the syndicate is giving up more. Basically, the syndicate gets licensing income after termination if that termination occurs early, such as for failure to meet income hurdles, death of the creator, or bankruptcy of the creator.

The following final provision of Section 9 is also subject to both an expansive and a limited interpretation, with the expansive one reclaiming much of the value of the copyright for the syndicate:

(ii) The Syndicate shall have the exclusive right to republish or cause republication in any media of all material delivered to it during the term of this agreement provided that payment is made to Producer with respect to any republication in accordance with Section 7. Section 9(b) shall not be applicable.

The syndicate probably intends an expansive reading which defines “republication” as any reuse of the strip. Thus, reuse might include greeting cards, books, coffee mugs, calendars, and everything else that uses the feature. This becomes a permanent licensing right for a large part of the possible merchandise. Only such goods as stuffed animals, product endorsements, and the like are ruled out by the provision. Any such permanent licensing right should be at the top of the creator’s list of topics for negotiation. The limited interpretation is that the syndicate may sell reprints and publish anthology books, but not license a strip for a coffee mug.

The following revision makes clear that the limited interpretation holds:

(ii) The Syndicate shall have the exclusive right to republish or cause republication of the Feature delivered during the term of this agreement in any anthology book provided that payment is made to Producer with respect to any republication in accordance with Section 7. Section 9(b) shall not be applicable. All other uses of the material delivered to the Syndicate shall revert to the Producer.

This is a much cleaner organization for the contract.

Clearly, a sizable portion of the value of the copyright is at stake in subsections (c)(i) and (c)(ii). Now that the syndicates often allow the creators to keep the copyright, the syndicates have become very subtle at carving out the key rights. Although syndicates use different language, all carve wherever possible. Of course, carving out rights is sometimes a fair way of allocating value. For example, if the syndicate grants a very short initial term such as five years, that syndicate might fairly require the creator to pay over some of the revenue earned in subsequent years. An increasing number of syndicates follow this approach.

The lesson for creators is to focus on any section which addresses post-termination rights and duties. Not all such provisions are unreasonable, but most are very important.

Section 10: Assignment, Etc.

Section 2 permits the syndicate to delegate to third parties any of its duties, as well as to assign any of its rights. Section 10 goes further by permitting the syndicate to completely assign the contract to a third party.

***10) ASSIGNMENT, ETC.** This agreement shall be binding upon and inure to the benefits of the parties hereto and their respective heirs, legal representatives, successors and assigns, except that this agreement may not be assigned by the Producer except (a) to a corporation formed by the Producer of which all of the voting stock is owned and continues to be owned by him, and (b) where the Producer continues to be the person who prepares the Feature.*

The right to assign the contract means that the syndicate can sell anywhere from one contract to its entire portfolio (essentially, the power to sell the company). As with the similar provision in Section 2, the syndicates are likely to feel so strongly about this

provision that almost all creators will be unable to negotiate substantial assignment restrictions. Still, there are several issues which need further examination and clarification.

With regard to selling the company, any syndicate which has granted approval rights to the creator faces both a possible legal block to the sale or, if the sale is allowed to go forward, a possible major reduction in the value of the business. The legal block is that a creator approval right is a flat veto power under most circumstances. The veto power arises because the syndicate has no right to terminate the agreement unless there is either a breach of the contract by the creator or a shortfall in revenue pursuant to Section 9's term and termination provision. Rewriting the contract to permit the syndicate to terminate the contract of any non-consenting creator would not help much: as discussed in The Syndication Business chapter of this paper, almost all of a syndicate's value is attributable to its sales network and its long term contract rights with profitable creators. Thus, it would destroy most syndicates if all of their creators became "free agents" as a result of a sale of the business. Overall, the only creators who stand a chance of getting approval rights would be blockbuster creators in small syndicates. Since a such creator really is the syndicate, he may be able to convince the syndicate that it is better to take the chance of him destroying its economic value in the future than to drive him away now, which makes the feared future a current certainty.

One compensating aspect of the syndicate's transfer right is that sometimes the change is good for the creator, especially when creators tied to harsh contracts and intransigent syndicate management are sold to a more accommodating owner. Bil Keane,

for example, is reported⁶⁴ to have struggled in vain for many years to regain his copyright to *Family Circus*. When his syndicate was purchased, he inherited a more receptive management and negotiated the return of his fundamental artist rights. The reverse problem of moving from a good syndicate to a bad one is less of an issue if the creator has already secured basic contract rights such as copyright ownership and a moderate term.

With regard to assigning one or just a few contracts, the syndicate has similar concerns as with a sale of the business. Here, however, the veto power or ability to get out of the contract is likely to be less important for two key reasons. First, the transfer of such contracts on an individual basis is a rare event, so non-transferability is unlikely to have a significant impact. Second, in the instances where individual transfers are made, the circumstances tend to be extraordinary. The most likely scenario is that the creator becomes dissatisfied with the existing syndicate and wants to move to a different one. In such cases, the creator may well push for the move rather than resist it. As with the syndicate's power from Section 2 to delegate rights, the best creator remedy for ownership or personnel problems is to own his copyright and have a short enough term on the contract to permit escape within a reasonable number of years. Overall, Universal's provision reflects its needs fairly.

At least one syndicate provides the creator with a consultation right. This right merely obligates the syndicate to inform the creator prior to an assignment of the contract; the creator has no approval authority. This provision seems unhelpful to the creator and potentially hazardous to the syndicate. Although it would seem that consulting with

⁶⁴ Mr. Keane was not interviewed for this paper, but the source reliable appears reliable.

creators would be a good client relations move and perhaps smooth the transition, in fact most buyout or merger discussions need to take place in absolute secrecy. For the sale of individual contracts rather than of the syndicate's entire portfolio, such a consultation right makes more sense for two reasons. First, from a logistic standpoint, it is more feasible to provide meaningful meetings between syndicate personnel and a couple of creators than with fifty or more creators, all of whom may have a significant number of questions. Second, the sale of just a couple of contracts is unlikely to generate the attention that the sale of a whole syndicate would: fewer people are involved and it is less newsworthy. Still, although the issue is less dramatic for the sale of individual contracts, in both cases the decision should probably be left to the syndicate executives as to when and how they should inform the creators.

The one clear case where the creator deserves the right to know of a potential sale is when the creator is negotiating for a contract renewal. In the interviews conducted for this paper, many creators stated that their decision to stay or move to a new syndicate was based primarily on their syndicate's size and personnel.⁶⁵ It would be unfair for a syndicate to manipulate the timing of a sale of the company or a renewal of a contract because some blockbuster creator's contract was in renewal negotiations. Further, such manipulation might be perpetrated by a third party who knew about major contracts within the syndicate. A good, though still imperfect, solution to the creator consultation right issue might look as follows:

⁶⁵ Anonymous Creators.

Prior to the assignment of this agreement, the Syndicate may consult with the Producer and any or all other entities with which the Syndicate has contractual relations. Provided, however, that the Syndicate shall not be required to so consult. In the event that the agreement with the Producer is assigned within three months of any extension or renewal, the Producer may terminate the agreement within thirty days if he had not been notified of the potential transfer prior to the extension or renewal of his contract. The Producer shall have this right whether or not the Syndicate was engaged or planning such negotiations at the time of the signing of the renewal or extension. The Producer agrees to hold confidential any information learned pursuant to this paragraph.

This provision clarifies that the syndicate may consult with certain creators without being accused of legally inappropriate favoritism. Further, although the syndicate assumes responsibility for notifying creators about to sign renewals or extensions, the syndicate may also keep the discussions secret if it is worth releasing the creator from his contract. A large syndicate like King Features might well choose this option if it were merely re-signing a couple of smaller features. Not only is the amount at stake in such situations low, there is also a reasonable chance that the creator will continue with the contract unless he is truly aggrieved.

Section 11: Book Publishing and Licensing

The potentially rampant conflicts of interest in this book publishing and licensing provision are actually less than they appear.

11) BOOK PUBLISHING AND LICENSING. The Syndicate is affiliated with a book publishing firm, Andrews & McMeel ("A&M"), and with a licensing firm, Universal Licensing, Inc. ("ULC"), and the Syndicate may (but need not), pursuant to rights granted it by this agreement, contract with either A&M or ULC for publication or other uses respecting the Feature. In this connection, the Syndicate will not so contract with either affiliate except on terms which (a) considering all circumstances, in the Syndicated reasonable judgment are as favorable as could be obtained from an unaffiliated party, and (b) provide creative control to the Producer and

the Syndicate. Receipts by the Syndicate from either affiliate pursuant to any such contract will be subject to the payment provisions of this agreement.

Andrews & McMeel is the premier publisher of comic reprint anthologies, so the creator almost certainly wants A&M to publish a book of his feature. Furthermore, with books, both fair market payment and sales effort are somewhat easier to determine and monitor since the active life of the book is short whereas syndication efforts occur over many years.

Compared to A&M, Universal Licensing is less dominating in its market and harder to monitor, so the risk is higher and the payoff lower. Overall, the question is one of business judgment regarding conflicts of interest.

The only legal issue is the “reasonable judgment” standard. Given that there are so many obvious possibilities for conflicts of interest, the syndicate is justifiably concerned with being accused of inappropriate behavior. This “reasonableness” standard provides the syndicate with some protection against disappointed creators who may claim a conflict of interest even where the transaction was legitimate. Thus, it appears to be a fair standard.

Section 12: Time of Delivery

Syndicates need lead time to prepare a feature for distribution. Common deadlines for creators are six weeks in advance for dailies and eight weeks for Sundays.⁶⁶

12) TIME OF DELIVERY. *The time of delivery of installments of the Feature shall be set forth below or, if no time is specified, such delivery shall be as is reasonably specified by the Syndicate from time to time:*

Syndicate executives prefer the installments as far in advance as possible, whether for efficiency of the syndicate’s operation or for the executives’ peace of mind, or both. By

contrast, creators generally prefer shorter deadlines. The real problem for creators, however, is not what the deadline is but rather the fact that it constantly looms over them. As Wiley Miller of *Non Sequitur* put it “[i]n this kind of work, it’s not that the deadlines are so immediate, it’s that they are inaccessible. They are always going to be there, seven days a week, fifty-two weeks a year.”⁶⁷

On the other hand, a few strips such as *Doonesbury* and *Mallard Filmore*⁶⁸ reflect current events and need as short a deadline as possible. Furthermore, some creators have difficulty motivating themselves far in advance, especially on material topical to some future time of the year, “There just isn’t any way I’m going to be able to do Christmas cartoons in July. It’s tough enough in November.”⁶⁹ Creators need to judge on an individual basis whether the specific deadline matters enough to negotiate some control.

The next provision provides the remedy for late submissions.

Time is of the essence as to this Section, and Section 4 contains certain provisions for deductions for costs occasioned by Producer’s failure to meet delivery times.

Under general contract law, the stock phrase “*time is of the essence*” can encourage timely performance in two ways. If the party under the time-sensitive obligation fails to perform, then the other party is either excused from counter performance or has a claim for breach of contract, or both. In the case of the Universal contract, however, Section 12’s “*time is of the essence*” provision is used to trigger Section 4’s remedies. This is an interesting twist on general contract law because Section 4 does not claim to either terminate the contract or

⁶⁶ NORDLING, *supra* note 2, at 200.

⁶⁷ *Id.* at 201.

even make the creator liable for damages due to nonperformance. In fact, the syndicate's remedy is the right to perform the creator's duties. The only penalty is that the syndicate may subtract any related costs from the creator's earnings. This odd situation is explainable by the nature of the contract: syndication contracts are valuable because they are long-term arrangements that generate a steady income stream with only minor work for the syndicates after the costs of launch. Furthermore, syndicates view the majority of creators as replaceable once the feature is well established.

Section 13: Product Agreement

Almost all syndicate contracts require that the creator acknowledge his status as an "independent contractor" rather than an "employee."

13) PRODUCT AGREEMENT. Producer acknowledges that this agreement is not a personal services or employment agreement and that the Producer is an independent contractor and not an employee of the Syndicate.

Syndicates prefer the creators to have independent contractor status rather than employee status because it reduces the syndicates' obligations. Specifically, "[t]he syndicates do not want us as employees because of 1) liability 2) they would have to pay benefits, 3) it's easier to get rid of us if we're contractors."⁷⁰ Specifically, the creators are denied the usual benefits of formal employee status, such as:

1. unemployment compensation;
2. workers compensation;
3. disability insurance;

⁶⁸ Neither of the creators of these strips was interviewed for this paper, and I have no knowledge of their deadlines. These comics are merely used as examples of ones that would benefit from a short deadline.

⁶⁹ *Id.* at 200.

⁷⁰ Anonymous Creator.

4. pay in accordance with the Fair Labor Standards Act;
5. protection under the Occupation Safety and Health Administration;
6. Social Security and Medicare coverage;
7. coverage under the Americans with Disabilities Act;
8. coverage under the Age Discrimination in Employment Act;
9. coverage under the Family Medical Leave Act;
10. rights under the National Labor Relations Act; and
11. coverage under ERISA.⁷¹

This list includes some major items. As one colorful creator put it, “I have worse employment status than someone who works at Wendy’s.”⁷² For example, the creator must pay the additional half of the FICA burden in order to make up for the fact that the syndicate does not contribute the employer half. Also, exemption from the FLSA means that a creator can, and many do, work for below minimum wage.

Agreement between the syndicate and a creator as to independent contractor status does not automatically guarantee that the IRS, other agencies, or the courts will view the relationship that way. These government bodies use various sets of objective criteria to make the determination of independent contractor/employee status, and how the parties label the relationship is only one factor. The most important set of criteria are the twenty common law factors that the IRS examines when determining employee status for federal tax purposes.⁷³ The IRS uses these twenty factors as an analytic tool in order to decide whether, on balance, the employer has the right to “direct and control” the person. If so, the person is likely to be held an employee.

⁷¹ CB01/2 ALI-ABA 657, 670 *Review of the New Internal Revenue Service Initiatives Regarding the Independent Contractor/ Employee Distinction* (1996).

⁷² Anonymous Creator.

⁷³ Rev. Rul. 87- 41, 1987-1 C.B. 296.

Many creators feel that the independent contractor provision is invalid. Such a conclusion depends on the creator's situation and the particular law involved. These examinations are beyond the scope of this paper. However, initial research in the area appears to strongly support the syndicates' position on the issue, at least for IRS purposes.

Section 14: Governing Law

This following is a "choice of law" provision, and almost all commercial contracts have one.

***14) GOVERNING LAW.** This agreement shall be governed by the laws of the State of Missouri as to all matters including, without limitation, matters of validity, construction, effect and performance.*

Even the short syndicate contracts which omit an express choice of law provision insist that the contract be signed in a certain state, which is normally the syndicate's home state. Both the express provision and the hidden maneuver are attempts to control which law governs the contract and the location of any court contest.

Choosing the governing law benefits the syndicates both from a pure law standpoint and from a convenience standpoint. From a pure law standpoint, choosing the governing law is an advantage because the syndicate can know in advance how courts are likely to interpret each provision. This means that the syndicate can craft the contract to its best advantage. From a convenience standpoint, if there ever is a conflict with the creator, then the syndicate can defend or pursue the lawsuit more cheaply because neither its executives nor its attorneys need to travel or learn the law of another state. For precisely the opposite reasons, it is much more expensive for a creator to maintain a lawsuit in a distant jurisdiction.

The fact that almost all commercial contracts contain choice of law provisions does not mean that they are always valid. For some issues and under some sets of facts, courts will refuse to recognize the choice of law and instead will use the law of the local jurisdiction. However, because state law varies so widely in its recognition of choice of law provisions and because state law is often unclear as to its position on choice of law provisions, creators should consult with an attorney on an individual basis if an actual dispute arises with his syndicate.

Section 15: Miscellaneous

The “miscellaneous” provisions in this contract address a wide range of common legal issues.

15) MISCELLANEOUS. If there is more than one Producer, the term “Producer” herein shall mean all of them, their obligations under this agreement shall be joint and several,

Joint and several liability means that the each creator is fully liable for the promises made in the contract. The syndicate may sue either or both of them for performance or damages.

and any payment due them hereunder shall be equally divided among them unless they otherwise specify by notice in writing to the Syndicate.

An equal split of proceeds from the contract is a reasonable default rule.

The section headings herein are for reference only and shall not be considered in interpreting this agreement.

This provision is merely an aid to the interpretation of the contract in the event of a lawsuit.

Neither party is helped or hurt by it.

The provisions of this agreement constitute the entire understanding of the parties hereto, and this agreement may not be amended, modified or discharged except in writing.

This provision expresses two common protections, “*entire understanding*” and “*no-oral-modifications.*” Both protections attempt to control how a court would interpret the contract.

The “*entire understanding*” provision is known as a “merger clause.” The main benefit to such a provision is that a court will hold that the contract wipes out all prior negotiations, agreements, and understandings.⁷⁴ This is yet another good reason for both parties to follow this paper’s recommendation of writing down all terms of the arrangement, including the method of doing business if that is important. A more comprehensive version of the provision might look as follows:

The provisions of this agreement constitute the entire understanding of the parties hereto, and supersede all previous negotiations, agreements, and understandings whether written or oral, express or implied.

This more comprehensive language means the same thing as what it replaces, except that it is much easier for the creators to understand.

The next provision tries to prevent “*oral modifications*” but is probably not enforceable in most jurisdictions. Under the common law, such provisions are generally invalid.⁷⁵ One important factor in evaluating their validity is whether the party claiming such a modification has relied on the change in the contract terms. If so, the court is likely

⁷⁴ E. Allan Farnsworth, Contracts § 7.3 at 470 (2d ed. 1990)(“If the parties intended the writing to be a complete expression of all the terms agreed upon, as well as a final expression of the terms it contains, the agreement is completely integrated. If they intended the writing to be a final expression of the terms it contains, but not a complete expression of all the terms agreed upon—some terms remaining unwritten—the agreement is partially integrated.”).

⁷⁵ *Id.* at 493.

to be sympathetic.⁷⁶ However, some states, such as New York,⁷⁷ have enacted statutes which seemingly reverse the common law. Creators and syndicates should consult the law of their contract's jurisdiction to confirm the applicable law. Even if the “*no-oral modifications*” provision is valid and closes off a claim that the deal was changed, the syndicate or creator might be able to pursue several related theories of law such as the collateral agreement rule or promissory estoppel.

The next provision preserves the rights of either party which may at some point during the contract make a limited waiver of rights.

The waiver of any party hereto to a breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

This provision is necessary because the waiver of some rights in a contract can be more extensive under the law that the waiving party intended. In particular, a temporary waiver of a breach of the contract can become a permanent waiver under several legal theories. The effect of the no-waiver provision is to reduce the number of such legal defenses and to raise the standard for proving the remaining ones. In the end, however, a waiving party must be extremely diligent. Every time a significant breach or a continuing minor breach is waived, the waiving party should send a letter acknowledging the waiver but insisting on the preservation of the right to enforce the contract term in the future.

The final part of the contract is the signature page.

⁷⁶ *Id.* quoting *Universal Builders v. Moon Motor Lodge*, 430 Pa. 550, 560, 244 A.2d 10, 16 (1968).

⁷⁷ N.Y. Gen. Oblig. L. §15-301(1) (“written agreement...which contains a provision to the effect that it cannot be changed orally, cannot be changed by an executory agreement unless such executory agreement is in writing and signed”).

**DRAFTING CREATOR CONTRACTS:
A Guide for Syndicates, Creators, and Their Attorneys.**

*To indicate your acceptance of and agreement to the foregoing,
please sign and return to us the enclosed copies of this agreement.*

Very truly yours,

UNIVERSAL PRESS SYNDICATE

By _____

The foregoing is accepted and agreed to as of the date hereof.

(Producer)

(Producer's Social Security Number)

(Producer's Date of Birth)

It is standard practice for contracts to include a disclosure of the creator's date of birth and Social Security number. The syndicates need this information to report earnings to state and federal taxing authorities, as well as for immigration purposes.

IV. CONCLUSION

The goal of this paper was to provide syndicates, creators, and their attorneys with the information necessary to draft fair and efficient contracts. Although such a goal would seem rather humble for most industries, for the syndication business it is the first time anyone has attempted such a task. Many of the suggestions which seem like common

sense once articulated have been overlooked until now because few people had both the legal and business knowledge to make the obvious connections.

My greatest fear regarding this paper is that syndicates may undermine its balanced approach. Since they have the lawyers and bargaining power, the syndicates may selectively adopt only those recommendations which help them. As a result, creators need to understand this document so that they can resist overreaching.

Author Biography

Stuart M. Rees graduated from Harvard Law School in June, 1997. This paper was written in satisfaction of his thesis requirement. He spent his two law school summers working for a large law firm in San Francisco. Since September 1997 he has been an attorney in the business department of Bingham Dana LLP, a major Boston law firm. He devotes a substantial part of his practice to intellectual property issues.

Prior to law school, Stuart worked for two years as a financial analyst for a Boston-based pension fund investment manager. While working there, he passed the first two of three tests required for the Chartered Financial Analyst degree. He has enrolled for the third level, and will take the test in May 1998.

Throughout high school and then at the University of California at Berkeley, Stuart spent his summers working for the real estate research company he started in New Hampshire.

Stuart is a lifelong fan of newspaper comics. As a outgrowth of this interest, he maintains an Internet site devoted to comic strips (www.stus.com). This site offers twenty

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funnies pages, search tools, original content, a bulletin board, a book store, and descriptions of all 1,100+ online cartoons.

APPENDIX I: Universal Press Syndicate Boilerplate Contract

AGREEMENT

Name:

Date:

Dear:

The following comprises the agreement between Universal Press Syndicate (“Syndicate”) and you (“Producer”) regarding our syndication of your Feature:

1) PREPARATION OF THE FEATURE. The Producer shall prepare and furnish to the Syndicate each week during the term of this agreement, at such time prior to the Syndicate’s date of release as is specified in Section 12 or otherwise as the Syndicate may reasonably specify from time to time, the following material (which, with its drawings, ideas, subject matter, format, continuity, plots, themes, characters and characterizations, is sometimes referred to as the “Feature”):

The Producer shall maintain for the Feature a quality of work consistent with that previously submitted and with the Syndicate’s reasonable requirements. The title of the Feature may be changed by mutual agreement of the Producer and the Syndicate.

The original of any drawing delivered by the Producer to the Syndicate shall be the property of the Producer, and, after any such drawing has served the Syndicate’s purposes, it shall be returned to the Producer. No drawing so returned shall be published or otherwise used in any way or form which conflicts with the Syndicate’s rights under this agreement, and the return of any such drawing shall not in any way affect such rights.

2) SYNDICATION. The Syndicate shall, in a manner consistent with customary practice in the conduct of its business, use its best efforts to sell the Feature to newspapers (both print and electronic) and shall take such other action, if any, to exploit the Feature as the Syndicate in its sole discretion deems appropriate. The Syndicate shall have absolute discretion in selecting purchasers of any rights in the Feature and in determining prices and all other terms of sale in any media. All or any part of the Syndicate’s rights under this agreement may be delegated or redelegated from time to time to any sales, syndication, publication or other agency or firm, each of which may act with respect to the delegated right in its or their own name or names.

3) RIGHTS GRANTED SYNDICATE. (a) The Syndicate shall have, and the Producer hereby transfers and conveys to the Syndicate, all copyright, proprietary and exploitation rights whatsoever in the Feature produced for the Syndicate by the Producer during the term of this agreement, including but not limited to the following exclusive rights: to reproduce the Feature in copies or phonorecords; to prepare derivative works based on the Feature; to distribute copies or phonorecords of the Feature to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform the Feature publicly; to display the Feature publicly; to trademark any name or title used in connection with any services rendered or Feature prepared or furnished under this agreement; to copyright any such Feature and to secure any renewal of copyright permitted by law; to communicate the Feature by radio broadcasting, rebroadcasting, wired radio, television, cable, telephone, satellite or by any other methods or means (now or hereafter existing) of transmitting or delivering ideas, sounds, words, images or pictures; and to vend and otherwise dispose of, and to otherwise exercise with reference to said Feature any and all rights and privileges now and [sic] in existence or which may hereafter accrue. As used in this Section 3(a), the term “Feature” includes any derivative work based on the Feature. The Syndicate may, at its option, appoint an agent or agents to exploit one or more of the rights so granted. Whenever requested by the Syndicate, the Producer shall execute any instruments which in the judgment of the Syndicate may be necessary or desirable to secure to the Syndicate the rights granted by the agreement.

(b) The Syndicate, and its subscribers, agents and appointees, licensees and successors shall have the right to use the Producer’s name, picture (color and black-and-white, provided by the Producer) and biography for promotion, trade and advertising purposes in connection with the rights granted the Syndicate hereunder.

4) EDITING: FAILURE TO DELIVER. The Syndicate shall have the general editorial supervision of the Feature, but the Syndicate shall make no substantive changes to the Feature without the Producer’s prior approval. If the Syndicate determines that a particular installment of the Feature is not suitable for publication, it shall return it to the Producer for revision and resubmission. Upon the inability (whether due to disability, death or otherwise) or the failure of the Producer to submit the Feature, suitable for publication, as determined by the Syndicate, within such time in advance of the date of publication as the Syndicate specifies pursuant or Section 1 or Section 12, the Syndicate shall have the right, in addition to any other rights and remedies hereunder (a) in the case of late submission, to deduct from the amounts payable to Producer under this agreement all costs and expenses occasioned by such late submission (including without limitation freight, mailing and handling and overtime of personnel), and (b) in the case of non-submission, to have the Feature prepared by others, deducting the expenses incurred by it in this connection, including the compensation of a substitute writer or artist, from any amounts payable to the Producer under this agreement.

5) PRODUCER'S WARRANTIES AND INDEMNIFICATION. The Producer represents, warrants, and agrees, to and with the Syndicate and its assignees and agents, that (except to the extent attributable to editing by the Syndicate which was not approved by the Producer) all material furnished pursuant to this agreement will be original with him and that the use of such material as contemplated by this agreement will not constitute libel or conflict with or infringe upon any copyright, right of privacy or other rights of any third person or firm. The Producer will indemnify the Syndicate (and any sales, syndication, publication or other agency or firm to which the Syndicate has delegated rights under this agreement) against any expenses or damages (including reasonable attorneys' fees) resulting from any breach or alleged breach of such representation and warranty. The Syndicate and any such indemnified party shall have the right, at their discretion, either to defend any claim or suit by counsel of their choice or to settle the same on such terms as they deem advisable. In the event that a final judgment dismissing any such claim or suit without liability to the Syndicate or any such indemnified party, the obligation of the Producer shall be limited to reimbursing the Syndicate and such indemnified party for one-half of all expenses incurred by them in connection therewith.

6) EXCLUSIVITY; RIGHTS OF FIRST REFUSAL. During the term of this agreement, the Producer will not, without the prior written consent of the Syndicate, produce or consent to be produced (under his name or any other name or names), or advise or assist in any way with the production of, any material of similar name or appearance to the Feature for publication in any newspaper, periodical, book, or other publication. The Syndicate shall have the option to meet any bona fide offer for the services of the Producer with respect to material suitable for syndication during the term of this agreement, provided, however, that such option shall be exercised by the Syndicate within 90 days after receipt of written notice of such a bona fide offer.

7) PAYMENT TO PRODUCER. (a) In consideration of the satisfactory performance by the Producer of his obligation under this agreement, the Syndicate shall pay to the Producer, not later than the twentieth day of each month:

(i) with respect to the sale for newspaper publication within the continental United States of the rights to the use of the Feature, 50% of the net domestic newspaper collections during the preceding month (derived by deducting from the gross collections from such sales the Syndicate's cost for in-paper promotion, sales and promotional kits, sales and commissions [not in excess of 2%], production, transportation by wire or other mechanical or electronic means, securing and protecting trademark and copyright in connection therewith);

(ii) with respect to the sale for newspaper publication outside the continental United States of the rights to the use of the Feature, 50% of the net foreign newspaper collections during the preceding month (derived by deducting from the gross collections from such sale the Syndicate's costs for agent's fees and commissions, in-paper promotion, production, trademark, copyright, and all other expenses and payments in connection therewith);

(iii) with respect to the sale of pamphlet compilations of the Feature by advertisements in the syndicated newspaper version of the Feature, 15% of the retail list price of each such pamphlet sold; and

(iv) with respect to the sale of any other rights to use, in any media or form other than newspaper publication or pamphlet sale of the Feature, or of its drawings, continuity, ideas, format, plots themes characters or characterizations, 50% of the net collections (derived by deducting from the gross collections from such sales all of the Syndicate's expenses [including without limitation agency fees and commissions] in connection therewith).

(b) The Syndicate shall render to the Producer monthly itemized statements (with remittances) of the income and disbursements of the preceding calendar month with regard to the Feature; and the Syndicate's records relating to the Feature shall be available to the Producer or his authorized Certified Public Accountants for inspection at all reasonable times during business hours.

8) PERSONAL APPEARANCES. The Syndicate will act as the Producer's non-exclusive representative in connection with requests for personal appearances or personal services by the Producer, such as lectures, speaking engagements, television or other media appearances or advertising, product endorsements and the like, and the Syndicate will not arrange any such appearances or services for the Producer without first securing his approval, which he will not withhold unreasonably. The Producer will notify the Syndicate promptly of his approval or disapproval of the terms of appearances or services submitted to him. The Producer will pay to the Syndicate 20% of all amounts, after deducting therefrom his direct and necessary expenses incurred, which he receives for any such personal appearances or services, such payments to be made promptly after receipt of such amounts by the Producer.

9) TERM AND TERMINATION. (a) The term of this agreement shall commence on the date hereof and end on the date ten calendar years from the date of first publication of the Feature in a newspaper, except that such term shall be automatically renewed for an additional period of ten years if the Syndicate's gross weekly billings during the first six months of the last year of the original ten-year term for the sale of the Feature and other rights granted pursuant to this agreement average at least \$.

(b) Beginning with the thirteenth month after the date of the first publication of the Feature in a newspaper, if the aggregate payment to the Producer (prior to any deductions pursuant to Sections 4 and 7) under this agreement during any calendar month averages less than \$ per week, either the Producer or the Syndicate may cancel this agreement upon at least 30 days notice to the other given within the month following the month of such occurrence. Should the Producer elect to so terminate, the Syndicate may continue this agreement by advancing to the Producer a sum equal to the difference between \$ and the aggregate payments due to the Producer (after any deductions pursuant to Sections 4 and 7) for the month upon which such election is based, and repayment of any such advance shall be made solely from subsequent payments due the Producer hereunder. No

such advance shall constitute a waiver of either the Producer's or the Syndicate's right to cancel upon subsequent recurrences of the contingency provided for herein.

(c) Upon any termination of this agreement, whether by expiration or otherwise:

(i) If there are at the time of such termination any outstanding contracts to third parties respecting any rights hereunder, the Syndicate shall continue to receive the proceeds therefrom, and shall make payments to the Producer in accordance with Section 7, until such contracts are terminated. Section 9(b) shall not be applicable.

(ii) The Syndicate shall have the exclusive right to republish or cause republication in any media of all material delivered to it during the term of this agreement provided that payment is made to Producer with respect to any republication in accordance with Section 7. Section 9(b) shall not be applicable.

10) ASSIGNMENT, ETC. This agreement shall be binding upon and inure to the benefits of the parties hereto and their respective heirs, legal representatives, successors and assigns, except that this agreement may not be assigned by the Producer except (a) to a corporation formed by the Producer of which all of the voting stock is owned and continues to be owned by him, and (b) where the Producer continues to be the person who prepares the Feature.

11) BOOK PUBLISHING AND LICENSING. The Syndicate is affiliated with a book publishing firm, Andrews & McMeel ("A&M"), and with a licensing firm, Universal Licensing, Inc. ("ULC"), and the Syndicate may (but need not), pursuant to rights granted it by this agreement, contract with either A&M or ULC for publication or other uses respecting the Feature. In this connection, the Syndicate will not so contract with either affiliate except on terms which (a) considering all circumstances, in the Syndicated reasonable judgment are as favorable as could be obtained from an unaffiliated party, and (b) provide creative control to the Producer and the Syndicate. Receipts by the Syndicate from either affiliate pursuant to any such contract will be subject to the payment provisions of this agreement.

12) TIME OF DELIVERY. The time of delivery of installments of the Feature shall be set forth below or, if no time is specified, such delivery shall be as is reasonably specified by the Syndicate from time to time:

Time is of the essence as to this Section, and Section 4 contains certain provisions for deductions for costs occasioned by Producer's failure to meet delivery times.

13) PRODUCT AGREEMENT. Producer acknowledges that this agreement is not a personal services or employment agreement and that the Producer is an independent contractor and not an employee of the Syndicate.

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14) GOVERNING LAW. This agreement shall be governed by the laws of the State of Missouri as to all matters including, without limitation, matters of validity, construction, effect and performance.

15) MISCELLANEOUS. If there is more than one Producer, the term “Producer” herein shall mean all of them, their obligations under this agreement shall be joint and several, and any payment due them hereunder shall be equally divided among them unless they otherwise specify by notice in writing to the Syndicate. The section headings herein are for reference only and shall not be considered in interpreting this agreement. The provisions of this agreement constitute the entire understanding of the parties hereto, and this agreement may not be amended, modified or discharged except in writing. The waiver of any party hereto to a breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

To indicate your acceptance of and agreement to the foregoing, please sign and return to us the enclosed copies of this agreement.

Very truly yours,

UNIVERSAL PRESS SYNDICATE

By _____

The foregoing is accepted and agreed to as of the date hereof.

(Producer)

(Producer’s Social Security Number)

(Producer’s Date of Birth)

APPENDIX II: “Fair” Contract

The following contract contains the sum of the “fair” terms proposed in the paper. Of the proposed changes from the Universal contract, some benefit creators, some benefit the syndicates, and some benefit both parties.

Obviously, no creator has the negotiating strength to achieve all of these changes. Furthermore, the contract as a whole might become unfair to the syndicates were creators to achieve all of these concessions; creators should view the proposed terms as a menu of possible changes, not as a goal.

Underlined sections indicate changes from the Universal Press boilerplate contract.

AGREEMENT

Name:

Date:

Dear:

The following comprises the agreement between [syndicate name] (“Syndicate”) and you (“Producer”) regarding our syndication of your Feature:

1) PREPARATION OF THE FEATURE. The Producer shall prepare and furnish to the Syndicate each week during the term of this agreement, at such time prior to the Syndicate’s date of release as is specified in Section 12 or otherwise as the Syndicate may reasonably specify from time to time, the following material (which, with its drawings, ideas, subject matter, format, continuity, plots, themes, characters and characterizations, is sometimes referred to as the “Feature”):

The Producer shall maintain for the Feature a quality of work consistent with that previously submitted and with the Syndicate's reasonable requirements. The title of the Feature may be changed only by mutual agreement of the Producer and the Syndicate.

The original of any drawing delivered by the Producer to the Syndicate shall be the property of the Producer, and, after any such drawing has served the Syndicate's purposes, it shall be returned to the Producer. In the event that the Producer makes electronic delivery of the Feature which is satisfactory to the Syndicate, the Producer shall be entitled to continuous possession of his original artwork. No drawing so returned or retained shall be published or otherwise used in any way or form which conflicts with the Syndicate's rights under this agreement, and the return or retention of any such drawing shall not in any way affect such rights.

2) SYNDICATION. The Syndicate shall, in a manner consistent with customary practice in the conduct of its business, use its best efforts to sell the Feature to newspapers (both print and electronic) and shall take such other action, if any, to exploit the Feature as the Syndicate in its sole discretion deems appropriate. The Syndicate shall have absolute discretion in selecting newspapers and other purchasers of the Feature and in determining prices and all other terms of sale. The Syndicate may license or sell subsidiary rights in the feature, such as merchandise, provided that the Producer approves or fails to disapprove the proposed contract within ten (10) business days. Producer shall not unreasonably withhold such approval. The Syndicate may assign all or any part of its rights and may delegate all or any part of its duties under this agreement from time to time to any sales, syndication, publication or other agency or firm. Each such agency or firm may act with respect to the assigned rights and delegated duties in its or their own name or names.

3) RIGHTS GRANTED SYNDICATE. (a) The Syndicate shall have, and the Producer hereby transfers and conveys to the Syndicate, all copyright, proprietary and exploitation rights whatsoever in the Feature produced for the Syndicate by the Producer during the term of this agreement, including but not limited to the following exclusive rights: to reproduce the Feature in copies or phonorecords; to prepare derivative works based on the Feature; to distribute copies or phonorecords of the Feature to the public by sale or other transfer of ownership, or by rental, lease, or lending; to perform the Feature publicly; to display the Feature publicly; to trademark any name or title used in connection with any services rendered or Feature prepared or furnished under this agreement; to copyright any such Feature and to secure any renewal of copyright permitted by law; to communicate the Feature by radio broadcasting, rebroadcasting, wired radio, television, cable, telephone, satellite or by any other methods or means (now or hereafter existing) of transmitting or delivering ideas, sounds, words, images or pictures; and to vend and otherwise dispose of, and to otherwise exercise with reference to said Feature any and all rights and privileges now and [sic] in existence or which may hereafter accrue. As used in this Section 3(a), the term "Feature" includes any derivative work based on the Feature. The Syndicate may, at its option, appoint an agent or agents to exploit one or more of the rights so granted. Whenever requested by the Syndicate, the Producer shall execute any

instruments which in the judgment of the Syndicate may be necessary or desirable to secure to the Syndicate the rights granted by the agreement. In the event that any such instruments grant rights in excess of those contemplated by this agreement, the Syndicate shall indemnify the Producer for any losses he may suffer.

(b) The Syndicate, and its subscribers, agents and appointees, licensees and successors shall have the right to use the Producer's name, picture (color and black-and-white, provided by the Producer) and biography for promotion, trade and advertising purposes in connection with the rights granted the Syndicate hereunder.

4) EDITING: FAILURE TO DELIVER. The Syndicate shall have the general editorial supervision of the Feature, but the Syndicate shall make no substantive changes to the Feature without the Producer's prior approval. If the Syndicate determines that a particular installment of the Feature is not suitable for publication, it shall return it to the Producer for revision and resubmission. Upon the inability (whether due to disability, death or otherwise) or the failure of the Producer to submit the Feature, suitable for publication, as determined by the Syndicate, within such time in advance of the date of publication as the Syndicate specifies pursuant or Section 1 or Section 12, the Syndicate shall have the right, in addition to any other rights and remedies hereunder

(a) in the case of late submission, to deduct from the amounts payable to Producer under this agreement all costs and expenses occasioned by such late submission (including without limitation freight, mailing and handling and overtime of personnel). Notwithstanding the foregoing, the Producer shall not be required to pay such costs if they are a result of the Syndicate's editorial oversight. Further, overnight delivery and other forms of expedited delivery are subject to a reasonableness limitation based on actual necessity and not mere convenience.

Option 1

and (b) in the case of voluntary non-submission, to have the Feature prepared by others chosen by the Syndicate, deducting the expenses incurred by it in this connection, including the compensation of a substitute writer or artist, from amounts payable to the Producer for the substitute installments. In the case of involuntary non-submission for such reasons as death or disability, to have the Feature prepared by a substitute artist or writer of the Producers' selection subject to the Syndicate's right of approval, which shall not be unreasonably withheld. The Syndicate may deduct the expenses incurred by it in this connection, including the compensation of the Producer-selected substitute writer or artist, from amounts payable to the Producer for the substitute installments. If the Producer is unable or unwilling to select a substitute artist or writer, the Syndicate may make the selection.

Option 2

and (b) in the case of voluntary non-submission, to have the Feature prepared by others chosen by the Syndicate, deducting the expenses incurred by it in this connection, including the compensation of a substitute writer or artist, from amounts payable to the Producer for the substitute installments. In the event of the Producer's death or permanent disability, the Syndicate may continue to release those unpublished installments of the Feature then in existence. The Syndicate may not employ substitute artists or writers to continue production of the Feature without the consent of the Producer, his estate, or his representative. If the Producer, his estate, or his representatives do elect to continue the Feature, it must be with the Syndicate and pursuant to the terms of this agreement.

5) PRODUCER'S WARRANTIES AND INDEMNIFICATION. The Producer represents, warrants, and agrees, to and with the Syndicate and its assignees and agents, that (except to the extent attributable to editing by the Syndicate which was not approved by the Producer) all material furnished pursuant to this agreement will be original with him and that the use of such material as contemplated by this agreement will not constitute libel or conflict with or infringe upon any copyright, right of privacy or other rights of any third person or firm. The Producer will indemnify the Syndicate (and any sales, syndication, publication or other agency or firm to which the Syndicate has delegated rights under this agreement) against any expenses or damages (including reasonable attorneys' fees) resulting from any breach or alleged breach of such representation and warranty. Provided, nevertheless, that the Producer shall be responsible neither for consequential damages incurred by the Syndicate or any other indemnified party nor for the time of personnel employed by the Syndicate or other such indemnified party. The Syndicate and any such indemnified party shall have the right to defend any claim or suit by counsel of their choice but shall not be entitled to indemnification payments from the Producer for a settlement unless the Producer agrees to the settlement in writing. In the event of (a) a final judgment dismissing any such claim or suit without liability to the Syndicate or any such indemnified party, or (b) the claimant withdraws the action prior to adjudication, then the obligation of the Producer shall be limited to reimbursing the Syndicate and such indemnified party for one-half of all expenses incurred by them in connection therewith. The Producer acknowledges that he is a member of the journalistic profession and shall be governed by its ethical standards. The Producer shall bring to the attention of the Syndicate any actual or potential conflict of interest between the subject matter of the Feature and the Producer's personal dealings, including social, religious, financial, professional, and other issues. The Producer's above-described warranties and indemnities shall survive termination of this Agreement and shall be binding upon the Producer's estate or representative.

6) EXCLUSIVITY; RIGHTS OF FIRST REFUSAL. During the term of this agreement, the Producer will not, without the prior written consent of the Syndicate, produce or consent to be produced (under his name or any other name or names), or advise or assist in any way with the production of, any material of similar name or appearance to the Feature for publication in any newspaper, periodical, book, or other publication. The Syndicate shall have the option to meet any bona fide offer for the services of the Producer with respect to material suitable for syndication during the term of this agreement,

provided, however, that such option shall be exercised by the Syndicate within 45 days after receipt of written notice of such a bona fide offer.

7) PAYMENT TO PRODUCER. (a) The Syndicate shall pay to the Producer, not later than the twentieth day of each month:

(i) with respect to the sale for newspaper publication within the continental United States of the rights to the use of the Feature, 50% of the net domestic newspaper collections during the preceding month. Net domestic newspaper collections shall be derived by deducting from the gross collections of such sales the Syndicate's cost for

(A) production expenses, subject to a monthly limit of \$ _____ for daily features and the actual cost of third party preparation of Sunday features. Production expenses shall be limited to mats, proofs, film negatives, digitalization, reproduction, engraving, and cuts. The Syndicate shall provide an itemized list of such expenses together with each remittance. The Producer may chose to provide such services in the future, and in return the Syndicate shall not charge the Producer for those services. In recognition of the Syndicate's administrative needs, the Producer must provide such services for the entire month that Producer wishes to receive credit, and the Syndicate shall be entitled to reject such services if they are materially inferior to those supplied by the Syndicate or its agents.

(B) the direct costs of in-paper promotion solely for the benefit of the Feature and not for the benefit of the Syndicate in general or any of its other text or comic products. Direct costs shall include the costs of materials, printing or reproduction, and distribution by mailings or electronic means. Such direct costs shall not include design work, overhead, salaries, or any other indirect cost of the Syndicate. These costs, together with those of subsection C, shall not exceed the lesser of \$300 per month or ten (10) percent of gross collections.

(C) the direct costs of sales and promotional kits solely for the benefit of the Feature and not for the benefit of the Syndicate in general or any of its other text or comic products. Direct costs shall include the costs of materials, printing or reproduction, and distribution by mailings or electronic means. Such direct costs shall not include design work, overhead, salaries, or any other indirect cost of the Syndicate. These costs, together with those of subsection B, shall not exceed the lesser of \$300 per month or ten (10) percent of gross collections.

(D) sales commissions [not in excess of 2%],

(E) transportation by wire or other mechanical or electronic means,

Option 1

(F) securing and maintaining the trademark, copyright, other literary property, and any other rights covered by this agreement in connection with the Feature and its title. Such expenses shall not cover the costs of enforcing these rights against third parties, as such costs are provided for under (a)(v) of this Section;

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(F) securing and maintaining the trademark, copyright, other literary property, and any other rights covered by this agreement in connection with the Feature and its title.

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Further, Syndicate shall be entitled to reimbursement for the costs of legal action (including attorney's fees) in which the Syndicate asserts against a third party any of the rights granted to the Syndicate in this agreement, provided that the Producer authorizes such action and has not withdrawn such authorization. In the event that either the Syndicate or the Producer declines to pursue an enforcement against a third party, the other party shall remain free to pursue such enforcement at its own expense and shall be entitled to retain all settlement payments or judgment damages;

(ii) with respect to the sale for newspaper publication outside the continental United States of the rights to the use of the Feature, 50% of the net foreign newspaper collections during the preceding month. Net Foreign Newspaper Collections shall be derived by deducting from the gross foreign collections of such sales the Syndicate's costs as provided for in Section 7(a)(i)(A-F), subject to the following adjustments:

(A) Sales commissions paid to foreign agents shall be limited to fifty (50%) of collections directly attributable to such foreign agents,

(B) The Syndicate may deduct the additional costs attributable principally to doing business outside of the continental United States, including but not limited to costs of translation, currency conversion, agents' fees, and foreign sales taxes.

(iii) with respect to the sale of pamphlet compilations of the Feature by advertisements in the syndicated newspaper version of the Feature, 15% of the retail list price of each such pamphlet sold; and

(iv) with respect to the sale of any other rights to use, in any media or form other than newspaper publication or pamphlet sale of the Feature, or of its drawings, continuity, ideas, format, plots themes characters or characterizations, 50% of the net collections (derived by deducting from the gross collections from such sales all of the Syndicate's expenses [including without limitation agency fees and commissions] in connection therewith).

(v) The Syndicate shall bear all litigation and other enforcement costs associated with protection of rights granted to the Syndicate under this agreement. The creator grants the Syndicate absolute discretion over when and how to pursue such claims. Should the enforcement result in a settlement payment or a damage award, the Syndicate shall be entitled to deduct from such payment all out-of-pocket costs associated with achieving such payment. The Producer shall be entitled to fifty (50) percent of any portion of the payment remaining after reimbursement of the Syndicate's out-of-pocket costs. The Syndicate shall have reasonable discretion over the allocation of out-of-pocket costs, compensation, and punitive damages in any joint recovery among the Producer and other claimants. In the event that the Syndicate declines to pursue an enforcement against a third party, the Producer may pursue such enforcement at its own expense and shall be entitled to retain all settlement payments or judgment damages.

(b) The Syndicate shall render to the Producer monthly itemized statements (with remittances) of the income and disbursements of the preceding calendar month with regard to the Feature. Such statements shall include a list of current newspaper and other clients, as well as their scheduled pay rates and the amounts actually received. New clients and

cancellations recorded during that month shall be conspicuously noted. The Syndicate's records relating to the Feature shall be available to the Producer, his attorney, his Certified Public Accountant, agent or other personal representative for inspection during business hours twice annually with five (5) business days notice. If such review determines that either the expenses or gross collections are misrepresented by five (5) percent or more under Generally Accepted Accounting Principles, then the Syndicate shall pay the direct cost of such review and any other related expenses including attorney's fees.

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8) PERSONAL APPEARANCES. They Syndicate shall refer to the Producer or his agent all requests for personal appearances or personal services by the Producer, such as lectures, speaking engagements, television or other media appearances, as well as product endorsements. In connection with lectures, speaking engagements, and television or other media appearances, the Producer may refer to the Feature and use samples of the strips or merchandise. In connection with product endorsements, the Producer may refer to his status as creator of the Feature but may not make other references or use samples without the permission of the Syndicate. The Syndicate may condition such permission on payment of a licensing fee under Section 3 as if the Producer were a third party.

Option 2

8) PERSONAL APPEARANCES. The Syndicate will act as the Producer's non-exclusive representative in connection with requests for personal appearances or personal services by the Producer, such as lectures, speaking engagements, television or other media appearances, as well as product endorsements. In connection with lectures, speaking engagements, and television or other media appearances, the Producer may refer to the Feature and use samples of the strips or merchandise. In connection with advertising, product endorsements, and the like, the Producer may refer to his status as creator of the Feature but may not make other references or use samples without the permission of the Syndicate. The Syndicate may condition such permission on payment of a licensing fee as if the Producer were a third party under Section 3. The Syndicate will not arrange any such appearances or services for the Producer without first securing his approval. The Producer shall not withhold such approval unreasonably, but Producer's determination of reasonableness shall be conclusive. The Producer will notify the Syndicate promptly of his approval or disapproval of the terms of appearances or services submitted to him. The Producer will pay to the Syndicate 20% of all amounts, after deducting therefrom his direct and necessary expenses incurred, which he receives for any such personal appearances or services, such payments to be made promptly after receipt of such amounts by the Producer.

9) TERM AND TERMINATION. (a) The term of this agreement shall commence on the date hereof and end on the date seven calendar years from the date of first publication of the Feature in a newspaper, except that such term shall be automatically renewed for an additional period of five years if the Syndicate's gross weekly billings during the first six months of the last year of the original seven-year term for the sale of the

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Feature and other rights granted pursuant to this agreement average at least \$300,000 when annualized.

(b) Beginning with the thirteenth month after the date of the first publication of the Feature in a newspaper, if the aggregate payment to the Producer (prior to any deductions pursuant to Sections 4 and 7) under this agreement during any calendar month averages less than \$ per week, either the Producer or the Syndicate may cancel this agreement upon at least 30 days notice to the other given within the month following the month of such occurrence. Should the Producer elect to so terminate, the Syndicate may continue this agreement by advancing to the Producer *within five business days* a sum equal to the difference between \$ and the aggregate payments due to the Producer (after any deductions pursuant to Sections 4 and 7) for the month upon which such election is based, and repayment of any such advance shall be made solely from subsequent payments due the Producer hereunder. No such advance shall constitute a waiver of either the Producer's or the Syndicate's right to cancel upon subsequent recurrences of the contingency provided for herein.

(c) Upon any termination of this agreement, whether by expiration or otherwise:

(i) If there are at the time of such termination any outstanding contracts to third parties respecting any rights hereunder, the Syndicate shall continue to receive the proceeds therefrom and shall make payments to the Producer in accordance with Section 7 until such contracts are terminated. Section 9(b) shall not be applicable. Provided, nevertheless, that such right shall not extend past the initial term of the agreement together with any renewal right. Licensing through the end of the renewal period shall be presumptively valid even in the event that the Syndicate does not eventually qualify for or exercise such right.

(ii) The Syndicate shall have the exclusive right to republish or cause republication of the Feature delivered during the term of this agreement in any anthology book provided that payment is made to Producer with respect to any republication in accordance with Section 7. Section 9(b) shall not be applicable. All other uses of the material delivered to the Syndicate shall revert to the Producer.

10) ASSIGNMENT, ETC. This agreement shall be binding upon and inure to the benefits of the parties hereto and their respective heirs, legal representatives, successors and assigns, except that this agreement may not be assigned by the Producer except (a) to a corporation formed by the Producer of which all of the voting stock is owned and continues to be owned by him, and (b) where the Producer continues to be the person who prepares the Feature.

Prior to the assignment of this agreement, the Syndicate may consult with the Producer and any or all other entities with which the Syndicate has contractual relations. Provided, however, that the Syndicate shall not be required to so consult. In the event that the agreement with the Producer is assigned within three months of any extension or renewal, the Producer may terminate the agreement within thirty days if he had not been notified of the potential transfer prior to the extension or renewal of his contract. The Producer shall have this right whether or not the Syndicate was engaged or planning such

negotiations at the time of the signing of the renewal or extension. The Producer agrees to hold confidential any information learned pursuant to this paragraph.

11) BOOK PUBLISHING AND LICENSING. The Syndicate is affiliated with a book publishing firm, Andrews & McMeel (“A&M”), and with a licensing firm, Universal Licensing, Inc. (“ULC”), and the Syndicate may (but need not), pursuant to rights granted it by this agreement, contract with either A&M or ULC for publication or other uses respecting the Feature. In this connection, the Syndicate will not so contract with either affiliate except on terms which (a) considering all circumstances, in the Syndicated reasonable judgment are as favorable as could be obtained from an unaffiliated party, and (b) provide creative control to the Producer and the Syndicate. Receipts by the Syndicate from either affiliate pursuant to any such contract will be subject to the payment provisions of this agreement.

12) TIME OF DELIVERY. The time of delivery of installments of the Feature shall be set forth below or, if no time is specified, such delivery shall be as is reasonably specified by the Syndicate from time to time:

Time is of the essence as to this Section, and Section 4 contains certain provisions for deductions for costs occasioned by Producer’s failure to meet delivery times.

13) PRODUCT AGREEMENT. Producer acknowledges that this agreement is not a personal services or employment agreement and that the Producer is an independent contractor and not an employee of the Syndicate.

14) GOVERNING LAW. This agreement shall be governed by the laws of the State of [agreed state] as to all matters including, without limitation, matters of validity, construction, effect and performance.

15) MISCELLANEOUS. If there is more than one Producer, the term “Producer” herein shall mean all of them, their obligations under this agreement shall be joint and several, and any payment due them hereunder shall be equally divided among them unless they otherwise specify by notice in writing to the Syndicate. The section headings herein are for reference only and shall not be considered in interpreting this agreement. The provisions of this agreement constitute the entire understanding of the parties hereto, and supersede all previous negotiations, agreements, and understandings whether written or oral, express or implied. The waiver of any party hereto to a breach of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

To indicate your acceptance of and agreement to the foregoing, please sign and return to us the enclosed copies of this agreement.

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Very truly yours,

[syndicate name] SYNDICATE

By _____

The foregoing is accepted and agreed to as of the date hereof.

(Producer)

(Producer's Social Security Number)

(Producer's Date of Birth)