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Research Paper

### **The Lord of the Rights**

J.R.R. Tolkien published *The Hobbit* in 1937, but how did this book, a piece of printed material, turn into toys, action figures, cartoons, movies and comics? More precisely, how does the copyright for a book become the copyright for a movie or action figures? How much control does J.R.R. Tolkien (or his estate) have over these subsidiary products based on his books? More importantly how does the intangible become the tangible? How does a character from the author's imagination become a cartoon or toy? Who decides what it will look like? Does the author have any "veto power" over creations which deviate from actual character description? In order to answer these questions, it is important to understand what subsidiary rights are in general, how have the subsidiary rights for J.R.R. Tolkien's *The Hobbit* and *The Lord of the Rings* trilogy been used, and what can looking specifically at the subsidiary rights for J.R.R. Tolkien's works tell us about the whole world of subsidiary rights.

Subsidiary rights are those rights that are, as the name suggests, subsidiary to the right of publishing literary work in book form (Rich). Film rights are a form of subsidiary rights. Film rights are normally acquired on an option basis (Owen, 224).

J.R.R. Tolkien wrote to his son, Christopher Tolkien, in late September 1957 to inform him that he had been approached by Forrest J. Ackerman and Morton Grady Zimmerman who were interested in making a movie based on *The Lord of the Rings*. In

a situation like this where the author still holds the film rights, “an exclusive period of time is granted during which the applicant will investigate all the necessary aspects in order to establish whether a film would be viable: finance, availability of suitable screenwriter, locations and actors” (Owen, 224). In this case, Forrest J. Ackerman was the “applicant” and the period of time was three to six months. Tolkien states in his letter, “Stanley U(nwin) and I have agreed on our policy: Art or kudos” (Carpenter, 157). Morton Grady Zimmerman drafted a synopsis by Christmas of 1957. The synopsis was sent to Tolkien for his review. Zimmerman’s synopsis was written with the intention of becoming an animated motion picture. In a later letter to his son Christopher, J.R.R. Tolkien writes in regard to Morton Grad Zimmerman’s synopsis, “I should say Zimmerman...is quite incapable of excerpting or adapting the ‘spoken words’ of the book. He is hasty, insensitive, and impertinent” (Martinez). In February of 1957 J.R.R. Tolkien wrote to Forrest J. Ackerman, the man who originally approached J.R.R. Tolkien about doing a movie, “I would ask them [the screenplay writers, like Zimmerman] to make an effort of imagination sufficient to understand the irritation (and on occasion the resentment) of an author, who finds, increasingly as he proceeds, his work treated as it would seem carelessly in general, in places recklessly, and with no evident signs of any appreciation of what it is all about” (Carpenter, 266). Since the prospect of creating a piece of “art” failed, Tolkien, like he told his son Christopher, opted for “cash rather than art” and sold the movie rights to United Artists (Fong).

The film rights stayed with United Artists until the death of J.R.R. Tolkien in 1973, whereby the rights reverted back to his heirs (Christopher, Priscilla and John Tolkien). In the early 1970s, Saul Zaentz traveled to England to meet with Tolkien’s heirs, “it was

a shrewd business move to negotiate the film rights with them” (Oliver).

Saul Zaentz, to this day, holds the movie rights to *The Lord of the Rings*. Saul Zaentz is the Academy-Award winning producer of *The English Patient* and *Amadeus*. In 1977, Zaentz began producing *The Hobbit*, the cartoon. Normally, in order for Zaentz to proceed with producing an animated motion picture, he would have to obtain a quitclaim from the estate of J.R.R. Tolkien, but since Tolkien had sold one hundred percent of the rights to Zaentz, this was not necessary. A quitclaim provides that the original copyright owner has absolutely no right to any of the profits generated by the motion picture or subsequent motion pictures (Owen, 225).

Knickerbocker Toys released a line of action figures under the license of Saul Zaentz. Since, the Knickerbocker figures were renderings of what appeared in Saul's Zaentz's *The Hobbit* cartoon, Zaentz gets a percentage of the sales and the estate of Tolkien gets nothing. Essentially, the toys are based on the intellectual property of Zaentz, therefore, he gets part of the proceeds. In 1999, the toy manufacturer, Toy Vault, manufactured a set of figures based on the actual character descriptions from the books. This means that the estate of Tolkien gets a share of the profits and Zaentz gets nothing because the estate is the one who holds the intellectual property of the Toy Vault's figures; the intellectual property in this case being the original books. Zaentz has issued several licenses to toy manufacturers to commercialize on the new motion picture from New Line Cinema. Again, this is a case where the figures will look like the characters/actors from the new motion picture and therefore will subject to “licensing fees” which will go to Zaentz as he is the holder of the film rights.

Saul Zaentz created Tolkien Enterprises which is a subsidiary of Saul Zaentz Company. Tolkien Enterprises sells licenses to toy manufacturers, comic book companies, etc. With these licenses, the licensee can manufacture “official” products. Tolkien Enterprises maintains a weak connection to the estate of J.R.R. Tolkien, but the estate has no legal ability to prohibit a product of which they do not approve. The connection is only there to benefit Tolkien Enterprises so that they have a better knowledge as to whether or not a certain product deserves to be licensed.

In late 1996, rumors inside Hollywood began to circulate as to a new production of a *The Lord of the Rings* movie. One year earlier, Saul Zaentz met with director Peter Jackson to start making a *Lord of the Rings* motion picture. It was not until 1998 when Miramax Pictures would authorize the production of one movie. Officially, Peter Jackson, now the director, became unsatisfied at the prospect of having to make one, single movie which would be a compression of the three parts . Jackson began looking for another studio to make the three motion pictures. It is rumored that Miramax was forced to give it to a third party because of an official statement Tolkien made about not wanting Disney involved in any of his movie projects. If this is the case, then this is an example of the author, even an author who has sold one hundred percent of the rights, still having political influence on the outcome of a movie based on his works.

Peter Jackson, found a new studio to underwrite the *Lord of the Rings* movies. New Line Cinema underwrote three movies, one for each part of the trilogy, *The Fellowship of the Ring*, which are slated for release in late December, *Two Towers* and *The Return of the King*.

Unfortunately for the estate of J.R.R. Tolkien, the rights are long gone and in the hands of Saul Zaentz. But J.R.R. Tolkien was savvy enough to make a deal with his publisher so that he (or his estate) would continue to get a fifty-fifty cut of the actual profits from his every book sold (Fong). This includes new books published in conjunction with the New Line Cinema *Lord of the Rings* films. David Imhoff, New Line Cinema's vice president for licensing and merchandising says that, "although New Line has the film rights to the stories, Tolkien's estate has the publishing rights, and the movie could set off a surge in reading" (James). Imhoff goes on to say, "with the movie buzz, book sales rose four hundred percent in the past year" (James). Because of the fifty-fifty split of the profits on book sales and the recent surge in reading the books, the estate stands to reap a dragon's horde of gold.

In conclusion, what does this say about the bigger picture of subsidiary rights and more precisely movie rights? Not much. This is due largely to the fact that movie right options are done on a contract to contract basis. Today, publishers upon acquiring a new work from an author, often demand to have the subsidiary rights sold to them with the rights to the printed work. When Tolkien first published *The Hobbit* over fifty years ago, movie rights were not even really discussed. This is very similar to our current situation with electronic rights, in that we are not exactly sure what tomorrow's technology will be. In researching the story behind the *Lord of the Rings's* movie rights, we have uncovered a fascinating history, but it is quite difficult to apply the specific to the general. One thing that is universal is that an author should hold on to all subsidiary rights if possible. With the release of the new motion picture by New Line Cinema, the

estate of Tolkien can expect a large rise in readership, but they will not see one cent from the profits of the movie. It is safe to say that Saul Zaentz is quite content to be the Lord of the Rights.

## Works Cited

Carpenter, Humphrey. The Letters of J.R.R. Tolkien. Houghton Mifflin: Boston. 1981.

This is a collection of letters between Tolkien and just about everyone in his life, his sons, his publisher, and even fans. It is written by Humphrey Carpenter who was not only Tolkien's business advisor but also his close friend. It is a very good source of information because Tolkien writes very candidly in his letters and it gave the emotional side to the story.

Cole, David. The Complete Guide to Book Marketing. Allworth Press: New York. 1999.

This book is not cited in the paper, but rather it was used for general information. The book focuses on how a publisher should take a new book and begin to market it. Written by "an experienced publishing agent," it is full of useful information for publishers, but subsidiary rights are only briefly mentioned.

Curtis, Richard. Beyond the Bestseller. Penguin: Markham, Ontario. 1989.

This, like Cole's book, is the same type of "publisher's guide" book. It talks about marketing and some basic legality issues, but like Cole's book, I only used this preliminary research and never cited it.

Fong, Mei. "Earnings From the Crypt." Forbes 28 February 2001.

[http://www.forbes.com/2001/02/28/crypt\\_print.html](http://www.forbes.com/2001/02/28/crypt_print.html).

An article from Forbes magazine naming the 10 richest dead men. It had a brief section on Tolkien who, just from his books sales made seven million dollars in the year 2000 alone. This is where the information about Tolkien's 50/50 profit deal with publisher came from.

James, Steve. “*Lord of the Rings* Marketing Blitz is On.” Reuters. June 14, 2001.

This is mostly an interview with the leading marketing vice-president from New Line Cinema. He says he is making all the licensees get really involved in the project so “there will be no hobbits on the sides of lunchboxes.” I guess stupid goblets at Burger King are “involved.” It establishes that New Line Cinema along with Tolkien Enterprises (Zaentz) are going to “blitzing” the market with Lord of the Rings merchandise.

Martinez, Martin. “Lord of the Rings Movie / Hobbit Movie.” Xenite 2001.

[http://www.xenite.org/faqs/lotr\\_movie/lotr\\_background.htm](http://www.xenite.org/faqs/lotr_movie/lotr_background.htm).

This is where a detailed history of Tolkien’s subsidiary rights can be found. It is mostly accounts of fans who have pieced the puzzle together. It was a good starting point to find approximate dates so letters corresponding to those dates could be found in Carpenter’s book.

Oliver, Greg. “The Man with the Key to ‘The Rings.’” JAM! Movies. May 9, 2001.

[http://www.canoe.ca/JamLordOfTheRings/may9\\_z Kentz-can.html](http://www.canoe.ca/JamLordOfTheRings/may9_z Kentz-can.html).

JAM! is an online entertainment e-zine. It gave a brief biography of Zaentz and explained how the rights came into the hands of Zaentz and what he did with them. It also has lots of information on how the new movie is came to be.

Owen, Lynette. Selling Rights. Blueprint: New York. 1991.

This is a great source. It contained the step-by-step process of how an author should begin to negotiate selling rights, not just printed rights but movie rights, electronic rights, etc. This was more useful than the books written from the

publisher's side because it dealt more with the negotiation aspect an author must consider and the legal ramifications involved.

Rich, L. Lloyd. "Subsidiary Rights - Acquisition & Licensing." The Publishing Law Center 1998. <http://www.publaw.com/subsidiary.html>.

This is a website for an intellectual right attorney. It was used for preliminary research, but was not informative enough for my purposes.