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ABSTRACT

Revision of the USOE copyright policy constitutes a major step in bridging the gap between the researcher and the consumer. The revisions are designed primarily to facilitate marketing arrangements between developers and disseminators of educational materials. USOE has established the framework to place a greater number of educational materials on the consumer market, and developers, such as Project LIFE (Language Improvement to Facilitate Education) and Project MORE (Mediated Operational Research for Education), have formulated systematic dissemination procedures to utilize the revised copyright policy. As more research products become available to consumers, a systematic retrieval system should be designed to: (1) share information between developers, (2) assist developers to more effectively reach the existing markets for their materials, and (3) inform consumers of the materials available. However, there can be little consequence unless present marketing trends are reevaluated in favor of the increased utilization of educational technology. Also, Project LIFE and Project MORE discovered that developers cannot be content with merely developing educational materials: dissemination activities must command a priority equivalent to that of program development. (WCH)

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BRIDGING THE RESEARCH-CONSUMER GAP:

*Systematic Procedures
to Obtain Commercial
Dissemination of
Educational Materials*

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BRIDGING THE RESEARCH-CONSUMER GAP:

Systematic Procedures to Obtain Commercial Dissemination of Educational Materials

INTRODUCTION

Education research in the United States has long held a position of low priority, low funding, and low prestige. The fact is, no more than one-half of one percent of the education budget allocated by Congress has ever been spent in the area of research. The apparent inability of education research to justify its own demands for increased funding offers an explanation for Congress' relatively minute allocations to this area of education. Those agencies administering education research funds have been sharply criticized because there has been a relatively small amount of educational materials on the market in proportion to the amount of money allocated for the research and development of such materials.

James Brann, Washington freelance education writer, states that " . . . since 1959 the government has spent about \$1 billion on research and development with few tangible results other than some excellent math and science curriculums and Public TV's *Sesame Street* (which really was the creation of private foundations in New York)."

Perhaps as a gesture of faith, Congress created the National Institute of Education in 1972 to administer the government's research and development efforts. The legislation which created the NIE has provided for the transfer of most of the existing USOE research programs to this new agency. NIE was initially allocated \$550 million over a three-year period to bring education research out of the shadows. Such a task, it was felt, could not be accomplished except by an organization separate from and equal to USOE.

USOE COPYRIGHT POLICY REVISED

As early as 1970, USOE saw its dilemma and began taking steps to place on the market more research-developed educational materials for the handicapped. Among the first steps taken were the revision of the copyright policy and the issuance of new Copyright Guidelines which became effective June 8, 1970, and were published in the Federal Register, Vol. 35, No. 91, on May 9, 1970. (See USOE Copyright Guidelines Form No. OE 11030 or Government Printing Office Form No. 899-601.) The new policy, which is also applicable to those projects now administered by NIE, outlines five major differences from the 1968 copyright policy statement:

- 1) *The emphasis on public domain was discarded.* In order to obtain commercial dissemination under the 1968 Guidelines, it had been necessary first to seek such dissemination without copyright. Inasmuch as there was no established vehicle for inviting commercial dissemination, the contractor/grantee (developer) could not seek copyright authorization from USOE unless attempts to obtain commercial dissemination without copyright had been unsuccessful.

- 2) *The prohibition of sharing royalties was lifted.* Previously the contractor/grantee had not been permitted to retain any portion of the royalties accrued from the commercial dissemination of materials. The USOE retained 100 percent of all royalties and commercial disseminators were less than enthusiastic without some proprietary protection and a realization of some reasonable return on investment. Under the provisions of the new Guidelines, the contractor/grantee may normally retain 50 percent of all royalties and the remainder may be payable to USOE.

3) *The USOE is empowered to arrange dissemination under copyright of materials if the developer is unwilling or unable to do so.*

This provision, which had not previously existed, enables USOE to negotiate directly with a disseminator to market materials. A potentially useful educational product will not, therefore, be denied to the consumers due to the developer's inability to facilitate dissemination.

4) *A distinction has been made between "mass market" and "thin market" materials. "Mass market" materials are those with a potentially large audience. To insure competitive selection of a disseminator for such materials, USOE requires the issuance of a formal "Request For Proposals" (RFP) to a representative segment of the educational products or publishing industry. "Thin market" materials are those directed toward a smaller group of consumers. USOE has developed a less formal competitive procedure for the selection of a commercial disseminator for materials designated as "thin market." The 1968 Guidelines made no such provision.*

5) *Articles published in professional journals and other periodicals are excluded from the procedures of USOE Copyright Guidelines. Authors of articles which are based upon work performed under USOE-sponsored projects now need no specific authorization from USOE to publish their works. This permits the articles to be published in periodicals which are in some cases outside the area of the traditional scholarly journal. In addition, a greater segment of the public should be able to*

receive notice of education materials that have been or are being developed.

The implementation of these policy revisions epitomizes a primary objective--to place a greater number of research-developed educational materials on the market. The importance of this objective became even more apparent with the creation in 1970 of the Publisher's Alert Service (PAS). The PAS is now sponsored by the National Institute for Education and is charged to " . . . facilitate contact between publishers and educational research and development contractors and grantees . . ." (Editor's note: This is the responsibility of the USOE-NIE Copyright Administrative Office).

Revision of the USOE copyright policy constitutes a major step in bridging the gap between the researcher and the consumer. Such changes have little effect on tradition and reality, however, without a systematic method of facilitation. Precedents must be established and problems must be worked out before any determination can be made regarding the effectiveness of these policy changes.

COPYRIGHT ADMINISTRATOR'S OFFICE REGULATES NEW POLICY

The Copyright Administrator's office is the NIE liaison between developers of educational materials and the commercial organizations who seek to market those materials. Although the Copyright Guidelines offer regulations governing the dissemination of such materials under copyright, no clear-cut procedures of implementation have yet been developed. There is little, if any, information available describing a systematic procedure for accomplishing the dissemination of USOE-NIE funded educational materials.

The responsibility of assisting developers in the marketing of their

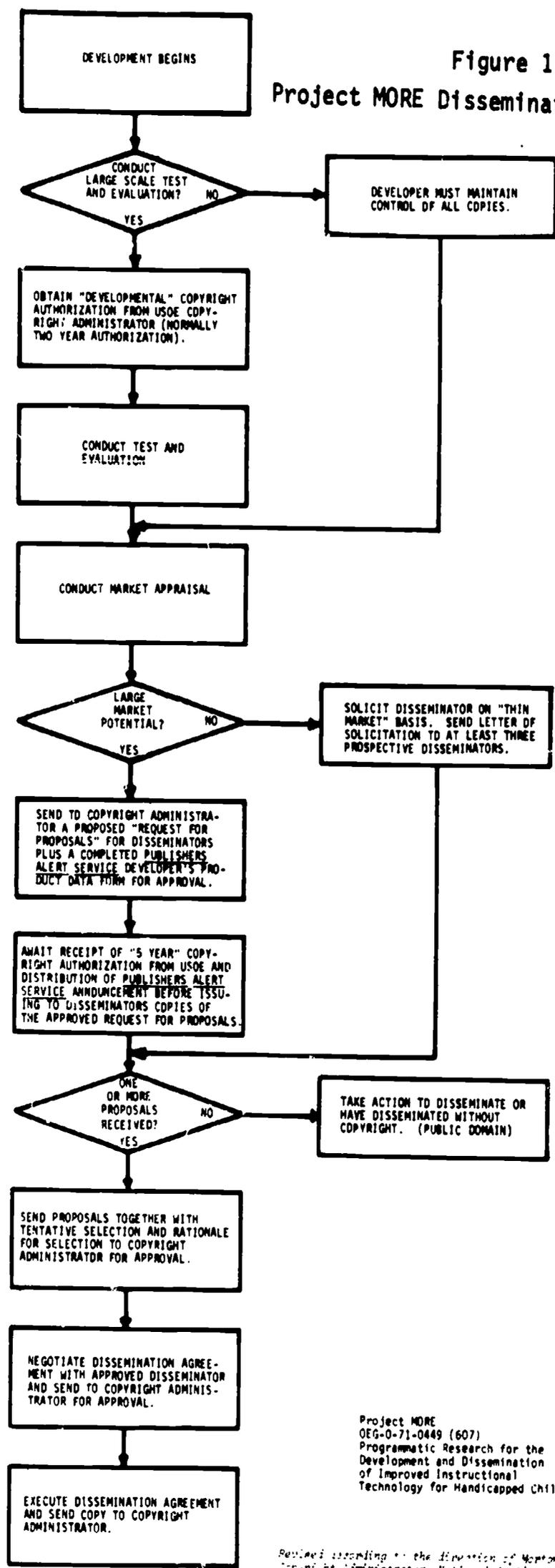
materials has been assumed by the Copyright Administrator's office. The absence of systematic dissemination procedures has necessitated that this office become extremely flexible in its dealing with developers and disseminators; however, this can hardly be deemed detrimental to its effectiveness. In fact, the flexibility of the Copyright Administrator has made it possible for one USOE funded research program, Project LIFE, to market highly successful language improvement materials and another, Project MORE, to be well on its way to marketing an entire curriculum of self-help skills special education materials for the handicapped.

THE Project MORE SYSTEM OF DISSEMINATION

The flow chart (Figure 1) depicts a systematic procedure for marketing USOE funded educational materials under copyright. The chart was developed by Project MORE with the assistance of the NIE Copyright Administrator, Dr. Morton Bachrach.

Project MORE's system of dissemination is based on the experiences of the Project in developing an overall dissemination plan for instructional packages to teach self-care skills to the trainable and educable level retarded. The first task, indicated by a rectangle  , was the development of the materials to be marketed. Project MORE utilizes a highly refined program implementation lattice to help facilitate program development. Incorporated in the lattice are provisions for input and feedback from the Project's Media Support Services, and 11 checkpoints at which data are collected to confirm the validity of materials. Program

Figure 1
Project MORE Dissemination Flow Chart



Project MORE
OEG-0-71-0449 (607)
Programmatic Research for the
Development and Dissemination
of Improved Instructional
Technology for Handicapped Children

Revised according to the direction of Morton W. Backhaus,
Copyright Administrator, National Institute of Education, D. C.

validation maintains a high priority in Project MORE.

Once the development of the materials had begun, a decision, indicated by a diamond , was made to determine whether large scale test and evaluation of the materials would be conducted.

If the decision was made to conduct large scale testing and evaluation, the next task was to arrange a Developmental Copyright Authorization Agreement with USOE. Such an agreement is intended to facilitate the protection of materials by copyright while they are undergoing testing and evaluation. Normally, copyright for "developmental materials" is authorized for a period of two years. The requirements for this type of agreement are outlined in Sections 8, 9, and 13 of the USOE Copyright Guidelines.

It should be pointed out that securing a USOE Copyright Authorization Agreement does not generate a copyright and does not constitute a registration of the copyright claim; the agreement merely grants permission and sets forth the conditions under which the developer may claim copyright. Registration of a copyright claim can only be accomplished through the Copyright Office of the Library of Congress. It is not usually necessary to register the copyright claim during the period of test and evaluation--the developmental period.

Common law protects unpublished works against unauthorized use prior to general publication; however, the dividing line between limited publication and general publication is often very thin. (General publication is defined as the sale, offer for sale, or general distribution, whereas a limited publication is defined as a distribution to a limited group for a limited purpose, such as for testing materials in one or two classrooms.)

Publication of printed materials not bearing the copyright notice can result in the loss of the right to hold copyright. The addition of the correct copyright notice to a later edition will not restore copyright protection to the original work after that work has entered the public domain. Since copyright protection is secured when a work is copyrighted with the copyright notice properly placed on the materials, it is to the developer's advantage to place a copyright notice on all materials which are intended for general publication.

Although the Project MORE materials were extensively field tested, that process was the option of the Project. If a developer does not elect to conduct large scale test and evaluation, control of all copies of the materials must be maintained in order to assure that the right to claim statutory copyright is not forfeited.

After the developmental Copyright Authorization Agreement with USOE had been consummated, the following legend was placed on each copy of all materials concurrent with the copyright notice on the title page or on the page following the title page:

Copyright for these materials is claimed only during the period of development, test, and evaluation, unless authorization is granted by the U.S. Office of Education to claim copyright on the final materials. For information on the status of the copyright claim, contact either the copyright proprietor or the U.S. Office of Education.

Figure 2 shows a page from one of Project MORE's products which bears this and other copyright information.

The next task was to proceed with the test and evaluation of the materials. Project MORE accomplished the validation of its materials through

**Figure 2
Project MORE Copyright Information**

© 1973

**University of Kansas
Project MORE**

**U.S. Office of Education
Bureau of Education for the Handicapped
Grant No. 0-71-0449 (607)**

**University of Kansas Bureau of Child Research
Parsons State Hospital and Training Center
Parsons, Kansas**

Copyright for these materials is claimed only during the period of development, test, and evaluation, unless authorization is granted by the U.S. Office of Education to claim copyright also on the final materials. For information on the status of the copyright claim, contact either the copyright proprietor or the U.S. Office of Education.

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a series of field tests using six sites in four states. A developer who elects not to use USOE Copyright Authorization procedures, but does wish to conduct some testing and evaluation of materials, should maintain control of all materials during this process in order to maintain "common law" copyright.

Appraisal of the consumer market for the materials was the next step. Project MORE is now in the process of conducting such an appraisal. The Project's two-year developmental Copyright Authorization Agreement permits it to disseminate materials for this purpose until September 15, 1974.

Project MORE is presently using two methods of dissemination:

- 1) commercial dissemination--an agreement between Project MORE's grantee organization, the University of Kansas, and Psychologists and Educators, Inc., of Jacksonville, Illinois, and 2) non-commercial dissemination--an arrangement with the Extramural Independent Study Center of the University of Kansas.

Involvement with commercial disseminators does not usually occur during the dissemination of developmental materials. Paragraph 4 of the USOE Copyright Authorization Agreement provides, however, that *The copyrighted materials will not be sold or otherwise disseminated except to the extent necessary for the Contractor/Grantee to develop, test, and evaluate the materials.* This allows for market appraisal.

When the market appraisal is completed, Project MORE must decide whether or not a large market potential for its materials exists. Should the Project determine that a large market potential does not exist, Section 6 of the Copyright Guidelines provides two alternatives:

- 1) The developer may proceed in the matter specified for "mass market" materials--those having a large market potential, or

2) the developer may indicate to USOE that it considers its materials to be "thin market."

If the decision is made to use the "thin market" procedures, two alternatives are open to the developer. Under the first alternative, once USOE has been notified that "thin market" procedures will be followed, the developer must draft a letter inviting proposals to interested disseminators. Such a letter must be sent to at least three disseminators, and a copy of the letter with a proposed list of disseminators to whom the letter will be sent must be approved by the Copyright Administrator's office. If approval is granted by USOE, the developer will receive a Copyright Authorization Agreement--unless such an agreement was previously secured. At this point the developer may begin distributing to prospective disseminators letters inviting proposals.

The second alternative permits the developer to send a letter of solicitation to at least three prospective disseminators without prior approval from USOE. This alternative greatly abbreviates the procedure for competitive selection of a disseminator; however, it does not permit the developer to receive input from the Copyright Administrator's office.

If the developer decides that the materials have a large market potential, it is necessary to complete the formal Request for Proposals (RFP) procedure. Sections 4 and 13 of the Copyright Guidelines should be closely followed when preparing an RFP, since all RFP's must be approved by USOE prior to distribution to potential disseminators. In addition, it is recommended that the developer complete and submit a Publishers Alert Service (PAS) Developer's Product Data form. The forms are available from the Copyright Administrator's office. Information from the form concerning the materials the developer has ready for dissemination will be used for the

preparation of an announcement of the availability of the materials for publication and will be distributed to potential disseminators.

When the proposed RFP is approved by USOE, the developer will receive a Copyright Authorization Agreement which will permit the developer to undertake the procedures for obtaining a publisher for "final materials." This agreement, which will normally authorize a selling period under copyright for five years, should not be confused with the two-year Copyright Authorization Agreement for "developmental materials." After the Copyright Authorization Agreement has been approved and signed and the PAS announcement distributed, the developer should distribute the approved RFP's to interested disseminators, including those who ask for copies as a result of seeing the PAS announcement.

If no responses to the RFP's are received, the developer may 1) take other action at the suggestion of the Copyright Administrator to disseminate under copyright; 2) allow materials to enter the public domain by disseminating without copyright; or 3) suggest to the USOE Project Officer that dissemination be arranged by USOE under the provisions of the revised Copyright Guidelines. This is a "last gasp" alternative and should be utilized only in a situation in which the development organization is unable to undertake the procedure. (Editor's note: As of this writing, this procedure has not been utilized.)

If one or more proposals are received, the developer should make a tentative selection of the proposal most nearly meeting the pre-established criteria for selection and cite the rationale for selection. This information, as well as the other proposals, if any, should be sent to the Copyright Administrator for approval.

Once approval of a disseminator has been granted by USOE, a dissemina-

tion agreement between the developer and disseminator can be drafted. This agreement for the dissemination of "final materials" must be approved by the Copyright Administrator.

The final task on the dissemination flow chart is the execution of the dissemination agreement. It is the developer's responsibility to send a copy of the signed agreement to the Copyright Administrator. Such an agreement will normally be effective for five years.

THE Project LIFE SYSTEM OF DISSEMINATION

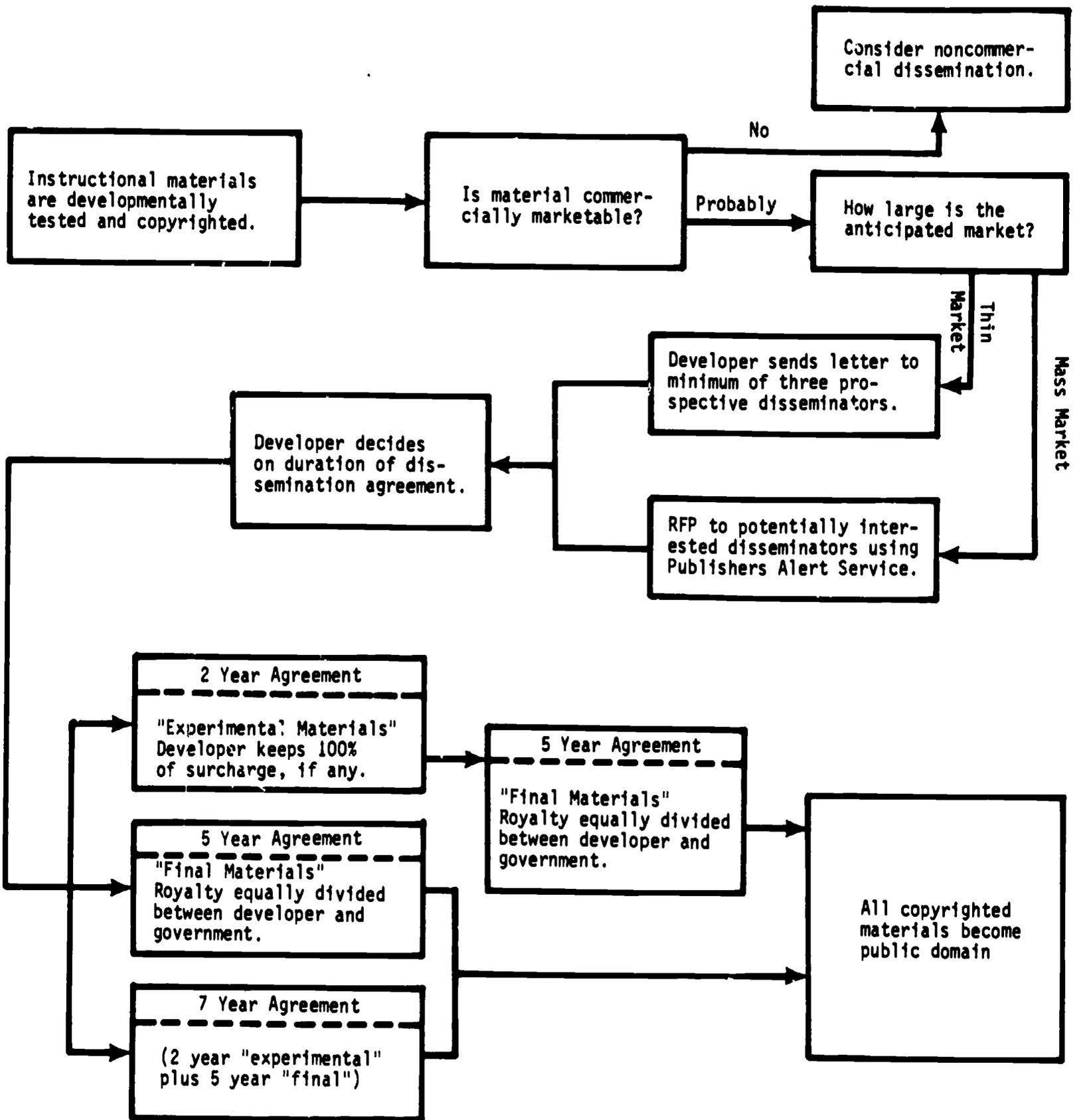
The Project MORE dissemination flow chart was tailored specifically for Project MORE and was later expanded for possible use by other developers seeking to disseminate educational materials for the handicapped. Each task or decision in the dissemination process is or was applicable to Project MORE under the USOE Copyright Guidelines. The Project MORE system may not be applicable for all developers, however.

Project LIFE (Language Improvement to Facilitate Education) of the National Education Association (NEA) offers another example of a systematic method of dissemination. Dr. Glenn S. Pfau, Project LIFE director, developed a dissemination flow chart in March 1972 (Figure 3). The flow chart was contained in a memorandum sent to Dr. Phillip Newberg, then of the SEIMC/RMC Network office, to document the procedures followed and the problems encountered by Project LIFE during the establishment of a commercial dissemination agreement with the General Electric Corporation.

The systematic dissemination process used by Project LIFE includes the following points:

- 1) When it became apparent that the Project LIFE materials had potential marketability, rather than being only prototypical in nature, a request was made and subsequent authori-

Figure 3
Project LIFE Dissemination Flow Chart
(For Materials Developed Under USOE Grants and Contracts)



zation received from the Copyright Administrator to have all materials copyrighted. The prime contractor, the National Education Association, holds the copyright on the LIFE materials.

- 2) A copyright notice was placed on all copyrighted materials and the following legend appeared: *Copyright for these materials is claimed only during the period of development test, and evaluation, unless authorization is granted by the U.S. Office of Education to claim copyright also on the final materials. For information on the status of the copyright claim, contact either the copyright proprietor of the U.S. Office of Education.*
- 3) A decision was made as to whether the materials could be commercially sold and marketed ("Go/No Go" Marketing Decision). It was decided that there was a greater demand for the Project LIFE materials than could be supplied through funds provided by the Bureau of Education for the Handicapped, U.S. Office of Education. Thus, a commercial concept had to be considered.
- 4) A decision was made as to whether procedures would be established for "mass market materials" or "thin market materials." Thin market materials are described as "those for which a limited market, and consequently insubstantial publication revenues, are anticipated." The "thin market" concept was not identified as appropriate for the Project LIFE materials.
- 5) A determination was made as to whether the materials would be not only developmentally tested but comprehensively validated before commercial distribution. Although all the Project LIFE materials were developmentally tested it was decided to market the materials while simultaneously gaining validation testing feedback. (Editor's note: This was an ad hoc procedure devised for one special extraordinary situation.)
- 6) The agreement between the developer and the commercial distributor was made for one of three time periods: 1) two-year distribution for experimental materials, 2) five-year distribution for nonexperimental materials, or 3) seven-year distribution, with the first two years being for experimental materials and final five years considered for "final materials" (those materials in which the development has been completed to the extent intended under the grant or contract).
- 7) There is normally no royalty arrangement during the two-year experimental phase. The five-year commercial distribution of "final materials" involves a royalty in which the developer retains 50 percent with 50 percent of the royalty being returned to the U.S. Government. Thus, during the subsequent

phase (commercial) of distribution of the LIFE materials, the royalty (rather than a surcharge) will be equally divided between the National Education Association and the U.S. Government. (Editor's note: Again, this was a one-of-a-kind proposition and is not expected to be repeated.)

- 8) It was recommended that Project LIFE prepare Request For Proposal (RFP) for "thin market" materials.
- 9) In order to meet the requirements of the RFP (providing these are carefully specified), it was necessary to have regular coordinating meetings between the developers and the disseminator. The major GE/LIFE meetings are on a quarterly basis with frequent intermediate communication by way of telephone, letters, conventions (GE exhibits the LIFE system at approximately 12 conventions per year), and the like. On a quarterly basis, GE is also required to submit hardware and software sales reports to LIFE showing both the number of units sold, as well as the dollar amounts. Also, GE must have feedback procedures established from their purchasers in order to satisfy the evaluation component of their proposal.
- 10) Project LIFE elected to conduct the "experimental" phase and "final material" phase as separate entities. Thus, a separate RFP was written for the five-year subsequent phase. A final decision was reached during the summer of 1972 regarding the successful bidder of the five-year program. It was specified in the original RFP that the successful bidder for the two-year program would not be prevented from also bidding on the five-year program.

The Project LIFE system of dissemination was frequently used by Project MORE as a reference during the formulation of Project MORE's systematic dissemination procedures. Organizational differences between Project MORE and Project LIFE made it necessary for Project MORE to develop procedures that are in some respects different from those used by Project LIFE. The prescribed procedures set forth in the USOE Copyright Guidelines were, however, applicable to both; Therefore, such differences are minimal. Both projects may be considered pioneers in the area of dissemination of educational materials under the revised USOE copyright policy. However, Dr. Morton W. Bachrach, NIE Copyright Administrator, does not agree that they should be used as "examples." "In the law we use the expression that 'hard facts make bad laws,'" he said. "I might

paraphrase that in the cases of Project LIFE and Project MORE to say difficult, complex, and atypical situations require us to depart from what we consider to be ideal procedures."

THE ROLES OF EDUCATORS AND DISSEMINATORS

The development of systematic dissemination procedures should not be interpreted as the only goal of the revised USOE copyright policy. The copyright policy revisions are designed primarily to facilitate marketing arrangements between developers and disseminators of educational materials. USOE has established the framework to place a greater number of educational materials on the consumer market, and developers, such as Project LIFE and Project MORE, have formulated systematic dissemination procedures to utilize the revised copyright policy. It is the responsibility of educators and disseminators to prepare themselves for the innovations that will come as more and more developers begin seeking disseminators and potential users for their materials.

In the 1970 report of the Commission on Instructional Technology of the House Committee on Education and Labor, one fact was vehemently emphasized: ". . . America needs to examine the basic assumption (too often unexamined) on which schools and colleges operate. . . America's vast decentralized educational "system" must undergo a revision that draws upon the best insights that can be cultivated. . . ." The committee reported that the concepts of instructional technology were not being effectively utilized by school systems in the United States. For countless years this country's educators have relied upon textbooks and teachers to educate students as a mass and not as individuals. In the field of education for the handicapped--especially the learning disabled--such educational methods have proven to be ineffectual.

Commercial disseminators react to market trends. If educators create a demand for new educational materials for the handicapped, disseminators must respond to that demand. Project MORE queried more than 30 commercial disseminators seeking to involve them during the early stages of program development. Most responded that their lack of experience in marketing programmed instructional materials, especially those for the developmentally disabled, and the lack of an adequate demand from educators for such materials would not permit a credible marketing effort.

One exception to the "teacher-textbook technology" is programmed instruction for individualized teaching. Many school systems have experimented with this form of instruction; however, programmed instructional materials sometimes require expensive "hardware" in the form of teaching machines which constitutes a rather large investment. Many educators eventually become disenchanted with programmed instruction due to the lack of quality programs ("software"). The 1970 report of the House Committee on Education and Labor states:

"One important reason for the decline in the use of programmed instruction was that the teaching machine came onto the market long in advance of the appropriate software. Also, according to a 1965 survey of recent programs produced for schools, 40 percent provided no evidence of pretesting, despite the fact that programmed instruction claimed to be the first real application of scientific principles to learning. By 1967, a sampling survey showed that the situation had actually deteriorated--70 percent of the programs had not been pre-validated."

If the USOE copyright revisions prove to be successful in placing more programs on the market, the problem of poor "software" should be alleviated.

Educational methods in the United States have withstood countless attacks; however, possibly its greatest assault is yet to come. A recent federal mandate has declared that all United States citizens--including the handicapped--are entitled to an education in the public schools. To

date, civil suits are pending in at least 22 states demanding that school districts comply with the mandate, and in Pennsylvania and Texas, for examples, plans are now being formulated for its implementation. One thing is certain: conventional educational methods will not work with the handicapped.

THE NATIONAL MEDIA CENTER

As more research products become available to consumers, another area of concern should be anticipated. A systematic retrieval system should be designed to 1) share information between developers; 2) assist developers to more effectively reach the existing markets for their materials; and 3) inform consumers of the materials available for their particular needs. A proposal by Dr. James R. Lent, Project MORE director, would make the establishment of such an information retrieval system the responsibility of the recently established National Center on Educational Media and Materials for the Handicapped at Ohio State University. Dr. Lent states:

One of the growing needs is to share information with persons engaged in similar work. At this point in time there is too little written which is directly relevant to this kind of full-technology undertaking. Problems of design, development, mediation, staffing, funding, and marketing have been confronted and partially solved by different groups of investigators acting as individuals. Because the efforts are incomplete and in some cases tentative, the results have not been published. This does not mean, however, that the information is not useful to others confronted with the same general issues. It would be extremely valuable to meet with other project directors and share information and insights in a structured fashion.

THE FUTURE

The true measure of the USOE copyright policy revisions is the number of educational materials that will be placed on the consumer market. There can be little consequence, however, in increasing the number of educational materials suitable for marketing unless present marketing trends are re-evaluated in favor of the increased utilization of educational technology.

The declining use of programmed instructional materials can be reversed as more validated research-developed educational materials and software become available. The need for such materials is assessed prior to their development and yet these materials, once developed, never reach the consumers for which they were developed. It becomes evident, then, that developers cannot be content with merely developing educational materials: dissemination activities must become inherent to the development process.

Such was the discovery of Project LIFE and Project MORE. Both were well-established research projects when the USOE re-evaluation of objectives began and both have found that dissemination activities must command a priority equivalent to that of program development. The rationale is simple--educational materials must be put to use if their development is to be justifiable.

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