

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Inertia Webware		11/05/2003	PARTNERSHIP: TEXAS

RECEIVING PARTY DATA	
Name:	Texas Education Agency
Street Address:	1701 N. Congress Avenue
City:	Austin
State/Country:	TEXAS
Postal Code:	78701
Entity Type:	State Agency: TEXAS

PROPERTY NUMBERS Total: 1		
Property Type	Number	Word Mark
Registration Number:	2639736	TPRI ONLINE

CORRESPONDENCE DATA	
Fax Number:	(512)853-8801
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	512-853-8800
Email:	dkgpto@intprop.com
Correspondent Name:	Dwayne K. Goetzel
Address Line 1:	P.O. Box 398
Address Line 4:	Austin, TEXAS 78767-0398

ATTORNEY DOCKET NUMBER:	5849-00700
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NAME OF SUBMITTER:	Dwayne K. Goetzel
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Trademark and Domain Name Assignment Agreement

This Trademark and Domain Name Assignment Agreement (the "Agreement") is entered into as of the last signature and date shown below (the "Effective Date"), by and between the Texas Education Agency, a Texas state agency, with a principal business address of 1701 N. Congress Avenue, Austin, Texas 78701 ("TEA"), and Inertia Webware, a Texas partnership formerly comprised of Aaron T. Murrell and Quentin H. Davis and currently solely owned by Aaron T. Murrell, having a business address of 12223 Noco Drive, Tomball, Texas 77375 ("Assignor"), as follows:

Background

A. TEA is the owner of the trademark, service mark, trade name and any and all trade dress associated with "Texas Primary Reading Inventory" and "TPRI." TEA has used "Texas Primary Reading Inventory" and/or "TPRI" in association with its goods and services since at least as early as 1996. TEA has used "Texas Primary Reading Inventory" and/or "TPRI" on or in connection with, *inter alia*, (1) educational and training services, namely, conducting classes and workshops in the field of assessment of reading and language arts development in children, (2) printed instructional, educational, and teaching materials for assessment of reading and language arts development in children, and (3) computer software for use in the assessment of reading and language arts development in children;

B. Assignor owns the trademark registration for the mark TPRI ONLINE, U.S. Registration No. 2,639,736. Assignor has used the TPRI ONLINE mark in association with Assignor's Services as described below at least as early as June 2001. Assignor has used the TPRI ONLINE mark in association with "computer software for the collection, management and reporting of data for the Texas Primary Reading Inventory." Specifically, Assignor offers Internet based software that automates the collection and reporting of Texas Primary Reading Inventory testing data, and allows school district administrators to enter, assess and review that testing data in the administrator's district ("Assignor's Services"). "Assignor's Services" do not include any administration of the Texas Primary Reading Inventory tests themselves, or any "Mobile Computing Device" designed to assist in the administration of such tests, *i.e.*, handheld personal digital computing devices such as Windows-based "Pocket PCs," Palm operating system-based "personal digital assistants" and similar palm-sized devices, digital pens, or software applications through which information entry is made through such devices (tablet PC, notebook, laptop and desktop computers are not Mobile Computing Devices);

C. Assignor also owns the domain names "tprionline.com" and tprionline.org (the "Domain Names"). Tprionline.com has been used in association with the TPRI ONLINE mark since at least as early as July 2001;

D. Assignor desires to convey, transfer, assign, deliver, and contribute to TEA all of its worldwide rights, titles, and interests in and to the TPRI ONLINE mark

and the Domain Names (including the business goodwill symbolized thereby and appurtenant thereto); and,

E. TEA desires to license back certain rights to Assignor to utilize TPRI ONLINE and the Domain Names, as set forth below.

NOW, THEREFORE, Assignor and TEA, in consideration of the mutual agreements contained herein and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and in consideration for the transfer of the trademark rights, the payment by TEA to Assignor of \$850 within forty-five (45) days of the Effective Date of this Agreement, do hereby agree as follows:

Section 1

ASSIGNMENT

1.1 Grant for TPRI ONLINE and the Domain Names. Assignor hereby conveys, transfers, assigns, delivers, and contributes to TEA all of Assignor's worldwide rights, titles, and interests in and to TPRI ONLINE (including U.S. Registration No. 2,639,736) and the Domain Names, together with:

- (a) the business goodwill symbolized thereby and appurtenant thereto; and,
- (b) all rights to sue for past, present, and future infringements, misappropriations, or unauthorized uses of TPRI ONLINE and the Domain Names.

1.2 Recordation. TEA will request the Commissioner of Patent and Trademarks to issue in TEA's or its nominee's name all certificates of registration for TPRI ONLINE. TEA will also request that the Assignor initiate a transfer of registration of the Domain Names to TEA. TEA may record these documents with the United States Patent & Trademark Office, with Network Solutions, and any other appropriate authority as evidence of the assignments reflected in this Agreement. TEA will be responsible for continuing the registration of the Domain Names and TPRI ONLINE in force and effect during the term of this Agreement and any extensions hereof.

1.3 Unrestricted Future Use. Assignor agrees that TEA has the unrestricted and unfettered right to use and register TPRI ONLINE and the Domain Names anywhere and in any manner it desires, alone or in combination with other words and designs, for any products and any services TEA desires.

1.4 Licensed Use to Assignor. Notwithstanding the provisions of paragraph 1.3 above, TEA hereby licenses to Assignor the right to use TPRI ONLINE and the Domain Names for Assignor's business purposes as follows:

(a) **Grant.** Subject to Section 1.4(i) below, TEA grants Assignor a nontransferable license to use TPRI ONLINE and the Domain Names in connection with the marketing and sale of Assignor's Services, and Assignor accepts the license subject to the terms and conditions herein.

(b) **Territory.** The license terms of this Agreement are valid within the United States of America and its possessions and territories.

(c) **Quality Standards.** Assignor agrees to use TPRI ONLINE and the Domain Names only in connection with Assignor's Services of a quality (i) consistent with the quality of the services offered by Assignor as of the Effective Date, or (ii) consistent with such other level of quality to which TEA or its designee may consent, such consent not to be unreasonably withheld.

(d) **Benefit of Use.** All use by Assignor of the TPRI ONLINE mark and the Domain Names inures to the benefit of TEA.

(e) **Term.** The term of the license provisions in this Agreement shall commence as of the Effective Date and, unless earlier terminated in accordance with the terms set forth herein, shall continue to January 1, 2004, subject to automatic renewal for successive one (1) year terms, provided that Assignor has continued to materially perform its obligations under this Agreement and TEA has not terminated the license pursuant to Section 1.4(f), below.

(f) **Termination.** If TEA believes that Assignor has materially failed to perform its obligations under the Agreement, before terminating the license provided herein, TEA shall give Assignor written notice of material breach, specifically identifying the acts and/or omissions by which TEA believes Assignor has materially breached this Agreement. Assignor shall then have thirty (30) days from the receipt of TEA's written notice in which to take reasonable steps to cure the material breach identified by TEA. If Assignor fails to cure the material breach identified in TEA's written notice within thirty (30) days of Assignor's receipt thereof, TEA may provide written notice of termination, subject to review under the dispute resolution process identified in Section 4.8 below. The license provided herein to Assignor shall be automatically terminated if Assignor becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, if Assignor otherwise discontinues its business, or if Assignor attempts to assign, transfer or sell its rights or obligations hereunder without the prior written consent of TEA. Upon termination of the license provided herein, all rights granted to Assignor hereunder shall cease, and Assignor shall refrain from further use of the TPRI ONLINE mark, or any trademark or name reasonably deemed by TEA to be similar thereto, in connection with Assignor's Services. In the event of termination, Assignor will be allowed a reasonable period of time not to exceed forty-five (45) days within which to cease all use of TPRI ONLINE and the Domain Names and to create a new trademark, trade

name or domain name under which Assignor's Services are offered. Upon termination of the license provided herein, Assignor shall not operate its business in any manner which would falsely suggest to the public that such license is still in force or that any relationship exists between Assignor and TEA.

(g) *Use by Assignor.* Assignor may post material, information and content on the Internet accessible to the public through the Domain Names during the term of this Agreement and any extensions hereto. Assignor shall retain all responsibility and liability, if any, for any and all material, information or content posted on the Internet that is accessible through the Domain Names. Assignor agrees to use TPRI ONLINE in the form and manner consistent with its prior use. Assignor agrees to include a notice on its website, subject to the approval of TEA, that "Texas Primary Reading Inventory" and "TPRI" are trademarks of the Texas Education Agency.

(h) *Statement of Nonaffiliation.* Assignor agrees to include a statement of nonaffiliation or sponsorship on its web site to the following effect: "Inertia Webware and the TPRI Online web site are not sponsored by or affiliated with the Texas Education Agency, the University of Texas, or the 'Texas Primary Reading Inventory' project." Assignor further agrees to include a hot link on its web site to the following effect: "If you were looking for the Texas Education Agency or information about TPRI, please click here: "<http://www.tea.state.tx.us>" or "<http://www.tpri.org>."

(i) *Restriction of Third Party Use.* Pursuant to the license terms herein, Assignor is authorized during the Term of this Agreement to use TPRI ONLINE and the Domain Names in association with Assignor's Services. During the Term of this Agreement, TEA and its licensees will not use TPRI ONLINE as a trademark or to otherwise identify goods or services offered by TEA or its licensees. Further, TEA will not authorize third parties to use TPRI ONLINE as a trademark or to otherwise identify goods or services offered by TEA or its licensees. TEA will, subject to its obligations set forth in section 2.4 below, be the party responsible for enforcement of any third party infringement of the TPRI ONLINE mark or the Domain Names. Assignor recognizes that TEA and its designees (e.g., University of Texas System) and their licensees may and will utilize "Texas Primary Reading Inventory" and "TPRI," or other trade marks that may utilize "TPRI," in association with goods or services that may be the same as or similar to the goods or services offered by Assignor, and that such use shall not constitute any action contrary to or in violation of Assignor's rights as set forth herein, provided that such use does not include use of TPRI ONLINE as a trademark.

Section 2

REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 Representations. Assignor represents, warrants and covenants to TEA that:

(a) Assignor is the owner of TPRI ONLINE and the registrant of the Domain Names;

(b) Assignor has not previously assigned, transferred or otherwise encumbered the rights conveyed in this Agreement;

(c) TPRI ONLINE and the Domain Names are valid and subsisting and have not been abandoned;

(d) there have not been nor are there presently any claims or causes of action asserted against Assignor, the subject matter of which included or includes, whether in whole or in part, TPRI ONLINE or the Domain Names;

(e) except for U.S. Registration No. 2,639,736, Assignor owns no other applications or registrations in any jurisdiction for TPRI or TPRI ONLINE or anything confusingly similar thereto, and except for the Domain Names, Assignor owns no other domain name registrations incorporating "TPRI" or anything confusingly similar thereto.

2.2 Future Acts. Assignor acknowledges that the continuing goodwill symbolized by TPRI ONLINE and the Domain Names is critical to TEA, and that it is therefore important to TEA that such goodwill be protected and enhanced. Accordingly, toward that end, Assignor agrees that it shall not at any time after the Effective Date of this Agreement:

(a) directly or indirectly attack or challenge (i) TEA's worldwide rights, titles, or interests in and to TPRI ONLINE, "Texas Primary Reading Inventory," "TPRI," the Domain Names, or any other trademarks owned by TEA, or (ii) the validity of any of the registrations in or to TPRI ONLINE, "Texas Primary Reading Inventory," "TPRI," or the Domain Names;

(b) do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of TEA in TPRI ONLINE, "Texas Primary Reading Inventory," "TPRI," or the Domain Names;

(c) apply to register or maintain any application or registration of TPRI ONLINE, "Texas Primary Reading Inventory," "TPRI," or the Domain Names, or any marks or names confusingly similar thereto, in any jurisdiction,

domestic or foreign;

(d) use any trademark, service mark, trade name, insignia or logo that is confusingly similar to or a colorable imitation of TPRI or TPRI ONLINE;

(e) take any action that would tend to destroy or diminish the goodwill in TPRI ONLINE, "Texas Primary Reading Inventory," "TPRI," or the Domain Names;

(f) represent or suggest that Assignor is affiliated with TEA in any form or manner; or

(g) represent or suggest that Assignor has any ownership or rights in TPRI ONLINE, "Texas Primary Reading Inventory," "TPRI" or the Domain Names.

Notwithstanding the above, Assignor may use TPRI and "Texas Primary Reading Inventory" in a non-trademark sense to identify and refer to TEA's products and services in conjunction with the offering of Assignor's products and services, provided that such use does not cause a likelihood of confusion with TEA's trademarks, goods or services.

2.3 Notice of Infringements. Assignor agrees that it shall promptly notify TEA if it becomes aware of any third party that may be infringing, diluting, or otherwise derogating TEA's rights in "Texas Primary Reading Inventory," "TPRI," TPRI ONLINE or the Domain Names. TEA will notify Assignor if it becomes aware of any third party that may be infringing, diluting, or otherwise derogating rights in TPRI ONLINE or the Domain Names.

2.4 Infringement Suit.

(a) TEA has the unconditional right to renew, sell, license or otherwise dispose of any and all rights in TPRI ONLINE or the Domain Names and to retain the entire proceeds thereof for TEA's exclusive benefit. TEA further has the unconditional right to demand, sue and recover for any and all infringements of TPRI ONLINE or the Domain Names, regardless of whether such infringements occurred prior to, at, or after the effective date of this Agreement. TEA shall have the right to retain for its exclusive benefit any and all recoveries arising from such infringements.

(b) Assignor shall reasonably cooperate with TEA in any action, proceeding or other effort to police the TPRI ONLINE or the Domain Names. In the event that a third party files suit against Assignor for trademark infringement arising out of Assignor's use of "Texas Primary Reading Inventory," "TPRI," TPRI ONLINE or the Domain Names, TEA will engage counsel regarding such issue at its own expense, and will handle such suit according to TEA's own sole discretion. Nothing herein shall impose any duty or obligation on TEA to otherwise defend or indemnify Assignor for any claim, demand or suit. In the event that TEA does not take steps to enforce and protect

its rights in TPRI ONLINE and/or the Domain Names, TEA may authorize Assignor, by separate written instrument, to take all legal action necessary to protect those rights from infringement, dilution or other derogation by third parties.

Section 3

FURTHER ASSURANCES

Further Assurances. Assignor shall execute, acknowledge and deliver such further instruments and take such further actions as may be necessary or desirable to evidence more fully the transfer of ownership, or the validity and enforceability, of TPRI ONLINE and the Domain Names to TEA. Assignor therefore agrees within ten (10) days of request, and without further consideration, to:

(a) execute, acknowledge, and deliver any affidavits or documents of assignment and conveyance regarding TPRI ONLINE and the Domain Names;

(b) cooperate fully with TEA (at TEA's expense) in any action, proceeding or other effort affecting the rights, titles, or interests of TEA in TPRI ONLINE or the Domain Names, including but not limited to providing such information, affidavits and testimony as TEA may require; and

(c) perform any other acts deemed necessary to carry out the intent of this Agreement.

Section 4

MISCELLANEOUS

4.1 Authority and General Warranties. Each party represents and warrants to the other that it is duly existing; that it has full power and authority to enter into this Agreement; that this Agreement does not and will not interfere with any other agreement to which it is a party; that it will not enter into any agreement the execution or performance of which would violate or interfere with this Agreement.

4.2 Modifications and Waivers. This Agreement may not be modified and no provision hereof waived without the prior written consent of the party against whom such modification or waiver is asserted. No delay or omission by either party to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver of any provision of this Agreement on any occasion shall not constitute a waiver of such provision on any succeeding occasion. Unless stated otherwise, all remedies available under this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available at law, in equity or otherwise.

4.3 Assignment. Assignor may not assign or transfer its rights or obligations under this Agreement without the prior written consent of TEA, and any attempt to do so

shall be void. This Agreement shall be binding on the parties and their heirs, successors, and personal representatives and shall inure to the benefit of the parties and their successors, assigns, and legal representatives.

4.4 Entire Agreement. This Agreement constitutes the sole understanding of the parties with respect to the subject matter hereof.

4.5 Survival of Representations. The representations made in this Agreement shall survive its execution.

4.6 Headings; Exhibits. The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. Any exhibits referred to in this Agreement are incorporated into this Agreement to the same extent as if set forth in full herein.

4.7 Severability. If, but only to the extent that, any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the specific intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the minimum extent necessary to make it legal and enforceable while preserving its intent. It is the specific intent and request of the parties that the court or other adjudicative body called upon to interpret or enforce this Agreement modify such provision to the minimum extent necessary so as to render it enforceable. If such amendment is not possible, another provision that is legal and enforceable and achieves the same objectives shall be substituted therefor. If the remainder of this Agreement is not affected by such declaration or finding and is capable of substantial performance by the parties, then the remainder shall be enforced to the extent permitted by law.

4.8 Governing Law; Venue; Jurisdiction. This Agreement is deemed to have been entered into in the State of Texas, and its interpretation, construction, and the remedies for enforcement or breach are to be applied pursuant to, and in accordance with, the laws of the State of Texas, except to the extent that federal patent, copyright, or trademark laws apply, in which case federal law shall govern.

(a) Dispute Resolution. The parties shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code (TGC) to attempt to resolve any claim for a breach of this Agreement. All reference in this subparagraph to "subchapters" is to the subchapters referenced in TGC Chapter 2260. Any claim for a breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B. To initiate the process, Assignor shall submit written notice to the Texas Commissioner of Education. Such notice shall specify that the provisions of subchapter B are being invoked.

(b) Contested Case Process. The contested case process provided in subchapter C is Assignor's sole and exclusive process for seeking a remedy for an alleged breach of this Agreement if the parties are unable to resolve their disputes in accordance with the negotiation process provided in subchapter B. Compliance with the contested case process provided in subchapter C is a condition precedent to seek consent to sue from the Texas Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code.

(c) Venue and Jurisdiction. In the event that consent to sue is granted by the Texas Legislature, then venue for any action or claim brought against TEA regarding this Agreement shall be in the state and/or federal courts located in Austin, Travis County, Texas, and the parties expressly submit themselves to the personal jurisdiction of the state and/or federal courts located in Austin, Travis County, Texas.

4.9 Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party. The parties expressly understand and agree that their relationship shall be that of independent contractors in the performance of each and every part of this Agreement. Nothing in this Agreement shall constitute one party as an employee, agent, joint venture partner, or servant of another. Each party is solely responsible for all of its employees and agents and its labor costs, taxes and expenses arising in connection therewith.

4.10 Attorneys' Fees. The party prevailing in a judicial proceeding or appeal from such a proceeding shall be awarded its costs and expenses, including reasonable fees associated with the proceeding for attorneys, paralegals, and expert witnesses.

4.11 Counterparts. This Agreement may be executed in separate counterparts, each of which taken together shall constitute one single Agreement between the parties.

4.12 Notice. Notice required under this Agreement shall be effective if delivered by certified mail, return receipt requested, by facsimile, or by email, to:

Aaron Murrell
Inertia Webware
1223 Noco Drive
Tomball, Texas 77375
(713) 569-4355 (telephone)
(713) _____ (fax)
aaron@tprionline.com (email)

Joan Allen, Esq.
Texas Education Agency
1701 N. Congress Avenue
Austin, Texas 78701
(512) 463-9733 (telephone)
(512) 475-3662 (fax)
jallen@tea.state.tx.us (email)

The parties may change the address for giving notice required under this Agreement by giving written notice to the above address of the new address for written notice at least ten (10) days before the change is to be effective.

AGREED:

Inertia Webware ("Assignor")

Aaron T. Russell
Signature

Aaron T. Russell
Typed or Printed Name

Owner - Inertia Webware
Title

8/27/2003
Date

Texas Education Agency ("TEA")

Nora Hancock
Signature

Nora Hancock
Typed or Printed Name

Associate Commissioner
Title

11/5/03
Date