

Offers you can refuse

Terry Gault debunks some myths about copyright and looks at how writers can avoid being ripped off

There's a name for people who offer to issue you with copyright on anything you've written if you pay them a fee. It's con artists. For, you see, one of the biggest misconceptions among amateur writers is that they somehow need to find the appropriate agency to rubber-stamp a piece of work before it's safe from plagiarism.

The Berne Convention says, in slightly more formal terms than I shall use, that immediately a literary, musical, dramatic or artistic work is created, the creator owns the form of words used. A piece can't be reproduced without permission. In short, that means once you put something down on paper — or these days on a disk or the internet — it's your intellectual property and no one else can copy it.

Protection lasts until 50 years after the death of the author or, if the work is pseudonymous, 100 years from the date of its creation or 100 years from the date of first publication, whichever is shorter.

Fair use of excerpts to illustrate a point in, for example, a criticism, does not constitute an infringement of copyright.

Note that it's the words that are copyright. Ideas cannot be copyrighted, so if I choose to write a story about a boy who has adventures with dragons and wizards, as long as I do it in my own words, that's legally quite OK (though "Harry Potter" may have been registered as a trademark).

But note, if you are writing in the course of your employment, your employer owns all the rights. Freelances are different and the rules described here apply.

If push comes to shove, the most you'll ever need to do is prove the date of creation. You could, of course, pay an agency to register it, but why bother? The old idea of sending a manuscript to yourself in the post, hence collecting a date stamp, is quaint, but I wouldn't fancy going into court with that. Bank "safe keeping" facilities are another old favourite, but they cost money.

Why not just show the manuscript to someone? Or several people. Give them copies and let them note the date. Job done. You don't need to put little c signs

on it or anything, although in some circumstances they can strengthen your legal position in that they have been a warning to potential copiers. And remember, once something is published in *WJ*, that's incontrovertible too.

You decide

As you own the copyright automatically, you decide who gets to use your words. In fact you don't so much sell them as rent them out. That may be for a period of time, or for use in a set geographical area and in specified media. You can license them to someone to use forever in any media anywhere in the world if you want. Equally you can license them to a specific publication for one use in the UK only, and this is much closer to what has been the norm.

It is good practice to establish with whoever commissions a piece of work just what rights they want to buy so you can agree a fair price. That also applies to things like short story competition entries. Read the small print. It can avoid confusion if you then include the rights you are selling in the header: "Article for *Dendrochronologists Quarterly*, by Teresa Russ, First UK serial rights".

Traditionally, first UK serial rights were what most publications wanted and bought — though some paid for syndication rights as well — and these gave the buyer a licence to be first in the UK to publish it. That left you free, of course, to peddle it anywhere else in the world at once and, when it had been published in the UK, to try to resell it there too.

This is all very well in theory, but in practice you often won't have thrashed out the details in advance. Never fear. It is assumed that where a piece is submitted with no definite agreement having been struck that it is for a single use by the medium doing the buying.

For example, this article is submitted free to *WJ*. The fact that the magazine hasn't paid doesn't matter one jot. It is implicit in law, unless I specify any different, that *WJ* gets one use of it. If it should be reprinted anywhere else, or again in *WJ* without my express permission then I could, if I chose, stomp

round to the editor's door with a bill.

In fact I've done something similar when I found a handful of my features, written for a magazine, on a limited-access web database. They'd been passed on in error by the magazine, but it hastily agreed a four-figure sum for the rights. Mean? Additional uses are making more profit. Not to pay for the raw materials is simple theft. And such additional uses may be in areas where the writer could otherwise have expected to make further sales of the work.

This opens up a whole new can of worms. The internet revolution has changed everything and the law and accepted practice has yet to catch up.

But big companies haven't been slow off the mark. For example, in January 2000, Virgin Net, the internet service provider, put a clause in its terms and conditions of use (who reads all that small print?) to say that where anything was posted in any public area via the service, the company could freely use, edit, copy publish and distribute it. Suppose you were a writer with a webpage containing your articles? After protests, including from the NUI's freelance organiser, Virgin climbed down.

Many publications are trying to cajole, or strong-arm, writers into signing away rights for all sorts of uses, including on the internet. It's up to you to choose how to respond to such an attempt, but my own feeling is that reproduction on a magazine's website is worth at least a 40% uplift on the original fee. And where all rights are demanded, at least double the basic one-use-in-print fee would seem to be an absolute minimum. Try for 300%.

Moral rights

Finally there is the question of moral rights. These are more to do with your integrity as a writer than with financial considerations. They prevent your work being distorted so it isn't true to its original tone or purpose or in a way that is damaging to your professional reputation. They also give the right to be identified as the creator of the work.

In most of Europe moral rights are inalienable, that is to say they cannot be signed away. In Britain, however, freelance work in newspapers and magazines is exempt. But you can put "moral rights asserted" on whatever you write. It may do some good.

When it gets down to basics, the copyright laws are remarkably sensible. You own the intellectual property; you sell rights to use it in specific ways. The rule of thumb is that if someone uses your work, then you must have sold, or given, them the right to do so.

And remember, don't open your wallet to strangers purporting to sell you your own copyright.

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