

Copyright Issues for Self-Published Books

Michael Grass House
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NOTE: This booklet is not intended to be a legal document nor an exhaustive description of possible copyright infringements. It is a general summary guide to help new authors determine if their book contains possible copyright issues.

If you have concerns about possible copyright issues in your book, you are responsible for clearing up these issues with a lawyer. If you choose not to use a lawyer's services, then rewrite the passages and remove all potential copyright problems.

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If you have any doubts about parts of your book, don't publish it.

Copyright Infringement

Copyright protects literary works, paintings, photographs, drawings, films, music and lyrics, choreography, sculptures and other creative works. It doesn't protect the underlying ideas, and it does not protect facts.

Copyright infringement differs from plagiarism because of the issue of ownership. Copyright infringement refers to stealing creative work that someone else owns as the creator, whereas plagiarism refers to passing off someone else's research, coined terms, exact phrases, or data as your own. Copyright is theft, whereas plagiarism is lying.

For example, copyright doesn't prevent you from expressing in your own words ideas and facts found in a book or journal you read. But plagiarism does. Both copyright and plagiarism prevent you from copying sentences, paragraphs, or significant phrases from someone else's work without giving the true author credit.

Copyright Infringement in Works of Fiction

Internet

Information, phrases, sentences, and works of fiction on the internet are almost always copyrighted by default. "I found it on the Internet" is not a defense against copyright infringement.

A website doesn't need to have a copyright notice in it to be copyright-protected. Unless the website clearly states that the work is in the public domain, assume that it is under copyright. Avoid stealing material from someone's website.

Fan Fiction

Famous authors are very protective of their works. Even though they appreciate fans, they take legal action if a fan writes a book of "fan fiction" that infringes on their copyright. Original fictional characters (e.g., Harry Potter), story-lines (e.g., attacks by Death Eaters), and settings (e.g., Hogwarts) can be copyrighted. This means that fan fiction can easily be a copyright infringement.

Works of fan fiction constitute fair use *only* if they are "transformative" with respect to the original work, if they use very little of the original work, or if they don't detract from the potential market for or value of the original work. Before publishing a work of fan fiction for commercial profit, take it to a copyright lawyer.

Parody

Parody is a form of writing that mocks another book (or film, speech, etc.). Authors who write parody must realize that their work may anger the original author and provoke legal action for libel. Before you publish a parody, hire a copyright lawyer to check it.

Use of Trademarks

Authors are generally allowed to make minor mention of trademarked items and characters (e.g., *Nikes*, *Tony the Tiger*) in their work of fiction without adding the TM marker. However, authors should be aware that if their use of the trademark is derogatory, the corporation that owns the trademark may pursue damages.

Damaging:

Tom spat out the food. "This burger tastes horrible. How can anyone eat McDonald's food?"

Non-damaging:

Tom spat out the food. "This burger tastes horrible. How can anyone eat fast food?"

Be aware that many brand slogans are trademarks. If you're going to parody

a brand slogan, alter it. Word-for-word parody of brand slogans will lead to legal action.

In general, avoid using brand names as much as possible. Instead, use a generic phrase will do (*sneakers* instead of *Skechers*) or create a new but similar brand name (*Strechers*). Do not, under any circumstances, violate copyrights belonging to Disney, Walmart, Vivendi Universal, Time Warner, or LionsGate. These corporations will not hesitate to sue you.

Finally, you may end up accidentally infringing on a trademark if you create a name that happens to be the same as a trademarked name. Always run an internet check of the names you create, and alter any name that might infringe on a trademark. In addition, include a waiver at the beginning of the novel informing the reader that all names are fictional:

AUTHOR'S NOTE: This is a work of fiction. Names, characters, places, and incidents are either the product of the author's imagination or are used fictitiously, and any resemblance to actual persons, living or dead, business establishments, events, or locales is entirely coincidental.

Word-for-word copying:

The original passage in Samantha Waring's 2009 novel:

Jessica entered the room and slammed the door. "Where's global warming when you need it? It's been raining all day, I'm tired, and all I want is a cup of joe and a tropical beach. Is it too much to ask?"

- Samantha Waring, *Holiday in Hell*, 2009.

What you wrote in your soon-to-be-published novel:

Sam slammed the door. "Where's global warming when you need it? It's been snowing all day, I'm tired, and all I want is a cup of coffee and a day at a tropical beach. Is that too much to ask?"

Note that you copied entire phrases that make your paragraph clearly plagiarized. Substituting one or two words doesn't make her paragraph original. You should rewrite this paragraph to remove the similarities.

Copyright Infringement in Works of Nonfiction

Copyright infringement in works of nonfiction includes all of the aforementioned issues, plus *plagiarism*. Plagiarism means copying or near-copying someone else's writing or research and pretending it is your own. Plagiarism in a school assignment can get you a failing grade, but plagiarism in a published book can infringe on copyright law. The original author can sue you for damages. At the very least, plagiarism shows a lack of professionalism that will cost you readers, sales, and credibility.

Always provide footnotes or citations for the following:

- ▶ details from someone's research
- ▶ sentences, conclusions, or ideas from someone else's book, film, or website
- ▶ material from someone's website
- ▶ photographs, images, graphs, tables, data, and graphics from someone else's website, book, film, or other published work

Plagiarism of Words and Ideas

The original passage from T. Frick's 1991 book:

Technology has significantly transformed education at several major turning points in our history. In the broadest sense, the first technology was the primitive modes of communication used by prehistoric people before the development of spoken language. Mime, gestures, grunts, and drawing of figures in the sand with a stick were methods used to communicate -- yes, even to educate. Even without speech, these prehistoric people were able to teach their young how to catch animals for food, what animals to avoid, which vegetation was good to eat and which was poisonous.

- Frick, T. (1991). *Restructuring Education through Technology*.

What you wrote in your soon-to-be-published nonfiction book about the same topic:

In examining technology, we have to remember that computers are not the first technology people have had to deal with. The first technology was the primitive modes of communication used by prehistoric people before the development of spoken language.

Note that you copied entire phrases and sentences from Frick's book without quotation marks, footnotes, or source notes, and tried to pass it off as your own. This is plagiarism and an infringement of Frick's copyright. When you take material directly from a book, article, speech, statement, remarks, the internet, or some other source, you must provide proper attribution.

Even if you don't use the original author's exact words, you still need to include a footnote or citation for material that you have paraphrased. You need to acknowledge when you've taken someone's ideas.

If you quote or paraphrase another author extensively in your book, consider contacting that author to be one of your reviewers. The author will be pleased to see so many references to his/her work in yours.

Apt Phrases

If a well-known expert has coined a term or used a particular phrase extensively, you can't use that term or phrase yourself without using quotation marks and providing the source.

Even a short phrase must be footnoted or sourced if it is distinctive and integral to an expert's work. Only phrases that have truly become part of general usage can be used without citation.

Graphics and Photographs

Scanning a chart, table, graphic, or photograph doesn't give you the right to use it in your book. All material in your book must be original unless you've received written permission from the original creator to use it.

Fair Use

Fair use is a legal concept that permits freedom of speech while protecting an author's copyright. Fair use permits limited quoting of copyright material for the purposes of teaching, critiques, comments, reporting, and research.

However, fair use law is vague and complex. Don't rely on fair use to protect you if an author takes legal action against you. It's far better to get the author's written permission before you publish than to risk failure of the fair use argument.

Providing Footnotes, Sources, and Bibliographies

If your book is nonfiction and

- ▶ relies on research
- ▶ extensively quotes or summarizes the work of other authors or experts
- ▶ discusses ideas and material presented in the work of other authors or experts
- ▶ includes maps, diagrams, tables, or data from the work of other authors or experts

then you must include footnotes or source notes and a bibliography.

For information on how to document your sources, please refer to one of the following documentation methods:

- ▶ The Modern Language Association (MLA) style
- ▶ The American Psychological Association (APA) style
- ▶ The American Sociological Association (ASA) style
- ▶ The Council of Biological Editors (CBE) style
- ▶ The American Medical Association (AMA) style
- ▶ The Institute of Electrical and Electronics Engineers (IEEE) style
- ▶ The Chicago Manual of Style (CMS) style