Beyond the Book

A Resource for Authors and Creators from Copyright Clearance Center

Protecting Your Ideas

By Howard Zaharoff

When that light bulb goes on—Eureka, you've got it! The most brilliant plot ever!—it's understandable if paranoia sets in. What if I tell my writing group and someone steals my idea? Or who knows—maybe some agent will snatch my work right from under me when I submit the proposal!

These are common concerns among new writers. Great ideas are hard to come by, so it's only natural to worry that some shady character might steal your concept for a book, article or TV show. How can you protect yourself?

The brief legal answer may surprise many: copyrights, contracts and related laws all do, indeed, protect many aspects of what people call "ideas." The key is understanding that copyright doesn't stop at your words, but protects any original expression in your work, including detailed outlines, plots and characters.

The Boundaries of Copyright

As most writers appreciate, copyright protects original "works of authorship," that is, original expression the author fixes in tangible form, such as words penned on paper or saved to disk, images captured in photos or drawings, and sounds and music recorded on tape or digitized on a hard drive.

Copyright guards these works not only against copying and adaptation, but also against public sale, performance and display without consent of the copyright owner.

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Section 102(b) of the Copyright Act states clearly what most writers have heard: "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle or discovery …"

But this leaves undone a tricky task: drawing the line between a work of authorship and the ideas embodied in that work. That may sound easy, but it has plagued copyright lawyers for centuries and produces a surprising array of copyrightable works that one might have assumed were unprotected ideas.

Detailed Outlines

In the 1960s, Harper & Row published an extremely popular child development textbook. Meredith Corp. created a competitive textbook using the Harper & Row book as the model by distributing detailed chapter outlines to freelancers, who worked from these outlines without seeing the original. When Harper & Row sued, the court found Meredith Corp. guilty of infringement, due in part to "an extensive taking of the entire structure and topical sequence" of the original.

So, if you give an editor a *detailed summary or full manuscript*—as opposed to a two-paragraph description of your idea—the publisher's use of your themes, mood and sequence of events may infringe your copyright in your original expression.

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Copyright: Well-Defined Characters

Another hidden strength of copyright law is that it can protect original characters. Thus, if you describe in writing a unique and detailed character ("he's a debonair, well-dressed, womanizing British secret agent with a 00 license to kill who likes martinis shaken, not stirred"), any publisher who reproduces a substantially similar character without your permission may be infringing your copyrights.

Contracts: Written, Oral and Unspoken

Suppose we're not talking about a detailed plot or unique character, but just a concept. For instance, you have an idea for a sitcom about a middle-class black family (*The Cosby Show* was the subject of a suit) or a film about an African prince visiting the U.S. (Eddie Murphy's *Coming to America* inspired an infamous legal battle). How can you protect those?

One option is a written nondisclosure agreement (NDA), under which the party receiving the confidential idea promises not to use it without consent. NDAs are widely used in business, and are occasionally found in Hollywood. Unfortunately for authors, they're rarely used in publishing.

Protecting Ideas

Finally we reach the extreme case: an idea alone. No copyright. No contract. Will courts recognize an idea as property, holding accountable a publisher who uses it without permission or payment?

Unfortunately, except in rare cases, the answer is no. The rare cases include relationships of special trust or reliance—e.g., the publisher is also your priest or paid adviser. Other rare cases, generally outside publishing, include ideas that are so unique and concrete that allowing use without compensation would reek of injustice.

Still, in planning your approach it's safest to assume that absent a contract or special relationship, if a publisher uses your underlying ideas, but neither solicited them nor agreed (expressly or by implication) to receive them in confidence or pay for their use, you won't be able to prove misconduct or recover damages.

What's a Writer to Do?

Most advisers would say: Don't sweat it. What counts most in writing is executing a good idea, not necessarily devising a truly novel one.

Still, if you believe you've conceived that once-in-a-lifetime, barnburner idea and you're determined not to lose it:

- Don't submit this idea to any publisher who won't agree to treat it as a disclosure of proprietary information.
- At least be certain to tell publishers before submission that you expect to be paid if they use your idea. If they say "nyah," walk away.
- Don't submit the bare idea; instead, flesh it out to the point where a publisher who uses it will almost surely be stealing copyrighted expression. (If not done correctly this could backfire, so don't do this without first consulting a lawyer.)
- Mark any materials describing your ideas with both a copyright and "CONFIDENTIAL INFORMATION" legend.

Even these recommendations, however, won't always work. So perhaps the best advice, in all situations, is to investigate before proceeding to ensure you're always dealing with reputable publishers, producers and agents.

Howard Zaharoff is a lawyer who represents both writers and publishers from his offices in Waltham, Mass. He has spoken on publishing law issues for the National Writers Union, Society of Children's Book Writers and Illustrators (New England), and the Copyright Society of the U.S. (New England).

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