

Magazine articles: copyright, thievery, and paranoia

Like you, I oppose thievery and I'm always on the lookout for paranoia!

Editors are the same way, so that's the point of this blog (and it's mate, "copyright and other rights" posted on 11/4/11). It all starts with the nagging question: **What are the chances of an editor using your copy without paying you? Or of his stealing your idea and assigning it to a friend? And what can you do about it?**

It happens. Copy is used and ideas stolen, but not nearly as often as the beginner's paranoia suggests. It also happens in reverse: so-called writers plucking *in toto* literary gems (or even rocks) and passing them off as their own. Or they sell their own copy, used, as a first-rights article without changing a word (or only a few) from the copy they had sold years ago! It's hard to tell who's ahead, editors or writers, where petty purloining is involved. If you find yourself the victim of lifted lines, though, you want to know how to get justice now—or at least payment. What follows is my system, should that occur. (If you want legal help, though, see a lawyer!)

Say you send a manuscript to an editor in response to his go-ahead, receive no response to repeated letters, and discover months or years later that it was printed, without acknowledgment or payment. You could have sent a registered letter, when the editor repeatedly ignored your letters, withdrawing the manuscript for his use. But in our case you didn't.) You have a simple recourse: Make a copy of the printed article, your original query, and the editor's go-ahead and mail them to that editor with a thank-you note, plus a reminder that the payment has yet to be received. That

should bring you a quick check and a note of apology. But if it brings silence, find out the name of the highest authority in the publishing firm, preferably the chairman of the board, and send a copy of everything you sent to the editor with an additional note that you have still not received payment and hope that the recipient of this second letter will be able to resolve this obvious breach of contract.

All three elements of a contract are there yet payment has not been received. If the letter to the top honcho brings no reply, contact the Better Business Bureau. They will send you a form to complete to which you should attach a copy of all the above items. The BBB isn't a collection agency, but it does an excellent job of mediating. It will send your complaint to the company and will lend its good offices to prod them into responding.

You can also contact the postmaster at the publication's zip code and explain the situation, asking whether the firm is still in business. If that still doesn't work, you might write to *Writers Digest*, the monthly counterpart to *Writer's Market*, explaining what happened. If you belong to a writing organization, do the same. Both will bring your complaint to the attention of their readership. Don't forget the consumer advocate groups or representatives with the local newspaper and radio/TV stations who, by the same kind of negative publicity, get businesses to listen.

Still nothing? Small Claims Court, where you act as your own lawyer. Finally, the full lawsuit. How frequently will you have to resort to these techniques to wrest payment from thieves? My own experience may be atypical, but of 1,700 articles in print, I have had only four editors who didn't pay. That's less than one-half of 1%, which is an excellent debt ratio for any business. In two cases a nudge by the BBB got me a check pronto. The other two folded with my work in their last issues. A few letters got me 17 cents of a bankruptcy settlement on a \$50 claim. The other still owes me

\$150, a twelve-year debt I may never collect.

Idea stealing is harder to prove or prevent. The problem is the gaseous consistency of ideas themselves. They can't be boxed or fenced in or even kept intact, so they can't be defined and labeled. Ideas in themselves have no legal substance. They become property when expressed in a tangible form: an article, lyrics, musical notes, etc.

And how do you prove that the editor and you didn't have the same idea at the same time? Bell and Gray not only invented telephones, completely unknown to each other, but they patented their inventions the very same day half a country apart!

So you can't overly fret at idea heisting. Think up another idea. In a week of concentrated idea-thinking you could fill a lifetime's larder. That one idea of a hundred might be swiped from a query can be exasperating, but the only sane response is one of flash anger, resignation, and moving on to another editor, with an even better idea.

One thing is certain: If you don't risk ideas, if you don't query or write articles or books, your writing future and income will be bleak. So take the gamble. Probably 99% will be responded to, rejected, or left for you to turn into copy. Chalk up the rest to man's perversity. Writer's paranoia can stand in the way of sensible business practices. It's a luxury few writers can afford. Concentrate on marketing good ideas, lots of them. Follow up with manuscripts so extraordinary that any editor, however larcenous at heart, will want to pay you for more.

About the Current Copyright Law

"For works created (fixed in tangible form for the first time) after January 1, 1978, the term of (copyright) protection starts at the moment of creation and lasts for the author's

life, plus an additional 50 years after the author's death." (This differs for joint or group authorship and for works made for hire.)

"Under the 1976 Act, a work of original authorship is protected by copyright from the time the work is created in a fixed form; registration with the Copyright Office is not a condition of copyright protection itself except to preserve a copyright if a work has been published with a defective or missing copyright notice), but copyright registration is a prerequisite to an infringement suit."

To register a claim to copyright, send (1) a properly completed application form; (2) a fee of \$35 or \$65 (not cash) for each application; and (3) two complete copies or one photorecord of the best edition of published works, or one copy of unpublished work. The mailing address for copyright registrations is: Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559.

For more information about which application form to use and deposit requirements, which vary in particular situations, write to: Copyright Office, Publications Section, LM-401, Washington, D.C. 20559-6304. Or email www.copyright.gov/forms.

The old law required, as a mandatory condition of copyright protection, that the published copies of a work bear a copyright notice. The new enactment calls for a notice on published works, but omission or errors will not immediately result in loss of the copyright, and can be corrected within certain time limits. Innocent infringers misled by the omission or error will be shielded from liability.

Another thievery question: **How often will the editor actually change your copy?**

Answer: Very rarely, unless the copy is poorly written. Newspaper travel editors seem to make the most changes, probably because of space restraints. Magazine editors make

far fewer changes, and the ones they do make are to streamline the piece or trim it to fit into a size format.

Don't worry about this stuff. Worry about finding something that readers want or need to know, then being able to present it so captivatingly the editor will open the door to future assignments or purchases. Hard to imagine that many will pick the literary pocket of their new best buddy.

Best wishes,

Gordon Burgett