

Will They Steal My Idea?

Your book is both interesting and original. Unfortunately, the part that is original is not interesting and the part that is interesting is not original.

—Samuel Johnson

I GIVE A LOT of seminars on freelance writing. When I get to the part where I explain how to write a query or book proposal I know that someone in the room will raise a hand to ask this heartfelt question: “How do I know they won’t steal my idea?”

And why not ask it? After all, the writer asking the question had the idea in the first place, polished it up and refined it, and is now ready to try to get it published. The last thing she wants is a

rejection slip, followed by a similar article over someone else's byline a few months later.

The short answer is no, it is not likely that they will. However, there are still some important things you need to know to protect yourself and your intellectual property from whatever crooks there may be out there

Some of these questioners seem almost paralyzed by the fear of losing the products of their minds and hearts to unscrupulous individuals who might, in some way, gain access to them at some point during the publication process, mainly while they are shopping an idea around.

Such writers find themselves in a kind of *Catch-22*: they can't get published without sending their ideas out for consideration; but if they send them out

they think they may risk losing them. So what's the dope? Do ideas get stolen in the writing trade? Seldom? Often? If so, how can you protect yourself from this literary thievery?

I have been a magazine editor and freelance writer for more than 35 years. During that time, I have had no personal experience with purloined ideas, none of my friends in the business has ever complained to me of purloined ideas, and no writer submitting queries to my magazines has ever complained that his or her idea was stolen.

You Can't Avoid It

Moreover, what choice do you have? If you're a farmer, you've got to sow your seed, even though the birds may peck up one or two of them here or there. Keep

the seed in the barn and you do indeed protect them from the vagaries of the natural world, but you also prevent them from germinating and bearing fruit. If you want to be a writer, you've got to send your ideas out , or they just rot in your mind like the fearful farmer's unsown seed rot in the barn.

Still, I imagine the writing trade has as many dishonest persons per capita as exist in any other profession, so maybe I was just lucky. At any rate, my assertion that I never experienced this kind of editorial malfeasance is no guarantee that it is not going on.

Writers enjoy much more protection from present-day copyright laws than they ever enjoyed before. Until the late 19th century no one's books, let alone ideas, were secure. Unauthorized editions

of popular works could be and were published around the world, with no benefits at all going to the author. As long as the writing business consisted wholly of print publications, the problem was pretty much solved. But now with the vast, still untamed, territories of electronic publishing before us it is a very unwise writer who does not learn what the real dangers are and how to protect himself against them

So let's map out the territory and see where we stand.

Ideas and Words

Here's the good news: it doesn't really matter if someone steals your idea. They still can't steal your style. Ideas are not all that important in themselves. It's what your particular and personal skill as a

writer brings to them that counts. And though an idea can be ripped off, its really not very likely in the writing trade. The great French poet Stephanie Malarkey was out walking one day with a younger writer. "Monsieur Malarkey," the young man asked. "Where do you get your ideas for poems?"

"Ah, but you don't make poems with ideas," Malarkey replied. "You make them with words."

It is the rhythm, the images, the sounds of the words — even the way they look on the page — that makes a poem. The idea is secondary, except that it needs to be one of interest to most readers. Here is an idea: "Don't give all your worldly goods to your children. They may not love you as much as you love them." The idea is bland, flat. So go ahead and steal it and

see what you can do with it. But King Lear, dressed out in Shakespeare's words, is a very powerful work of art.

How many books have been based on this idea: "A young man and a girl fall in love but the normal course of their passion is blocked and tragedy ensues." How many hundreds—thousands—of books have been based on this idea, ranging from Romeo and Juliet to An American Tragedy to Love Story. The idea is the same, but the books could not be more different.

Here is another idea, a very contemporary one, that of the "gratuitous act." A person commits an act of violent murder not for any rational motive but simply because it can be done. That is a very clear and simple idea, but in the hands of different writers it finds very

different and complex expression: Dostoevsky in *Crime and Punishment*, Andre Gide in *The Caves of the Vatican*, and Truman Copote in his “non-fiction novel” *In Cold Blood*. It is difficult to image three more different books, but the same basic idea informs them all.

Ideas and Editors

In the publishing business we see the same ideas over and over again. In fact, it can be maintained that there are a limited number of ideas in the world at the most basic level: love, hate, greed, ambition. Then there are the subcategories: pure love, erotic love, selfless love; hatred of oneself, hatred of a single other; hatred of a race; greed for money, for land, for power; ambition to achieve political

power, worldly status, heroic stature; sexual lust.

That's barely a dozen ideas, and it covers almost everything in human experience. Editors see them over and over again. No, ideas are not tempting in themselves. Most editors got where they are because their own minds are fairly brimming over with ideas., and for most writers the problem is not a shortage of ideas by the time to develop them all.

What editors are looking for are two things; a new slant on the same basic truths of human experience that have always interested readers; and a strong, original style capable of dressing out those ideas in words that will give freshness and originality to their expression. No one has time or need to steal ideas. Writers are what is rare, and

if you approach an editor with a fresh slant in a query letter that convinces him that you can write well enough to bring your idea to life, you couldn't drive him off with a baseball bat. It is you, not your idea, that interests him, because you exhibit that rare combination of imagination and talent that he is looking for. (Which should tell you, by the way, much about the kinds of query letters you must learn to write. See Little Blue Sourcebook 1013, The Query Letter That Never Fails.)

Simultaneous Invention

Simultaneous invention — wherein two individuals, not in contact with one another give birth to the same idea or clusters of ideas — is not a new phenomenon. Sir Isaac Newton in

England and Leibnitz in Germany developed the infinitesimal calculus during the same years independent of one another. Writers do it all the time. An idea is simply in the air, and several freelancers, independently of one another, jump on it and try to market it. It is entirely possible that this is the source of many "stolen idea" stories. An editor has several versions of the same thing on his desk. He chooses one and rejects the other. Several months later the rejected writer sees an article on a theme similar to that of his on piece in the magazine in question. He raises a hue and cry, claiming that his idea has been stolen. But he is wrong and suffering from a bad case of simultaneous invention.

What about Copyright

The standard bar against the theft of intellectual property is the international copyright convention, according to which the vast majority of literate and literary countries worldwide join in recognizing the sole right of authors (unless voluntarily signed over to others by the author) to enjoy the ownership and benefits of his or her literary works.

For most of the twentieth century copyright protection in the United States was governed by the copyright act of 1909, which granted protection to the author for a period of 28 years, renewable for another 28 years. In the event that the copyright was not renewed, all protection expired, and the work in question passed into the public domain

This law was revised in 1978. Under the new law, copyright protection exists for the author's lifetime, plus 50 years. Bringing the United States into line with the copyright laws of England and some other countries. Furthermore, copyright protection is said to exist from the moment that a work, in whole or in part, exists in concrete form: handwritten, typed, or output from a computer. Technically, copyright registration is no longer necessary, but in the absence of a certificate of copyright issued by the copyright office of the Library of Congress one's rights under the law are much more difficult to assert – perhaps even impossible.

A certificate of copyright is easy to obtain. One has only to send two copies of the literary product, a copyright

application, and a check for (as of this writing) \$30 to the Office of Copyrights at the Library of Congress. You can get details and download application forms online at <http://www.loc.gov/copyright/>.

What Copyright Does Not Cover

Although a certificate of copyright is the most basic and effective protection available for a literary work, it does not cover some things. It does not, for instance, cover the title of your work, nor does it prevent persons from quoting a paragraph or two (the exact amount is ill-defined) under the “fair use” doctrine. Thus a college student preparing a term paper on Hamlet can, without fear of copyright violation, quote a hundred or so words from another critic’s study of

that same play. Anyone who wants to quote more extensively than that will have to write to the holder of the copyright to ask permission to do so and pay whatever fee, if any, may be asked.

But if copyright law does not protect a title, there may be others that do so in certain, well-defined cases. These usually have to do with violations of laws governing fair trade practices. Another person may not legally appropriate your title (though you would have to go to court to prevent it) if your title is part and parcel of a larger marketing presence.

Such titles are said to be the equivalent of brand names. A well-known example today is the “. . . for Dummies” and “Idiot’s Guide to . . .” that are seen in all the bookstores. “Cliff’s Notes. . .” is another. The title of this series of reference

guides for writers *Little Blue Sourcebooks!*
*for Writers and Self-Publishers*TM is another.
Note that I include the small “TM” after
Sourcebooks to warn others that this is a
“branded” series.

If you wish you can register a
trademark at [http://www.uspto.gov/
main/trademarks.htm](http://www.uspto.gov/main/trademarks.htm).

The Public Domain

A work whose copyright has expired
or which intentionally created without
copyright protections (as are most
government books, booklets and
pamphlets, for instance) are said to be in
the “public domain,” and may be used by
anyone at anytime without any
permission or penalty.

Things You CAN Worry About

If out-and-out idea theft is an unlikely event in the publishing world, this does not mean that thieves and evil-doers are not lurking there as elsewhere. There are other kinds of literary skullduggery that are far more likely and that you be prepared to protect yourself against. Those who engage in it are likely to look you in the eye (if you are ever able to meet them face to face) with a “Who, me?” expression of surprised innocence. They probably believe that they are engaging in legitimate business practices, and, after all, there are few of us who don’t think that way. When you meet one of these guys (or gals) circle the wagon and protect yourself. Or, if you decide that it is in your best interests to do business with them,

choose to do so of your own volition, not by default.

The Rights Pirates

Rights pirates, like unscrupulous politicians ambulance-chasing lawyers may dress well and appear to be pillars of the literary community. They make their living not by stealing your idea but by poaching on your right to profit by that idea in its written form. This works in various ways:

You are paid for the initial publication or “first serial rights” but receive nothing from later uses of your work when the publication that bought it republishes it electronically or by some other means. The National Writer’s Union (<http://www.nwu.org>) and the American Association of Journalists and Authors

(<http://www.asja.org>) , the two leading advocates for freelance writers, are currently working to bring fair compensation to the writer in these cases. I'll give some examples below.

Electronic Rights

Here is a minor case of electronic rights grabbing from my own experience. It was not important to me, since I wrote the piece primarily for PR purposes and to gain visibility for my publishing business in the community to which I had just moved.

In April I set up my office in Savannah, Georgia, having relocated from Fort Lauderdale. My business—Williams & Company—designs, publishes and sometimes even ghostwrites family and local history. I contacted the editor of a

tabloid supplement to the Savannah Morning News called Coastal Senior and proposed an article, "How to Write (and Publish) a Living Family History." The editor accepted the article, told me how much he would pay. I wrote the piece and it was duly published.

A week later the editor who had bought my piece sent me a "contract" to sign so that he could cut me a check. The contract, I discovered, granted to the newspaper not only first serial rights, but all other rights, including electronic rights, web rights, and the right to use and distribute my piece by any other means now in existence or which might one day come into existence. Talk about a broad grant of rights! The same thing will happen to you, if you are don't take care to read the small print. Most of us achieve

some kind of freelance profitability by recycling articles, by selling them more than once to non-competing markets or by recycling them later in books. A contract like the one my newspaper sent me makes such multiple uses technically illegal

Fortunately this piece, for me, was a throwaway. I wrote it to get some publicity and name recognition and did not intend to market it elsewhere. Nevertheless, I doubt that I would have signed the agreement giving up all rights had I seen it before publication.

The POD Blues: Starbound Books.

Technically print on demand is essentially a means of production, available to anyone who chooses to use it, and most printers who offer print on

demand services have nothing to do with the actual business of publishing at all. However, the technology has been adopted by a number of companies that advertise themselves as “POD publishers.” These include such companies as IUniverse, 1st Books, two of the largest and best known. Thus “print on demand” has come to stand, by extension, for a type of publishing .

As a example of POD as a publishing business, let’s look at a company that I will call “Starbound Books.” This is a real company, and the facts below are as presented in their brochures. The name, however, is fictitious. Starbound Books invites writers to send in their books for publication. Starbound Books promises to “publish” these books, formatting the interior and designing a cover at an

affordable price, using standard templates. It is not difficult to get published at Starbound. If you have written a book that does not transgress the laws of libel or decency, it is likely to be accepted by Starbound.

Starbound becomes the publisher of those who send in a manuscript. It assigns an ISBN to the work published and has a contract with author specifying royalties to be paid on retail sales and income sharing on sales of subsidiary rights-if any retail sales or rights sales do in fact occur. Starbound Books promises to make the author's book "available" in bookstores and other outlets. Note that this does not mean that the books will actually on the shelf. It simply means that the author's book will be listed in the Books-in-Print database, and so available for special

order whenever a customer asks for such an order.

APOD publisher offers contracts very unfavorable to the writer who has paid upfront to get his book published, siphoning off income from rights sales which it does little or nothing to earn.

Here is the way it typically works. A writer, frustrated by his or her inability find a publisher for a manuscript, sees and advertisement for a Web-based publisher who offers to publish any book, in print and/or eBook formats, for what seems to be a small fee, usually a few hundred dollars. The publisher further offers to pay the writer a royalty of twenty to forty percent on books sold and to sell books to the writer himself at a discount of as much as fifty percent off the retail price. The publisher also offers to pay the

writer a hefty percentage of any money received through the sale of subsidiary rights.

So what's wrong with this deal? Here are just a few ways that this agreement can go wrong to the unwary writer:

1. The publisher does no editing, and so the published books suffers greatly—often fatally—from the lack of professional editorial input.

2. The publisher uses a template design format into which he forces many different kinds of book. The one chosen for your book may not be at all suitable. Reviewers who pick up an ill-designed book usually put it down again just as quickly.

3. The publisher does nothing at all to market the authors book. This fact is explicit in the presentations made by leading POD ..

4. The author's book is not likely to be reviewed in an substantial and important review media. The reason is that, since the POD publishers will bring out virtually any writer, no matter how good or bad he may be, is willing to pay for, most review sources routinely pass them over as not worthy of their scarce editorial time.

5. Many POD publishers will ask that the writer sign away far more of his rights that is called for. They do this so that, in the rare instance that one of their titles should become a hot seller—in spite of the fact that they have done nothing to make it do so—they, as publisher, will

stand to reap a substantial part of any profits made without incurring any risks at all.

6. The POD publisher offers its services at rock-bottom rates—often as little as a couple of hundred dollars to start with. However, if you want custom design features, proofreading, editing, or individual cover design this base price rises very rapidly

So if Starbound's books are unlikely to sell, how does the company make money. Simple.? It sells printed books directly to its authors at discounts ranging from "19% to 50%." Lets say that the print version of your book retails for \$19.95 and is sold to the author at a 40% discount, or \$11.97 cents. If this hypothetical book has 200 pages, printing costs, at the very most, \$3.90 (and this is the retail rate) for

printing. Thus Starbound Books nets a profit of \$8.07 on books sold to its own authors. Let's say, further, that Starbound Books has 1000 authors each month, each of whom orders 25 copies of his or her book for friends, relatives, and local reviewers, then the income is substantial. One thousand multiplied by 25 equals 25,000. This figure multiplied by \$8.07 equals \$201,750. This produces an annual income of \$2,421,000. When you consider that Starbound Books, since it is a POD publisher, has no investment in inventory, no need for warehousing or fulfillment services, and that the whole enterprise, once set up, can do business almost entirely in the thin air of hyperspace, the net profit is substantial.

Starbound doesn't have to sell your books to anyone else to make money.

They sell enough of them to you to do that.

Getting Out of It

The National Writers Union addresses some of these problems on its web site: "With online books," the NWU says, "the systems of distribution and promotion are being reinvented, so authors should take nothing for granted. They should insist on contract provisions that detail, to the extent possible, the ways in which the online publisher is going to make potential readers aware of the existence of the work (online promotion, print promotion, etc.) and the ways in which they are provided access (by e-mail only, by World Wide Web, or whatever). The length of the grant of rights might be tied to specific commitments by publishers

with regard to availability and promotional budgets. Authors may also want to consider a provision stating that after the publisher has exhausted its agreed-on promotional budget, a portion of the future royalties from the work be used for promotion, which could help extend the 'in-print' life of the work. Print book contracts typically provide for the termination of the grant of rights if the publisher does one of several things: fails to publish the book within a reasonable amount of time, fails to pay royalties, or allows the work to go out of print. All of these provisions should be adopted in online book contracts." For more on this I refer you directly to the web site of the Writer's Union, <http://www.nwu.org>.

2. Data Bases

You have written an article and gotten it published. A so-called electronic “data base” picks it up and stores it, along with thousands of other articles, in its files. When a client calls the data base company and requests all information on a given topic, the data base’s computers spew out all relevant info, including anything you may have written and published on the topic and published in an indexed magazine or newspaper. You do not receive a cent in compensation, although the publication in which your article was first published may have “sold” the right to use your article to the data base in the first place.

The National Writer’s Union reports that there are “more than 100 NWU members . . . protesting the sale of their

work at high prices to users without a dime being paid to writers. Of the many databases engaged in this practice, we have focused our efforts on one of the largest, Information Access Company (IAC), to play fair. (IAC operates full-text databases on CompuServe, Dow Jones News Retrieval, and other sites.) While we hope that the lawsuit and the protests will establish principles of fairness and justice in electronic publishing, the NWU is also interested in finding practical solutions to problems. Therefore, in line with the principles set forth in this document, we have established the Publication Rights Clearinghouse (PRC), a collective-licensing agency inspired by the music industry's ASCAP. PRC has set up a transaction-based writers' electronic-rights marketing and royalty collection

system with the Uncover Company. Uncover operates the world's largest magazine and journal article database, and is an affiliate of Knight-Ridder, Inc."

Plagiarism

A final way that a dishonest writer can perform some intellectual picking of your intellectual pockets is by plagiarizing your work. The plagiarist doesn't just steal you ideas. He steals your words as well. Plagiarism is not widespread in professional writing and commercial publishing because it is so easy to spot and so easy to prove. In all but a few rare cases plagiarism is little more than a nuisance.

Plagiarism is common among high school and college students faced with a term paper deadline on a topic that they

know absolutely nothing about. For some, the rich resources of the World Wide Web have made this kind of “borrowing” too tempting to resist. It is now beginning to be controlled by special computer programs designed to detect plagiarized texts. (See <http://www.plagiarism.com> and <http://www.plagiarism.org>) Although reprehensible, this kind of copying is not likely to harm anyone financially.

More serious consequences may occur when the plagiarism is high level and extensive. In the past year, two well-known historians, Doris Kearns and Stephen Ambrose, were found to have used materials in their work lifted from other writers without attribution or note. Neither of these writers needed to lift text written by others. In my view the

misstep can from other sources. Most prolific scholars and authors of extensive, broadly-sweeping narratives routinely employ research assistants to do leg work for them and gather relevant notes and references. Some of these notes more than likely found their way into the finished text because the attribution had been omitted at the research assistant level. No one will claim that the writers whose work was stolen were actually harmed by the theft. Those most harmed by the revelations were Kerns and Ambrose themselves, who were wounded where it hurt most: in their reputations.

Sometimes, though, the plagiarism is more extensive and much less excusable. H. G. Wells, the British author of such mega-hits as *The Time Machine* and *The War of the Worlds* and *The Invisible Man*,

published, in 1920 a book of non-fiction, *The Outline of History*. I remember reading it during my college years, back in the 1950's. I wondered how it was possible for one man to know so much.

As it turned out, it was not possible after all, at least not in Wells' case. He plagiarized a good part of his book from a Canadian author, Florence Deeks, whose own outline of history he had read in manuscript form. This affair is the subject of a recent book by A.B. McKillop, *The Spinster and the Prophet: H.G. Wells, Florence Deeks and the Case of the Plagiarized Text*. (New York, Four Walls, Eight Windows, 2002).

Why a Union?

I have suggested that readers go to the web site of the National Writer's Union,

find out what they are up to, and consider joining. I suggest this because there is power in numbers. Individually, writers have little chance of winning a legal battle with a large, powerful and above all, well-financed business or corporation. In the American court system, the guy with the most money almost always wins. That's why serious writers should band together and, in effect, pool their resources to create legal precedents that will help protect them from the kind of literary piracy that the data base companies are now practicing and from the depredations of unscrupulous writers like H.G. Wells.