

## Three Things Every Writer Should Know about Copyright

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If you are writing fiction in the hope that it will one day be published, you probably wonder what your rights are under the law. Copyright is a complex subject that covers a wide range of creative works, but you don't have to be a lawyer to understand these basic concepts:

1. How is copyright created?
2. What is copyrightable?
3. What is fair use?

Copyright is entirely a creation of law. It is different from plagiarism—which is a moral principle. If I take Shakespeare's play, *Romeo and Juliet*, and publish it with my name as author, I have plagiarized the work because it is not my creation. But I haven't violated any copyright because *Romeo and Juliet* is so old that it is in the public domain, in fact all works originally published before 1923 fall into this category. Works created and first published between January 1, 1923 and December 31, 1963 may have fallen into the public domain. The only way to find out is to research the status of the specific work. Other things that are in the public domain in the U.S. include documents created by the federal government.

On the other hand, if you copy this article and print it in a book, or post it on your web site without my permission—you have violated my copyright even if you properly attribute the article to me. Why? Because this article is protected by copyright.

An original work is copyrighted at the moment of creation—as soon as it is fixed in a “tangible medium of expression”. This can be a digital medium—a disk, computer hard drive—this web site. Or it can mean

writing it on paper—a poem scrawled on a restaurant napkin is copyrighted.

Copyright does not depend on having a copyright notice, or registering the work with the copyright office. It is a good idea to place a notice on your work, as I have done with this article, because it does give notice of your intention to anyone who looks at the work. A copyright notice makes it clear that you are reserving your rights and don't want your work copied or used without your permission. Registration in the U.S. Copyright Office is also valuable. If your work is registered you will be eligible for statutory damages and attorneys fees, should you succeed in an infringement law suit. But neither registration, nor a notice is required for copyright protection to attach to your work.

All that is necessary is that the work be fixed and original. The word "original" as used in the copyright law is a term of art that is somewhat different from our ordinary use of the word. It means first of all that the work isn't copied, that is, I couldn't take my edition of *Romeo and Juliet* mentioned above and obtain a copyright for it because all I did was copy it. If I take Shakespeare's play and add original illustrations, special annotations, or an original commentary I can copyright those original things I added to the work, though I still wouldn't have a copyright in Shakespeare's words.

The term original also means that the work must be more than a mere idea. It must be an original creative work. Take my novel, *Loving Mercy*, a western historical romance. It started out as an idea: create a role reversal story, set in the American west with a strong female heroine and a hero who needs her help. That idea is not copyrightable—you could create your own novel based on the same idea without infringing my copyright in *Loving Mercy*. My novel became an original creative work, worthy of copyright when I created an entire world—characters,

setting, plot. A mere idea is not copyrightable, but a detailed outline, for example, would be. You cannot copy my original work without my permission.

Obviously you can't take the book down to your local copy center, photocopy it and distribute it. This is true even if you distribute it for free. It is still infringement even when you don't profit from your copying! Between writing an original work that happens to be based on the same idea as another work and copying the work in its entirety there is a vast fuzzy area where infringement issues may be difficult to parse out. That is the subject for another article.

Pure copying is easier to detect. But *Loving Mercy* is 314 pages long. Suppose you only wanted to use a scene, a paragraph, a sentence? There is a concept called "fair use" that is a defense to copyright infringement. Like many concepts in the law, there is no bright line test that tells you, for example—over 100 words is infringement, while 99 words or less is fair use. There simply is no such rule.

In fact, the amount of the work being copied is only one factor to be considered in a fair use defense. Another misconception people have is that it is "fair use" as long as you aren't making a profit from the use. Thus, it would be okay to copy a picture and put it on your website, or print an excerpt from a book for your reading group. Whether the use is for profit is one factor to be considered in a fair use defense. But the fact that the use is not for profit does not automatically mean fair use will apply.

For more information on the fair use doctrine, check out this fact sheet at the Copyright Office website.

<http://www.copyright.gov/fls/fl102.html>.