

Law 101 . . .

Protecting Your Stories

Borrowed Elements or Stolen Ideas?

by Mark Litwak
Attorney At Law

When writers submit their work, they become vulnerable to theft. As an entertainment attorney I often hear from writers who believe that they have been ripped off. Usually the writer is a novice without representation who submits a script to an established production company. The company passes on the script or does not acknowledge its receipt. Months or years go by and one day the writer stumbles upon a movie that closely resembles his story and the credits show a recipient of the writer's script made it. The writer is convinced that his work was stolen and his copyright infringed. This may or may not be the case.

Many writers do not have a solid understanding of the nature and extent of what copyright law protects, and they may not know that they can also protect their interests under the principles of contract law. Let's begin with a discussion of copyright law.

Copyright does not protect story ideas, concepts or themes. So ten authors can write different stories about a doomed romance between lovers from dissimilar backgrounds, resulting in *Romeo and Juliet*, *West Side Story* and other variations. Also, facts and historical incidents are not copyrightable, so numerous authors could each write a biography on George Washington based on the same facts and incidents.

What copyright law does protect is the "expression of the author," the particular manner in which the writer tells the story, his approach to the material, his voice. In other words, what is protected is the embellishment on the idea, not the idea itself.

Consequently, others are free to borrow uncopyrightable elements from your work. But if they borrow your expression, then they have crossed the line. Granted it may be difficult to tell when an idea has been sufficiently embellished upon that the resulting work is considered an expression of an author and protected, but generally the more detailed the story, the greater the protection you will receive.

So how can a writer protect his ideas? By contract. While ideas are not protected by copyright, they are a form of intellectual property, and the recipient of an idea can agree to pay the provider for it. Such an agreement can be an enforceable contract.

In order to understand how a writer's idea can be protected by contract, let us first review some legal principles. There are different kinds of contracts. Some are written, others are oral. Contrary to popular belief, oral contracts may be valid. However, it is usually advantageous to have a written agreement, if only because it's evidence as to what the parties agreed.

The best way for a writer to protect himself would be to have the recipient of a story idea sign a written agreement. However, it may be awkward for a writer to begin a meeting with such a request. Some producers might be offended or worry about liability. They might want to consult their lawyer. Since writers often experience difficulty just getting in the door to see a powerful producer, asking for a written agreement may

I am telling you this idea with the understanding that if you decide to use it, I expect to receive reasonable compensation." The producer most likely will nod her head yes or say "of course," in which case you have a deal. If the producer indicates that she does not agree to these terms, leave without presenting the story.

Since a contract made under these circumstances isn't in writing, there might be a problem proving its existence and terms. That's why it's advisable to have a witness or some documentation. You could bring a co-writer, agent or associate along to the meeting. After the meeting you might send a letter to the producer reiterating your understanding. The letter should be cordial and non-threatening. You could write: "It was really a pleasure meeting with you to discuss my story about singing cat. As we agreed, if you decide to exploit this material, I will receive reasonable compensation." If the terms set forth in your letter are not disavowed by the recipient, the letter could be considered of your agreement. Since the letter has not been signed by the producer, her agreement is implied from the fact that she didn't object. Of course, if the producer confirms these terms in writing, that would give you even better evidence.

But what if the producer listening to your pitch doesn't steal your story but repeats it to another producer who uses it? You can protect yourself by also stating: "I am telling you my idea with the understanding that you will keep it confidential and will not tell it to anyone else without my permission." If the producer nods her head okay or says yes, you have a deal, and you can sue if she breaches her promise.

[Mark Litwak is a veteran entertainment attorney and Producer's Rep based in Beverly Hills, California. He is the author of six books including: *Reel Power*, the *Struggle for Influence and Success in the New Hollywood*, *Dealmaking in the Film and Television Industry*, *Contracts for the Film and Television Industry*, and the recently published *Risky Business, Financing and Distributing Independent Film*. He's the author of the CD-Rom program *Movie Magic Contracts*, and the creator of the *Entertainment Law Resources* website where he can be reached: www.marklitwak.com]



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