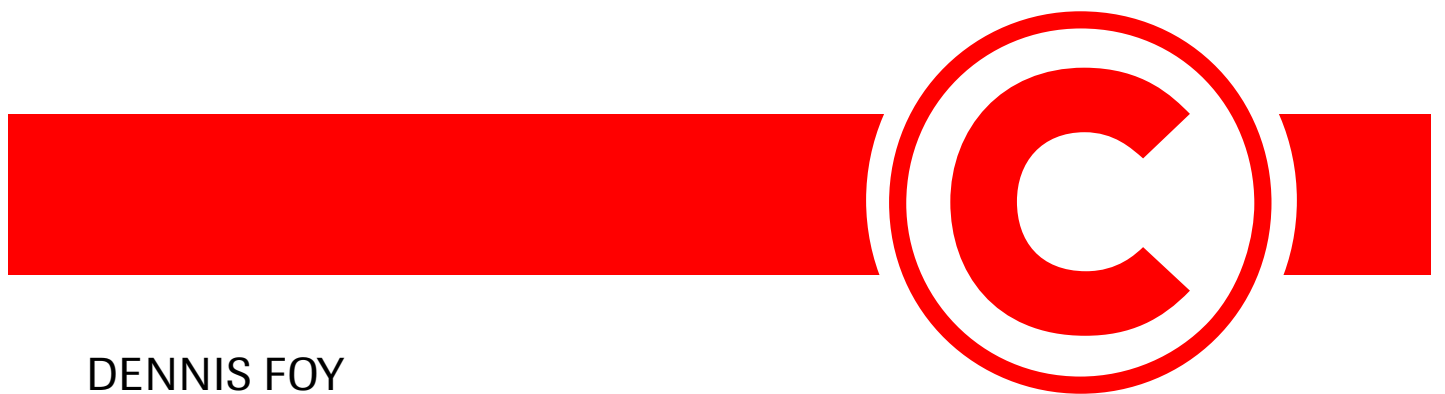


# **COPYRIGHT** *for* **CREATIVES**

**A QUICK GUIDE FOR  
WRITERS  
PHOTOGRAPHERS  
ARTISTS  
&  
ILLUSTRATORS**



DENNIS FOY



## Introduction

When he wrote *A Whiter Shade of Pale*, Procol Harum keyboard player Gary Brooker was asked “What does it mean?” He considered the question for a moment, head apparently full of thoughts of vestal virgins and the other elements of the song, then replied: “It means I’ll never have to work again.”<sup>1</sup>

**I asked him how much would go towards royalties for the musicians, writers and producers. He looked at me with a blank expression on his face and said: “well, er, nothing...”**

I was at a house party a little while ago, and one of the guests commented on the music CD that was playing in the background. It was a Beatles compilation, and the guest wanted to know what I thought of it. I confess that I have never been an enormous fan of the Beatles, but was impressed by the range of songs that was on the CD, and told him so. He then started to tell me, at great length, how he could do me a copy of the compilation for a fiver: “Twenty three tracks, all their best stuff, copied at low speed so the disc density is optimised...”

And so he went on for some time. He explained that he was (and still is, for all I know) a member of a group that is into internet file sharing; he can access the music archives of any other members of the group, and they can access his archive, too. “That means that I can get virtually anything that’s ever been recorded...” and he rattled off a list that was virtually a *Who’s Who* of popular music over the past five decades. I asked him about how much of the £5 that he was charging for the copy CD would go towards royalties for the musicians, writers and producers of that music, he looked at me with a blank expression on his face and said: “well, er, nothing...”

It became obvious that the concept of paying for the right to copy whatever songs or tunes he felt like was alien to him. Which worries me. The people who wrote, played, sang or produced the millions of songs that have been released in the past half century all own a chunk of copyright in those recordings, a copyright that should eventually lead to them making some money (a royalty payment) every time that a song is played on the radio or sold through a retail outlet. Some of those people, the Elton Johns and the Paul McCartneys and the Carole Kings and the Willie Nelsons, have made

<sup>1</sup> This same exchange has also been credited to Don McLean, writer of *American Pie*. However I reckon that it was Brooker who first said this, if only because *Whiter Shade of Pale* preceded *American Pie* by five years



**Despite the protestations of Marxist theoreticians who argue that the accumulation of vast wealth is immoral, the core principal is that if anybody has the right to be paid for their creations, then it is those writers.**

many millions from royalties on their creations. Others have made very little. But whenever there is a bootleg copy made of the tune, then nothing makes it back to those who created it. This is a concept I find fundamentally immoral. Despite the protestations of Marxist theoreticians who argue that the accumulation of vast wealth by tune-smiths such as McCartney is immoral, the core principal is that if anybody has the right to be paid for their creations, then it is those songwriters.

The same principle, that of ownership and the right to gain a slice of whatever money is generated by the sale of a product, applies to a writer, photographer or artist. Yet all too often there is a free distribution of written work or visual creations which means that there is no further revenue stream making it back to the creator of that work.

In this booklet I seek to explain how rights of ownership can be established and perpetuated, and what can be done to protect those rights against infringement. And copyright is about more than just money. Running parallel within the copyright laws, alongside issues of value and financial worth, are the moral rights. These provide the creator with the ultimate prerogative to decide how a piece of work can be used. Or not used.

Ultimate choice and ownership are the unalienable rights of the creator of a piece of work, but it is possible to transfer those rights to somebody else – and all too often that transference of rights can be a totally inadvertent process, simply because the creator failed to read the small print, or to over-ride a publisher's standard terms and conditions of purchase with the creator's own. In this booklet I will be providing a route map through the strange, parallel universe that is copyright law and practice as it is interpreted in England.

And no, I didn't buy a copy of the bootleg Beatles CD...

Dennis Foy  
*Cheshire, 2003*



## **Employee or freelance: a major distinction**

# **1**

**...if an individual wishes to make subsequent use of a piece of work then permission must be granted by the copyright owner or its successors...**

Ownership of material, and all the rights which go along with ownership, vary fundamentally. It all depends on the work status of the creator.

If the work has been conceived and executed by an employee of a publishing house or broadcasting organisation, then the rights to that material will almost invariably belong to the company which owns the organisation. This is usually enshrined within a contract of employment, and is valid in perpetuity. There is no way around this, and if an individual wishes to make subsequent use of a piece of work then permission must be granted by the copyright owner or its successors. For instance a few years back I worked for *Hot Car*, a magazine owned by Mercury House Publications. This became AGB, and was in turn sold on to Emap. So in the unlikely event that I would ever want to do anything with any of the many features that I wrote for *Hot Car* I would need to gain permission from Emap. I could possibly be charged a fee for this, too, if only to cover the legal costs of permission.

Sometimes publishing houses simply evaporate into nothingness, via the company liquidation process. In such instances the copyright technically remains the property of the insolvency practitioner who had carried out the liquidation process. In practical terms few liquidators ever bother to do anything about the rights, and in practical terms the copyright reverts to the public domain. If you need to know about the status of a defunct business and of its liquidator, you will need to contact Companies House (<http://www.companieshouse.gov.uk/info/>) and pay a search fee for details of the company.

If you are not an employee, but work freelance, then your rights to ownership of material get a little more complicated, as you will come to realise.



## **The Berne Convention: A key right to establishing ownership**

# **2**

**T**he purpose of copyright is to protect the interests of the creator of a work. Regardless of whether it is written, oral or visual work, the creator has the right to decide how and where that work is used or shown, and to benefit from any financial value which might be attached to that creation. It is defined as a means of “protecting any literary, dramatic, artistic or musical work, sound recording, film, broadcast, and graphics... [but] There is no copyright in fact, news, ideas or information... [only] in the form in which information is expressed.”<sup>2</sup>

Copyright is a development of the *Berne Convention*<sup>3</sup>, and gives moral rights to the authors of copyright work. “These give the author the right to be identified, not to have his work subject to derogatory treatment, and not to have a work falsely attributed to him.”<sup>4</sup> The most recent redefining of the law in Britain – which carries international weight – was in 1988, when *The Copyright, Designs and Patents Act* was put into force. A core provision of the act is that copyright has a duration of seventy years from the year of death of the author. There are moves in train to extend the scope of copyright, these being driven by the growth of digital media. The Bill which provides for these amendments is in the Committee Stage at the point of writing (Spring 2003).

<sup>2</sup> Extracted from Walsh T & Greenwood W 1995 *Essential Law for Journalists* London: Butterworths p235

<sup>3</sup> The Berne Convention for the Protection of Literary and Artistic Works was composed in the late nineteenth century. It was first drafted in September 1886, and completed at Paris on 4th May 1896. It has subsequently been amended several times: Berlin, 1908; Berne 1914; Rome 1928; Brussels 1948; Stockholm 1967; Paris 1971; and Paris 1979. The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works. The Convention has progressively been adopted by most countries

<sup>4</sup> Also from *Essential Law for Journalists* p235



## Proving ownership

# 3

**marking a piece of  
work with the ©  
symbol alongside the  
creator's name and  
dateline is often  
adequate**

All that is needed to establish copyright is to prove beyond reasonable doubt that the originator of a piece of work is entitled to make that claim. Setting the work into some tangible structure is effective; as soon as the work is published in some shape or form, its copyright is established. With ideas and concepts, establishment of copyright becomes less clear; in practical terms, a writer simply marking a piece of work which outlines a synopsis with the © symbol alongside the creator's name and dateline is often adequate to deter others from misappropriation. However this may not be sufficient to protect a writer, should a situation develop which requires judicial arbitration. One accepted method of confirming copyright beyond all reasonable doubt is to make use of the postal service; enclose the text in an envelope addressed to either a trusted person (such as a solicitor) or back to yourself, and have it sealed (being date-stamped by the local post office is the most common method) across the envelope closure. The letter should then be mailed, but left unopened so that it can be produced as evidence. A more expensive option is to have work dated and lodged with a legal practice. This will be effective proof of provenance to a court, but will probably attract a fee for each deposition. A common-sense approach would be to reserve the process for valuable works which are at risk of misappropriation.

Most publishing contracts provide scope for more detailed protection of copyright, and are binding legal documents. A typical contract will determine the rights of the author, and also the rights of the publisher; a book will have a separate ancillary copyright covering the layout and design, and foreign language editions will also have a separate copyright status. Regardless of such issues, the



**If you don't  
specifically say in  
advance...  
...you are working on  
the publishing  
house's terms**

underlying rights of the original author remain intact.

If establishing copyright is straightforward, protecting it is a far more complex issue. In theory, a writer produces a piece of work, and then sells it as often as he or she is able. In the case of a book, the sale is to the publishing house, which then pays a royalty to the author on each copy sold. If it is a piece for a magazine or newspaper, the transaction is almost always more complicated.

The value of any commercial transaction is formalised within the contract attached to the work, and so far as books are concerned the contract will vary to accommodate such matters as the territories for which the publisher has rights, and any secondary rights which can allow the first publisher to re-sell the book to publishers who operate in other places or publish in other media. The magazine and newspaper industries operate along broadly similar lines, with the contract (which might be no more than the standard protocols operated by the publishing house, unless the writer has specified otherwise) detailing the number of times that the material concerned can be used. It is the complexity of publishing contracts, and the need to ensure that the best interests of the writer are consistently attended to, which leads to many authors using a literary agent.

But journalists – particularly freelance journalists – rarely have such protection. Much of the time he or she is working alone, and there is no formal contract in place; a journalist comes up with the idea for a feature or an editor contacts a journalist with a commission, and the copy is created, polished and delivered. Only later is the matter of ownership an issue. Quite often there is no formal contract as such. Sometimes a writer, photographer or artist will agree to standard terms and conditions when he or she first joins the contributor list of a publication, but most of the time acceptance is by default. If you don't specifically say in advance that you are submitting on your own terms, simply accepting the cheque in payment for the article is sufficient to establish that you are working on the publishing house's terms. It is not unusual for a set of terms and conditions to be printed onto the back of the payment advice – usually in tiny text (2.5 point is not unknown...) and often in pastel-coloured ink.

The way around this is to copy the following line onto every invoice that you issue:

*"All material supplied on a first rights basis only".*



**There is a tendency to think only in the present time; most of us produce material to order, deliver it and move straight on to the next job.**

That way, you have determined that any future rights will revert to you, and you will be free to do with the material whatever you please. If you want to take matters a stage further – and I strongly recommend that you do – then use the specimen invoice at the back of this booklet as a model for your own invoices. And make sure that Standard Terms are put on the back of each invoice. By selecting the single page in your ‘print set up’ programme you will be able to run the full set off quickly and easily.

There is a tendency to think only in the present time; most of us produce material to order, deliver it and move straight on to the next job. But occasionally you might like to extract from earlier work for a book – and if you have to go back to the publisher of the work in its first form, then you suddenly find plans for any further iteration becoming awfully complicated. This can also apply if an artist or photographer holds a retrospective exhibition of work; there might be no problem in showing the work, but images reproduced for an accompanying catalogue or brochure – or even publicity posters – can infringe a copyright that has inadvertently passed to a publishing house. So unless you are certain that you hold the copyright to the work in question, proceed with caution. Otherwise you could find yourself in the bizarre situation of contravening somebody else’s rights with your own work.

I mentioned earlier that there is no copyright on ideas or concepts, and this is a source of endless complaint. And yes, I’ve been there. I several years ago switched on the TV, and a long-running cop-soap was on. After watching for a couple of minutes I began to get a sense of *deja vu*; the plot-line was vaguely familiar. But this didn’t surprise me. Rather like the way in which all western-world music is structured around the same set of chords, then so there must be a finite limit to the number of new plot ideas in cops n’ criminals scenarios. A few minutes on, I realised that what I was watching was a deconstructed and rebuilt version of a plot outline and lump of dialogue that I had sent in almost five years previously to the producer of another, totally unconnected, TV series. I eventually worked out that the individual to whom I had originally submitted my stuff was now an associate in the production department of the cop show.

So I spoke to my lawyer. Unfortunately, I no longer had any copies of my original material available, and so couldn’t prove a thing. He contacted the



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work**

producer anyway, but as expected it went nowhere. My brief was good – and he didn't charge me, either – though he concluded that I ought to have known better, and protected my original ideas.

But how? There is no protection for ideas. After further discussion over a beer, he suggested that in future, any ideas I have ought to be structured into a more formal proposal, and lodged with him to confirm that the content is all my own work. This would by no means be foolproof, but would at least provide him with something to build a claim around.

But even that might not be sufficient to provide protection. As has been observed: "Writers trying to sell ideas should start on the assumption that it is almost impossible to stake an exclusive claim." It is also pointed out that common practice is for a response to include the warning that "we are currently considering ideas... that may be similar to your own."<sup>5</sup> I have in my possession a letter which was acknowledging a set of ideas that I submitted, on request, to the BBC. The letter carried the disclaimer that:

As you can imagine, the BBC receives a very large number of proposals and it is inevitable that many of these are similar to or the same as each other. For this reason, therefore, you must appreciate that in the event we produce or commission a programme along the lines of your own suggestion, but which has come coincidentally from another source, we are unable to compensate you for your own efforts.

In my own case some of these ideas were used and I was paid for my input. Others might be less fortunate, and the provision of such a *caveat lector* could be construed as sufficient to cloud rights to the concept. It is likely that any claim for rights to the idea would be thrown out of court.

There are a number of peculiarly odd situations which are unique to photographers. For instance a photograph of a logostyle is not a copyright infringement; a photographer is deemed to be the originator of a work. So whilst a car magazine would be infringing copyright if it took an artwork image of a logo such as the Ford oval or Vauxhall's griffin or whatever, using a close-up photograph of a car badge would not be infringing the copyright of the car manufacturer.

Another area where things get truly complicated for photographers is when an image has been lifted, and then completely reworked in Photoshop or one of the other image manipulation programmes. There are two layers of ownership in such a situation; the original photographer owns the rights

<sup>5</sup> Extracted from Turner B (ed) 2000 *The Writer's Handbook* London: Macmillan p249



to the image, but the person who changed it into what it has become also has rights. The realistic answer is to share the rights to the finished image, with an agreed split of any revenue which the revised image might generate. Provided, of course, it is known who both parties are. If not then it is back to determining ownership.



**First rights, all rights – and the spider’s web that is the internet**

**4**

**...if you failed to mark your invoice to the effect that you were selling single use rights only, then you have only yourself to blame.**

One of the biggest problems facing any creative is the growth of the internet. An article might have been supplied to a publishing house for use in a magazine or newspaper, it duly appears in print, and eventually the cheque or bank transfer appears. And that, you might think, is the end of the story. By the time that payment is made you are likely to have forgotten about the piece or the picture, having moved on to create other great works. Then you get an email from somebody referring to something they have seen on a website somewhere – and you wonder what they are on about.

There are two possibilities. The first is that some private individual has decided to take your material and post it onto a site illegally. The other is that it has been posted quite legitimately by – or through – the original publisher. By taking advantage of the All Rights clause that is a standard feature of a typical editorial contract, the publisher has either made multiple use of the material on its own account, or sold it on as part of a revenue-raising scheme. This is entirely legitimate, but can be galling. And if you failed to mark your invoice to the effect that you were selling single use rights only, then you have only yourself to blame.

So to the issue of tracking down the use of your creations. Starting with the illicit posting of material, there are ways that this can be detected. The first move should be to carry out a web search, using a good search facility; my favourite is Google ([www.google.com](http://www.google.com)) simply because it seems to find sites that other engines miss. It is also independent... Put your name into the search box (wrapping your name in quotation marks, so that the search engine looks for the combination of words) and press go. Within seconds you will have



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every instance of your name's appearance that can be tracked. If you have been tipped off that some of your work is on the internet you can repeat the same process, this time putting in the search box a short extract from the text that you think has been misappropriated – and again, all known references should show up. It is not foolproof – there will some that don't show up – but you will have a good idea of the number of instances that your work (or reference to it) appears.

But if establishing that your work has appeared on the World Wide Web is one thing, proving that it should not be there is another matter entirely. It is rather like making crocodile soup, when the first line of the recipe says: "first catch your crocodile". Firstly you have to ascertain ownership of the site – and very few sites have a registration address readily to hand. Because of the way it has developed since Tim Berners-Lee, Robert Caillau and a couple of chums first started hooking up computers via telephone lines, the internet has become the definitive many-to-many communications medium. Providing you have access to a server (and this can be anywhere in the world: the server I use for my site *automotive-telematics.com* is situated in Malaysia and there are thousands of servers in countries such as India and Korea) then you can create a website that can be accessed by anybody with a web browser and internet connection at their disposal. There is no central registry for sites, no one place where they can be policed or traced through. In short, it is anarchic in that it is beyond the realistic rule of law in most countries. Worse still there are virtual servers, which are rooted somewhere on *terra firma*, but which are accessed via a string of internet connections; the people who host the site and those who operate the server can be dislocated by a dozen intermediaries, and never have any direct dealings. This makes tracing almost impossible.

So the best that you can hope for is that whoever has infringed your rights will hold up his or their corporate hand, say sorry, and pay you something for the use of your material.

There have been a number of legal cases – mostly in the USA – which have attempted to make the server operator responsible for all content stored on their hard drives. However these have been generally unsuccessful; attempts in the USA and also in Australia to create statutes which would determine responsibility for content have been put before the legislatures and, after lengthy talks, abandoned.



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site**

The consensus was that such laws are fundamentally unworkable, and could impact on the human rights of those who run internet service providers.

So the bottom line is that even if you find infringements of your copyright material, the chances of being able to do something about it are slim.

One interesting complication to all this is the way in which most websites carry a copyright mark, sometimes with an ancillary line claiming all rights to all content. If they have ripped off your material, then obviously their claims are not worth the keystrokes that put them onto the site. So far as I am aware there has never been a legal case that has sought to claim copyright on such appropriated material, but doubtless one will pop up at some point in the future.



## Moral rights

# 5

**Moral rights can be neatly summarised as the entitlement of the creator of a piece of work to determine how it is used**

There was a court case a number of years ago in Italy, when the *auteur* film maker Federico Fellini successfully sued an Italian broadcast organisation, because Fellini objected to the way that one of his films had been broadcast on commercial television. The root of his objection was that his film had been created as a grand, sweeping view of its subject, and the constant interruption created by commercial breaks was sufficient to destroy the integrity of his creation. In the case of that film, absolute ownership was easy to establish; at all stages of the process its creation had been monitored and could be proven. But it wasn't a direct copyright issue that allowed Fellini to win his argument; instead it was the exercising of his moral rights. Similarly, in 1990 a French broadcaster, Société Métropole Télévision, lost a claim brought by film-maker Claude Sautet after cutting almost 20 minutes out of his film *Les choses de la vie*.<sup>6</sup>

Moral rights can be neatly summarised as the entitlement of the creator of a piece of work to determine how it is used. Or at least to ensure that the work is not abused. Unfortunately this is not precisely enshrined in law; it is covered in part by the Berne Convention and the various acts of copyright, but the precise interpretation of moral rights is left to the courts. This means it is a moving feast, and also means that you need substantial resources (which stretch well beyond the fee consultation offered to members of the Guild of Motoring Writers via its legal helpline<sup>8</sup>) to be able to get the best possible solution to a problem.

So what constitutes abuse of work?

One of the most common problems for journalists is what I describe as 'chainsaw editing'. This is what happens when you submit a substantial feature or article, only to find that when it is published it is

<sup>6</sup> Sautet (1990) *Tribunal de Grande Instance de Paris Revue de la SACD* No. 1 - 1er trimestre 1992, p. 59

<sup>8</sup> The Guild of Motoring Writers legal helpline is available to all members. Contact the General Secretary for information on making use of the scheme. Other organisations and trades unions might offer a similar service to their members



**The crafted piece can  
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the work you  
originally submitted**

ten percent of its original size, and all the carefully-constructed witticisms and salient opinion has been excised. From being a masterpiece of sharp observation, attitude and opinion it looks like something put together by an enthusiastic amateur from the local creative writing circle. Hardly the kind of stuff to get you noticed, or to cement a reputation.

For a photographer, artist or illustrator, the equivalent is some inept cropping or image manipulation. This can again distort the values which you felt were integral to the worth of the original image, and again can be harmful to a reputation.

Broadcasters suffer from unfortunate editing, too; a crafted piece can be chopped about and the eventual radio or television product can bear little resemblance to the work you originally submitted. Worse still, quotes can be cut up or cut short, so that they no longer explain what your subject had intended to say. This is a similar law to that used by television, theatre and film publicists, who will take a line from a review which says something along the lines of “This film should have been wonderful, but is in fact the biggest load of excrement that has ever been pushed through a projector...” and judiciously edit it. When the production poster or TV trailer appears, all that remains of the quote is the word “wonderful” followed by the name of the critic.

Regardless of whether it is in print or on a screen, the reaction of the creator of a piece of work that has been subjected to such brutal treatment is the same mix of horror and despair, followed shortly afterwards by a need to exact some kind of revenge. Whatever the grievance, in theory there is recourse to action on the grounds of infringement of moral rights. In practice, it can prove expensive and is fraught with danger. The first likely problem is one I touched on earlier, that of expense; given the cost of hiring a barrister (which is apparently exceeded only by the hourly rate of the finest Knightsbridge call girls) and the convoluted nature of legal action in Britain, it takes a rich or brave person to follow that route. Sautet and Fellini could obviously afford to take legal action against the broadcasters. But could you? And if you are that rich or that brave, will you be bothered by a bit of misrepresentation? Of greater significance is the damage that can be done to a relationship by legal action; even the threat of litigation can destroy in minutes a working relationship with a publication which might have taken months to develop. Let’s be pragmatic about



**Are you prepared to throw everything away because they jack you off by some injudicious editing?**

this; if you are a freelance operator, the chances are that you live a precarious existence. Your income stream is rarely protected by contracts for regular contributions to publications, and the fact that your work appears at all is a testament to a lengthy process of negotiation. You will have started by a bit of networking, then shown how fine the quality of your product is, and gradually eased your way into that publication until you become a trusted contributor. Are you prepared to throw all that away because they jack you off by some injudicious editing?

If they regularly treat your material with such contempt (and bear in mind that you are not always in the right – quite often an editor or a sub knows far more about the house style and reader or viewer expectation than you do) then the sensible answer is to find another, more sympathetic, outlet for your material. Or revise your style so that the difference between what is submitted and what appears is far less great.



## **Inadvertent use of somebody else's material**

# **6**

**S**ometimes, no matter how hard we might try, there is a risk of inadvertently using somebody else's work. As a general rule, provided the source of the material is credited (in the form of an academic reference citation or footnote as I have done in this document) then the problem no longer exists. You are not passing off somebody else's work as your own, but are ensuring that your readers know where the material came from. Most copyright laws provide for reasonable use of somebody else's material, but as is so often the case, there is a vagueness in the precise framing of the laws. It is the investigation of ownership and what constitutes a reasonable use of external material that keeps some lawyers in work. Some might argue that it is better to keep lawyers who specialise in intellectual rights busy rather than letting them hang about on street corners...

Where waters can muddy is when two or more writers have followed strikingly similar lines of enquiry. The key here is to retain tapes or transcripts, so that any attempts to accuse you of such passing off can be repudiated.

This happened to me some years ago, when I produced one of my books. Part of the book covered familiar ground, and another author suggested that I had taken part of his work and wrapped it into my book. This was not the case – I had until recently original interview tapes and notes which would have proved this – but such a situation was, in retrospect, understandable. Only by having those tapes would I be able to prove my case, but the chances were that I would have been forced into spending a fortune on legal fees to prove my innocence. If there is a piece of advice, it is that no research material should be thrown away until six years have passed – you never know when you

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**An area that can trip up even experienced writers is the use of song lyrics**

might need it. The usual statute of limitations on contractual claims, under which umbrella an action for copyright infringement can be started, is six years. This is generally taken as six years from publication of any article or image, although in the case of foreign-language publications there might be grounds for starting an action after six years. In practical terms the courts tend to be unhappy at the notion of allowing a 'stale' action to begin; the judge would require an awful lot of convincing that the passing of time between the date of publication of the commencement of legal proceedings was justified.

An area that can trip up even experienced writers is the use of song lyrics. This can be a great way of spicing up an article (I've been tempted on several occasions to draw on the rock n' roll poetry of Bruce Springsteen to enliven or to illustrate a point in car road test articles) but be warned: it is a minefield. For a start, there is almost invariably a charge for reproducing song lyrics. Maybe it's payback for all those fileshare downloads. To give an idea of the sums involved, an acquaintance of mine wanted to include in her new novel some lyrics from a song written by a major female singing star. She had structured a complete chapter of the book around the verse, and so it had become integral to the work. Then she starting chasing permission. After a convoluted process including a string of transatlantic telephone calls and email, she was finally offered the single-use rights to use the song extract – for nine grand. Working on the premise that she was likely to make less than that from the entire royalty proceeds of the book, she decided to keep the £9000 and instead completely reworked the chapter.



## Conclusion

If there is a single conclusion, it is that there is no straightforward right or wrong; the way that the laws concerning copyright and all that copyright entails are structured, there is lots of room for manoeuvre. Every time that a piece of work is created its long-term value should be considered. If you have ambitions to eventually compile a book of your favourite columns of articles, or mount an exhibition, then ensure that you retain copyright on your work. If not you could find yourself stymied much later in life, and forced to track down the copyright owner to seek permission to use your own material. And if you discover misappropriation of your work, get yourself a good lawyer who can act quickly and decisively.

Note:

On the following page is a sample of an invoice which establishes the sale of material on a first rights only basis. There is additionally a set of standard terms for creative work; this should be printed on the back of every invoice, to maximise protection of rights whilst at the same time providing a publisher with a reasonable level of security against unfair practices by any creative.

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# Dennis Foy

MA BA(Hons) MIMI GMW

Some Publishing Co  
123 Any Street  
LONDON  
W1X 1XX

INVOICE  
Ref A001  
28th May 2003

Summary:

Feature – **Flying in Ferraris.**

1500 words + sidebars, plus selection from images supplied

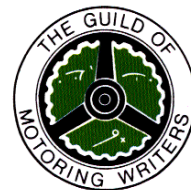
Delivery Date: **1st May 2003**

Total agreed fee of: **£350.00**

*to be paid in one single amount*

Strictly nett, 30 days

*First Rights use only. Subject to Standard Terms printed on reverse of this invoice.*



The Institute of the Motor Industry

PO Box 51  
Hazel Grove  
Cheshire  
England  
SK7 6FR

**&** Journalist  
Author  
Photographer

## Standard Terms of freelance creators, writers, journalists, photographers, artists, illustrators and other and creative contributors

These are the terms on which The Creator will produce an original work or works ("the Work") in accordance with agreed specifications confirmed in writing to The Publisher overleaf. Performance of specific obligations does not release either party from the remaining obligations. Termination of the agreement will not affect any legal rights, which either party may have at the date of termination.

### Assignment of copyright

The Creator will assign first-use copyright in all media. All other rights of every kind in the Work are, and remain, the property of the originator as it is written or created. This assignment will be of both present and future copyright throughout the world for the full period of copyright and for all renewals of and extensions to that period. During that period The Creator shall have the exclusive right to publish and license publication of the Work in whole or in part throughout the world in all editions, forms and media and in all languages. Any broader assignment of copyright shall be the subject of a separate and binding agreement.

### Electronic media

The expression 'media' when used in these terms shall include, but not be limited to, digital, optical and magnetic information storage and retrieval systems (such as, by way of example and not limitation, videos, floppy disk-based software, CD-ROM, interactive software, compact discs, Digital Versatile Discs, ROM-card, silicon chip and other such systems), off-line and on-line, electronic or other (including but not limited to) satellite transmission, and any other device or medium for electronic reproduction, publication, distribution, or transmission, whether now or hereafter known or developed.

### Moral rights

The Creator retains all rights conferred by Chapter IV of the Copyright Designs and Patents Act 1988 (rights to be identified by The Creator) in relation to the Work. The Creator also retains all rights that he/she may have under the laws of any jurisdiction other than the United Kingdom, which are the same as, or substantially similar to those conferred by the Act. These waivers will continue to apply even if The Publisher agrees to transfer the copyright and other rights in the Work to a third party or agrees to licence the production and publishing of the Work by a third party. At The Creator's request and expense the Publisher will sign whatever further documents may be needed to give effect to this clause.

### Creator's assurances to The Publisher

The Creator gives the following assurances, warranties and undertakings to The Publisher in relation to the Work:

- (a) The Creator has full power to enter into these terms in respect of the Work;
- (b) The Work will be original and the Creator will be the sole Creator of the Work;
- (c) Production and publication of the Work by The Publisher will not infringe any third party's copyright or other kinds of rights;
- (d) No part of the Work, except for brief and credited excerpts, has been published previously in any form in any part of the world and that, where needed, the necessary permission to quote other sources has been obtained;
- (e) The Work will not be libellous, blasphemous, obscene or infringe any other legal or statutory rights;
- (f) To the best of the Creator's belief, all information included in the Work will be true, accurate and complete and the Creator will not, without attributing the source, report as fact the opinion of any third party or any information whose accuracy or authenticity the Creator should have reason to doubt.

The Creator warrants that he/she will hold harmless and indemnify The Publisher on demand against any claim, demand, suit, action, proceeding, recovery or expense of any nature whatsoever arising from any claim of infringement of copyright or proprietary right, or from claims of libel, obscenity, unlawfulness or invasion of privacy based upon or arising out of any matter or thing contained in the Work, or from any breach of warranties or representations herein contained. The Publisher may at its sole discretion and expense retain counsel and may at its sole discretion compromise any such claim or suit brought against it. Furthermore the warranties, representations and indemnities shall survive the termination of this Agreement.

### Dealings with third parties

The Publisher will not have any authority to create any obligation on The Creator's behalf or on behalf of any corporation associated with The Creator. The Creator will not make or promise to make any gift or payment either directly or indirectly to any person for any illegal, corrupt or unlawful purpose or to influence the decisions of any person or body. The Creator will maintain the strictest standards of confidentiality in relation to all the information that the Publisher may learn concerning The Creator or other corporations associated with The Publisher or any directors, officers, employees, agents, or consultants of The Publisher or of those associated corporations.

### Delivery of the work

The Work is to be delivered to The Publisher in such format as The Publisher may require on or before the date(s) agreed in writing between the parties. Delivery will be regarded as having taken place when the Work has been accepted by The Publisher as conforming to the requirements of the agreement.

### Intellectual property rights

The Publisher acknowledges that The Creator is the owner of various trade marks, software licences, computer templates and programmes, copyrights and other intellectual property rights which, if made available by The Creator to The Publisher, shall be used solely for the preparation of the Work and solely at the direction of The Creator. The Publisher shall not have or claim any interest in any such rights and shall return to The Creator all materials incorporating such rights on request.

### Editing of the work

If The Publisher accepts the Work, it shall be entitled to edit it in whatever way it considers appropriate. The Publisher may require the Creator to make amendments to the Work to ensure that it conforms to the agreed specifications and/or is suitable for publication, but the making of amendments at The Publisher request shall not oblige The Publisher to publish the Work.

### Revision of the work

If the Work is affected by political, economic or other changes or events between the date of delivery to The Publisher and the date of publication, the Creator will at The Publisher's request and without any additional fee or payment except where agreed in a separate contract revise the Work and provide whatever help and advice The Publisher may request to update the Work ready for publication.

### Payments

When The Publisher accepts the Work, the Creator shall be paid the agreed Fee or Fees, if any, exclusive of value added tax, which if chargeable, shall be charged and paid in addition against submission of the Creator's tax invoice. The Creator shall be responsible for paying all expenses incurred by him/her in the preparation of the Work, except where approved in writing by The Publisher as part of the schedule of works overleaf. The Publisher shall pay any invoice Thirty Days after receipt.

### Taxation Liabilities

Both parties acknowledge that the Creator is acting as an independent contractor in entering into this agreement and performing his or her obligations under this agreement and accordingly the Creator will be solely responsible for all taxation, social security contributions and other duties, taxes and impositions, which may be due on any payment made by The Publisher to the Creator. If for any reason The Publisher is required by the appropriate authorities to make any such payments on behalf of the Creator or otherwise in connection with the Creator's services, the Creator agrees to reimburse The Publisher immediately on demand for such payment. In such event, the Creator agrees that The Publisher may set off any such payment from any other monies due to the Creator by The Publisher.

### Termination

The Publisher shall be entitled to terminate this agreement immediately on written notice to the Creator, if the Creator is in breach of any obligation or undertaking of this agreement and fails to remedy it within 30 days after being served with a notice requiring remedy or thereafter repeats the breach.

### General

It is agreed that:

- (a) This agreement is personal to the Creator and may not be assigned to any third party, in whole or in part
- (b) This agreement shall restrict or limit The Publisher's right to publish the Work or licence, sub-licence or otherwise exploit any of the rights relating to the Work beyond those rights specifically agreed overleaf
- (c) References in this agreement to "the Creator" include and shall be binding upon his or her personal representatives or successors.

### Governing law and jurisdiction

The laws of England shall apply to the agreement between the parties. The parties agree to submit to the non-exclusive jurisdiction of the English courts.