

Copyright and Royalties for Literary Expression

Madam, Sir,

It is a commonly accepted fact that the Creator of a literary work is entitled to royalties from the proceeds of that work. So, what defines a literary work? In order for a piece of written work to be considered literary, and thus permitting the entitlement of royalties for its author, it must comply with the rules of a given language.

1 – What are the basic rules of a given language: In the Western World, where most languages stem from ancient Greek and/or Latin, there are certain rules of *grammar*, and *spelling** that must be adhered to and which are specific to each of these languages, as well as an array of *writing techniques* to be utilized. In order to enable people of different countries and cultures to understand each other, international organizations adopt a common language of communication such as French or English. For this reason all International Conventions on Copyright are enacted and published in both these languages throughout the world.

Grammar and spelling * make up the *rules* of a language

*or " ideogram " A graphic sign reduced to its essential features that, in certain forms of writing, creates a morpheme or a word.

2 – Writing Techniques: The Creative Quality of a writer is measured by and contingent on the *originality* of his written work; that is, on his ability to actualize whatever new idea he has written about. In other words, the author must express a creative idea by putting it into concrete form onto some physical medium... The work also requires an artistic quality, which is inherent in the writer's *style*. Such a style either belongs to a school of literature, or it is original, and thus would usher a new school of writing. In any case, all art requires technique, and each work of art requires at least one if not several techniques which are specific to it.

Originality and style make up the *techniques* of a language...

3 – Work of the Mind: By applying these *rules* and *techniques*, one creates a *Work of the Mind*. Why does one use the word " Mind " ? Because a creative work originates in its author's mind. This explains why an author is always an individual entity (*i.e. a natural person*). In accordance with the internal laws of Nations and the International Conventions on copyright, a Work of the Mind is, by its own nature, the property of its author. Furthermore, a Work of the Mind is perhaps the only **Property** that can be claimed in such a way by its author. The right to produce, market and interpret such a work results from this natural property (*somewhat like the relation between parents and children*); the internal laws of Nations and the International Conventions call such a right: **Copyright**.

4 – Copyright: In order to *hold a Copyright*, and thus enjoy its commercial and tax-related benefits, the writer must first and foremost be a true *Author*. His literary work must therefore be *creative*, which means that it must be original. Moreover, such a work must also be representative of a personal *artistic quality*, which transcends mere technique, referred to as the author's style. However, it must be noted that a plagiarist who writes artistically (using a style) would never be entitled to copyright. Indeed, the notion of a work of art, in and of itself, is not enough to warrant a claim of copyright. Only by putting his creative (original) idea into concrete form onto some physical medium, according to the rules of art and in a personal style, can the author own a Work of the Mind and therefore hold its copyright.

5 – Result: Respect of the rules and techniques inherent in the art of writing is what distinguishes a creative literary work from a mere technical text for which no copyright could be claimed. It distinguishes a poem from the report of an assembly, the drafting of an estimate, etc. And this makes clear the difference between a true author and a technical writer, or mere hack. It is also the reason why an author is entitled to copyright, while technical or mediocre, uninspired writers are not.

6 – Example: Thanks to the authorship of a creative literary and artistic work ~ *a Work of the Mind* ~, Pierre Aguesse won his case in 1st instance, in Appeal, and in France's Supreme Court (*Cour de Cassation*).

By contrast, L'Oréal recently lost its appeal before the same '*Cour de Cassation*' precisely because it failed to respect the stylistic techniques inherent to a literary work (*whatever language is used*). The judges ruled that the non-literary technical description of a technique used to produce a fragrance could not, **as such**, be considered a Work of the Mind, namely, a creative literary or artistic work warranting a claim to copyright.

L'Oréal made two fatal mistakes in this matter:

- First, they thought the writer of a technical description (*without any literary value*) was entitled to copyright. Furthermore they thought that a legal entity (*i.e. a company*) could directly ~ *and successfully* ~ claim copyright.
- Their second mistake was, they thought copyright forbade third party involvement the same way patents do. Copyright forbids third parties from producing, marketing and/or interpreting all or part of a work for commercial (*artistic or business*) purposes. Utility and design patents (*industrial design*) forbid third parties from copying any process or method outlined within it.

7 – Conclusion: Regardless of the country, state, or province in which copyright laws are enacted, these internal laws must respect and align themselves with those established by the International Conventions on Copyright, therefore respecting all criteria outlined therein on the definition of a Work of the Mind entitling copyright. These fundamental principles must be applied in every State or Nation, regardless of the legal system in force. Consequently, because of this system of laws there is a guarantee that each state's cultural heritage will be preserved and respected worldwide.

Remarks:

In order to ensure that the work included in the Intellectual Passport CB series respects all literary and artistic rules, a professional writer called an **Interlitt** (in French, *Interprète Littéraire*, i.e. Literary Interpreter) is appointed by the USD System Editions to transcribe the details of the author's biography.

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