

COPYRIGHT ... IS IT NECESSARY?

By Sean Rooney

There is a running argument in the movie business these days regarding the question of screenwriters registering their copyrights and affixing a formal © notice on their scripts.

People on one side claim that some in the industry view a copyright notice as "a sure sign of an amateur" and will not read a screenplay so attired. Others claim that a copyright notice is offensive because it shows a "lack of trust" in the movie business by the writer. Some also say that because a legal copyright notice must include the year, it can date a script.

Before 1960 or so, most screenwriters were employed by studios, with offices on the lot. They did not own copyrights to their work. They worked in a "writer for hire" capacity and in that circumstance, employers own copyrights, not writers. It may be that the resistance to copyright notices on scripts stems from that era, at least in part.

I'm on the other side of this issue, as I think all writers should be. Reason? Simple, your screenplay is potentially worth five or six figures, in other words, a lot of money. You have invested months of mind crunching work writing it. If it's unique and original and well executed, it can literally be worth its weight in gold. Why then, not protect it?

Copyright is the only law on the books that's designed to protect the work of writers -- from theft or unfair use for commercial gain. There is simply no other law or legal procedure that's designed to do this. Every book you ever held in your hands was copyrighted and had a formal © notice affixed. This protects the work from theft, plagiarism or copy for any purpose not authorized by the copyright holder. Now, ask yourself, "Is my work any less deserving of protection than every book ever published?" The answer, it seems to me, is plain enough -- no, *emphatically* no -- your work is no less deserving.

Do you lock your house when you go out to the movies? Do you lock your car while in the movie? Do you take precautions like not leaving valuables sitting in plain sight on the front seat of your car when you are not in attendance? Do you lock your home to prevent theft? Does the stuff in your house add up to \$250,000 in value, \$500,000? Probably not. But your screenplay may be worth that much. Are you going to protect your \$500 television set from theft but not your half-million dollar screenplay? Wouldn't make a lot of sense, would it?

Make no mistake; a screenplay is property, literary property to be precise. Because you created it, you own it -- every last possible commercial right that's inherent in it, is yours and yours alone (e.g., novelization, adaptation to the stage, television or radio, derivative merchandizing rights such as toys or apparel).

If someone uses your screenplay in a manner not authorized by you -- you can sue him or her for infringing your copyright, and, if you have registered your copyright, you can claim punitive damages, which is where the real money is.

An infringement suit involving an unregistered copyright cannot claim punitive damages, only actual damages you can prove, such as loss of income. So, even if you prove authorship and win the case, the amount of money awarded will be substantially less.

You own what you write, but to prove this -- in a court of law -- you need a registered copyright. If you have it, you can win an infringement suit and be awarded punitive damages. If you don't, you'll be reduced to making arguments that attempt to prove your authorship but which may fail, all the while facing a Judge who is looking at you with the question in his or her eyes, "Why didn't you register?" There is no really good answer to that question.

Hopefully, you will never have to exercise the rights you hold in your work -- that is, until you sell them. The fact that you own the copyright to your script and can prove it's what gives you the right to sell the screen rights in the work or to collect a prize in a screenwriting contest. You may or may not at the same time sell other rights that are inherent in the work -- the right to novelize the script or to adapt it to the stage or to radio, for example. But you can sell these various rights collectively or singly because you own them and if need be, you can prove you own them.

On the other side of the coin, if someone claims your screenplay infringes their copyright and threatens to sue, you can prove what you own.

The other side claims that "theft in Hollywood is almost nonexistent anyway, so why register a copyright?" It's true that outright theft of a screenplay and production of a movie verbatim from a stolen script is rare, even exceedingly rare. But this isn't the kind of theft that goes on. What goes on is theft of premises, settings, locales, characters, major story elements, story events from screenplays written by others.

You submit your screenplay to a production company and they take a pass. But someone in the creative department is intrigued by your premise, your setting and your main character, very intrigued. From there, theft is but a few keystrokes on the keyboard away. That someone takes your script home, writes a treatment from it, hires a writer to write a screenplay, and proceeds to sell the script to their company.

The movie gets made and is released a year or so later. You happen to see it and by the time it ends you have a queasy feeling in the pit of your stomach. The movie has a different title, the story is set in a different locale and has some fundamental differences from your own, yet, the premise is the same, the main character is spookily similar and the ending is exactly as you wrote it.

Did this person steal your screenplay? It will depend on how a judge sees it, of course, but certainly they stole the principle idea and if they used any of your script verbatim or even close to verbatim and if they used your setting, most courts will rule that an infringement has indeed occurred. This would be especially true if your screenplay was made unmarketable by the other movie - by virtue of similarities between the two.

You have been ripped off, and, if you didn't register the copyright on your screenplay, there's not a damn thing you can do about it. You did most of the work; someone else made all the money. Sorry! Too bad! The odds of this happening are long, but they're not zero. There's nothing like a little insurance, and a registered copyright is the best insurance you can buy.

Some would argue that even if you had registered your copyright you can't afford an attorney, so you couldn't sue anyway. But wait, sure you could - because the party that loses an infringement suit pays all legal costs, yours included. If your lawyer sees that you indeed have a winnable case, he'll take it on a contingency basis because he knows he's going to get paid.

Copyright exists for the protection of intellectual property in the form of literary and other material, e.g., musical scores or choreographies, television plays, stage plays, radio shows, novels, works of art, essays and so on. Clearly, any sensible writer will register a copyright on the work they produce; it's the professional thing to do.

Agents or producers who think otherwise are kidding themselves. Any agent or production company that will not read a script because it has a copyright notice affixed is out to lunch and are probably not the kind of people you want to work with anyway.

As with any major law, the copyright statute and its related case law can be a legal swampland. Copyright issues can become so complicated and difficult that lawyers specialize in the field.

Imagine, your whole day, nothing but copyright.

But it need not be such a monster for the average Joe writer, like you and me. We can easily register a copyright and quite easily re-register it if and when we rewrite significantly. It only costs \$30.

The form can be downloaded online from the Copyright Registration Office at the Library of Congress at <http://lcweb.loc.gov/copyright/forms>.

For a screenplay, use form PA and a cover form. Fill out the form, write a check for \$30, make two bound copies of your completed screenplay, plunk all of this in an envelope and send it off to Washington. Keep a photocopy for your own records.

Because of backlog, don't expect to get confirmation from the Copyright Office for several months. However, not to fret, your copyright registration is valid from the date the material was received and date-stamped in at the Library of Congress.

We should mention registration with the Writer's Guild (WGA) because there is some confusion out there about how this relates to protecting your work. Copyright protects your work from unauthorized use.

Registration with the WGA protects your writing credit in a credit arbitration.

Nearly every screenplay sold gets rewritten, one or more times. Producers who are signatory to the WGA's Basic Agreement must offer the first rewrite to the original writer, but often this takes the form of offering the writer a fee to waive his or her rights to the rewrite. By the time the movie is in the can any number of writers have had their hands on the script. Who gets what writing credit?

The Basic Agreement requires that a Producer submit proposed writing credits to the WGA when their movie is finished. The Guild discusses this with the affected writers. Do they agree? If so, the Producer is advised that the proposed credit assignment is acceptable.

If the writers do not agree and negotiations fail, credit arbitration is initiated. This is a formal process aimed at resolving disputes about writing credits in film, television and radio, conducted by the Guild's arbitration committee. The decision of the arbitration process is final and everyone is bound to comply.

Writing credits on nearly every movie made nowadays are arbitrated. This is because there is so much rewriting going on.

What you register with the Guild is used by its arbitration committee to determine what you wrote, and that's it, that is the sole and exclusive purpose of registering a work with the WGA.

WGA registration may be used as corroborating evidence in an infringement trial, but it lacks the power of copyright in terms of proving who is the author of what in the bigger legal picture.

The US Copyright law can be downloaded from the Copyright Office's website. I think every writer should have this and should spend some time getting familiar with its various provisions. Some will leave this up to their lawyers, and that's fine, if you can afford it. If not, reading the law yourself, and other documents available at the website (including their FAQ), can improve your ability to protect your work.

Under the law, the moment you reduce your writing to "tangible form" it's copyright material. This means printing it, perhaps even saving it to a diskette. But the fact that written material is inherently copyrighted doesn't mean much if you don't register it, and if you don't put a copyright

notice on your work. You can place the © anywhere on your script, but the law wants it where a "casual reader" will see it. This means it has to be up front somewhere, the way book publishers do it. I put mine on the reverse side of the title page, lower left-hand corner. It looks like this:

["TITLE HERE"]

© COPYRIGHT [YEAR] [AUTHOR'S NAME]

ALL RIGHTS RESERVED

Now you have your copyright registered and you have affixed a notification of copyright to all copies of your work. That's all there is to it. Any person who likes your idea will think twice about doing a version of it for his or her own gain. They see the © symbol and the brakes go on. They know they'll be sued if they use any part of your screenplay. And they know they'll lose.

Tell the world you have protected your screenplay by affixing a copyright notice on all copies slated to leave your hands. If anyone in the movie business ever questions you about this, ask why studios and producers copyright their films -- that ought to end the conversation. It is a bogus question. Professional writers copyright their work, just as professional moviemakers copyright their movies.

Your screenplay may be worth millions.

Protect it!

Sean Rooney has been screenwriting since the early 90's. In 1998 his script JOAQUIN! won first place in the Breckenridge Festival of Film screenplay competition. His screenplay PERFECT DEFECT was a quarterfinalist in the Maui Writer's Conference and Quantum Quest competitions this year. Sean is originally from Los Angeles but has lived in British Columbia for many years. He was a College Instructor before taking up writing full time. He has written six screenplays, one teleplay, and a novel. Sean's radio drama "The Bluebell Incident" was produced by CBC Radio and aired on that network's series, "The Bush and the Salon."

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