

Ask the Lawyer

AMY COOK

Inspiring or Infringing

Iwrote a novel titled *With Silence and Tears. It is the last line of Lord Byron's poem, When We Two Parted. The whole poem is at the beginning of the story. Do I have the right to use the poem?*

—Don Brookes

Lord Byron died in 1824, so his works are now in the public domain. Generally, in the United States (the United Kingdom has similar laws), works published before 1908 are no longer protected by copyright. Many works published subsequently are also in the public domain if they were not timely renewed, back when it was necessary to renew a work's copyright. You can do a basic search on the U.S. Copyright Office Web site (www.copyright.gov) to see if other works you want to use are still copyrighted.

The copyright law was intended to provide ownership of creative works for a limited period of time, though what "limited" means has been in debate ever since. Then, the works are to be freely used by new creators.

I am writing a story that portrays a similar situation as that in Ayn Rand's novel Atlas Shrugged. If I portrayed a similar situation but with different characters and ending than Rand's, would that be plagiarism?

—Chrys Jordan

Plagiarism is when one takes the words and ideas of another with-

out giving proper credit. It is an ethical violation for writers. Copyright infringement occurs when someone other than the copyright holder uses the protected work without permission. There are civil and even criminal penalties. Giving credit to the original creator absolves a writer of plagiarism, but attribution is not a defense to a copyright infringement charge.

You say you plan to change the characters and plot. Characters usually are not copyrightable, except those that have especially identifiable traits (think James Bond, Rocky Balboa). If you use Rand's work simply as a jumping off point and insert

worry about copyright infringement. Some titles can be trademarked, however. Trademarks are words, names, symbols or devices used to distinguish the owner's goods and services from those of others. Some publishers, such as those of travel guides or book series, trademark their titles. Titles also can be protected under state unfair competition laws. You can't use a title identical or similar to one already in use for the purposes of confusing or deceiving buyers as to who the author or publisher is.

The best trademarks are distinctive, like Apple for a computer. The more distinctive, the stronger the legal protection it

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your own creativity, as Michael Cunningham did in his Virginia Woolf homage, *The Hours*, you should be OK.

I am writing a collection of nonfiction stories titled Strong and Beautiful Women. There's a painting by Kiki with the same name, which, quite honestly, was the inspiration for this collection. Can I use this title?

—Nancy Harless

Titles, and other individual words and short phrases, are not copyrightable, so you do not need to

will receive. Those that are simply descriptive or generic receive little if any protection. Using the phrase "strong and beautiful women" as a title for a book, painting or any other item that happen to feature such women would be merely descriptive. ●

Amy Cook is an attorney and literary agent. To submit a question, e-mail writersdig@fwpubs.com with Ask the Lawyer as the subject line.

We regret we cannot answer all questions submitted. This column provides general legal information. A qualified legal professional should be consulted for application of the law to your specific circumstances.