

# Ask the Lawyer

AMY COOK

## What Rights Do I Have?

**I**f you've sold "all rights," how different does an article have to be so that you can write about the same topic without violating those rights that you just sold?

—Andrea Lopez

An all-rights contract means that the writer no longer has the ability to sell that article elsewhere, unlike if you sold only first rights. Generally, try to avoid all-rights contracts, unless the payment reflects the fact that you won't be able to resell that article.

Your question has no hard-and-fast answer, but we can take some cues from the U.S. Copyright Office and book contracts. Some authors are able to negotiate book contracts that state if the publisher desires a revision of more than 25 percent of the work, it is considered a new edition for which new payment terms are negotiated.

The Copyright Office says, "You may make a new claim in your work if the changes are substantial and creative—something more than just editorial changes or minor changes." To be eligible for a new copyright, the work must be "different enough" from the original or must contain a "substantial amount" of new information. The new material must be copyrightable in and of itself (i.e., not merely factual, in the public domain, or from the government).

Is your agreement geographically limited? For instance, is it

all rights to print exclusively in New England or Southern California? If you are writing for a regional publication, you may be able to slant the piece differently and sell it to a different region. To keep your editors happy, though, do not sell a similar piece to a different publication before the first publication has run it.

What do those Copyright Office terms—"different enough," "substantial amount"—really mean? It'll probably come down to a "what feels right" approach. Since ideas cannot be copyrighted, you are certainly free to use the same idea, but you must approach it differently. Interview new sources, approach the subject from another point of view, or target a different audience.

*As a poet, I like to include pictures on my Web site to highlight my work. Are there any copyright rules for photographs when I take pictures of popular items? Do I need permission to publish my picture from the company that manufactures the item that was photographed?*

—Lucy Edwards

First, be careful not to insinuate that there is any endorsement or affiliation between the maker of a trademarked product and you or your Web site if such a relationship does not exist. Otherwise, the manufacturer may claim trademark infringement or unfair competition.

You may even want to insert a disclaimer on your Web site to that effect.

As for taking photos of commercial objects, companies and photographers generally have been unsuccessful in copyright infringement lawsuits for photos that merely look similar but are not exact copies. With commercial product shots, there is a limited number of ways a photo can be composed. In a recent lawsuit involving photographs of a Skyy vodka bottle, the court said that the plaintiff's photos had a "thin" copyright that protected against virtually identical copying, but that "similarity is inevitable" in the defendant's picture, "given the shared concept, or idea of photographing the Skyy bottle."

For further protection when taking photos of commercial products, make the pictures uniquely yours. Vary angles, light and shadow, reflections and background so as not to be too similar to anyone else's photos or to the company's advertisements.

And do not, of course, use someone else's copyrighted photographs without permission.

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