

# PROTECTING YOUR IDEAS, TREATMENTS AND SCREENPLAYS

by  
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## Introduction

Just about every writer and producer I know, or represent, is concerned that their ideas will be stolen by some unethical and unscrupulous producer, production company, studio executive or competitor. As such, this article is meant to educate writers and producers regarding the protection of their ideas, treatments and screenplays.

## Copyright Law

The U. S. Copyright Act (the "Act") protects literary works, literary characters, music, movies, videos . . . when these are original works of authorship, which are fixed in a tangible medium. By fixed, the Act means that the work is embodied in a manner which is "sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration," i.e., a treatment, screenplay, video, film, etc.

The Act does not protect ideas, concepts, principles and discoveries. Therefore, writers (and producers) should never blurt out<sup>1</sup> an idea to anyone who has not agreed previously to purchase<sup>2</sup> it from the idea from them, or to attach them to whatever is produced based upon the idea. It is necessary to ask for permission and to condition disclosure on purchase of the idea because contract law<sup>3</sup> can afford protection where copyright law falls short. An oral agreement of this sort, whereby the disclosure of the idea/pitch is conditioned on payment, creates a confidential relationship, which obliges the pitcher to pay for use of the idea. This is simpler than it seems. You just need to schedule a meeting for the purpose of pitching the idea/screenplay you want to sell. The writer is even protected, even if she doesn't go so far as to ask for payment if the idea is used because the producer takes the meeting knowing why the pitch is being made; it is implied that the writer was there to sell the pitch, and that payment is to be forthcoming if it is used.<sup>4</sup> Therefore, the writer should refrain from pitching an idea outside of a scheduled meeting. The writer should create a paper trail by following up the pitch meeting with a letter thanking the pitcher for his/her time and reiterating the purpose of the pitch meeting. Sending the letter will remind the pitcher of the implied agreement, and it will provide the writer with proof of an implied agreement should the pitcher use the idea without the agreed upon compensation. Again, since ideas are not protected by copyright, the writer should ask the pitcher not to disclose the idea without the writer's permission, and the writer should include request in his/her letter, as well.

In 1976, the Act required that the writer of the work register the work with the U.S. Register of Copyright and that the writer post a copyright notice on the work. These formalities are no longer

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<sup>1</sup> The most common blurt out occurs when a writer meets a producer at a party and he shares his idea.

<sup>2</sup> You are not going to negotiate a deal at that point in time, but it does not hurt to state that they you want to be paid either WGA minimum or a figure which would be considered standard in the industry.

<sup>3</sup> Oral contracts are binding. For an explanation of oral contracts refer to the author's article on this topic at [www.surfview.com](http://www.surfview.com).

<sup>4</sup> Various cases have been won on the basis of the Implied Contract. It was the basis of the Art Buchwald v. Paramount Pictures "Coming To America" court decision.

necessary for copyright protection. Today, copyrights are automatic as of the moment of creation.<sup>5</sup> Nonetheless, it is recommended that the writer of the work adhere to the formality of registration, since it affords the writer certain valuable benefits not otherwise available. For example, if the writer of the work discovers that someone has infringed his/her copyright, the writer can have a court order an injunction<sup>6</sup> against the infringer and win a suit, assuming there was an infringement, where damages are awarded by the court. The writer may secure an injunction whether or not the writer registered with the U.S. Register of Copyrights, but damages are only available if the work was registered. It is also wise for writers to place the copyright symbol and year of copyright on their works; this formality is no longer necessary, but it does serve to deter potential infringers.

Writers must file a copyright registration form with the U.S. Register of Copyrights, in order to formally register a copyright for their original work. Complete the online registration form at [www.copyright.gov/register/](http://www.copyright.gov/register/). Online registration costs \$35. You can still do a mail-in registration, but it costs \$65.00. Proof of registration is usually forthcoming within twelve or so weeks if do an online registration, or do a mail-in registration and send it via overnight mail.

#### **Poor Man's Copyright**

Self-mailing has been referred to as the "poor man's copyright." This entails the writer placing the work in an envelope, mailing it to himself/herself via registered mail, and not opening it upon receipt. The reasoning behind this is the unopened envelope, which is post marked, can be used as evidence in a court proceeding to provide verification as to the date of existence of the work. The poor man's copyright provides no more protection than the unregistered copyright. It is best to formally register original works with the U.S. Register of Copyright.

#### **Writers Guild Registration**

Many writers and producers mistakenly believe that WGA registration protects their idea, treatment or screenplay. The WGA does not provide protection against infringement since only the Act is capable of such protection. As such, WGA registration only serves to provide evidence at trial. The WGA may be called as a witness for testimony regarding the date of WGA registration if someone infringes the WGA registered writers' work. The WGA cannot testify as to the originality of the writer's work, or the validity of the infringement claim. The cost of WGA registration is \$20 for nonmember and \$10 for members.

#### **Releases**

Writers are very often asked to sign a release when making submissions to production companies and studios. This occurs when the writer is unrepresented by an agent or attorney. If the writer takes the time to read the release, then he/she will notice that the release more likely than not gives the release's beneficiary carte blanche to use the writer's idea without compensation. As such, it is highly unlikely that the writer will be attached to whatever project is developed from his/her idea, since copyright law does not protect the idea, the writer is admitting via the release that the idea is in the public<sup>7</sup> domain, and the release establishes that there is no contract for payment. Obviously, writers should avoid signing releases. If a writer is unrepresented by an agent, then it is best for the writer to hire an attorney to make submissions. The legal fees for a submission range between \$50 and \$200.

#### **Conclusion**

The best protection for a writer's idea, treatment or screenplay is non-disclosure, but that

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<sup>5</sup> For purposes of copyright law creation begins the moment the work is fixed in a tangible form.

<sup>6</sup> A court order which will stop the infringer from exploiting the copyright protected work..

<sup>7</sup> Material in the public domain does not have a valid or enforceable copyright. Such material may be used by anyone without the possibility of infringement.

approach is impractical if the writer intends to have a writing career in the film industry. The next best alternative is registration of the work with the U.S. Register of Copyrights and the creation of oral and implied contracts, as detailed above, to protect the writer's ideas during the pitching and submission process. The aforementioned procedures for protection are not a guarantee against theft, but they are a deterrent with legal punch.

***This article is not a complete review of the subject matter and, as such, the reader should not make decisions on the basis of the above without consulting with an attorney.***