

SoA GUIDANCE NOTE

2024



Protecting your work

Guidance notes can give only a brief, generalised overview and the SoA cannot give legal advice. Members are always welcome to consult the SoA for bespoke advice. We try to keep the guides up to date but if you spot errors or omissions, please let us know by emailing info@societyofauthors.org marked 'Guides feedback'.

1: How literary, dramatic, musical and artistic works are protected

Copyright

As soon as a work is recorded in writing (or in some other form) copyright automatically exists – without any requirement for registration of fees. For more on copyright see the SoA's *Guide to Copyright Permissions*.

Passing off

If a new work trades on someone else's reputation in a way that leads people to think that it is the work of someone else or has that other person's endorsement, and that other person can show actual or likely loss or damage as a consequence, a court may well grant an injunction and/or award damages for 'passing off'.

Trademarking

A trademark is 'an identification symbol which is used in the course of trade to enable the purchasing public to distinguish one trader's goods from the similar goods of other traders.' Registration involves the payment of fees for ten years' protection initially, renewable indefinitely. If you have a contract with a publisher or film/TV company, and that company considers trademarking to be appropriate and useful, an author's main concern will generally be to ensure that s/he is included as one of the owners of the trademark.

A trademark must be capable of being distinctive. It cannot be confusingly similar to other trademarks, or be merely generic. There must be evidence that the mark is actively being used, and that, when it is used, the public associates the goods with the manufacturer. In other words it would generally apply to a character or series title only where that item has an established reputation.

It is an infringement of a trademark to make unlawful use of it within the class for which it was registered – if you are using it as a trademark yourself. There is no infringement if the use is purely descriptive. You could safely write 'He used his Biro to stir his Nescafe while scrolling through his iPhone' without infringing the trademark protection given to any of the capitalised words - though some owners go to great lengths to ensure that their trademarked word is given a capital letter. Trademark protection is given for 45 'classes' of use. If, for example, you were thinking of trademarking a character for

merchandising purposes, you would want to bear in mind that each of the following comes under a different class: printed matter (including books); handbags; cushions; articles made of ceramics; duvet covers; clothing; games and playthings; the providing of training, entertainment, sporting and cultural activities. And that's just for starters. The size of the registration fee will reflect the number of trademark classes in which you want to register.

Trademarking is perhaps of most use if you have a character you want to control after copyright has expired – so given that copyright lasts until 70 years after the author's death, it may be of more appeal to film companies than individual writers.

2: Submitting work to publishers, agents, producers, etc

Always be sure you are submitting to a bona fide company. There are very many scammers out there – see the SoA's guidance on *Scams*.

Make clear you are showing that person your material in confidence. Ideally send it to a specific named individual. Consider watermarking your work or for images, sending only very low-resolution scans.

Include a copyright notice on every item you are submitting.

If submitting a work to a competition, look carefully at the fine print as to what if any rights are being sought, in case it's a scam, and for assurances about generative-AI. And make clear, perhaps in the footer to your email and explicitly in your initial communications with the company that you opt out of any access to or use of your work by generative-AI models. See the SoA's guidance on *Scams* and on *Artificial Intelligence*.

3: Spotting and avoiding scams

See the SoA's guidance on *Scams*.

4: Generative AI

Check the terms and conditions of any website, social media platform or online tool to which you supply personal data or which has access to your works, to see what its policy is on allowing such material to be accessed and exploited by generative AI systems and whether it allows you to opt out. See the SoA's guidance on *Artificial Intelligence*.

You might like to include the following 'all rights reserved' wording on the copyright page of your work: *You may not copy, store, distribute, transmit, reproduce or otherwise make available this publication (or any part of it) in any form, or by any means (electronic, digital, optical, mechanical, photocopying, recording or otherwise) including but not limited to for the purposes of training generative AI technologies.*

5: Online piracy

See the SoA's guidance on *How to deal with online piracy*.

6: If you believe your copyright has been infringed

See the SoA's *Guide to Copyright Infringements*.