

February 1999

Op-Ed-Opinions and Editorials

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Recommended Citation

Rich, Lloyd (1999) "Op-Ed-Opinions and Editorials," *Against the Grain*: Vol. 11: Iss. 1, Article 14.
DOI: <https://doi.org/10.7771/2380-176X.3720>

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A Response to Robert Franklin's Response to "Protection of Literary Titles?" [ATG, Sept, 1998, pp.56-57, 60].

by Lloyd Rich <rich@sni.net>



Dear Mr. Franklin:

It's a good thing that the world treats the profession of publisher in a kinder and gentler way than the profession of publishing attorney.

As a former publisher for more than 20 years, I was always proud of the work I did and the contributions I made to society and education. And, as a publisher, I felt it was my responsibility to find ways to protect the company's huge investment in their intellectual properties to insure that their revenues would continue for many years. Therefore, I took advantage of every copyright and trademark protection that was offered by our federal government.

Now, as a publishing attorney, I try to do the same for my clients. In the changing world of media communications, not to mention the invention of new methods of distribution such as the Internet, I believe it is important for all creators of inventions, words, music and the like to have the comfort of knowing that they will be compensated for their contribution and that it will be protected from infringement. After all, this is why Congress passed the Copyright, Trademark and Patent laws in the first place.

While you are obviously well-versed in case law relating to these protections, and are concerned that in the future there will be no more words or phrases to use without potentially violating someone else's rights (the six international corporations?) and that consolidation will pit the small businesses against the giant conglomerates thus putting the small businesses at a disadvantage, I think you are underestimating our creativity and abilities to adapt to the inevitable change that time will bring.

You point out that there are only 20,000 ordinary words in English, but you neglect to say that these words can be combined in over a billion ways to create unique "expressions and concepts." You also fail

to acknowledge that hundreds of words are added to our vocabulary every year (the Internet, Web, PC, and Genetic Engineering being just a few examples). I believe that publishing companies will continue to apply their creativity in developing protectable expressions which will help them build equity in their company. And, if these expressions result in a book title, they should use all available means to protect that as well. Put yourself into the shoes of the publisher of "Chicken Soup for the Soul." Would you like this concept appropriated by other publishers or would you be interested in protecting it so that you could come out with more books in the future?

Lastly, I would like to address your obvious disdain for my profession.

While it is obvious that you have had some unhappy dealings with attorneys in the past, I would hope that you would agree that not all attorneys are alike just as not all African American people are alike. Throughout my legal education and during all the time I have practiced publishing law, I have never met a person or heard anyone talk about our profession's function as "creat(ing) problems and then attempting to solve them, while billing for both behaviors."

As you well know, attorneys are held to a rule of ethics created by the American Bar Association. If we violate these rules, we can and should be disbarred. One of those rules is that we cannot represent both sides in a contract, negotiation, or any other legal issue. The idea that we "create" a problem for a client and then bill them to solve it is absurd. My clients come to me with problems that have already been created and, yes, I try to help them resolve the issues. This is my job. But my mission is to work with publishers to prevent future problems from occurring. This is what any responsible attorney should do to adequately and competently represent the interests of their clients.

I am proud of my profession and the contributions we make to the publishing community. I'm tired of being the butt of lawyer jokes and accused of causing "mischief." You have the right to express your opinions and I'm glad you did since it gave me the chance to express mine. This is the freedom of speech which is, I hope, at least one thing we agree on.

Sincerely,

Lloyd Rich

Publishing Attorney 

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