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The Scholarly Publishing Scene — Words of Warning

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Recently, I reread *Other Men's Daughters*, a novel that I read for the first time nearly four decades ago. Published by **Dutton**, the book was written by **Richard Stern**, a professor of English at the **University of Chicago** from 1955 to 2002. (I enjoyed the novel this time, but not as much as I remembered. Professor-falling-for-a-much-younger-woman-and-escaping-a-shrewish-wife-his-own-age has become a cliché. **Stern** himself had a substantial reputation back in the 1970s, but it seems not to have endured at such an exalted level, or won't until someone writes a new appreciation.) I have the original hardcover edition; I can tell by markings in my copy that I must have bought it used. When I turned to the copyright page to check the publication year — it was 1973 — I found this lengthy and, I thought, prescient statement:

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system now known or to be invented, without permission in writing from the publisher, except by a reviewer who wishes to quote brief passages in connection with a review written for inclusion in a magazine, newspaper, or broadcast.

Whether the statement was ginned up by an imaginative soul in **Dutton's** legal department or by **Stern** himself, who might have gotten wind of some version of the digital future, is probably lost to history. (**Stern** died in January 2013 and finding the statement's author among the employees of **Dutton**, now a boutique imprint in the **Penguin Group**, strikes me as an investigative task beyond my pay grade.) In any case, the statement — in a novel, for goodness sake — far exceeds the one on the copyright page of my monograph, *Temperature Control*, published by **Wiley** only five years earlier:

All Rights Reserved. This book or any part thereof must not be reproduced in any form without the written permission of the publisher.

Of course, **Wiley** has always been a copyright champion, so I'm not going to belabor any supposition that the firm's legal department contained personnel who might not have been as imaginative as those working for a publisher of trade fiction and non-fiction. Besides, as a copyright champion, **Wiley** had a major role in the establishment of the **Copyright Clearance Center**. That's one of the factors — in addition to the ubiquity of all manner of electronic devices, as well as the Internet itself — that helps produce a paragraph such as the one found on the copyright page of the new edition (the fourth) of my *Mechanical Engineers' Handbook*:

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as permitted under Section 107 or 108 of the 1976 United States Copyright Act, without either the prior written permission of the Publisher, or authorization through payment of the appropriate per-copy fee to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400, fax (978) 646-8600, or on the Web at www.copyright.com. Requests to the Publisher for permission should be addressed to the Permissions Department, John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, (201) 748-6011, fax (201) 748-6008, or online at www.wiley.com/go/permissions.

Indeed, you can copy something, but you'd better 'fess up — and pay up — for whatever you do copy.

There's another lengthy paragraph that publishers have added in one form or another to the copyright page. Whenever I look at one of

these paragraphs, I'm reminded of the story told by my mentor, the late **Bob Polhemus**, my boss when I took a job as an acquisitions editor at **Wiley** years ago. (An impossibly cheerful, roly-poly fellow, **Bob** was not only a fund of information about scientific and technical book publishing — some of it possibly apocryphal, but who could tell? — but also a perfect imitator of **Louis Armstrong's** rich, gravelly singing voice.) A favorite story concerned the flawed tennis court dimensions that appeared in an edition of *Architectural Graphic Standards (AGS)*, a perennial **Wiley** bestseller. According to the story, which I've never been able to confirm, when a hapless architect provided a doubtless very disgruntled client with a tennis court that used the incorrect *AGS* dimensions, there was a lawsuit. The judge, **Bob's** tale had it, threw the suit out on the grounds that the plaintiffs should have known better than to rely on some book, no matter its reputation.

Nowadays, in our more litigious era, publishers take no chances on finding judges sympathetic to the risks inherent in publishing technical information supplied by outsiders working in a "work-made-for-hire" regime. Now, you will find statements similar to the following on copyright pages of STM books:

Limit of Liability/Disclaimer of Warranty: While the publisher and author have used their best efforts in preparing this book, they make no representations or warranties with the respect to the accuracy or completeness of the contents of this book and specifically disclaim any implied warranties of merchantability or fitness for a particular purpose. No warranty may be created or extended by sales representatives or written sales materials. The advice and strategies contained herein may not be suitable for your situation. You should consult with a professional where appropriate. Neither the publisher nor the author shall be liable for damages arising herefrom.

Publishers cover themselves in the other direction — toward authors rather than readers — with warranty clauses in author contracts. A typical clause — this one is in a contract for contributors of chapters to a multi-author work — reads:

The Contributor represents and warrants that: the Contribution is original except for excerpts and illustrations from copyrighted works for which the Contributor has obtained written permission from the copyright owners at the Contributor's expense on a form approved by the Publisher; the Contribution has not been previously published and is not in the public domain; the Contributor owns and has the right to convey all the rights herein conveyed to the Publisher; the Contribution contains no libelous or unlawful material, contains no instructions that may cause harm or injury and does not infringe upon or violate any copyright, trademark, trade secret, or other right or the privacy of others; and all statements asserted as fact in the Contribution are either true or based upon generally accepted professional research practices.

It's not surprising that a publisher with pockets far deeper than those of nearly all contributors would inset such a self-protection clause in a contributor's agreement, even though the publisher's lawyers must know that of all the clauses in a wordy document of five or six pages, this is the one that contributors would be most liable to contest. But lawyers take no prisoners these days, i.e., they seldom give in to contributors who want the warranty clause excised or even modified. And as perusal of their written fears on copyright pages would indicate, lawyers have, I must admit, more imagination than the rest of us might appreciate. 🦋

