The Scholarly Publishing Scene: Words of Warning

Myer Kutz
Myer Kutz Associates, Inc., myerkutz@aol.com

Follow this and additional works at: http://docs.lib.purdue.edu/atg

Part of the Library and Information Science Commons

Recommended Citation
Kutz, Myer (2017) "The Scholarly Publishing Scene: Words of Warning," Against the Grain: Vol. 26: Iss. 6, Article 34.
DOI: https://doi.org/10.7771/2380-176X.6969

This document has been made available through Purdue e-Pubs, a service of the Purdue University Libraries. Please contact epubs@purdue.edu for additional information.
R
cently, 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 cliche. 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 writ-
ing 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.

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 doubltless
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 Contribu-
tion 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’ 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 state-
ments 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 insist such a self-protection clause in a con-
tributor’s agreement, even thought 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.