**“Five Scary Legal Things Every Writer Needs to Know”**

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**Presentation by Anne Dalton, General Counsel to the Florida Writers’ Association**

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**Following is a summary of the points presented by Anne Dalton as understood by the writers. Ms. Dalton has not reviewed or commented on these notes to confirm their accuracy.**

**Scary Thing - #1-Death and Copyright**

* **What is copyright?** A monopoly owned by creator of work for a specific period of time, must be an original work fixed in a tangible expression.
* Copyright law is different in every country. References are made to U.S. copyright law
* Excerpting from material published before 1923 – No permission required; no fee paid.
  + Exceptions: Material published before 1923 is changed and reprinted, new printed date applies for purposes of copyright.
* Reprints: Penguin editions of Mark Twain’s works – falls under the before 1923 copyright law.
* Copyright for material published between 1923 – 1978 is vague. Do not assume public domain until 2065.
* As of January 1978 there was total overhaul of copyright law to be more protective of writers and artists.
  + Material published after January 1, 1978.Copyright is established for writer’s life plus 70 years. Estate owns the copyright after writer dies.
* Estate planning - writer has options for who owns copyright beyond heirs. Consider addressing this in your will.
* Can do a search with copyright office to find out who has copyright of a certain work.
* Three levels of copyright notification:
  + Create work. It is original and tangible – you own it.
  + Add the word ‘copyright’ or the symbol © to your work.
  + Best Protection – register the copyright. This can be done online at copyright.gov.

**Scary Thing #2 – Joint Copyright**

* Joint Copyright – creation of work by two or more persons with the intent to merge contributions into one work.
* Unless there is a written contract, unequal contribution equals equal copyright ownership.
* Collaboration with other creatives regarding your work outside their prescribed assignment can result in a joint copyright.
* Joint copyright participants should protect themselves with a contract to determine profit distribution, determining the decision maker and how profits are to be used.
* Consider creating a one page transfer of copyright to protect yourself when you collaborate with illustrators, editors, etc. Something as simple as: ‘To the extent that you are creating any content, I (name of author) own the copyright and you transfer any of your rights to me.’ Collaborator’s signature is required.

**Scary Thing #3 – Fair Use Law - Song Titles and Lyrics and other material**

* Who decides Fair Use? The Courts do. This is a complex and murky area of law. ‘Fair Use’ entitles you to use copyrighted material without permission or payment. The use is considered ‘fair’ for the public to have.
* Fair Use Categories – There are only four. Use must fall into one of these four categories:
  + News Reporting
  + Research and Scholarship
  + Teaching
  + Criticism and Content
* Attribution does not get you out of hot water. It may lessen the copyright owner’s inclination to come after you.
* There is no magic percentage of content or number of words that you can use without fear of infringement.
* Fair Use is a major area of litigation.

**Scary Thing #4 – Memoirs – Defamation, Invasion of Privacy, or Fair Game?**

* Defamation in Florida is publication of a false statement causing injury to plaintiff.
* Right of Privacy – statement can be 100% true and still invade right to privacy.
* There is provision in Florida state constitution guaranteeing right to privacy. In Florida Right to Privacy is for life plus 40 years.

**Scary Thing #5- Contracts and Publishers**

* Read contracts back to front!
* Read the very back of the contract thoroughly that is where many of the most onerous provisions are hidden.
* Beware of administrative costs. Also, what are they taking out of gross to get to net?
* Pay close attention to the termination provision.