Can I use other people’s names and stories?

Get the answers to some of your most pressing legal questions surrounding what you can and can’t use in your manuscript.

by Jane Friedman

You can run into trouble simply writing about other people’s lives. You are guilty of libel if you publish a false statement that is damaging to another living person’s reputation. That false statement can be unintentional and still be ruled libelous in court, which is why the law requires writers to take every reasonable step to check for accuracy. While it is up to the plaintiff to prove the falsehood, it is up to you to prove that you made every reasonable effort to be accurate.

Few writers would knowingly publish falsehoods. Yet the potential pitfalls for writers are numerous. You can accurately print what you have been told and still commit libel—if the person giving you the information was wrong about her facts. Many writers get into trouble by failing to check minor facts, which is why you must double-check and triple-check information—even when you believe it is correct. The Associated Press Stylebook and Libel Guide is an excellent source of information on libel and how to protect yourself from committing libel or being accused of libel.

When writing about real people, you must also be concerned with invasion-of-privacy lawsuits, in which the plaintiff claims that even though the things you say about her can be proven true, they are “private and embarrassing facts not of legitimate public concern.” The questions below address common situations that fiction or memoir writers might find themselves facing when writing about other people.

A neighbor of mine is a disfigured recluse. I have built a story around such a woman. I slander her in no way, yet my husband feels I will have a lawsuit on my hands if the story gets published. I would appreciate any advice.
It would be best to change as many of the obvious true-to-life facts as possible to avoid an invasion-of-privacy suit. Give your heroine a different age, size, hair coloring, nationality, etc. Add new mannerisms, idiosyncrasies, and other aspects of personality. Use a totally different setting if you can. After all, the only basic idea you need is that of a disfigured recluse. It is not necessary to make the type of disfigurement identical to that of your neighbor. Use your creative imagination to produce a completely new character based on the general idea but not the exact details of your neighbor’s life. In fact, you might even experiment with the idea of making the leading character a man instead of a woman.

How careful must a fiction writer be with names she contrives, but which could turn out to be names of living persons? For example, if I name the villain in a story Jack Bowlton, could a real Jack Bowlton sue me for defamation of character for characterizing him as a villain? Also, what about the old disclaimer, “Any similarity to persons, etc., is strictly coincidental”?

Unless the real Jack Bowlton happened to be circumstantially similar in personality and actions to the fictional character you gave that name, there probably wouldn’t be any cause for legal recourse. The old disclaimer doesn’t appear much anymore because a person who can prove that a real person was used in a fictional account, and who can also prove defamation or invasion of privacy, may still have legal recourse in spite of the disclaimer.

Could a person actually named William Faulkner, Ray Bradbury, or Ann Landers publish work under that famous name?
No. Ann Landers, William Faulkner, and Ray Bradbury have already established the reputation of those names; anyone who tried to publish her work using these names would be guilty of infringing on the reputation those writers have already built. This holds true even if the writer’s real name is the same as that of an already-published author. The second
writer would have to take a pen name.

**Do I need the permission of a corporation to publish an article or book about it?**

No, and if the company has been treated fairly, you should have no legal problems. However, if the company takes exceptions to any part of your work, you may have a lawsuit for libel on your hands. Even if what you write is true, the company might sue simply as a way of denying what you have written. Books about corporations written without their consent include Disney War and Under the Influence: The Unauthorized Story of the Anheuser-Busch Dynasty. Writers should exercise extreme caution when writing such material and make sure that all facts are verified.

**I am writing the life story of a remarkable woman I knew a couple of years ago, who has since died. I’m sure she would have given permission, but I’m not sure her husband would be so willing. Do I need permission to write about someone who isn’t in the public eye?**

The husband may interpret your work as invading his privacy and institute a lawsuit. However, most state laws say heirs can’t sue—only the live person who has been libeled or has had her privacy invaded can initiate legal action. You’ll have to decide if it’s worth the risk.

**Can I use the names of famous people in my fiction?**

Using the famous as characters in your fiction causes no problems as long as they are depicted in a favorable light. However, if your work makes negative allegations about the people involved, you could be asking for a lawsuit.

**Can I base my fictional characters on real people if I change their names?**

Even if you change their names, real people might think readers would recognize them, and therefore they might consider your work an invasion of their privacy. If these people believe they are shown in an unfavorable light, they might sue for libel. It’s safer to make a composite character with traits and characteristics culled from several people. It’s more creative to alter the events and characters of real life, since they are rarely suitable for use in fiction without some authorial manipulation or adapta-
In a book of personal experiences, is it permissible to use real names and to relate real episodes without obtaining written permission from the persons mentioned? Or should characters and events be fictionalized?

It's advisable to change the names of real persons and the locale of real events to avoid suits for invasion of privacy by the parties concerned. Even if your reference is complimentary, the individual may resent being placed in the public spotlight and go to court to prove her point.

In writing a personal memoir that includes stories of family, do I have to obtain a release from other family members, or is there a way to present the characters without having such consent?

The bottom line: Truth is a defense to any defamation charges that may be brought against you. However, you must also be concerned with an invasion-of-privacy suit, in which the person you wrote about can assert that even though the things you say can be proven true, they are “private and embarrassing facts not of legitimate public concern.”

I am doing research for a proposed biographical novel. The famous people on whom I am basing my novel lived in the early 1800s. I am not always able to get to an original letter or document written by the subject, so I am taking material from factual books by other authors in which they quote from these originals. Can you tell me the rules about biographical novels? Must I get permission from all the authors I have read in order to provide character dialogue? Must I get permission from the people who have the original letters, manuscripts, or documents, if I can find them? And how about a book that was written in this 1800 period by the famed person herself? May I use her material to build my character? Could living descendents of these
famed people object?
In a novel of this type, you could acknowledge, in an introduction or preface, the sources on which the factual material is based. Write to the book publishers, describing your project and asking their permission to use information in the letters they published. To be on the safe side, you might also write to the publisher of the book written by the famous character herself, requesting permission to make use of that material. As for the descendants, there is the delicate question of the right of privacy. Since each state has its own laws about this right, consult a lawyer who can advise you how much latitude you have under law.

Can a writer legally use the name of a business firm in fiction if the story is not uncomplimentary of the business?
Well-known companies do not look unfavorably on a little free advertising embedded in a nationally distributed piece of fiction, provided such usage is strictly for purposes of atmosphere and realism. Nothing even remotely illegal or distasteful should be connected with the company name. For example, if your story deals with a criminal who dupes a department store, you’d be on safer ground if you used a fictitious company name, to avoid the possible impression that the real store is not smart enough to escape being duped. As a rule: When in doubt, fictionalize.

If I write a true story, but change the names, is it fiction or nonfiction?
If the story is a factual account, with only the names changed, then it would be nonfiction.

I would like to set my story in the city of Detroit. Do I have to use real names of streets and places, or can I mix fiction with fact?
If you’re going to use a real city as the setting of your story, you had better use names of real streets and places. It will give your story authenticity. Make sure all facts in your story are correct. Just because your story is fiction doesn’t give you the right to present any factual inaccuracies. Fiction writers must spend time researching so that they can write with a sure knowledge of their subjects.

My short story embraces a true event in a nineteenth-
century man’s life that is recorded in newspapers and books. Can I properly call it fiction?
Yes, since you are creating the dialogue and much of the dramatic action, it can properly be called fiction.

What is the difference between an authorized and an unauthorized biography?
An authorized biography is written with the cooperation of the person it’s about—or with the cooperation of her estate, if she’s deceased. This means the writer has access to in-depth interviews with the subject and her family and friends, and to private records and correspondence. In some cases, the writer shares the byline, advance, and royalties with the subject. Authorized biographies are sometimes rejected by the critics for their lack of objectivity. An unauthorized biography, on the other hand, is written without the cooperation of the subject or her estate. Publication of these works is strongly based in current public interest, and these works cover such people as television personalities, rock stars, sports heroes, and political figures. Although some celebrities have claimed that unauthorized biographies violate their rights—that a biography is only legal if the celebrity herself has written or authorized it—the courts have not upheld these claims.

In writing a biography about a deceased person, do you have to be careful about what you tell, or can you tell the truth?
Most state laws prevent a person’s heirs from suing for either libel or invasion of privacy. Usually these suits can only be brought by a living person who feels she has been defamed or that her privacy has been invaded. But if you also discuss living people when you are writing about a deceased person, be sure of your facts, since the truth (if you can prove it) is the best defense against libel. Truth is not a defense, however, against invasion of privacy, so if you have any qualms about possible suits from living persons on that score, you had best either get releases or eliminate those references.

Through my experience as a freelancer, I have had contact with someone who would make a good biography subject. If I write the book, I think it will have national appeal. Any suggestions on how I can get started?
Discuss the possibility of a biography with your subject before you approach any publishers. If that discussion goes well, write up a book proposal on the biography you wish to write, and include the reason the proposed subject would make a salable biography. If you fail to find an interested publisher, it may be because the publishers don’t think your idea would sell well. You will either have to rethink it and change the slant, or abandon the idea.

Once you do receive a positive response, you should read all material written about the person. Then interview the subject, family members, and close acquaintances. In planning the book, you will need to know about outstanding events and conflicts that your subject has encountered, so that you can show how she became the person she is now. Earlier biographies were usually done in strict chronological order, but now they often open with some dramatic episode attesting to the subject’s character and/or fame, and then recapitulate the formative years. A sound knowledge of your subject and of the other people strongly influencing her is necessary to write a strong and viable biography. But avoid tedious detail and references to relatively unimportant people. Focus on highlights and the impact such events had on the subject’s life.