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## LEGAL ISSUES IN WORLD BUILDING

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To create a world for your story, whether it's fiction or non-fiction, your building blocks are people, places and things. There are legal issues that arise when these building blocks involve real people, places or things and as long as you stay within the legal bounds for usage, it is permissible to use them in your work.

Let's take people first. Bear in mind that the term "people" includes both natural persons, living or dead, and what are known in legal-speak as artificial persons, or legal entities (*i.e.*, companies) and characters (think Mickey Mouse, Harry Potter, etc.). There are three, legal, "people" issues with which to concern yourself: Defamation, Right/Invasion of Privacy and Right of Publicity.

Defamation is explicit or implicit injury to a person's reputation, or in colloquial terms, talkin' trash about others. Defamation is an encompassing term that covers both slander (spoken/oral defamation) and libel (literal/written defamation). The latitude you have in making remarks about others depends on the person's status. Public officials, such as politicians and public servants, have the least legal protection against defamation, meaning you can say just about anything you want about them provided it's factually true or your reasoned opinion (beware of vitriol which takes you into a legal gray area). Public figures, such as celebrities or notorious people, are also fair game, but they have somewhat greater legal protection against defamation than do public officials. Private figures, or ordinary citizens, have the greatest legal protection against defamation and one should tread lightly when lambasting them. So, it's open season on any US President, past or present (public figures), Brittany Spears or Simon Cowell (celebrities) and Scott Peterson or Amber Frey (people of notoriety), but not on your neighbor or boss (private figures).

The right/invasion of privacy is, simplistically speaking, the right to be left alone. This right applies only to living, natural persons. An invasion of privacy may consist of public disclosure of private facts, portraying someone in a false light, intrusion into another's life, or misappropriation of another's name or likeness for your own benefit.

The right of publicity is the right to prohibit others from using your persona (likeness, voice, unique behavior, etc.) for their commercial purposes and applies to both living and dead natural persons. It is permissible to use another's persona for the purpose of reporting, scholarship or commentary.

I am going to lump places and things together for purposes of discussion, because some of the same legal issues apply to both. These issues are trade libel (applies to both), trademarks and trade dress (applies to both) and copyrights (things).

Trade libel is a false statement that injures the business reputation of a company or the sale of a company's products. Trade libel is also known as product disparagement and the concept is akin to defamation, but it applies to things, not people.

Trademarks serve as an indicator of source or origin of a good or service (for instance, UPS delivery service) and trade dress conveys the total image and overall appearance of a good or service (the brown uniforms and delivery vehicles of UPS). Trademarks and trade dress can apply to goods, services, titles, characters and book covers, among other things. It is permissible to use either trademarks or trade dress in fiction or non-fiction, provided the reference is to an actual good or service (*i.e.*, don't make up products for real companies and vice versa) and proper format and ownership

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attribution are used. For proper format, a trademark should *always* be used as a noun, like so: trademark brand noun (Big Chief® brand writing tablet), and never as a noun or verb. Ownership attribution can be accomplished by implicit understanding of the reader within the context of the work, explicit statement within the work, or identification in the work, such as on the copyright page.

Copyrights apply to original works of authorship and give the copyright owner the exclusive right to reproduce the work, prepare derivative works of the original work and distribute copies of the work. In writing, the types of original works of authorship that are most often used in world building are excerpts from literary works, musical works (including any lyrics) and dramatic works (including any music). To lawfully use the copyrighted work of another, you must have either express permission from the copyright owner or legal permission to do so. Legal permission is imputed if the usage falls within

the parameters of the fair use doctrine. Fair usage must be for the purposes of criticism, comment, news reporting, teaching, scholarship, or research with regard to the original work. Whether or not use of a copyrighted work is a fair use is determined by the consideration of several factors: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the copyrighted work used, and the effect on the potential market for the original work.

Although you need to be cognizant of these issues, you don't need to worry about them during the creation phase of your work. Author and/or publisher liability for these issues won't arise until if and when the work is published. To preclude these publishing liability issues, the editing and pre-publication review stages of your work are when to make appropriate changes and to obtain necessary permissions for third party matter used in the work.

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