

SENSITIVITY EDITING: ANOTHER FORM OF CENSORSHIP?

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The debate about the propriety of hiring sensitivity readers for unpublished writing often touches on the recent practice of “scrubbing” already published books. Both editorial practices seek to remove elements contemporary sensitivities would consider offensive. Legally, however, these are two different topics.

Engaging a sensitivity reader as part of the editorial process for *unpublished* literary works is a contractual issue. Just as a publisher would hire an editor to address continuity, grammar, convention, and anachronisms within an unpublished manuscript, the publisher may also choose to employ a sensitivity reader to avoid publication of material containing racist, gender-biased, ableist, or sexist views and stereotypes. The publisher’s goal is to promote inclusivity, especially where writers do not identify as members of the group depicted in their written works.

Some writers find the prospect of their manuscripts being read by sensitivity readers “oppressive,” “meddling,” and “verging on censorship.” (“Why the use of sensitivity readers is causing such a stir in the publishing world,” CBC News, March 2023.) To those writers, I recommend you advocate to ensure your publishing contract grants you the right of final approval over all editorial changes, a right rarely accorded to newer writers. If you find yourself without control, then you can choose not to sign the agreement.

Other writers perceive sensitivity reading as a tool to sharpen their prose, a process affording added insight as part of manuscript development. As co-chair of the Canadian Authors Association, Travis Croken observed: “They don’t have to have a PhD in whatever

community they’re with, [but rather, they’re] someone who has lived experience.” (CBC News, March 2023.) To writers who are planning to self-publish or whose publisher does not commit to hiring a sensitivity reader, I recommend you solicit feedback on your unpublished manuscript from trusted friends, family, and members of the community depicted in your prose. Looked at from this perspective, sensitivity reading services protect your future reputation. Haven’t all of us cringed over something said, let alone written and published, in the past?

The tangentially related practice of hiring sensitivity readers to edit previously published works raises different issues. Inclusivity and avoiding publishing harmful bias are still the goals, but copyright law principles now apply. The Canadian *Copyright Act* contains not only statutory “economic” rights for creators to control the publication and other exploitation of their works, but also “non-economic” moral rights. These rights derive from the civil law and seek to protect the creator’s oeuvre as an extension of their personality, which as the Supreme Court of Canada ruled, “possess[es] a dignity which is worthy of protection.” [*Theberge v. Galerie d’Art du Petit Champlain Inc.*, [2002] 2 S.C.R. 336]

Moral rights subsist even if the author has assigned or otherwise dealt with the “economic” rights, and they pass upon the author’s death to those upon whom the work was bequeathed. Moral rights include the right of attribution or anonymity (sometimes insensitively referred to as the paternity right), the right of association (for example, a sculptor who has sold his work could still object to its depiction in connection with a



racist campaign), and the right of integrity (the right to prevent any mutilation or distortion of the work or change the work in a way that would prejudice the honour or reputation of the author).

Unlike economic rights, moral rights cannot be sold, but they can be waived. To authors seeking publication through publishing houses and wishing to retain their moral rights, I recommend you read your publishing agreement to ensure it does not contain wording that refers to a waiver of, or relinquishment of, a right to enforce moral rights. I further recommend writers who enter into wills naming a literary executor stipulate their wishes, whether or not to have their works altered after their death, or in specific terms, providing the content should not be edited to reflect the worldview prevailing after their death.

This is the legal context against which the recent sensitivity editing of well-known classics is portrayed. The works of esteemed and now-deceased authors such as Roald Dahl, Theodor (Dr. Seuss) Geisel, and Ian Fleming have been tweaked (or sanitized, depending upon one’s perspective), based on racial insensitivity and stereotypical renditions of marginalized characters as originally published (see “Recent Case Studies”). Perhaps such editorial updating, to use a more neutral term, infringes upon the moral right of integrity of these authors.

When an author’s words are changed without their permission, especially if such alterations could be seen to prejudice their honour or reputation, then their right of integrity may well be infringed. Indeed, the fact alterations are being made because of perceived insensitivity may itself constitute prejudice to an author’s honour and reputation. For example, those familiar with Fleming’s famous James Bond books, but

who haven't read them, would be unaware any tweaking of the text was required. Therefore, to learn that sensitivity edits were made would reduce their estimation of the prolific author.

Is it the creator alone who can identify whether an act offends their honour or reputation, or must the question be answered by a less subjective measure? What if the author is deceased and the publisher must work with the writer's estate? That would be an interesting issue for law students to debate in moot court. Is it possible for anyone but authors themselves to make decisions regarding acts that damage their prejudice and reputation? Could the estate of an author confidently decide these points? And did the publishing agreements of such authors contain moral rights waivers? All these points would be legally pertinent.

Apart from the public outcry against tampering with the words of the masters and, even more volubly decried, against egregious censorship, the editing of the already published works of deceased authors is problematic from a legal perspective. Even if done for superficially laudable reasons of sensitivity enlightenment, the practice itself is fundamentally fraught. ■

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RECENT CASE STUDIES

The following authors are dead, but the term of copyright subsists in their respective countries (most nations have used life + 70 for many years now) and, therefore, so do their moral rights.

Roald Dahl died at age 70 in 1990. Dahl's British publisher worked with the estate to edit his collected works. The new editions of some of Dahl's works omit or alter passages containing adverse comments about weight, mental health, gender, and race. Dahl was antisemitic. Salman Rushdie, author of *The Satanic Verses*, condemned the editing, calling it "absurd censorship." PEN America also reacted with dismay at the revisions. This is a classic example of the debate over cultural sensitivity, which pits advocates seeking to protect young people from harmful stereotypes against critics who complain that revisions undermine the genius of great artists. ("Roald Dahl rewrites: edited language in books criticised as 'absurd censorship.'" *The Guardian*, February 2023.) More recently, the publisher decided to publish an original, unedited "classic" edition of the same works.

Theodor Seuss Geisel died in 1991. He adopted the pen name Dr. Seuss to cover his identity as a writer for the Dartmouth University undergraduate magazine. During the Prohibition, he was suspended from extra-curricular activities

as a punishment for hosting a gin party. Another biographical fact to his credit is his first book was rejected by anywhere from 20 to 43 different publishers. The author censored his work during his own lifetime, recognizing an anti-Japanese sentiment in one work and correcting it. The organization that oversees his rights announced it would cease publication of six of his 60 titles, stating they contain "unconscious racist themes." ("6 Dr. Seuss books will no longer be published due to racist imagery," CBC News, May 2021.)

Ian Fleming, writer of the James Bond series, died on a golf course at age 56 in 1964. On the 70th anniversary of the release of his first book, his novels will be re-issued with some racial references removed, and prefaced with a warning the books may portray attitudes "considered offensive by modern readers." The family-owned Ian Fleming Publications is reported to administer all the author's literary works. A clever headline stated James Bond has been censored, not stirred. ("James Bond Novels Edited to Remove Racist Content," variety.com, February 2023.)

LETTERS TO THE EDITOR

Truth is Trouble

(Volume 43, Number 3, July–September)

At the risk of sounding banal, this edition's features were stellar. I wish I could say exactly why, but suffice it to say the overall vibe hit the mark for me, like no other edition.

Maybe good people, doing good works for the power of west words?

Carleen Marie

The Writer and Artificial Intelligence

(Volume 43, Number 4, October–December)

AI themed issue just arrived today and I have already enjoyed several of the articles, including the AI written legal opinion on issues related to AI and copyright!

Well done. It looks like a terrific issue.

It also made me want to read this: The Authors Guild and authors' suit filed against Open AI (storage.courtlistener.com/recap/gov.uscourts.nysd.606655/gov.uscourts.nysd.606655.1.0.pdf.) It's a fascinating (if depressing) read.

On a different note, I very much enjoyed Lorna Carley's "What Makes a Sentence Tick?" in the July–September (Volume 43, Number 3) issue. I hope you will keep such craft articles coming!

Sharon Hamilton

WestWord welcomes letters to the editor. Please send to editor@writersguild.ab.ca.