

Correcting the academic record: the legal issues in corrections and retractions

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Retractions

This is not a novel, to be tossed aside lightly, it should be thrown with great force

Dorothy Parker

Retraction of George Orwell's 1984

This is an apology for the way we previously handled illegally sold copies of 1984 and other novels on Kindle. Our “solution” to the problem was stupid, thoughtless, and painfully out of line with our principles. It is wholly self-inflicted, and we deserve the criticism we’ve received. We will use the scar tissue from this painful mistake to help make better decisions going forward, ones that match our mission.

With deep apologies to our customers,

Jeff Bezos, Founder & CEO, Amazon.com 23 July 2009

Corrections and retractions in print: legal and other ramifications

Thou shalt commit adultery?

Academic and literary feuds and threats of litigation between academics

In print books, erratum slips, or in extremis pulping and removing from sale

In newspapers, corrections and apologies

In France, droit de response, droits moraux

Legal rationales for correction and retraction

Plagiarism/copyright infringement

Libel

Lack of authority to publish

Privacy and data protection

Fraud

Error (scientific, medical)

Misrepresentation

Libel : The aggrieved third party

Corrections and offers of amends in libel law (Defamation Act 1996):
prompt action reduces damages

BUT

Beware against libelling the original author by the wording of a correction
or retraction: does it imply author dishonest, when the facts may be in
dispute?

AND

Beware publishing libel to the Editorial Board: who can you talk to about it?
As a general rule, keep it tight and need to know

Ex friends at war, the challenges of multiple authors

In UK copyright law joint authors must all consent to use

Is your practice that all co-authors sign your copyright assignment/licence form?

Lack of authority: cases where the wrong person is named as author, or the right person is not named

Academics changing institution, disagreements between institutions

Integrity and reputation

“But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed” Iago

The Berne Convention (and most copyright laws) provide for the Moral rights of identity (to be named as author, and conversely not to be wrongly named) and integrity (not to have the work changed)

Identity: are multiple authors correctly acknowledged?
Ghost authors?

Integrity: has the publisher messed around with the text
(eg by a correction?)

Moral rights

An integrity or reputation right:

Depending on the country, the editor may not have right to edit a text without the author's permission. France and civil law countries are very protective of moral rights, USA barely at all, save for graphic works.

The editor's dilemma: piggy in the middle

The COPE guidelines give many example of disputes

Scenario

Academic A of Bigbucks University alleges that Academic B, who used to work in his lab, has stolen his ideas. Academic B runs a research programme at Underfunded University. Bigbucks University threatens publisher with legal action unless Academic B's article is retracted and publisher apologises for copyright infringement.

The Dershowitz-Finkelstein feud 2005

Allegation “a collection of fraud, falsification, plagiarism and nonsense”

Libel, academic integrity, academic tenure, all in dispute, Governor of California was asked to intervene and prevent publication by the author’s University, adroitly sidestepped by Schwarzenegger’s lawyer

“Academic politics is the most vicious and bitter form of politics, because the stakes are so low.” Attributed to Wallace Sayre, Henry Kissinger et al

and disciplinary matters

In UK, Human Rights Act and due process

Professional bodies: what obligations are there on the Editor

Constitutional under the body's own rules

Oversight by regulators

In UK Advertising Standards Authority, Ofcom, Press Complaints Commission

Problem of publisher that is part of professional body

Breach of contract

Breach of contract to third party for removing, if you had licenced content

Alexander Pope on plagiarism

With him, most authors steal their works or buy,

Garth did not write his own Dispensary

An Essay on Criticism

Let standard-authors, thus, like trophies borne

Appear more glorious as more hacked and torn

Any questions?