

# Memorandum

TO: IAPE Represented Employees

FROM: Tim Martell, IAPE Organizer

RE: Book Deals

DATE: April 11, 2008

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Recently, management at The Wall Street Journal informed employees that changes have been made to the company book policy. The company has asserted rights to all material generated in the act of reporting for The Wall Street Journal (or, any Dow Jones product), and has informed employees that a portion of any advance and royalties must be paid to the company in order for the employee to make use of that material in any book written by the employee.

The United States Copyright Office addresses the issue within the “Works Made For Hire” doctrine, and says:

“Although the general rule is that the person who creates a work is the author of that work, there is an exception to that principle: the copyright law defines a category of works called ‘works made for hire.’ If a work is ‘made for hire,’ the employer, and not the employee, is considered the author. The employer may be a firm, an organization, or an individual.”

The United States Supreme Court also has something to say about reporters’ material:

“That there can be no valid copyright in facts is universally understood. The most fundamental axiom of copyright law is that ‘no author may copyright his ideas or the facts he narrates.’ *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 556 (1985).”

Therefore, if the company lays claim as “author” to material appearing in The Wall Street Journal, or any other publication and The Supreme Court says that “no author may copyright his ideas”, there is no foundation to company claims of entitlement to any portion of advances or royalties.

For the record, the company book policy also does not make any such claims. From the document “WSJ’s Guidelines On Outside Activities” available on DowJones.net and published December 4, 1996:

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## BOOKS

We have gone from active discouragement of books by Journal staffers to a point where, at any given moment, at least three or four of our reporters and editors are on leave to write them. I believe that, on balance, the paper has benefited significantly from this change, in terms of the development of our people, the information we have gained, and the talent we have retained. But an explosion of interest by publishers in business books, and an escalation in the sums they were willing to pay, caused us to develop some criteria to consider in determining under what conditions to grant a book leave. Among them are:

- The managing editor's assessment of the potential benefit to the Journal from having this person write this book;
- Whether the person's performance warrants such a leave;
- How long the person has been on the staff, and the length of time since the last book leave;
- The need to prevent the potential for a book contract from influencing or appearing to influence our coverage, and the need to strictly enforce the prohibition in the Conflicts of Interest Policy against disclosure of the timing or content of Journal stories;
- Commitment by the author or authors to provide the Journal access to hot news as it is learned in the research for the book, rather than having explosive revelations saved until the book is published;
- A reservation to the Journal of both an option on first serial rights and a "negative option" requiring my consent for the granting of such rights to certain other competing publications;
- An agreement by the book publisher to obtain insurance, or your own acquisition of insurance against defamation and invasion of privacy lawsuits filed against you as a result of your work on and the publication of the book. Should you solicit another Dow Jones employee to assist you in researching or writing the book, you would agree to do so only if the publisher of the book, or your insurer, agrees to extend the coverage of the insurance policy to protect such other Dow Jones employee. The insurance policy must be acceptable to the Dow Jones legal department.

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While we acknowledge that the terms of any leave of absence must be negotiated between manager and employee, and we recognize that an employee may “choose” to pay some fee in exchange for opportunities presented by the company (assistance in marketing, etc.), there should be no obligation on the part of the employee to share any payment with the company for a book containing original material.

If the company insists it has the right to income from notes and/or ideas in connection with a particular book, the union will consider that position to be an unlawful, unilateral change.

IAPE will take appropriate action on behalf of any employee who believes his or her rights have been violated by management of The Wall Street Journal. If management is attempting to force you to pay a share of your advance or royalties, your first step should be to present them with a copy of this memo. If they persist, your next step should be to contact our office.