

# Copyrights for Bulletin Editors

## A Review of United States Copyright Law

By Richard Busch (Past President, S.C.R.I.B.E.)

### Introduction

A copyright is used to claim and protect ownership of a literary work. By copyrighting your society's bulletin, other publications, and website, you can protect the material from unfair commercial exploitation and reduce your society's liability in the event someone copies portions of the material inaccurately.

Copyrighting is simple—and free! There are no forms to fill out, papers to file, or bureaucrats with whom to contend. This article will discuss the history and rationale behind copyrights, tell you how to copyright your publication, and describe the concept of "fair use"—a provision of the copyright law that lets you, as the editor of a non-profit, educational organization, use limited portions of someone else's copyrighted material without having to obtain explicit permission to do so.

### The History of Copyright

The concept of copyright came into being with the 15th-century invention of movable type and the printing press. These first copyrights (termed "privileges" at the time) were granted to printers, rather than authors, giving them exclusive rights to print and sell publications.

Authors' rights were first recognized in the British *Statute of Anne*. This 1710 law not only protected authors from copyright infringement, but established a limited period of time (28 years from the date of publication) after which a copyrighted work would enter the public domain and could be freely used by anyone.

In the United States, the first federal copyright legislation was enacted in 1790. Initially, the U.S. copyright law followed British law. Over time, the U.S. copyright law was modified and expanded to keep pace with technical advances in publishing and to cover material such as photographs, music, and art. In the latter half of the 20th century, the U.S. copyright law had become so heavily amended that it was decided to rewrite the law in its entirety. The old law was scrapped and *The U.S. Copyright Act of 1976* was enacted. In 1989, the United States modified its copyright law once again when it joined the Berne Convention which provides international copyright protection among its member countries.

Additional modifications to U.S. copyright law were made in 1992 when the *Copyright Renewal Act of 1992* removed the requirement for renewing registered copyrights after the first registration period of 28 years expired; the *Uruguay Round Agreements Act of 1994* restored U.S. copyrights for certain foreign works; the *Sonny Bono Copyright Term Extension Act of 1998* (yes, the Sonny Bono who was married to Cher and who later became a United States Congressional Representative) extended the terms of the duration of copyrights; and the *Digital Millennium Copyright Act of 1998* (the DCMA) criminalized some cases of copyright infringement.

## The Definition of Copyright

The U.S. Copyright Act provides for the protection of "original works of authorship that are fixed in tangible form." Ideas cannot be copyrighted but their "literary expression" can be protected. Thus, for example, you cannot copyright the idea for a new way to facet a gem, but you can copyright a written description and drawing of the process. As the holder of a copyright, you have the following **exclusive** rights with respect to your copyrighted work:

- You may make copies of the work.
- You may create derivative works using the copyrighted work as a starting point.
- You may sell, give, or otherwise distribute copies of the copyrighted work to the public.
- You may establish (legal) conditions under which others may make and distribute copies of the copyrighted material.

## The Term of Copyright

All "original works of authorship" are born copyrighted under U.S. copyright law. This means that from the moment your publication exists in tangible form it is protected by copyright—even if you have not explicitly included a copyright notice. According to the law, "tangible form" includes documents that exist on computer systems and digital storage media as well as those actually printed or handwritten on paper. The protection afforded by copyrights also extends to drafts of publications and unfinished works.

For individual authors, copyright protection for material created during or after 1978 lasts for the life of the author plus 70 years. For organizations the copyright lasts for 95 years from the date of publication or 120 years from the date of the work's creation, whichever occurs first. Unless previously explicitly released by the copyright holder, the work enters the public domain at the end of this time. Material created or published prior to 1978 is protected for various amounts of time depending upon the date of publication.

| <b>Date of Material</b>                               | <b>Duration of Copyright</b>  |
|---|---|
| Created during or after 1978                          | Author's life plus 70 years. For organizations, 95 years from the date of publication or 120 years from the date of creation, whichever is shorter. |
| Created, but not published, before 1978               | Author's life plus 70 years. For organizations, 120 years from the date of creation.  |
| Published during or after 1923 <u>and</u> before 1978 | 95 years from the date of publication.  |
| Published before 1923                                 | The material is now in the public domain.   |

## Why Copyright?

The usual reason for copyrighting a publication is to prevent others from profiting from your work. This reason is probably not that important to bulletin editors such as ourselves, but if you or your society has researched and labored over the creation of a special publication, you might wish to copyright it. Doing so will prevent other individuals, organizations, and businesses from copying, selling, and making a profit from your society's work.

Another important reason for copyrighting a publication is to protect you and your society from any liability that might arise from someone else copying your publication inaccurately. Suppose, for example, that someone copies and distributes a field trip description that you, as editor, placed into your society's bulletin. But, suppose that the person who did the copying left out the warnings or indications of hazards that you included in your original write-up. Having the original write-up copyrighted may help to protect your society from liability if someone is injured as a result of using the inaccurate copy of your field trip article.

It is an unfortunate aspect of today's society that lawsuits abound. Copyrighting your society's publication against improper use is one tool that can be used to protect yourself and your organization.

## How to Copyright

What must you do in order to copyright your society's bulletin, other special publication, or website? The answer is:

**Absolutely nothing!**

That's right. According to the provisions of the Berne Convention, all works created since March 1, 1989, are automatically copyrighted—even if they do not contain a notice of copyright. (Conversely, anything created prior to March 1, 1989, **must** contain a copyright notice in order to be copyrighted. Any and all material published in the United States before this date without a copyright notice is in the public domain.)

The Berne Convention and U.S. copyright law notwithstanding, it is generally recommended to include a notice of copyright in all publicly-distributed copies of a document, publication, or article. The location within a document is generally unimportant, but tradition dictates that the copyright notice be placed on or following the cover or title page or on the rear or inside rear cover.

The copyright notice consists of the word "Copyright," the symbol "©" or "(c)," or the abbreviation "Copr.," the year of the material's initial publication, and the name of the copyright holder. The copyright holder may be one or more individuals or organizations. Here are two examples of copyright notices:

**Copyright © 2015 by Richard Busch**

**Copyright © 2015 S.C.R.I.B.E.**

Placing a notice similar to one above in your publication or on your website will reinforce the fact that it is copyrighted. Note that the word "by" is optional. For the truly paranoid, it is possible to obtain a **registered** copyright by filling out the necessary forms and sending them, along with a copy of the

publication and the appropriate fees, to the Copyright Office which is part of the Library of Congress. Registering a copyright is a good idea if you are writing a book for sale, but for the editor of the bulletin of a non-profit, educational, hobbyist organization, it is unnecessary. For more information on registering copyrights, it is suggested that you refer to one of the references listed at the end of this article, or contact a copyright attorney.

## Copyright Etiquette

In practice, it is generally regarded as good publishing etiquette to include any special copyright restrictions or permissions along with the address of the copyright holder in the copyright notice. These permissions and/or restrictions can be any legal conditions that you want to impose on those who might wish to copy and redistribute your work. Here, for example, is the copyright notice that I used in my society's bulletin:

Copyright © 2015 by the Rocky Gem and Mineral Society, Inc.

Except for items that are specifically copyrighted by their authors, other societies may use material published in *Rockette* provided that proper credit is given and the sense or meaning of the material is not changed.

Editor: Richard Busch (<my address>).

As another example, here is the copyright notice used in a special publication that was produced by my society:

Copyright © 2012 by Richard A. Busch and Joe Smith

Permission to reproduce and distribute this booklet, in whole or in part, is hereby granted subject to the following conditions:

1. The material contained within this booklet may neither be reproduced nor distributed for profit, nor may it be distributed in conjunction with any commercial enterprise.
2. The sense or meaning of material contained within this booklet may not be changed.
3. The authors' notice of copyright must accompany all reproduction and/or distribution of this material.

Authors:

- Richard A. Busch (<Busch's address>)
- Joe Smith (<Smith's address>)

To completely restrict anyone from copying or redistributing any of your work, include the phrase “All rights reserved” in your copyright notice; for example:

**Copyright © 2015 by Richard Busch. All rights reserved.**

## Copyright: A Double-Edged Sword

If you can use a copyright to prevent others from unfairly using your publication, then others can use a copyright to prevent you from using their material. Right? Well ... unless the copyright notice specifically grants you permission to use the material ... then, yes, to a very large extent, you are prohibited from using copyrighted material. However, there are ways of legally circumventing copyrights, at least to a partial extent. Some of these methods are discussed next.

### Ask for Permission

It's amazing how many people simply do not consider asking the author or publisher of a book or article for permission to use the copyrighted material. My experience in asking to use someone else's copyrighted material has always resulted in one of two outcomes: either I don't get a response at all, in which case a second letter or follow up phone call is appropriate, or I get permission. My requests to use copyrighted material have never—**ever**—been turned down! It's easy to understand why. From the copyright holder's point of view, it's good, free advertising.

Of course, you have to ask permission in the right way. Here is a sample of the letter that I use:

February 5, 2015

GeoBooks, Inc.  
12345 Tectonic Street  
Laramide, CA 98765-4321

Dear Sir:

I would like to request permission to reprint the following item in the newsletter of the Rocky Gem and Mineral Society:

<author; title; other identifying information; page numbers to be used>

The Rocky Gem and Mineral Society is a non-profit organization which consists of about fifty amateurs who share common interests in mineralogy, gemology, geology, and paleontology. One of the stated purposes of the Society is to educate our members, and members of the general public, in various aspects of earth science and the lapidary arts.

Please be assured that GeoBooks, Inc., as well as the individual authors, will receive full credit for items included in our newsletter. If you wish, I would be pleased to mail you a copy of the issue of our newsletter in which the item appears.

Enclosed is a self-addressed, stamped envelope for your reply. Thank you very much for considering this request.

Very truly yours,  
Richard Busch, Editor  
Rocky Gem and Mineral Society

Some points to note about the above letter:

- Clearly identify the copyrighted material that you wish to use.
- Indicate how you intend to use the material.
- Identify your organization and state that it is non-profit and educational in nature, if appropriate.
- Assure the author or publisher that they will receive full credit in your publication and follow through on that promise.
- Offer to send them a copy of your publication.
- Make it easy for them to say "yes" by enclosing a self-addressed, stamped envelope for their reply.

Lastly, when you publish copyrighted material which you have received permission to reprint, include the words "Reprinted with Permission" in the credits along with an indication that the material is copyrighted, and by whom it is copyrighted.

## Paraphrase

According to copyright law, although the actual words and pictures in a publication may be copyrighted, the **ideas** in the material cannot be copyrighted. If you want to pass some particularly interesting information along to your readers but you are unable to obtain permission from the copyright holder to do so, then rewrite the material in your own words.

Paraphrasing someone's copyrighted article can be tricky at times. The intent in paraphrasing is to accurately re-convey the ideas in the copyrighted work without resorting to using the original text of the source. But, how do you know when you have paraphrased enough? The following method is used by one of my co-workers when he needs to copy something. He calls it "The Gilligan's Island Approach." Here's how it works...

Carefully read the copyrighted piece of information. Do **not** take notes. When you have finished reading, put the original away. Now, go watch an episode of *Gilligan's Island* on the television (or do something else for half an hour that totally occupies your attention). At the end of the episode or other activity, sit down and write your article from memory. Do not, under any circumstances, refer back to the original article while you are writing your version.

## Employ "Fair Use"

The U.S. Copyright Act defines and permits the "fair use" of copyrighted material **without** having to get permission from the author or publisher. To qualify for fair use:

- The amount of material copied must be limited.
- The use must be private, educational, or journalistic.

The Copyright Act does not specifically define how limited is "limited"; but it is reasonable to assume that copying three or four paragraphs or one drawing or an illustration from a copyrighted publication would qualify for fair use. (These amounts are, in fact, the limits that I have established with regard to my society's bulletin.) As a general rule, fair use is permitted to the extent that the value of the original copyrighted work is not diminished.

As far as meeting the "private, educational, or journalistic" requirement, nearly all amateur gem and mineral clubs have "education" as one of their stated objectives. That, coupled with the non-profit status of most gem and mineral societies, qualifies you, as bulletin editor, to use material under the fair use provision of the copyright law.

If you do use copyrighted material as a fair use item, you should make certain that you cite the original source of the material. As an added measure, you might include a notice similar to the following:

**Reprinted for educational purposes  
under the "Fair Use" provision of the U.S. Copyright Act**

Over-reliance on fair use material should be avoided. If you can, first try to get permission from the author or paraphrase the material. Stephen Fishman, in *The Copyright Handbook*, suggests keeping a variation of the Golden Rule in mind with regard to fair use: Use only as much copyrighted material under the provisions of fair use that you would not mind others using if the copyrighted material belonged to you. Nevertheless, an occasional use of fair use material in your bulletin is not only fair, it's legal.

### **Public Domain Material**

No discussion of copyrights would be complete without mentioning material that has been placed into the public domain. Public domain material may be copied and used by anyone without having to obtain permission to do so. Generally, work becomes public domain in one of two ways: Either it is explicitly made public domain when created by the author, or the copyright expires on a previously copyrighted work.

Are there really that many publications which are made public domain when initially created? Yes, absolutely! All federal government publications, and many other materials whose creation was funded with public money, are in the public domain. For us earth science aficionados, all material put out by the U. S. Geological Survey, the Bureau of Land Management, and similar federal agencies is in the public domain and may be used freely—even copied and sold in its entirety—without the need to obtain permission. Further, the publications of some state and local governments are in the public domain.

Other publications may have been deliberately or accidentally placed into the public domain when they were created. As a rule, if material published prior to March 1, 1989, does not contain a copyright notice, it is in the public domain.

As mentioned earlier, copyrights have lifetimes. When a copyright expires, the work enters the public domain and may be copied, used, distributed, or sold by anyone. **All works with copyright notices dated before 1923 are now in the public domain.** Material copyrighted during or after 1923 may or may not be in the public domain depending upon the circumstances of the copyright. See the chart showing the duration of copyrights, presented earlier. Generally, to be safe, you should assume that everything copyrighted on or after 1923 is still protected unless you have definite knowledge that a particular work has been released into the public domain.

## Some Final Thoughts

All published material, whether copyrighted or not, is the result of somebody's hard work. Regardless of the conditions under which you reuse published material—with permission, paraphrased, fair use, or public domain—you should always give credit to the original source. Recognition is a powerful motivator. Additionally, you will call your own integrity into question if you do not give credit where it is due. If in doubt, give credit. It never hurts.

Copyrights apply to more than just the printed word. Drawings, photographs, maps, illustrations, videotapes, websites—every original work of authorship that is fixed in some tangible form—can be copyrighted. Keep this in mind the next time you want to include a drawing, cartoon, field trip map, or some other non-textual item in your bulletin. The most common copyright violation I have seen in gem and mineral bulletins is the inclusion of field trip maps from copyrighted publications. Although such use may be permitted under the fair use provision of the copyright law, the author of the map should be given credit. A better alternative to outright copying of drawings and maps would be for you to redraw or trace the item.

Lastly, this paper is the result of an amateur's research into copyright law. For a definitive answer to any copyright question or concern, you should consult the law itself or a qualified copyright attorney. You may also call the Library of Congress' Copyright Office at (202) 707-6737 to speak to a copyright information specialist; or (202) 707-9100 (a 24-hour answering machine) to order copies of the information circulars mentioned in the reference list below.

## References

United States Copyright Office

*Copyright Basics (Circular 1)*; Library of Congress; Washington, DC; October, May 2012.

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*How to Investigate the Copyright Status of a Work (Circular 22)*; Library of Congress; Washington, DC; February 2013.

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*The Copyright Handbook: What Every Writer Needs to Know*; Nolo Press; Berkeley, CA; October 2014.

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