

Copyright, Public Domain, and the ABANA Newsletters

Things to think about when reprinting work by other authors

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Let's just suppose that you've been asked to be the editor of your chapter newsletter. Some people would say that this position is an honor, others would say it's more like a curse... either way, it is a big job that carries a lot of responsibility.



One of the ways that you'll be able to fill the pages of your newsletter is by reprinting work that appears in other chapter newsletters. There's a voluntary newsletter exchange program where editors swap newsletters and reprint articles that appear in other parts of the country. This has been a way to get a great deal of high quality information distributed to a lot of people. With only a few exceptions, there haven't been any problems in the past between the original authors and the editors of other newsletters.

But before you start reprinting, there are a few things about copyright and public domain that you need to be aware of. I need to preface this article by saying that I'm NOT a lawyer. I've done a lot of research into copyright law, but there's tons of stuff that I haven't read. So you'd better take everything here with a grain of salt. And before you get upset at me, or ABANA, or the ABANA Board, remember that I'm writing about Copyright Law of the United States. We didn't come up with these rules, they have been developed over a period of one hundred years and have gone as far as the US Supreme Court. This article contains the "Cliff Notes" for the normal rules of the publishing industry, albeit in a very abbreviated and relaxed form.

The first thing you need to know is about copyright status. If you ever ask yourself, "I wonder if this article is copyrighted?" then the answer is almost always yes. At one time, it was required that copyrighted works display the "circle C" symbol or the words "Copyright" and the date, but not anymore. Copyright exists from the moment a work is created... in our case, the moment an article is written down. Copyright law has been modified many times over the years, and this is one of the changes that were made in 1978. So the notion that "If it doesn't have a copyright notice, then it isn't copyrighted" is not true.

So in fact, whether the writers know it or not, ALL articles that are written for the chapter newsletters are protected by copyright. This copyright belongs to the original authors, and not the editors. (In many cases the editors are the original authors, though).

The exception to this is when the original author of an article gives up his or her copyright and grants it to the public domain. There are a lot of myths about public domain... one is "If it's posted on the internet, then it's public domain." Not true. While posting on the internet certainly makes it easy to copy someone's words, the act of posting something doesn't make the material public domain. There are two good articles about copyright myths on the internet. One is called "10 Big Myths of Copyright Explained" by Brad Templeton and can be read at <http://www.templetons.com/brad/copymyths.html>. Another is "An Intellectual Property Law Primer for Multimedia and Web Developers" by Diane Brinson and Mark Radcliff, it can be found at <http://www.eff.org/pub/CAF/law/ip-primer>.

Public domain status can only be granted by the original author or copyright owner of an article. In most of the cases that we'll be dealing with, the original author is also the copyright owner, but not always. These rights can be sold to a book publisher, for example. Public domain has to be explicitly stated, like in a signed, dated document that says "I hereby grant my article called "nailmaking" to the public domain" or words very much to that effect. It's nearly impossible for public domain status to happen any other way for an article written after 1923.

And guess what? A lot of good blacksmithing articles were written before that date. Be careful WHERE you get them, though. Publishers like Dover and Lindsay reprint a lot of old books, and you can't just start xeroxing stuff out of those or other reprints. Those EDITIONS are copyrighted, plus there are other rights, like distribution right, public display right, rights of publicity, etc, that may or may not apply. We are starting to get into pretty sticky territory here, and an intellectual property lawyer would probably be required to keep you out of trouble. So consider the source, and go to the original material. If you can get your hands on an original copy of the Blacksmith and Wheelwright Magazine, for example, issues before '23 are in the public domain, and can be used in newsletters. Old books can be purchased through internet bookfinding services like Bibliofind. It's good editorial practice to fully document your source, though, citing the original author, publication, and publication date.

Another common misconception is that "If there is no charge for the article, then it isn't copyrighted", or "If I don't charge for it, then I haven't violated any copyright laws." Neither case is true. Whether you profit from an infringement or not can affect the damages that are awarded in court, but it won't change the verdict. If a copyright infringement affects the commercial value of the article... for example, if you copied entire chapters from a book that's on the market... the damages can be quite high. Granted, that's an extreme example, but does illustrate an important point. Whenever money starts to come into the picture, then you can get into trouble pretty quickly. Remember at the beginning when I said, "With a few exceptions there haven't been any problems? One of those exceptions involved a chapter creating a "Best of the newsletters" publication as a fundraiser for their chapter. This publication had a lot of articles from other newsletters, one editor's work was featured heavily. His argument was that another chapter was profiting from his work, and had never asked his permission. He protested, and the publication had to be removed from sale. Thankfully, that was the end of it, but it could have turned into an expensive situation. The moral of the story is be extra, extra careful if you intend to charge money for someone else's work in any form, for any reason.

We haven't discussed an important part of copyright law, and that's the concept of "Fair Use". Fair use is an exception to copyright law that allows you to copy small amounts of other's work for certain purposes. The idea was developed so that copyright doesn't infringe on your right to free speech.. Fair use allows things like commentary, critical review, education, news reporting, and parody to happen without fear of infringing copyright.

The problem with fair use is that it's definition isn't clearly stated in the law. There have been many times when a copyright infringement was defended as fair use, but this defense didn't fly with the court. There are a number of tests that apply to fair use...Brad Templeton says in his article [10 Big Myths About Copyright](#),

"Fair use is almost always a short excerpt and almost always attributed. (One should not use more of the work than is necessary to make the commentary.) It should not harm the commercial value of the work — in the sense of people no longer needing to buy it (which is another reason why reproduction of the entire work is generally forbidden.)"

Just because a use is educational doesn't mean it's fair use. Many fair use determinations are made on a case by case basis, in court. This is definitely a place where we don't want to be. I have heard a rumor that the courts won't take a case where there is no commercial value to the infringed article... for example, unpublished works... but I haven't been able to confirm this. I certainly wouldn't bet my house on it.

Now, there is a point here that's somewhat valid. "I'm only printing 120 copies of my newsletter, for God's sake... do I *really* need to worry about all this?" In my opinion, probably not. You shouldn't *worry* about it, but I think it's important that all chapter editors *know* about it. In all likelihood, you'll probably never have any copyright hassles, and the risk diminishes as the numbers get smaller. But it's like the story of Francis' reply when someone asked him, "Is this straight enough?" It's either straight or it isn't. With copyright, you're either right or your not right, and it's part of your job as an editor to know the difference.

One of the easiest things that you can do to avoid any copyright hassles is to ask for permission to reprint something whenever there's any doubt. Most of the Chapter newsletters have a statement on the mast-

head or inside cover about chapter use of articles appearing in their newsletter. Here's our copyright statement that we use in the Appalachian Area Chapter newsletter:

"Other ABANA Chapter publications may reproduce items in this newsletter, but please acknowledge the AAC as well as the original source. Commercial use of any part of this newsletter is prohibited. ©2000 Brian Gilbert. "

Most other newsletters have a similar statement. Whenever you accept an original article for publication, it's probably a good idea to mention your chapters reprint policy and let them know there's a good chance that their article will appear in another part of the country at some point. Every author that's written for the AAC has had no problem with this, but still, it never hurts to point this out.

This brings us to the subject of ABANA's copyright policy. Until very recently, ABANA did not allow reproduction of the material that it published in the Chapter newsletters. This is because ABANA didn't own all of the copyrights to all of the articles published, the original contributors did. So ABANA said that the Chapter editors had to get in touch with the authors to get reprint permission. This is a standard practice in the publishing industry, but it didn't make the Chapter Editor's job any easier. So starting in 2001, materials submitted to the Hammers Blow must include a copyright release that I keep on file. This release covers use by ABANA and the Chapters, so that it's no longer necessary for the Chapter Editors to get permission to reprint... I've already done that for you. There are a couple of conditions with this, though. The reprinted article must include the following line:

"This article originally appeared in the (March 2001) issue of The Hammer's Blow, and is reprinted courtesy of ABANA. All rights reserved."

The *Hammer's Blow* is still copyrighted by ABANA and the original authors. This means that the Chapters have permission to reprint articles for NON-COMMERCIAL USE... you can't sell these articles unless you make arrangements with ABANA and the original authors. Also, this permission doesn't cover old issues of the *Hammer's Blow*... no copying old stuff... but starts with 2001 forward. The article must include the author's name and must be reprinted in it's entirety. After all, it wouldn't be fair for the author to get the flak for being incomplete when someone else left information out of his or her article.

So that's a quickstart version copyright law. The full version can go on and on. Again, I'm not a lawyer, and even they don't know EVERYTHING about this subject. Books about copyright law can be pretty dry, but they remain the best source of information. Info about copyright changes rapidly, and the internet is a good place to stay up-to-date, especially in the electronic media area. One book that I can recommend is *The Writer's Legal Guide* by Tad Crawford.

Remember, being an Editor is a big responsibility, but the rewards are great as well. So "Don't Panic," to quote the late Douglas Adams, and enjoy helping to spread the word about Blacksmithing.

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