

Copyright and other rights for magazine articles (and books)

Other than marketing, nothing is more confusing to the new writer than the issue of rights. Actually, there is little reason for bewilderment, anxiety, or even undue concern.

Two kinds of rights are involved in freelance sales. "Copyright" is one; "all rights," "first rights," "second rights" are the other. While they sound perplexingly similar, they are distinct in purpose and means of procurement. So let's discuss each separately.

But first a disclaimer. I'm not a lawyer, and if you have specific questions about any of the rights discussed, you should seek legal counsel. Copyright seems to be the biggest bogeyman, though it's hard to see why. Nothing could be more straightforward or easier to register. Nor is any term more often misused when applied to writing. The standard question is "Did you copyright your article, script, book?" When in fact the only question is whether you registered the copyright, which you rarely do for articles.

What isn't understood is that in a common-law country such as ours, the rights to the copy come with its creation. As you write an article or take notes in a class, when you "fix" a mode of expression in "copy" (in our case so it can be read), that copy is "copyrighted" as it is written. The rights are automatically yours. You are creating property just as if you were sculpting a statue or painting a canvas. The rights are yours as the property is created, without need of further legal action.

Should somebody else take that property, sell it, and cause you financial damage, you could take that person to court. If

you could prove that you created that item, you should win. Stripped of 100 complications that nimble minds can imagine, it's as simple as that. But if you had registered it (sent the proper forms, fee, and copies of the item to Washington, D.C.) and placed the copyright symbol on it, your victory would be even easier. Because in the first example you must prove that the object was your creation. But once it's registered and properly identified, the other person must prove that he created the object. That's a big difference in court.

REGISTER OR NOT?

Then why not just register and put the symbol on everything? Because the first costs money and takes time, and the second can be counterproductive. In a business sense a copyright is worth registering only when an infringement suit might be needed to protect potential earnings. Yet such a suit is expensive. Many items would never earn enough to justify going to court. So only the potentially lucrative forms of creation usually get registered: books, scripts, music, lyrics, newsletters, software for computers, etc. As for the symbol being counterproductive, magazine editors don't expect you to "copyright" articles. Some are offended by the symbol and will refuse to use the material at all. They see it as one more proof of writer's paranoia, a warning from you to ensure that the editor won't use the manuscript without paying, or, horrors, shuttle it to a crony or a cousin in some remote bailiwick to somehow reap millions from it. In fact editors would be fools to put your words in print and not pay, as they know. Nor do 99% have the slightest interest in doing so.

What is the symbol and what does it mean? For literary items, it is a © followed by the date of creation and the writer's name. The symbol tells others that according to the Copyright Act of 1976 (title 17, U.S. Code) you, as the owner of the copyright, have the exclusive right to do and authorize others to do the following:

- to reproduce the copyrighted work in copies
- to prepare derivative works based upon the copyrighted work
- to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- to perform the copyrighted work publicly
- to display the copyrighted work publicly

For our purposes, you can register literary works, musical works (including words), dramatic works (including music), and motion pictures and other audiovisual works. But you can't register ideas, procedures, methods, titles, names, short phrases, or slogans, to select the most appropriate items related to our topic. (More details? Go to www.copyright.gov/forms.)

You don't copyright ideas. You create, and register if you wish, the expression of those ideas. Although you write about pet care you cannot somehow prevent others from writing about pet care, in general or particular. You have only the right to what you say about the topic: the words as used in your means of expression. Others can write about the same topic, even in a similar fashion. But they can't do it in precisely the same way, nor can they repeat or copy your writing. That right to copy is your copyright.

How do you register the copyright? In summary, you must complete the proper form and send \$35 (for an electronic filing) or \$65 (for a paper filing) plus the stipulated number of duplicates of the item to be registered. The symbol should be affixed to the item before it is sold or distributed publicly. Then you have up to a year to complete the registration once that item is sold or distributed. In certain cases you can also include many items of a similar nature (like poems) in the same form for the same fee.

CONTRACTUAL RIGHTS

Of more immediate importance are the rights that are purchased with your manuscript. Those are contractual rights. They define how often the editor can use your copy, and are part of the three-element definition of contract: offer, consideration, and acceptance. You want to sell your writing to an editor, yet you must know what you are selling, when, and the limits to how it can be used. Copyright provides a general legal framework for your protection. The contractual rights make that specific.

You write a query letter: "Would you be interested (in buying) an article about ..?" Or you submit a finished manuscript. Either is an offer. Consideration refers to money. Since the pay rates of most publications are listed in the current *Writers Market*, or that information is readily available, and it is understood that commercial publications pay for manuscripts used anyway, consideration is generally understood as being implied in this relationship and need not be mentioned in the correspondence or transaction. (If there was any doubt at the time I was dealing with the editor, however, I'd mention it, and if doubt still persisted, get it in writing.)

What remains is the acceptance. For our discussion now the editor must at some point agree that the article will be bought. Somewhere between the offer and that acceptance you should know the rights that will be purchased. Usually that is simple. The *Writers Market* entry will state: "all rights bought" or "we purchase North American first serial rights" or whatever. (Serial means magazine.) If that is acceptable, no mention of rights need be made in your correspondence. As long as the edition of that guide is current and the editor doesn't alter that information, you can expect those rights to be bought.

Again, if it's unclear or you want absolute confirmation, explain this to the editor. If nothing is stated concerning the rights bought, ask.

These rights fall into three general categories: all rights, first rights, and second rights.

Many of the highest-paying publications want **all rights** (yet many of those will settle for first rights). "All rights" is as comprehensive as it sounds. The publication buys all the rights to what you wrote, to use as it sees fit, in the first printing, subsequent printings, anthologies, and so on. Sounds dreadful until you realize that all the editors bought was the expression of an idea in the words as written. They can make modest editorial changes in the text, but their use is limited essentially to what you provided. They didn't buy the idea, nor can they prevent you from using that idea elsewhere in another fashion or in other words.

So all rights is far less restrictive than it implies, and usually pays the best (though it's rarely bought now). Don't quibble, just rewrite it for other markets. The scope of change must be significant: a new title, lead, quotes, and conclusion. A better way is to find a different slant or approach and write a different article altogether. Facts are reusable, ideas can't be embargoed, and an all-rights buy can indeed be all right!

But **first rights** is better, since the very same article without a word's change can be sold again and again, after it has been in print. First rights entitles the editor to use the article first, which implies that it has never been in print in that form before. So you must adhere to that understanding, and by any sense of propriety, if not logistics, not sell that specific copy to more than one editor at a time.

What do you do if an editor buys it and doesn't use it? Can you sell that manuscript again? No, you can't. But after a reasonable period of time, which could be from several months to a year, I'd contact the editor and ask when the manuscript is going to be used or whether the publication would return the rights to you. (Keep the money, though. You sold it in

good faith. Their decision not to use it was just that, their decision.)

The minute a first-rights sale hits the stands, you can sell the rights again, as **second rights** or **reprint rights**. There is no exclusivity there, nor often much recompense, yet it can be profitable. For many years I sold the original copy, after first rights had been bought, two or three more times as reprints, which meant I doubled, sometimes tripled, my income!

How can you sell a reprint? Make a list of all the publications that might be interested in the topic that buy second or reprint rights. Then write a fetching one-page cover letter to accompany a copy of the actual sold article. In the letter I'd tell the respective editors, in the first two paragraphs, the virtues of the topic and prose, and I'd include in the third paragraph a statement something like this: "As you can see from the copy of the article enclosed, I sold first rights to X Magazine and it was published on Y date. I am offering second/reprint rights."

In the fourth paragraph I would offer any photos I had available, and in the fifth, I'd offer to send the original download file, if interested, for their easier use. I'd include my email address in the cover letter and, if they asked in the *Writer's Market*, an SASE too.

If one or five editors bought the reprint, super! Remember, no exclusivity.

Just don't worry much about rights in the beginning, or really ever. Worry about writing something worth stealing, then sell it.

In a week or so I'll share a blog [here](#) about paranoia, what to do if in fact your works are "stolen," and your many remedies (including puffery, that they stole from you!)

If you want the law stuff in an actual writing context, it's

better seen in the [Travel Writer's Guide](#).

Best wishes,

Gordon Burgett