



Fellenius, B.H., 2012. On copyright and bureaucratic correctness. Geotechnical News Magazine, 30(2) 54-56

On copyright and bureaucratic correctness

Bengt H. Fellenius

When we submit a manuscript to a journal, we always have to sign over copyright to all the illustrations, i.e., photos, figures, diagrams. We consent to sign lots of little things like that, whether it is sending a child to a hockey practice or swim team, or other extracurricular activity, so why not also the right to reproduce the figures of our paper? The form to sign is long, but that's only legalese, right?, so we do not see any problem in essentially giving the journal the power to do just about anything they'd want with the figures, now and "for perpetuity". Nobody minds that the journal publishes and reproduces our paper. We'd mind if they did not! So, the more that body, to whom we give over the right, publishes and exposes our work, the happier we are. But, what about our own rights?

Well, the American Society of Civil Engineers (ASCE) uses a form that states: "*The undersigned author retains the right to revise, adapt, prepare derivative works, present orally, or distribute the work provided that all such use is for the personal noncommercial benefit of the author*". Covers all desired and more, eh?

The Canadian Geotechnical Journal (CGJ) uses a form stating: "*Ownership of the copyright in the material contained in the Manuscript remains with the Author, provided that, when reproducing the Manuscript or extracts from it, the Author acknowledges and references publication in the Journal*", and a little bit further along in the legalese the right "*to reuse all or part of the Manuscript in other works created for noncommer-*

cial purposes, provided the original publication in an NRC Press journal is acknowledged through a note or citation in a format acceptable to NRC Press". In effect pretty well what the ASCE lets us retain.

So, would anyone have a problem with this? Perhaps not, but the proof of the pudding lies in the eating. What many do not realize is that, by signing over the copyright, we do not own our material any longer. Obviously, we are free to use and re-use it for any non-commercial purpose. Note the ASCE words with regard to the rights of the author: "*to reuse for personal non-commercial benefit of the author*" and the NRC Press "*to reuse for noncommercial purposes*". However, where they catch us is in the "*noncommercial*". Most journals are entities for-profit, i.e., commercial enterprises, so re-using, say a photo, that was published in the CGJ in paper submitted to the ASCE Geotechnical Journal, means that the figure is being re-used in a commercial context. Therefore, we are required to obtain proof of permission to re-use from the publisher of the first paper (CGJ), to be presented to the second publisher (ASCE), and the soacquired permission has to be indicated in the manuscript. The issue is not our rights, commercial or otherwise, it is the commercial right of the legal owner of the property, the Journal having published the figure the first time.

It does not matter whether an image to re-use is from the author's own previous paper or from that of some other person, the figure is owned by the journal that published the paper, and,

in addition to stating the source of the image (done by standard publication reference), permission for reuse has to be obtained and proof of permission has to be provided to the for-profit Journal that is going to publish the new paper. Note, your paper will not be accepted with re-used images, unless you obtain a permission to reuse and submit this to the publisher. I have just had the experience of serving as an assistant editor to a book to be published by the ASCE, where I had to convince more than one author (with senior company position) that I was serious in my request that he provide a letter signed by himself that permits himself to use a diagram from his company report in the paper authored by himself. More than a couple of the authors, when asked to arrange for the permission for re-use of a figure from an earlier paper, replied—generously—that "*I wrote that paper and I permit the re-use of the figure*". They are not lying, they did write the paper, but they do not own the rights to re-use the figures. There's more to reality than political correctness. Bureaucratic correctness, for instance. We have to learn to live with both.

The rules for reuse apply to all previously published material, including photographs. Of course, between the well-established professional journals, this is little bother. The CGJ, for example, has an efficient on-line procedure. What's a half-an-hour of time compared to the 100 hours of productive work that went into the writing of the new paper? However, when the previous publication was in

less common publication, say a trade magazine, obtaining the permission sometimes becomes less simple. Such magazines often want to cash in on the publicity by asking for an acknowledgment running at the figure caption with complete reference that contains one or two lines of text in the figure caption (in addition to the source listing in the References section of the paper). That may require two extra lines for each such figure. Rightly, authors may find a series of such extra lines undesirable, as they may impact the fitting all of the material to the length limit assigned for the paper. But the magazine has the right to demand it. Before permitting the re-use of an image, some magazines require that a copy of the image in question is forwarded for their review and verification that it is not changed; in some cases also that a little processing fee be provided—they are commercial entities, after all.

Still a minor problem. More awkward is that when using, say a diagram from an article in a magazine that now has ceased to exist. Their copyrights still exist, however, but how does one locate the owner of the rights so a permission can be solicited? In the US, most organizers of conferences require the authors to grant the conference to publish the paper in a proceedings. As the forms are more or less shortened or expanded versions of the ASCE form, the effect is that the author has signed away the commercial right. The problem is that if the author a few years after the conference was held wants to use a figure from a proceedings paper, where do you establish whether or not the proceedings are under commercial copyright, and, if they are, where do you find the rights holder who could be asked for the permission? Material produced by government—taxpayer money—are not under copyright, and copyright cannot be created by using a such figure in a paper, so re-use is allowed. It is sometimes difficult to establish that the figure you want to use is one of those, however.

Actually, a conference does not have to be that far back in time to make it next to impossible to locate the person in charge who can issue the permit. And, how does one prove that the issuing person does have that authority? Really, the organizers of ad-hoc conferences should seriously consider following the lead of the Canadians: With regard to copyrights, for papers submitted to an Annual Conference, the Canadian Geotechnical Society commendably limits the subject matter to requesting that the authors permit the conference to publish the paper, leaving the copyright with the authors, stating: *In assigning the rights and permissions to the Conference/CGS, copyright for the paper remains with the author(s)*. Therefore, once the reference of source is indicated in the caption as a paper to a CGS conference, the issue is resolved for figures you produced yourself. However, if you use that figure again, make sure that the figure caption indicates the original (the first) use of the figure as the source.

How do we best cope — I almost write “fight back”—with the permission to re-use requirement? Well, regarding photos, in this age of digital photography, it is easy to take, and store, more than one photo of an event. More often than not, you will find a duplicate photo in your files. Using it instead of re-using the previous photo will let you always to identify the image in your manuscript as “author’s photo” not used before. The attitude that “*as it is not clear who took or owns the photo, I call it mine to use*” is not satisfactory from legal and ethics point-of-view, as I was carefully lectured about during my brief bout as assistant book editor.

Want to re-use a previous diagram? Well, you have the data, so just replot the figure with whatever adjustment of the axes, symbols, etc. you find suitable. Then, don’t reference the previous paper by indicating it as the “source of the figure”, but as the “source of the data”. Write in the

caption: “*data from Migsjälv A. et al. (year)*” per standard style. It satisfies the requirement for indicating the source of the data (the previous paper) and it establishes you as a creator of the diagram. There is no difference in this regard whether the image is a previous figure in a paper you wrote or one from a paper that somebody else wrote. You are always allowed to use published data. So, if the previous paper is by somebody else, scan the figure into an image, then, digitize the image to extract the data, and, finally, plot the data so-extracted. I use a commercially available software called “Didger”, marketed by Golden Software. With it, a graph containing one or two curves with, say, five or eight points each, I can digitize into a text file in five minutes. It will take me another five minutes to import the text file to Excel and produce a graph for my paper. The effort of time invested in less than that required to compose a letter requiring permission to reuse and then to provide proof of the permission to the Journal. You know, particularly for a figure from the olden days when a trained draughtsman plotted the figures, I can get the data in sixteen decimals, whereas the draughtsman worked from at the most two. And, if the figure is from later days, my plot is probably a good deal neater than the original image.

The Canadian Geotechnical Journal papers can be download for free by members of the CGS, which means that when you want to use a figure, you can get a print screen from a high quality pdfformat electronic version to digitize, rather than by scanning it from the annotated multi-generation xerox copy in your files. (If you want to re-use the image rather than extracting the data, you do need to get that on-line permission, though). In contrast, you have to pay \$25 for every paper you want to download from the ASCE Journal or pay a substantial one-shot annual fee (I’d be quite surprised if the costs of managing that is covered by the income generated).

Be careful when you use figures from the Web. Many of them are not under copyright, but some are. It is almost impossible, always time-consuming, to prove that a particular illustration is not under copyright. You can always use a figure from Google Map if you keep the Google logo and the ©-sign. However, some Google Earth figures do have copyright and getting permission to use may be a bit time-consuming. Note, if a figure, a photo, or a drawing is older than 75 years, the original copyright has expired and the figure is in the public domain. But make sure that the re-use is an image from the original oldie and not a younger reproduction that might have re-created a copyright.

If, instead of re-using an image, you want to re-use a text, make sure it is limited in length and marked as a quote by placing it inside quotation marks and, I suggest, use italics font. Otherwise, it could be looked upon as a plagiarism, which is never permitted. A regrettable and disgusting all too common form of “self-plagiarism” is when a paper is submitted to two different journals after some cosmetic

cuts and additions, a “double-dipping” in consequence to the “publish-or-perish” culture of the academic world. Presenting conference papers with similarity of material can be acceptable, however, because a conference paper is often written to support a presentation, not for archival purposes. Such conference re-use or repeated use should make proper reference to the main paper presumably published in a journal.

It is very important that every figure published in a scholarly paper be identified as to source, be it a part of the work described in the paper or a part of an earlier work, so that the information can be traced. As an aside, and a very important one, nothing should ever be re-used, copied, or quoted without proper credit given. However, the issue of copyright is a different matter and it is of little benefit to an author of a paper, only to the publisher. Perhaps, were the journals not protected by copyright, some enterprising group would scan and disseminate a journal the moment the original is published, marketing it at a fraction of the annual subscription. A waste

of entrepreneurship, of course, but when I look at the \$600 I just paid for receiving the 2012 hard copy issues of the two journals mentioned above, I almost wish somebody would.

At the same time as the world gets ever more hooked up on-line and copyrights become harder to protect, those that can be protected, gets stricter. It is understandable that at times bureaucratic correctness then rises its head. However, all you authors out there could make life easier for the next assistant editor to get through the day with sanity intact by paying a bit more attention to the rules and standards and think through the issues of source of data along with copyright and permission for re-use before submitting the manuscript. And apply the simple solution of extracting and replotting the data to be used in a figure in the paper.

Bengt H. Fellenius
Dr.Tech., P.Eng., M.ASCE
Consulting Engineer,
2475 Rothesay Avenue,
Sidney, BC, V8L 2B9

GET THE BIG PICTURE ... and send it in!

We'll feature your geotechnically related photo on our cover page !

Digital submissions of images pertaining to geotechnical subject matter are invited. Deadlines for this year's issues are July 15 and October 15, 2012. Submit suitable digital images as jpgs at 300 dpi; image size 8.5" x 11" (portrait). If submitting smaller images that require enlargement, please use higher resolution. Include photography credit and contact information. Send digital files to gn@geotechnicalnews.com. State subject as : *Cover Photo*

