

Origami Copyright

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The issue of the rights of a composer, diagrammer, or folder of an origami model have long been a topic of interest and discussion. With the growth of origami as a recognized mainstream art form and the simultaneous expansion of means of spreading origami (e.g., the Internet), the interest in and importance of these rights has never been greater. OrigamiUSA has recently obtained a wide-ranging legal opinion on the issue of copyright from a intellectual property attorney with 25 years of experience in the field. This document describes (1) our understanding of the law as it applies to origami and our attorney's interpretation of the law as it applies to origami, and (2) the policy of OrigamiUSA in light of that interpretation.

Origami USA has had occasion to consult with an experienced intellectual property attorney on a range of issues pertaining to copyright and origami. This document describes (1) our general understanding of copyright law as it applies to origami, and (2) the policy of Origami USA in light of that understanding. We caution the reader that this document is not intended to constitute legal advice and should not be construed as legal advice. Please consult with your own attorney regarding your own unique legal situation or requirements.

Part 1. Origami, Copyright, and the Law

WHAT IS ORIGAMI?

For purposes of this discussion, we are utilizing the following definition of origami:

Origami is a form of visual or sculptural representation that is defined primarily by the folding of the medium (usually paper).¹

WHAT CAN BE COPYRIGHTED?

The law of copyrights arises out of Article 1, clause 8 of the United States Constitution. Clause 8 grants Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Since 1976, Federal law has been the exclusive source of copyright protection in the United States.

The U.S. copyright law provides that original works of authorship fixed in a tangible medium of expression, which can be perceived, reproduced, or otherwise communicated, can be copyrighted. The following categories of works of authorship can be protected by copyright.²

- (1) literary works;

¹ Source: paperfolding.com, origami history. Quote attributed to Joseph Wu.

² 17 U.S.C. §102(a).

- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, or sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

Copyright protection does not apply to ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries,³ although such matters may be protectable through the use of patents. It is often said that copyrights protect the expression of ideas, but not the ideas themselves.

To meet the requirement of originality, a work must be independently created by the author and not copied from other works.⁴ This is not to say that a work may not incorporate elements of other works or work found in the public domain. However, protection will be limited to the original portion rather than any material that preexisted or is owned by another. Ultimately, protection will be granted only if the author can evidence some substantial contribution.⁵

Applying the above copyright principles to origami, it is clear that an origami object can be copyrighted as a pictorial, graphic, or sculptural work. It is equally clear that folding instructions and diagrams for an origami figure can be copyrighted as literary works.⁶ To the extent that instructions or diagrams for an origami work contain traditional folding techniques in the public domain, such portion of the instructions will not be protected by copyright.

WHAT ARE THE RIGHTS OF THE CREATOR OF THE ORIGAMI DIAGRAMS, INSTRUCTIONS, AND CREATIONS?

Under the copyright law, a copyright owner is granted exclusive rights to do or authorize any of the following with respect to the copyrighted work:⁷

- (1) to reproduce the copyrighted work in copies;
- (2) to prepare derivative works⁸ based upon the copyrighted work;

³ 17 U.S.C. §102(b).

⁴ See Am.Jur.2d, §99.04.

⁵ *Kaman Intern, Inc. v. Russ Berrie & Co.* (9th Cir. 1981) 657 F.2d 1059, 1061.

⁶ §2.04, *Nimmer on Copyright*.

⁷ 17 U.S.C. §106.

⁸ Derivative works are defined as a work based on one or more preexisting works, such as a translation, dramatization, fictionalization, art reproduction, abridgment, or other form in which a work may be recast,

- (3) to distribute copies by sale, rental, lease, or lending;
- (4) to perform publicly literary and other certain other types of works; and
- (5) to display publicly literary, sculptural, and certain other types of works.

The author of a work of visual art also has the right to require attribution of the work to him or her and to prevent any “intentional distortion, mutilation, or other modification of that work.” This right, however, only applies if the work is produced in 200 or fewer copies, the work is signed by the author, and the copies are consecutively numbered.⁹ For purposes of this memo, such work will be referred to as “Limited Edition Works.”

Applying the above to origami, we conclude that, subject to “fair use” and other exemptions discussed below, the creator of an origami figure has the following exclusive rights:

- (1) to make copies of the origami figure;
- (2) to prepare derivative works of the figure;
- (3) to distribute copies of the figure by sale or other means;
- (4) to display publicly the work, such as on a web site, in a photograph, in a trade show, in a television broadcast, and so forth.

The creator will have the right to require attribution to his or her works and to prevent intentional distortion, mutilation, or other modification of the work by a buyer of the work only if the work is a Limited Edition Work as defined above.

The creator of the origami diagrams and instructions, subject to fair use requirements and other exemptions, has the following exclusive rights:

- (1) to make copies of the diagrams and instructions;
- (2) to prepare derivative works of such diagrams and instructions;
- (3) to distribute copies of the diagrams and instructions by sale or other means;
- (4) to “perform” the diagrams and instructions, such as reading them for a public audience in a meeting or television program; and
- (5) to display the diagrams and instructions publicly.

It also appears that a creator of origami diagrams and instructions has the right to prevent persons from utilizing such diagrams and instructions, even in slightly altered form, for the construction of origami creations, unless such persons have purchased or otherwise obtained a copy

transformed, or adapted. Work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent the original, is a derivative work.

⁹ 17 U.S.C. §§106A and 101 (for definition of work of visual art).

of such diagrams and instructions in a lawful manner. This is because the copyright holder for plans for sculptural works can prevent infringement of such plans by parties who have access to such plans, slightly alter them, and thereafter utilize them to build sculptural works substantially similar to the copyright holder's work.¹⁰

It is also quite arguable that a copyright violation occurs when a person takes apart an origami figure to learn how it was folded and creates a folding method which is substantially similar to the diagrams or folding instructions created by the copyright owner of the figure. Although ideas and methods cannot be copyrighted and must be fixed in a tangible medium of expression in order to have copyright protection, the folding is an embodiment of the instructions in another medium (the folded paper) in much the same way that computer-readable object code generated from human-readable source code is protected by the copyright to the source code. On the other hand, if a person takes apart an origami figure and creates a new folding method which is not substantially similar to the folding pattern of the copyright owner of diagrams or folding instructions, no copyright violation has occurred. The display of a copyrighted figure created with an independently derived pattern may be a separate copyright violation, however.¹¹

HOW DOES THE "FIRST SALE DOCTRINE" APPLY TO ORIGAMI WORKS?

Under the first sale doctrine, the owner of a particular copy of a work, such as a person who has purchased a copy of a book at a bookstore, can sell or otherwise dispose of possession of that copy.¹² The copyright owner's rights enumerated above still apply to the new owner, however, unless subject to an exemption discussed below. Therefore, a person who buys a copy of an origami creation or of instructions or diagrams for such origami creation is subject to the same rights of the copyright owner that the original buyer of that copy was subject to.

HOW DO THE "FAIR USE" PROVISIONS OF THE COPYRIGHT LAW APPLY TO ORIGAMI WORKS?

The "fair use" of copyrighted material is an exception to the copyright owner's exclusive rights.¹³ Material that is used or reproduced for the purposes of criticism, comment, news reporting, teaching, scholarship, or research may be subject to the fair use exception and will therefore not constitute an infringement on the owner's copyrights. In determining whether the use made of a work constitutes fair use, the following factors are considered:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes,¹⁴

¹⁰ *Jones Bros. Co. v. Underkoffler* (M.D. Penn. 1936) 16 F. Supp. 729. That case involved the design for a cemetery monument which was altered slightly by another party and built without payment to the designer.

¹¹ See answer to question no. 11 below.

¹² 17 U.S.C. §109(a).

¹³ 17 U.S.C. §107.

¹⁴ An educational use is much more likely to be deemed fair use.

- (2) the nature of the copyrighted work,¹⁵
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole,¹⁶ and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.¹⁷

It has been our experience that the principal factors in determining fair use are whether the person claiming fair use is making a profit on the use of the copyrighted work and whether such use has diminished the value of the copyrighted item to the owner of the copyright. In short, commercial use, especially if it involves use of the entire copyrighted work, will generally not be adjudged to be fair use.

Educational use alone is not enough to constitute fair use, especially if the entire work is copied. For example, photocopying of a song for use by students and choir members “in furtherance of music education” was held not to be fair use, largely because the entire work was copied.¹⁸ Likewise, the photocopying of course materials for students was held not to be fair use.¹⁹ This is a highly controversial area of the law, and one that is very difficult to predict with any degree of certainty an outcome of a particular factual situation.

ARE THERE OTHER EXEMPTIONS TO THE EXCLUSIVE RIGHTS OF THE CREATOR OF ORIGAMI DIAGRAMS, INSTRUCTIONS AND CREATIONS?

As mentioned above, a performance of a literary work, such as the public reading of a play or book, without the permission of the copyright owner constitutes copyright infringement, even if the copy of the work is owned by the reader. Thus, the reading aloud of copyrighted origami instructions in public would normally be a copyright infringement.

There is an exception, however, for certain educational activities. Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction is not an infringement of copyright unless the person responsible for the performance knew or had reason to believe the copy utilized in such instruction was not lawfully made.²⁰ In order to qualify as an “educational institution,” an organization must be “primarily and directly engaged in instruction.”²¹ Moreover, the organization must be “nonprofit.” A broadcast to the public of such teaching activities does not qualify under this exemption.

¹⁵ Fair use is more likely to be found in the case of use of an item which has little originality or is highly factual, like a news story, than for a highly original item, like a work of art.

¹⁶ If most of the item is used or the “heart” of the item, such as a biography, is used, then fair use is less likely to be found.

¹⁷ If the use has diminished the value of the copyrighted item, fair use is less likely to be found.

¹⁸ *Wihitol v. Crow* (8th Cir. 1962), 309 F.2d 777.

¹⁹ *Basic Books, Inc. v. Kinko’s Graphics Corp.* (E.D. Mich. 1994), 855 F. Supp. 905.

²⁰ 17 U.S.C. §110(1).

²¹ Reg. Supp. Rep., p. 37.

As discussed above, a public display of an origami creation without the permission of the creator violates the copyright of the creator. For example, if a photograph of an origami figure from the creator's web site were copied and displayed without the creator's permission in a public show devoted to origami, that would constitute a copyright violation.

There is an exception, however, with regard to a lawfully acquired copy of a copyrighted work.²² For example, if an origami figure were purchased from the creator and displayed in an origami show, such display would not be unlawful. It is arguable that, in selling diagrams and instructions for an origami figure, the creator of that figure has implicitly assented to the purchaser's ownership of the copy of the figure produced from such instructions. Therefore, display of that figure would likely not constitute copyright infringement.

ARE THERE WAYS OTHER THAN RELIANCE ON THE COPYRIGHT LAWS THAT AN ORIGAMI CREATOR CAN PROTECT HIS OR HER WORK?

Most exemptions under the copyright laws can be waived. For example, a nonprofit educational institution could waive its right to teach an origami design without an additional payment to the creator of the design. Such waiver, and conditions of payment for such teaching use, could be included in a license of the design to the customer, much in the same way that software is licensed.

The creator of an origami design can seek protection for his or her designs under the patent laws.²³ But a creator cannot seek protection under both the copyright laws and the patent laws.²⁴ Most creators of designs prefer to utilize the copyright laws for protection, as the procedures and fees are simpler, faster, and less expensive.

²² 17 U.S.C. §109(c).

²³ 35 U.S.C. §73.

²⁴ *Jones Bros. Co. v. Underkoffler* (M.D. Penn. 1936) 16 F. Supp. 729.

Part II. OrigamiUSA Policy and the Law

In lay terms, here is our understanding of the law and OrigamiUSA's policy in light of our understanding of copyright law.

First, a few general principles:

1. Neither the images nor the folding sequences for *traditional* models — generally those over 100 years old — are protected by copyright, although specific diagrams for traditional models, such as those redrawn for recent publication, are protected.

2. Original origami compositions composed within this century *are* generally protected by copyright, whether or not they are marked, and whether or not they were purchased or obtained for free, unless copyright is specifically waived.

3. When you legally obtain instructions for a copyrighted origami figure, for example, by buying a book of instructions, along with that book you have the right to fold as many copies of that figure as you wish for your own enjoyment and/or for private display. However, you have not obtained the right to fold, teach, or display it commercially, unless that right is specifically granted in the instructions.

4. Folded origami figures are works of art and are protected by copyright. Specific origami *techniques*, however, are, in general, not protected by copyright but are potentially protectable by other means (e.g., patents).

Next, some questions and answers.

1. *May I fold someone else's model?*

It depends how you obtained the information on how to fold the model. If you purchased the instructions or diagrams from the copyright holder for such instructions or diagrams, then there is no problem. If you observed the model and figured out how to fold it, this would not be a copyright violation as long as you did not unfold the model and devise a system of folding that was substantially similar to the diagram developed by the owner of the copyrighted diagram or instructions. If the owner of the copyright to the model has no copyrighted instructions or diagrams, then there is no problem with your figuring out how to fold and folding the model in any manner you choose for your own usage. For publication or commercial usage, the conditions are tighter; see below.

2. *May I diagram someone else's model that I learned informally?*

It depends what you mean by "learned informally." See answer to the next question (no. 3).

3. *I have a new method of folding someone else's creation – do I have the right to diagram it?*

Yes, if you developed your method of folding independently, without reference to the

folding of the creation (i.e., by unfolding the creation) or the creation's instructions or diagrams. If you had access to the creation's folding or instructions or diagrams and your method is not substantially similar to the folding diagram of the creator, then your method is not infringing. If your method is substantially similar to the creation's instructions or diagrams and you had access to such instructions or diagrams, then you should obtain the permission of the holder of the copyright to such instructions or diagrams prior to creating or publishing your diagram.

Keep in mind, however, that if you have diagrammed someone else's model, the final diagram shows what is essentially their finished work. That work, and any derivative representations of that work, is still protected by copyright. That is, you need the same permission as outlined in the answer to question 11 below.

4. *May I photocopy someone else's origami diagrams?*

U.S. copyright law permits limited copying for research and personal use. Such copying is governed by four "Fair Use" principles (See Title 17, Section 107 - <http://www.copyright.gov/title17/92chap1.html#107>). Generally, making multiple copies, copying an entire work, or redistributing copies are not permissible.

5. *May I re-draw someone else's diagrams and use them as my own?*

If your redrawing is based on an original copyrighted diagram and is substantially similar to the original, then your drawing is an infringing work and violates the copyright laws. Therefore, you should obtain the permission of the copyright owner of the diagram before redrawing it.

6. *May I teach someone else's model?*

Generally not without the permission of the owner of the copyright to the model, unless you are teaching a class under the auspices of a nonprofit educational organization and all copies of the diagrams, instructions, and/or model utilized in your class have been obtained lawfully by you.

7. *May I make a video tape of a person teaching someone else's model, and sell the tape?*

Not unless you obtain the permission of the creator of the model.

8. *May I display on my web site or in other public forums a picture of an origami figure I copied from the creator's web site?*

Not without the permission of the creator.

9. *May I display in origami shows and other public forums an origami figure I purchased from the owner of the copyright to such figure?*

Yes. You are entitled under the copyright laws to display in public a "sculptural work" you have lawfully acquired.

10. *May I display in origami shows and other public forums an origami figure I folded*

using instructions or diagrams provided by the owner of such instructions who is also the owner of the copyright to the figure itself?

Normally, yes, as there is implied consent by the owner of the instruction or diagrams for the person doing the folding to own the resulting figure. If the owner has specifically reserved public display rights to himself or herself in a lawful contract or license to the folding person, then the display right is not accorded to the person doing the folding.

11. *May I use an origami figure I folded using instructions or diagrams provided by the owner of such instructions in a commercial setting, for example, in an advertisement?*

Not without explicit permission from the owner of the instructions for this usage.

12. *May I display in origami shows and other public forums an origami figure I folded using instructions or diagrams which I developed myself (or were developed independently by someone other than the owner of the copyright to the origami figure)?*

Only with the permission of the owner of the copyright to the origami figure. The copyright to the figure is separate from the copyright to the folding instructions or diagrams. Since you have not purchased the instructions or diagrams from the owner of the copyright to the figure, you have not obtained an implied right to ownership of your copy of the figure and the display rights that accompany such ownership.

13. *I have independently developed folding instructions or diagrams for making a model, the copyright to which is owned by a third party. In developing such instructions or diagrams, I did not utilize the folding instructions or diagrams of the owner of the model, did not take apart the model, and my instructions or diagrams are not substantially similar to the instructions or diagrams owned and published by the owner of the model. Can I publish, sell, and distribute my instructions?*

Yes, but see answer to number 11; you still need the permission of the owner to the copyright of the final figure.

14. *I learned a model via oral teaching and want to teach it to a friend. Do I need to attribute the creator when I teach it?*

Yes: it is, in OrigamiUSA's opinion, always proper and ethical to attribute the creator of a model, and in many countries where copyright laws include Rights of Attribution, it is your legal obligation as well.

15. *Can I distribute diagrams if I'm teaching a class (with or without pay)?*

Not without explicit permission from the creator and diagrammer.