A Simple Guide to Copyright

and other intellectual property

by Barry M. Robinson,
Barry M. Robinson Photography,
Toronto, Ontario, Canada
http://www.barrymrobinson.com

As a photographer I'm concerned about copyright and moral rights. In my discussions with clients and other business people I've found many misconceptions concerning copyright. This article covers some of the general concepts of copyright and other types in intellectual property (sometimes abbreviated as "IP").

With the growing economic importance of intellectual property it is crucial that **anyone** involved in using images at any level in an organization should have a basic understanding of intellectual property law.

> ***Important****: I am NOT a lawyer and the following article should NOT be taken as legal advice; I have written this from an artist's viewpoint as an introduction to copyright. If you have any questions regarding copyright law consult a lawyer specializing in intellectual property law. You can find a lawyer by contacting the law society in your area. While I believe the information in this article is accurate, there may be errors or ambiguities within.*

What is Copyright?

Copyright is the right to reproduce or (in the case of music or a dramatic work) perform an artistic work, publicly display a work, distribute or broadcast a work, to copy an artistic work or to create a new work derived from the original work. Copyright is sometimes referred to as a "bundle of rights." To be protected by copyright a work must be fixed; it must have a physical representation, such as an audio recording, a photograph, a painting, a sculpture or a written work.

In general, the artist (author) who creates the work owns the copyright. If you are an employee **and** the work is created within the scope or course of your employment **and** there is no agreement to the contrary then the copyright belongs to your employer. The same holds true for a work created under a "work made for hire" agreement in the U.S. For employee works there is a difference between U.S. and Canadian law regarding authorship. In the U.S., the employer is considered the author of a work created by an employee during the course of employment (see U.S. Title 17, Chapter 2, § 201, Ownership of copyright). In Canada, the employee remains the author and retains moral rights in the work (see the Canadian Copyright Act (R.S., 1985, c. C-42) 13(3) Work made in the course of employment). In the case of commissioned photographs, copyright ownership is usually specified in the contract between the photographer and the client; by trade practice the copyright is usually retained by the photographer. The law regarding commissioned photographs in the U.S. is different than in Canada; copyright is automatically granted to the photographer in the U.S. unless otherwise stated in a contract. In Canada the copyright goes to the commissioning party unless there is an agreement to the contrary. This is changing; a report prepared by a Parliamentary Committee stated:

> *The Committee feels that photographers should be given copyright protection in their works equal to that enjoyed by other artists. Historically, photographs have been treated differently from other categories of works because they were perceived to be more mechanical and less creative than other art forms. This idea is outmoded and inappropriately treats photographers differently from other artists.*
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> *from the* ***Interim Report on Copyright Reform, The Standing Committee on Canadian Heritage, May 2004***

Registration is NOT legally required; copyright exists the moment the work is created (there are advantages to registration if you're in the U.S.) Copyright maybe sold or assigned, in part or in whole, for specific media, geographic areas or time periods. When an artist dies his or her copyright is transferred in the same manner as physical property.

The Purpose of Copyright

The purpose of copyright is to encourage the creation of new works of art. Canadian copyright is a descendant of the Statute of Anne, passed by British Parliament on April 10, 1710, ". . . for the Encouragement of Learned Men to Compose and Write useful Books." In the United States, the Constitution (adopted 1787) gives the government authority, "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;"

The Canadian Copyright Act encourages the creation of new works by granting control over the work to the creator for a limited period of time, after which, the work falls into the public domain. Without the ability to control and profit from a work, the artist would not have the incentive or the financial means to continue creating new works. There would also be little reason to fund or create new works of art if there was no way to prevent others from freely using an artist's creations.

What Copyright Protects

Physical possession of a work, such as a painting or photograph, does **NOT** entitle the holder to reproduce that work. To legally reproduce a copyright work you must have the permission of the copyright owner.

It surprises many people that you may not legally have the right to reproduce a work even if you have purchased the work. Apparently this even surprises some lawyers. An attorney working for a law firm accused of copyright infringement stated "They sold us this book [paper copies]. If we had known they would object [to posting the text of the book on the Internet], we would never have done it." (see "Workers' Comp Handbook Use Spurs Copyright Suit", Shannon P. Duffy, The Legal Intelligencer, 12-27-2002).

Copyright only protects the form of expression, that is, the exact words or images that make up the work. Ideas or subject matter are not protected by copyright. In the case of a close match of two works the matter of *scenes à faire* comes into play. The case Alexander vs. Haley, 460 F. Supp. 40, 45 (S.D.N.Y. 1978), defined *scenes à faire* as "incidents, characters or settings which are as a practical matter indispensable or at least standard in the treatment of a given topic." An example of this might be a crime novel featuring a detective and his sidekick. Many novels of this genre feature a sidekick; the presence of the sidekick could not be used to show copyright infringement. Using *scenes à faire* to show similarities between two works will not establish copyright infringement.

Derivative works (the creation of an illustration from a photograph, a movie from a novel, etc.) may violate the copyright of a work. Ottawa, Ontario based Corel became involved in a court case in 1994 when an art contest winner was found to have used a photograph, without permission, as the basis of an illustration. Designer Stephen Arscott used a photograph, "Potawatamie Indian", taken by Nick Vedros, as a basis for a drawing in his contest entry "The Real West". Tony Stone Images, a stock photo library who licensed the photograph in 1986, sued both Corel and Arscott.

A photograph based on an existing photograph is also considered a derivative work and may infringe on the copyright of the original. In Canada, the case of Ateliers Tango Argentin Inc. v. Festival d'Espagne et d'Amerique Latine Inc. defined copyright infringement in a derivative work:

> *For there to be copyright infringement, it is not necessary that the reproduction of a work be a slavish copy, as infringement is defined as including any colourable imitation. While no one can be prevented from using a photograph to reproduce the posture or traits of a person, when the original aspects of a work are reproduced there is infringement.*
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> *Ateliers Tango Argentin Inc. et al. v. Festival d'Espagne et d'Amerique Latine Inc. et al. (1997) 84 C.P.R. (3d) p. 59*

In this case, the organizer of a Quebec dance festival (Festival d'Espagne et d'Amérique Latine) used as a basis for a photograph, a photograph created for a Montreal dance company (Ateliers Tango Argentin). The organizer, Antonio Grediaga Bueno, insisted that the photographer he hired duplicate the principle elements of the original photograph (the location, number of dancers and composition). The court found that the dance festival, Mr. Bueno, the executive assistant (Mr. Bueno's son) and the photographer were all liable for infringement of copyright. This decision was upheld on appeal.

Photographer Bill Delzell of San Francisco, was paid $110,000 by RJ Reynolds after they copied one of his images without permission. A photograph by Mr. Delzell of a model blowing smoke into the air appeared in the 1996 *Communication Arts* photo annual. He received several offers from tobacco companies to license the image for advertising but turned them all down.

In 2003, Reynolds and their ad agency Gyro Worldwide began running ads for Salem cigarettes featuring a look-alike image shot by another photographer. After Mr. Delzell threatened legal action RJ Reynolds settled.

Fair Dealing and Fair Use

You'll often hear the phrase "fair dealing" or "fair use" applied to copyright. Fair dealing is a term found in the Canadian Copyright Act, that can be applied to the use of small portions of a copyright work for the purpose of research, private study, criticism, review or news reporting. Rather than providing permission in advance for the use of copyright material, fair dealing is used as a defense in copyright infringement cases and is dependent upon interpretation by the courts.

There are exceptions granted in the Copyright Act which allow you to make a copy of a copyright work without obtaining the permission of the copyright owner. For example, works such as statues that are permanently situated in public places may be sketched or photographed without infringing on copyright. For a complete list of all exceptions granted consult the current Canadian Copyright Act.

Fair use is a term used in the United States, similar to fair dealing in Canada, but much more broadly interpreted. In the United States a derivative work that is a parody of the work it was derived from may be protected under 1st Amendment Rights; the right of free speech. This was demonstrated in a case involving a “rap” version of Roy Orbison’s “Oh Pretty Woman” by 2 Live Crew (Luther Campbell, aka Luke Skywalker v. Acuff-Rose Music, Inc., United States Supreme Court, 114 S.Ct. 1164 (1994)). The United States Supreme Court determined that the song was a parody that made fair use of the original.

A parody, to be considered fair use, must be a parody of the work of art that it parodies; you may not make use of a copyright work to parody something else. Artist Jeff Koons, hired the Demetz Studio in Italy to create a sculpture based on the photo, "Puppies", taken by Art Rogers in 1980. Rogers sued Koons for copyright infringement in 1991 and won (Rogers v. Koons 960 F.2d 301 (2nd Cir. 1992)). Koons used the parody defense, claiming that his sculpture, "String of Puppies", was a parody of society at large. The court found that, while the sculpture may have been a parody of society at large, his sculpture did not parody the original photograph by Rogers and thus Koon's use was not fair use.

First Sale Doctrine

As previously noted one of the rights of the copyright holder is the right to distribute a work. Once a copy of the work has been sold, the copyright owner loses the right to control the distribution of that particular copy of the work. The purchaser may sell the copy, give it away, lend it out and, in some cases, rent it under the first sale doctrine. This doctrine is also called first sale rights or, in the European Union, the exhaustion of rights.

It is this doctrine that allows public libraries, video rental stores and used bookstores to operate. Some first sale rights may be limited by legislation (e.g. rental of software in the U.S. is excluded) or by a contract between the seller and buyer.

Public Domain

The term "public domain" is often misunderstood and abused. Strictly speaking, public domain refers to a work which may be freely used by anyone. A public domain work is not protected by intellectual property laws. A work may become public domain if:

- the term of copyright has expired
- the copyright holder failed to renew copyright where and when required
- the copyright holder has, in writing, placed the work in the public domain
- the work is one which is not protected by copyright law (e.g. a fact). **Caveat:** a creative work may be protected under some other type of intellectual property law such as a trade-mark or industrial design

Works do not have to bear any copyright symbols or be otherwise identified to be protected under copyright law. Do not assume that a work is public domain because it is posted on the Internet. Remember that works are copyrighted when created and that a work does not require any identification to be protected by copyright.

Changes to Copyright Law

Historically, copyright legislation has closely followed technological advances in printing and manufacturing.

Prior to the invention of movable type in 1436, all copying was done by hand and relatively few people owned or read books. As printing became more widespread, legislation (the Licensing Act of 1662) was first enacted to protect printers and later, authors.

Until the advent of copying machines it was difficult and expensive to copy a printed work. The reproduction of photographs required the original film for high quality reproduction. A photographer could control copyright simply by retaining the original. All that has changed with digital reproduction. Written text, sound recordings and images can be very easily stored, duplicated and exchanged. Unlike analog copies which degrade with each successive generation, digital copies remain pristine. The ease and quality of digital copying has added a new impetus to Canadian copyright law reform.

The U.S. has responded to the new technologies with the Digital Millennium Copyright Act (DMCA) which regulates copyright and digital media with special emphasis on copy protection systems. It was signed into law by President Clinton on October 28, 1998. The DMCA provides additional penalties, beyond those in the U.S. Copyright Act, for copyright infringement on the Internet and in digital media.

Economic Aspects of Copyright

Photographers, illustrators, musicians and other artists usually license the rights in their works based on usage; the intellectual rights in the work are retained by the artist. A license is permission to use the work under specified conditions; the copyright owner retains copyright. Licensing is a type of value-based pricing; the price of the license is directly dependent on the value (use) of the work to the company or individual using the work. Licenses may be defined by time, geographic area, media or by a mix of factors. A work may be exclusively licensed to only **one** individual or may be licensed to many (a non-exclusive license). An exclusive license is not the same thing as a sole license. A sole license gives both the licensee **and** the licensor permission to the same usage.

A license may be written, oral or implied. An implied license is one that is implied by the actions of the parties involved. The problem with an implied license is that the existence and scope of such a license must be determined in court; usually a long and costly process.

Another type of license is the bare license, often given without consideration (i.e. money), that confers a non-exclusive right to use a work.

An assignment is the transfer of part or all of the rights in a work to someone else. An assignment may be exclusive or non-exclusive.

There are intellectual property licenses which are mandated by law. You may have heard of compulsory licenses, statutory licenses and mechanical licenses. These types of licenses are used primarily in the music, recording and broadcast industries. There is a provision in the Canadian Patent Act for compulsory licensing to manufacture or to import patented drugs.

The use of intellectual property licensing is spreading to other industries. Advertising agencies have traditionally been paid by a mix of time (man-hours) and media commissions (based on media space and time purchased for advertising). Now that marketeers are using characters created by advertising agencies to brand their products, agencies are beginning to retain and license intellectual property rights to their creations.

The Siltanen & Partners agency developed the character Baby Bob for Freeinternet.com. When Freeinternet.com went out of business, the rights for Baby Bob were exchanged for money owed to the agency. The Baby Bob character has been licensed by CBS and Quizno's subs, generating revenue for the ad agency.

In contrast the Staples® Easy Button™, developed by the McCann Erickson agency, is not owned by the agency which created it. More than one million buttons have been sold since January 2005 but McCann Erickson makes no additional revenue. A portion of the proceeds from sales of the Staples® Easy Button™ go to charity.

Advances in copying, transmission and reproduction of images has created the need for new laws to deal with copyright at local, national and international levels. The marketing of goods and services has changed, giving greater importance to intellectual property (primarily trademark and copyright). Trademarks no longer only brand the product, they are the product (e.g. apparel). In an address to a European Union High-Level Seminar (*Content for Competitiveness*, Vienna, 2-3 March 2006) "How can copyright policy foster market entry and innovation?" Dr. Tilman Lueder said:

> *The Information Society added a variety of innovative services which are provided electronically at a distance (right of communication to the public) or on a specific request from the consumer (the right of "making available"). Electronic services are one of the key drivers for economic growth and future prosperity. These innovative electronic services require "new business models" to distribute valuable content digitally across national borders.*

Remember that simple possession of a work does NOT entitle you to reproduce that work. Protect yourself; INSIST on a written copyright license before you use the work (don't rely on an oral license or an implied license).

Moral Rights

Associated with but distinct from copyright are the moral rights of the artist. The moral rights of the artist don't have anything to do with the obscenity or morality of a work, but rather with the ongoing relationship between the creator of the artwork and the artwork itself. Moral rights include the right to:

- associate the artist's name with a work of art
- not associate the artist's name with a work of art
- use a nom de plume (pseudonym) with a work of art
- modify, distort or destroy a work of art
- not associate a work of art with a product, service or cause that may be prejudicial to the artist's image

Unlike copyright, moral rights may not be sold or assigned by the artist. However, moral rights can be waived by the artist; in other words the artist can give written permission to use a work of art in a particular way or for a particular cause. Moral rights are difficult for many people to comprehend; even people who deal with artists everyday don't always understand moral rights. In one magazine article about stock photography the author mistakenly thought that moral rights referred to the morality of use. Given some of the court cases that have appeared during the last few years, such ignorance could have dire consequences.

Moral rights are part of Canadian and U.S. Copyright law. In Canada the Copyright Act, R.S., c. C-30, s.1. Sections 14.1 and 14.2 define moral rights, Sections 28.1 and 28.2 define moral rights infringement. In the U.S. the Visual Artists Rights Act of 1990 (VARA) Title 17, Chapter 1, § 106A defines moral rights and the scope of those rights. U.S. moral rights are much more limited than those in Canada; **the following information in this section concerns Canadian law.**

Michael Snow, a famous Canadian artist, created a sculpture of Canadian geese for display in a public mall. As part of a Christmas promotion, someone had red ribbons tied around the necks of the geese. Mr. Snow took the mall management to court, contending that the ribbons made the sculpture look ridiculous and thus was prejudicial to his reputation as an artist. The court agreed with Mr. Snow and ordered the ribbons removed (Snow v. The Eaton Centre Ltd. et al. (1982), 70 C.P.R. (2d) 105 (Ont. H.C.J.)).

The band "The Parachute Club" threatened legal action after McCain Foods used the song "Rise Up" in a commercial. Although EMI Music Publishing had the right to license the copyright to the song "Rise Up", the band, had the moral right to prevent an association with a product, in this case frozen pizza. Several members of the band stated in a press release that "As a result of its use on the ad, both the song, the people who believe in it and the reputation of its creators have suffered damage within the sphere of public credibility and our personal reputations."

Associating an artist with something they consider repugnant is a fast way to create

monumental public relations problems for yourself and your business. You should get a waiver of moral rights from the artist before using artwork for anything which may be considered the least bit controversial. Never modify any artwork without the artist's written permission.

Other Intellectual Property Rights

There are other intellectual property rights (rights protecting intellectual works as opposed to rights protecting physical objects) which are sometimes confused with copyright.

International protection for intellectual property is governed through various treaties and multilateral conventions between countries. These treaties are administered by the World Intellectual Property Organization (WIPO), a United Nations agency. Presented here is a quick overview of other intellectual property rights. Protection for some of these rights varies by country, state and province.

Trade-Marks - A trade-mark (trademark in the U.S.) is used by a company or person to distinguish their goods or services from those produced by another company or person. Trade-marks may be either registered® or unregistered ™ and may be either words, artwork, a design (i.e. The distinctive shape of the Coke® bottle and the TOBLERONE® chocolate bar) or a combination of these. Since trade-marks are territorial in nature, registration of the trade-mark must be done in each jurisdiction in which protection is desired. To be protected in Canada, a trade-mark must be distinctive (it must be different from others) and it may NOT be generic or descriptive of the goods or services. The U.S. protects descriptive trade-marks but only under certain conditions. See the U.S. Patent and Trademark Office concerning trade-mark protection in the U.S.

Patents - Patents protect inventions, that is a description of an actual physical item or process. Patents DO NOT protect ideas. Drugs, electronic devices, computer algorithms are some of the things that can be patented. Patent protection varies by country. In the U.S. a patent on an actual physical item or process is called a utility patent.

Industrial Designs - Industrial designs protect the aesthetic design or ornamentation of a product as distinct from its technical or functional aspects. In the U.S., industrial designs are called design patents.

Privacy and Publicity Rights - The right of privacy and the right of publicity are **not** intellectual property rights but are often confused with those rights. The right of privacy is concerned with the public disclosure of private facts. The right of publicity is primarily concerned with the economic value of a person's persona; the name, image, style, voice and other distinctive traits associated with a model, actor, sports figure or other personality. If you're using a recognizable image of a person in a commercial context, you must be aware of privacy and publicity rights.

Publicity rights are protected in some jurisdictions by legislation; for example in the State of California (Celebrities Rights Act, latest changes to this law take effect on January 1, 2008). Privacy rights may be protected by specific legislation (the Quebec Charter in the Province of Quebec) or may be protected by common law.

In at least one country, the copyright act appears to provide for some protection of privacy rights. The Danish Consolidated Act on Copyright 2003, Section 60 states *"The author cannot exercise his rights in a commissioned portrait without the consent of the commissioner."*

In California, the right of publicity statute allows for the recovery of a defendant's profits in connection with the unauthorized use of a person's image for commercial purposes. This can be significant if the product has been successful. In the case of Russell Christoff, who sued the Nestle company over their use of his image on the Taster's Choice label, damages were $330,000 and the profits awarded were $15.3 million for a total of $15.6 million. All the plaintiff must do is show the gross revenue that results from the infringement. The case has since been appealed, the judgment reversed and the case remanded to the trial court for retrial (decision filed 6/29/07). The Nestle company has stated that the unauthorized use of the image was by a junior level employee. This underscores the point that all employees involved in using intellectual property should have at least a basic understanding of the law.

Actress Hedy Lamarr (1913-2000), famous for films in the 1930's and 40's, sued Corel Corp. of Ottawa, Canada for using her image without her consent. The lawsuit, launched in 1998, was over her image appearing on software packaging for Corel Draw. An agreement between Ms. Lamarr and Corel granted Corel a license to use her image.

Another Canadian case concerned the use, by Wrigley Canada Inc. and its ad agency BBDO Canada, of an image of Quebec athlete Myriam Bédard taken in 1998 at the Nagano Winter Games in Japan. Ms. Bédard sued Wrigley and its agency for $725,000 for the unauthorized use of her image in a chewing gum ad. In the process of creating the ad the image was computer manipulated (retouched), in what some have seen as an attempt to defeminize Bédard (see Rosie DiManno's article, page A2, The Toronto Star, Wednesday, January 19, 2000). The agency that licensed that photo, Canadian Press, sued for unapproved commercial use of the photograph. Myriam Bédard reached an out-of-court settlement concerning this lawsuit although the final terms were not revealed.

A performer's signature style may also be protected. When the Ford Motor Company, (through their advertising agency) asked singer Bette Midler (through her manager Jerry Edelstein) to perform in a Ford commercial they received an unequivocal "no". Undaunted, they hired one of her former backup singers, Ula Hedwig, to record a "sound-alike" commercial. Although they had permission from the copyright holder to use the song, Bette Midler sued, won and was awarded $400,000. The court determined that since the advertising agency had gone to considerable lengths to copy Bette Midler's style, her style must have been distinctive and be of value to them.

Individual privacy rights versus journalistic freedom of expression are given different weights depending upon where you are. The Supreme Court of Canada upheld a decision that the publication of a photograph of a young woman, taken in a public place, violated her privacy (Aubry v. Éditions Vice-Versa inc., File No.: 25579. 1997: December 8; 1998: April 9, Supreme Court of Canada). In Quebec the artistic expression of the photographer does not include the right of the artist to infringe on a fundamental right, the right of privacy, of the subject.

A New York court determined that photographs of a14-year-old model, used to illustrate a magazine column, did not violate her privacy under New York law even when the photographs might have "been viewed as falsifying for fictionalizing plaintiff"s relation to the article." (Messenger v. Gruner + Jahr Printing and Publishing, NY Court of Appeals, ASCOA, 2 No. 170, February 17, 2000). The article in question was a teen advice column in *Young and Modern* (June/July 1995) offering advice to an unidentified teen. A bold caption appearing at the beginning of the article in which photographs of Messenger appeared stated "I got trashed and had sex with three guys."

The court interpreted the concept of newsworthiness very broadly to include any subject of public interest. New York privacy law was "strictly limited to non consensual commercial appropriations of the name, portrait or picture of a living person" and the appeals court ruled that the privacy law did not apply in this case. In both the Quebec and New York cases, no model release had been signed by the subject of the photograph.

Public interest and prior behavior of the individual may also come into play as was demonstrated in the case of Barbara Streisand vs. Kenneth Adelman et al. Streisand attempted to have **one** aerial photo, which happened to include her home, removed from Adelman's California Coastal Records Project website. This nonprofit organization records the condition of the California coast through a series of over 12,000 aerial photos. Streisand felt this one photograph infringed upon her privacy. The court dismissed the lawsuit brought by Streisand, expressing the public interest in the coastline. The court also found ". . . that this plaintiff [Barbara Streisand] lives where she does and how she conducts herself in relationship to her surroundings, are matters of public interest". In the end, Streisand not only had her lawsuit dismissed but was ordered by the courts to pay the defendants $177,107.54 in legal fees.

If an identifiable person appears in a commercial photograph, it is essential to get a model release. Model releases are required for ALL advertising uses but are usually not required for news or editorials. In the case of sensitive uses (associations with a product or cause that may cast an unfavorable light upon the subject) you should have

a custom model release created by a lawyer specializing in this area of the law.

Property Rights - Some outdoor areas, such as parks, require permits for commercial photography. In Australia, the Uluru Kata Tjuta National Park has extensive rules outlining when and where photography may take place, the composition of photographs and the park must approve individual images before use.

You may also require property releases for photographs containing buildings, especially for interior views of the building or for buildings that cannot be seen from a public place. For most buildings fronting on a street or public place, property releases are not required. Aside from buildings, other identifiable personal property such as cars or pets should have property releases if possible.

The owners of some buildings (e.g. the Chrysler Building, New York City, designed by William Van Alen) claim that their buildings are trade-marks and, as such, are protected intellectual property. This view has proven difficult to defend in court. The Rock and Roll Hall of Fame and Museum in Cleveland, Ohio trade-marked its unique building, designed by architect I. M. Pei. Photographer Charles Gentile took a photograph of the building and marketed the image, along with the title "Rock 'N Roll Hall of Fame" as a poster in the spring of 1996. The museum took Gentile to court arguing infringement of their trade-mark and got an injunction against him. On appeal, Gentile argued successfully that the title was merely descriptive and the image was just a photo of a well-known building.

***Cover photo**: The story behind the yellow pencil.*
In 1847 a young prospector was looking for gold in Siberia. Instead of gold, Jean-Pierre Alibert found a rich graphite deposit at Botogol Peak in the Sayan Mountains near the Sino-Siberian border. Graphite is used in the manufacture of pencils; the high quality of this "Chinese graphite" prompted the L. & C. Hardmuth Company of Austria to introduce the yellow Koh-I-Noor pencil in 1890. The yellow colour, from the Manchu imperial robes, denoted the supposed Chinese source of the pencil lead and served as a trade-mark for the Koh-I-Noor pencil. Unfortunately for the Hardmuth Company, competitors began painting their pencils yellow. Today approximately 75% of all pencils sold are yellow.
(sources: "Colour: Travels through the paintbox" by Victoria Finlay, published by Hodder and Stoughton, London, 2002 and "The Pencil" by Curt Wohleber, American Heritage of Invention & Technology, Vol. 20, No. 2, Fall 2004, pages 10-11)

Did you find this article useful?
Any comments, questions, concerns?
E-mail Barry M. Robinson
at bmr@BarryMRobinson.com
