

US Copyright Policy: Sharing of Copyrighted Material

Scenario

A writer in a publications working group has obtained a copyright-cleared article from a document delivery service (eg, Thomson's ISI Document Solution) to review and eventually cite in a manuscript he/she is developing. This article will be stored electronically on the server of the writer's medical communications company.

During the review of the manuscript, the members of the publications working group, which includes the client and external authors, request to receive a copy of the article via e-mail. However, the writer is concerned that sharing the copyright-cleared article will violate copyright law.

Discussion

Copyright law is multifaceted and requires companies to be diligent in considering the law in their business practices. It is important to not only obtain copyright-cleared copies of references from appropriate sources but also have a license to use, store, distribute, and share the references at the writer's company and the client company.

As described by the US Copyright Office, copyright is a system that protects the "original works of authorship fixed in any tangible medium or expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated directly or with the aid of a machine or device." The US Copyright Act (www.copyright.gov/title17) allows copyright holders exclusive rights to reproduce, publicly perform, distribute, translate, and publicly display their works, or to authorize others to do so. Copyright protects the authors of the original published or nonpublished works of authorship, except in the following cases: 1) works made for hire, which are works produced by employees within the scope of their employment and are owned by the employer; and 2) written transfer of ownership; for instance, it is usually the publisher who holds the copyright in a published paper after a transfer agreement has been signed. The general rule of copyright duration for a work created on or after January 1, 1978, is the author's life plus 70 years. The duration of copyright for works made for hire is 95 years from publication or 120 years from creation, whichever span is shorter. Works created before January 1, 1978, are subject to renewals for a total term of 95 years of copyright protection.

A provision for fair use is found in the US Copyright Act at section 107. Fair use allows a certain amount of copying of copyrighted work in certain circumstances that is justifiable and exempt from penalties; however, in the event of a legal defense, the user would need to prove that it was fair use. Fair use tends to favor nonprofit and educational-related reproduction of material in modest amounts. Under fair use provisions, pharmaceutical companies may be allowed to use copyrighted material in certain circumstances, such as inclusion of copyrighted material in an FDA filing submission.

Copyright infringement carries severe penalties for an individual and/or the company, including significant monetary fines, legal fees, and possible imprisonment.

Copyright law is dynamic and constantly changing in response to legislative initiatives and technological advances. For instance, legislation has been introduced addressing orphaned works, which are copyrighted works where it may be impossible to identify and locate the rightsholders or owners. In addition, publishing companies are incorporating open-access models into their current business model, allowing (in varying degrees) scientific research to be freely available via the Internet in return for attribution (eg, BioMed Central). However, publishing companies still require permission to use (eg, storage on company servers or closed Web sites). If open-access articles are downloaded, they can be stored only on your computer's hard drive and not on a shared server. An alternative to open-access publishing is creative commons, which enables copyright holders to grant some or all of their rights to the public while retaining other rights through licenses and contracts with public domain or open-content licensing terms.

With an appropriate license from a copyright licensing agency (eg, the Copyright Clearance Center) and all pertinent information provided above addressed by the writer, the writer is permitted to disseminate the material to their publications working group as requested.

Works protected by copyright law:

- Literary works including articles and abstracts published in scientific, medical, and technical journals
- Pictorial, graphic, and sculptural works including figures published in journals
- Musical works
- Dramatic works
- Pantomimes and choreographic works
- Audiovisual works including motion pictures
- Sound recordings
- Architectural works

Works not protected by copyright law:

- Ideas, data, procedures, methods, processes, concepts, principles, discoveries, or devices*
- Works that have not been written, recorded, or captured electronically
- Works consisting solely of information that is self-evident and natural and without an original author (eg, standard calendars, height and weight charts, and rulers)
- Works created by the US federal government and works whose copyright has expired or that are part of the public domain.

* Works may be protected by patent.

Key Learnings

- Copyright law is complex and evolving. It is important to stay abreast of new developments in copyright law so that you and your company are not at risk of violation.
- Pharmaceutical companies are encouraged to acquire appropriate business licenses for internal use of copyrighted material and digital works.
- Figure artwork but not data is protected by copyright and requires permission (and usually payment of a fee) to re-use if there is substantial similarity between the original artwork and the potential new version.
- Abstracts are copyright-protected.
- Only works by the US federal government, not state or local government, are in the public domain.
- Although open-access articles are free to access in return for attribution (eg, BioMedCentral), publishers still require permission to use (eg, storage on company servers or closed Web sites).
- If a reference has been obtained through appropriate means, it is permissible to (a) send a copy to contract medical writers, key opinion leaders, and the client as long as they are members of the publications working group and (b) store it in a location accessible only to this limited set of people. However, they can not use, share, store, or distribute this copy of the reference to anyone else even if they have a copyright license because they did not pay the copyright fee for that particular reference.
 - When sharing a reference with another member of the publications working group, be sure to include a disclaimer such as: "This copy is not to be used for further dissemination or storage."

Additional Resources

Copyright Clearance Center Web site. <http://www.copyright.com>. Accessed February 1, 2008.

Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code. United States Copyright Office Web site. <http://www.copyright.gov/title17/circ92.pdf>. Updated October 2007. Accessed January 15, 2008.

Creative Commons Web site. <http://creativecommons.org>. Accessed January 31, 2007.

GovTrack.us. H.R. 5439 – 109th Congress (2006): Orphan Works Act of 2006, GovTrack.us (database of federal legislation). <http://www.govtrack.us/congress/billtext.xpd?bill=h109-5439>. Accessed January 31, 2008.

United States Copyright Office Web site. <http://www.copyright.gov>. Accessed January 15, 2008.