Copyright and Publishing

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The origin of ©

Congress shall have 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

(US Constitution, Art.I, Sec 8)
What is copyright?

• Copyright is a bundle of exclusive rights
  – To make copies
  – To make derivative works (the movie of a book, a translation, etc.)
  – To distribute copies publicly
  – To perform the work publicly
  – To display the work publicly, and
  – In the case of sound recordings, to perform the work publicly by digital audio transmission.
Why copyright is important to you

• You are an author/creator

• You need to use the works of other creators
How do you get copyright?

• The easiest part – Do Nothing!

• "copyright" is a bundle of exclusive rights, conferred by federal statute automatically, upon the author of a work, at the instant of its creation.
What can be copyrighted?

• Works that have originality
Do I need that little ©?

No, but it gives notice that you are the copyright holder.

Do I need to register my copyright?

• No, but there are advantages:
  – Establishes a public record of the copyright claim and,
  – It is required before an infringement suit may be filed in court.
Plagiarism/Copyright

• If you cite something properly, you haven’t plagiarized

• If you distribute something copyrighted you may have infringed even if you cited it properly
Retraction Watch

Genetics paper retracted for using material “without permission and/or proper reference”

without comments

A review article about a tool used to link genes to traits and behaviors has been retracted for including content “without permission and/or proper reference.”

Corresponding author Ali Masoudi-Nejad at the University of Tehran told us that the retraction occurred mostly because the paper included many figures and tables from other sources, and he didn't realize they needed to seek permission from both the author and the copyright-holder (ie, the publisher). He added that he doubts he is the only one to make this mistake:

I am sure many many scientist think that just correct citation is enough.

Upon realizing the review “Candidate gene prioritization” contained copyrighted material, Molecular Genetics and Genomics issued the retraction on September 14. Here's the notice:
If everything is copyrighted and copyright is exclusive, how can I use anything?
Exceptions to the exclusive rights

- Public domain
- Fair use
- Classroom teaching (face to face)
- Permission given up front (Open Access)
Warning:

- Freely accessible on the web ≠ public domain!
- Link but don’t copy
What’s in the public domain?

- works where the creator has expressly disclaimed a copyright interest;
- works created by the federal government;
- works whose copyright has expired.
Fair use of a copyrighted work for
• Criticism
• Comment
• News reporting
• Teaching
• Scholarship or
• Research
Is not an infringement of copyright.
What use is “fair”?

The four factors must be “balanced”:

• The **purpose and character** of the use
• The **nature** of the copyrighted work
• The **amount, substantiality, or portion** used in relation to the copyrighted work as a whole
• The effect of the use on the **potential market** of the copyrighted work
The **purpose and character** of the use

- Is it for nonprofit, **educational** or commercial use?

- Educational use is a factor in favor of fair use, but it is **only one factor**.
Transformative use

• You are using the work for a different purpose than the original
The **nature** of the copyrighted work

- Creative works and **unpublished** works are given greater consideration than published, factual works.
The **amount and substantiality of the portion** used

Consider

- the proportion of the larger work that is used (Did you use a large part of it?) and

- the significance of the copied portion (Is the part you used the heart of the work?)
The effect of the use on the **potential market** of the copyrighted work.

- This factor is regarded as the most critical one in determining fair use.

- Potential market – what does that mean for out-of-print works?
Is it fair use?

• You are an author preparing a book on the evolution of lighting styles in fashion photography. You scan some photos from a fashion magazine and use them to comment and explain concepts like “soft lighting,” “hard lighting,” and “catalog lighting.”

• Copyright holder sues you. You claim Fair Use.  
Guidelines: Resist the temptation!

- Guidelines, rules of thumb, safe harbors, are **not part of the law**.

- The law allows for a flexible nuanced interpretation– guidelines tend to be very conservative.
Recap

• Educational use is not automatic fair use
• All four factors must be weighed for each use of a copyrighted work
• Try for a transformative use
• If the balance tips in favor of fair use, no permission is needed – fair use is a right!
• If the balance weighs against fair use, get permission
• Digital works require the same analysis as print
Attempts to limit fair use

• Explicitly prohibiting uses that are fair
• Requiring acceptance of license terms
• Promulgating restrictive guidelines
• Encryption and copy protections
Licensing

• Giving away or selling some of the sticks from the bundle

• Licenses can be exclusive or non-exclusive, time-limited, limited by use

• Do these contracts trump fair use?
New publishing climate

• Rise of open access in response to price inflation

• OA = Digital, online, free of charge, free of some copyright restrictions

• Types
  – Gold = OA journals
  – Green = OA repositories
Benefits of Open Access

• Worldwide distribution
• Greater readership
• Citation advantage
• More equitable access to knowledge
• Knowledge spreads faster
Creative Commons

About

Licences

The following describes each of the six main licenses offered when you choose to publish your work with a Creative Commons license. We have listed them starting with the most accommodating license type you can choose and ending with the most restrictive license type you can choose.

License Conditions

Creators choose a set of conditions they wish to apply to their work.

<table>
<thead>
<tr>
<th>Attribution</th>
<th>Share Alike</th>
<th>Noncommercial</th>
<th>No Derivative Works</th>
</tr>
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<tbody>
<tr>
<td>You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.</td>
<td>You allow others to distribute derivative works only under a license identical to the license that governs your work.</td>
<td>You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.</td>
<td>You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.</td>
</tr>
</tbody>
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Look for licensed content

• Images : Wikimedia
• CC search
• Google image search
• Look for:
Negative consequences

• Opportunists launch predatory journals

• Publishers try to make even more money
  – Hybrid journals are double-dipping
  – Campaign of misinformation
Dilemmas

• What counts as quality?
  – Impact factor of journal
  – Name of the journal
  – Altmetrics
  – Disciplinary differences

• What counts as scholarship?

• Whose advice can you take?
Actions you can take

• As an author
  – Read and understand the publication contract
  – Reserve rights needed to use your own work
  – Publish in the highest quality journal you can but put a version in an open repository
  – Publish in an OA journal if there are high-quality ones in your field
  – Get and use an ORCID
Actions you can take

• As a user of third party content
  – Use only what you need (balance the fair use factors in good faith)
  – Transform if possible
  – Look for CC licensed images
  – Be mindful of difference between educational use and commercial publishing
  – In teaching:
    • Use Canvas (password protected)
    • Match amounts used to pedagogical needs
    • Create a new context with commentary, questions
Resources

• Copyright and Scholarship
  – http://libguides.bc.edu/copyright

• Open Access
  – http://libguides.bc.edu/openaccess

• Assessing journal quality
  – http://libguides.bc.edu/journalqual