



CAUDEX MEDICAL

**COPYRIGHT CASE
STUDIES**

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ABOUT ME...

- Medical publications professional with 24 years' experience
 - Discussing my experience and opinion of copyright in publication planning
 - Knowledge based mainly on UK copyright law and publishers' copyright agreements
 - Not legal advice!

YOUR QUESTIONS...

YOU ASKED – PROSECUTIONS

- It would be good to know whether any pharma companies (or agencies) have ever been taken to court or fined for breach of copyright - some case studies of what the consequences can be would be really helpful when trying to persuade clients to be compliant.

Number of defendants proceeded against at magistrates' court and found guilty at all courts for specified offences under the Copyright, Designs and Patents Act 1988⁽¹⁾, England and Wales, 1994-2010⁽²⁾⁽³⁾

Offence	Outcome	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008 ⁽⁴⁾	2009	2010
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⁽⁵⁾ Making for sale or hire, importing possessing or distributing articles which infringe copyright

Proceeded against	-	219	154	78	86	65	72	59	38	47	65	107	132	176	116	46	50
Found guilty ⁽⁶⁾	-	151	125	73	62	45	51	51	26	40	44	85	109	132	99	41	35

⁽⁷⁾ Infringing copyright in a work by communicating work to public

Proceeded against	*	*	*	*	*	*	*	*	*	-	6	16	16	33	10	1	2
Found guilty ⁽⁶⁾	*	*	*	*	*	*	*	*	*	-	6	13	10	30	10	1	1

Miscellaneous summary offences⁽⁸⁾

Proceeded against	1	110	39	91	72	87	79	51	59	56	51	62	130	253	475	699	456
Found guilty ⁽⁶⁾	1	87	35	74	48	66	53	47	45	37	39	55	88	169	353	518	322

SO WHAT?

■ UK

- Magistrates court: 6 months + £5k
- Crown court: 10 years + unlimited fine

■ USA

- civil action – court awards damages
- plus, for wilful infringement
 - < \$500k ± <5 years for the first offence
 - < \$1M ± <10 years for repeated offences



YOU ASKED – PROMOTIONAL?

- How do you define promotional use? All the materials we develop for external use are for scientific peer-to-peer exchange. Is this considered promotional or educational use; e.g. a standalone meeting?

- Publishers pretty much consider anything other than republication in a peer-reviewed journal, use in educational (university/medical school) teaching materials or use in accredited CME materials as promotional
 - Slide kits
 - Slide banks
 - HCP training
 - Monographs, details aids etc

- If your speakers are being paid, it's considered promotional
 - Satellites
 - Standalones

DERIVATIVE WORKS: PERMISSIONS...

MY EXPERIENCE 😊

PERMISSION – DO I OR DON'T I?

- Permission to reproduce is required for:
 - Figures/tables taken directly from a publication
 - Substantial quotes
- Not necessarily required for:
 - Limited information reused from a table
 - Significantly adapted figures (e.g schematics)

- However, if you ask a publisher, they will advise you that the decision of whether or not permission is required to reproduce or adapt material always rests with the copyright owner

WILEY PERMISSIONS DEPARTMENT

- In all circumstances permission should be sought if our material has been used. In the case of adaptations, if there are any similarities at all, even if it is just the wording of a single label that remains the same, we should be contacted as it is up to us to decide whether the adaptation is great enough to consider it a "new" figure
- Furthermore, there are strict rules that we have to follow from each journal and some adaptations may not be allowed, or the use of a figure by a certain kind of client may be prohibited
- In short, you should always come to us for permission if your clients work is derivative of ours in any way
- ...“it would never be acceptable for your own team to decide when it was worth requesting permission for figures and tables”

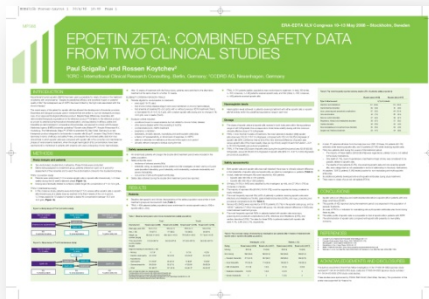
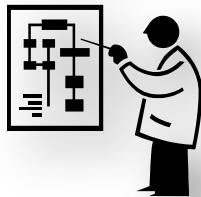
OUP PERMISSIONS DEPARTMENT

- “...in general we would say that whenever you are reusing material from one of our publications, even if this work is being adapted in some way, permission should still be sought”
- “We would also require permission to be requested for any reuse that substantially relied on or was based on a copyrighted image”

THE NAIL IN THE COFFIN...

- ...“It is unlikely that we would allow pharmaceutical clients to use any of our material for free no matter how they had adapted it”
- Probably best not to say which publisher that was

ORAL PRESENTATIONS AND POSTERS



- Acceptance of the need for copyright permission is not generally an issue for publications
- Presentations in congress main sessions generally come under the “fair criticism and review” clause and permission is not sought by the presenters
- Permission is required for reuse of copyright material in posters, particularly if you’re giving handouts away

CASE STUDY: JOURNAL SELECTION

HOW COPYRIGHT CAN AFFECT HOW YOU CAN USE YOUR
EVIDENCE BASE

CASE STUDY: SCENARIO

- Slide kit for use in a meetings cascade
- Sponsored standalone meetings, chaired by core faculty members (pan-EU)
- Chairman cites his own work in core slide deck

- Is this a familiar scenario?
- Do you need to request permission to reproduce previously published content?

CASE STUDY: FIRST STEP

- Permission to reproduce required, as slide kit is being distributed throughout Europe
- Request included full disclosure of sponsorship for final use
- Preferred method to clear rights?
 - Rightslink?
 - Publishers?
 - Journals?

CASE STUDY: OUTCOME

- Permission to reproduce denied by American Medical Association
 - No material published by AMA to be used in promotional material
- Options – what would you do?
 - Don't use the figure
 - Redraw it in a different way
 - Appeal the decision
 - Use it anyway
- Appealed, material was:
 - Included to ensure fair balance against sponsor's product
 - The chairman's own work
- Appeal denied

CASE STUDY: POST-MORTEM

Author copyright agreement

- AMA does not charge a permission fee to authors who wish to use their articles or parts thereof **in other books or journals**. However, an author must obtain permission from AMA, as the copyright holder, for such use

On further investigation...

- AMA-ASSN terms of use
 - No part of the material may be used in any form of **commercial exploitation**, including but not limited to, print or broadcast media
- So you sometimes need to check out society policies too!

CASE STUDY: LEARNING POINTS

- Journal choice may limit use of material for uses deemed to be “promotional”
- However, it’s always worth challenging a denial, sometimes it works!

YOU ASKED – ZINC MAPS

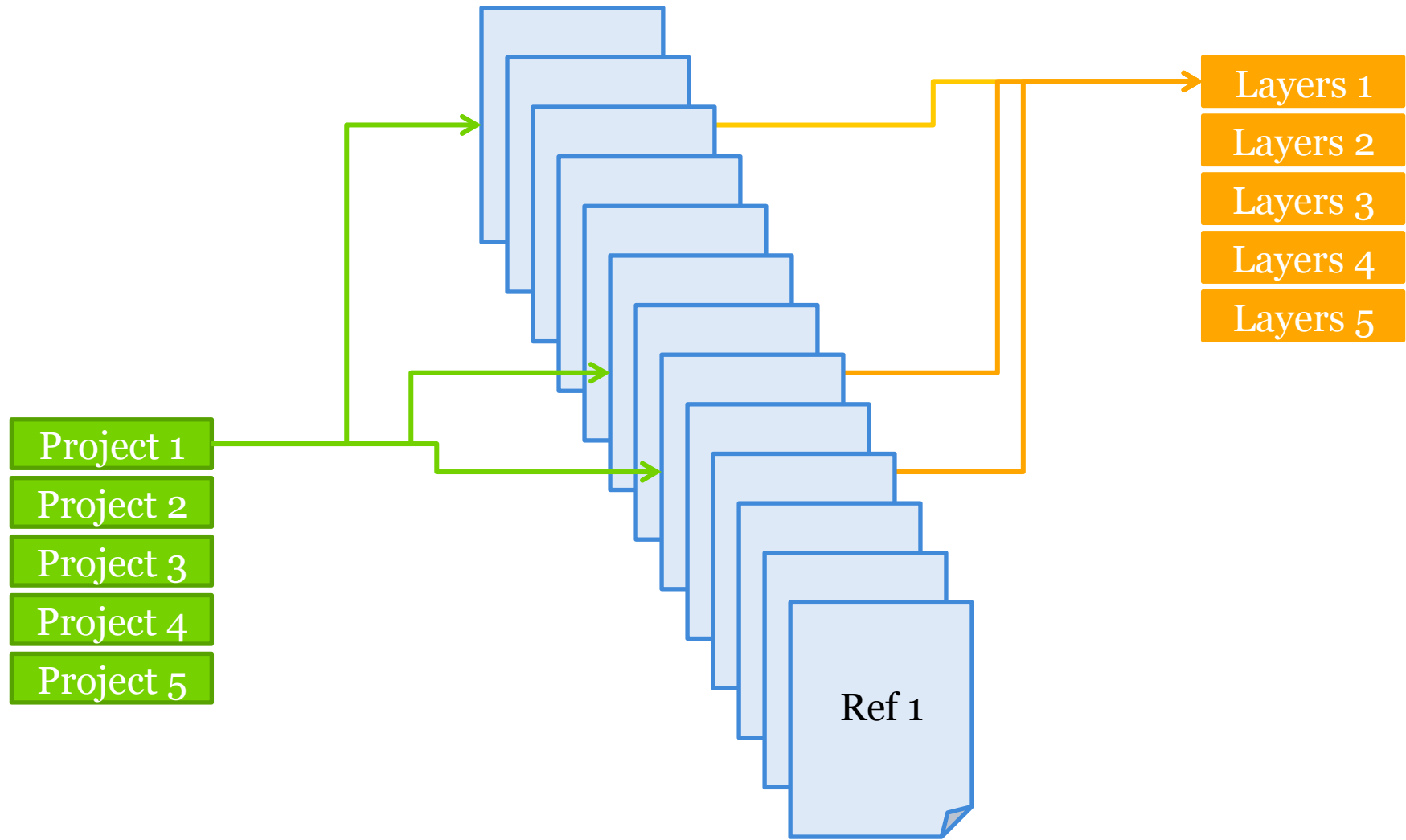
ZINC MAPS

- How many of you are familiar with Zinc?
- Does anyone like working with Zinc?
- Do different clients use Zinc differently?
- Do clients ask you to upload references to Zinc?
- Do clients ask you to download references from Zinc?
- How often do you hear “but all my other agencies do it”?

THE PROBLEM(S)...

- Most clients don't use it properly
 - Each project has its own database/collection of references
 - There are multiple copies of the same reference, with sometimes extraneous annotations
- It's cumbersome and time-consuming to use properly, it's quicker and easier to upload annotated pdfs
 - Clients ask us to annotate references and upload them to Zinc
 - Digital manipulation of pdfs
 - Providing copies of references to clients
 - Availability of already suspect references to other agencies
 - Any more?
- Projects can only be uploaded in pdf format, which is a complete nightmare for slide kits
- It is in no way shape or form suitable for publication management

HOW IT'S SUPPOSED TO WORK



CASE STUDY:
ENCORE ABSTRACTS

ENCORE ABSTRACTS

- Imagine you have, on behalf of physician authors, written and submitted an abstract of clinical trial data to a large conference with the intention of achieving an oral or poster presentation at the meeting. And the conference organizer states at the time of submission that they have the copyright on the abstract.

- Check what was signed over:
 - Copyright, and the abstract will appear in XXX journal
 - Exclusive licence to publish
 - You retain copyright in the abstract, but it can only appear in print in the meeting abstract book, or journal supplement or whatever
 - Non-exclusive licence to publish
 - You retain copyright in the abstract and you let them print it in their abstract book/ supplement with no restrictions on you doing it again

ENCORE ABSTRACTS

- Several months later, you want to submit the original abstract to a different meeting. Even though the writer, the authors, the investigators, the client are all unchanged, is it best practice to rephrase the abstract simply to make the wording different to the original abstract in places and so avoid any potential copyright issues with the conference organizer of the original meeting? Any guidance as to how much rephrasing is sufficient?

- Do any of your clients have an encore policy?
- Is rephrasing enough to “avoid copyright”?
- What do you need to check to clear an encore submission?
 - Original meeting conditions
 - New meeting conditions
 - Both
 - Neither

ENCORE ABSTRACTS

- A year after the original submission, there is new data and you want to update the results and submit to the original meeting again. Is rephrasing still necessary or desirable even when the updated abstract is being submitted to the original copyright holder?
- Is this a new abstract or an encore?
- Consider
 - Change of title
 - Change of authors
 - Different conclusions
 - Get on with the full publication

YOU ASKED – AUTHOR REUSE

- **Author reuse of own work**
- When suggesting journals for publications, check the author copyright agreement, because nobody else will!

- **Reuse clauses**
- Societies may be more restrictive
 - AMA: no fee for scholarly reuse but need permission
 - BSE: allows internal reuse (own institution/ company) without permission
- Publishers
 - Wiley Blackwell: allows scholarly reuse with proper credit
 - OUP: Pretty much do as author likes!

AUTHOR REUSE: AMA

- AMA does not charge a permission fee to authors who wish to use their articles or parts thereof in other books or journals. However, an author must obtain permission from AMA, as the copyright holder, for such use

AUTHOR REUSE: BSE

- You remain free to use your own article for the internal educational or research purposes of your own institution or company and to use it, in whole or in part, as the basis for your own further research or spoken presentations, provided you neither sell it nor encourage others to infringe our copyright

AUTHOR REUSE: WILEY BLACKWELL

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