

Walking the Copyright Tightrope

Debunking the myths: what are the do's and don'ts?

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Disclaimer

- All presentation content is based on personal interpretation of copyright requirements gained from experience working within medical communications
- Presentation content forms the basis for discussion at this event, is not a comprehensive summary of copyright, and should not be viewed as legal advice
- These are my own personal views and do not necessarily represent those of KnowledgePoint360 or Ashfield Commercial & Medical Services. I accept no liability for copyright decisions made based on the content of this presentation



The survey

Audience question

Have you ever experienced any of the following situations when asking for advice on copyright

- Different answers to the same question from different people?
- Different answers to similar questions from the same person?
- Different perspectives from colleagues, clients, HCPs, publishers?
- Your question is met with a barrage of additional questions?
- Answers that start with 'Well, it depends . . .'?

Answer

1. None of these
2. 1 or 2 of these
3. 3 or 4 of these
4. All of these

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- Answers that start with ‘Well, it depends . . .’?

Answers will depend on the specific situation and copyright licences

Pre-meeting survey – knowledge of licences

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AFTERNOON WORKSHOP - 29 APRIL 2014 - OXFORD

Walking the copyright tightrope

This should be a valuable event for everyone working in this specialist community. We're aiming to disentangle the myths from the facts about copyright and permissions and to provide expert guidance about the practicalities of working with licences in global MedComms. As always there will be plenty of opportunity to network with the speakers and panellists and with your peers.

This event is free of charge to any members of this MedComms Networking Community. To register for this event please email [Peter Llewellyn](#)

ONLINE SURVEY - NOW RUNNING - PLEASE JOIN IN

Copyright Licensing Questionnaire For MedComms Agencies

Closing date: 25 April 2014

[PLEASE COMPLETE SURVEY HERE](#)

Date: 29 April 2014

Venue: Oxford Spire Four Pillars Hotel, Abingdon Road, Oxford, OX1 4PS [\[DIRECTIONS\]](#)

OUTLINE PROGRAMME

13.00: Registrations and lunch

14.00: Welcome and objectives
Peter Llewellyn, [NetworkPharma](#)

14.15: Debunking the myths. What are the dos and don'ts?
Angela Cairns, [KnowledgePoint360 Group](#)

14.45: Open Access and Creative Commons. Just how 'free' is 'free'?
Caroline Sutton, Founder [Co-Action Publishing](#) and Immediate Past-President [Open Access Scholarly Publishers Association \(OASPA\)](#)

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CLA
The Copyright Licensing Agency






[Copyright Licensing Agency \(CLA\)](#)

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Respondent demographics





Where are you based?

United Kingdom		82.1%	110
United States of America		11.9%	16
France		0.0%	0
Germany		0.7%	1
Italy		0.0%	0
Spain		0.7%	1
If other, please specific country where you are based Show replies		4.5%	6
answered question			134

What is your primary role?

Medical writing		43.3%	58
Editorial services (copy/production editing, proof-reading)		10.4%	14
Client services		16.4%	22
Project Management/Admin		6.7%	9
Marketing		0.7%	1
Sales/Business development		1.5%	2
General/Strategic management		14.9%	20
Other (please specify) Show replies		6.0%	8
answered question			134








Had you heard of the CLA or CCC prior to reading details about this meeting/questionnaire?

4. Had you heard of the Copyright Licensing Agency (CLA) or the Copyright Clearance Center (CCC) prior to reading details about this meeting and questionnaire?			
		Response Percent	Response Count
Yes, CLA		11.9%	16
Yes, CCC		17.9%	24
Yes, both		56.0%	75
No		14.2%	19
answered question			134
skipped question			0



Do you know whether or not your company holds a business copyright licence?

5. Do you know whether your company holds a business copyright licence (not whether you hold one or not, just whether you know)?			
		Response Percent	Response Count
Yes, I know		56.7%	76
No, I don't know		43.3%	58
		answered question	134
		skipped question	0





Do you know which licence(s) your company holds?

1. If you answered yes, above, do you know which licence(s) your company holds?			
		Response Percent	Response Count
I don't know		27.4%	20
CLA business licence		24.7%	18
CLA pharmaceutical licence		2.7%	2
CCC business licence		15.1%	11
CCC multinational licence		11.0%	8
VGWort licence		0.0%	0
I know that we do not have any licences		31.5%	23
Other licence (please specify) Show replies		2.7%	2
answered question			73
skipped question			61

Are you aware of collaboration licences?

1. Are you aware of collaboration licences?			
		Response Percent	Response Count
Yes		21.4%	27
No		78.6%	99
		answered question	126
		skipped question	8

Do clients seek your advice on copyright permission to reproduce previously published material?

2. Do clients seek your advice on the requirement for copyright permission to reproduce previously published material?			
		Response Percent	Response Count
Yes, they appreciate our professional opinion		45.0%	45
Yes, they ask us how much we need to change something		7.0%	7
No		4.0%	4
No, but we advise them anyway		44.0%	44
Add any further comments here: Show replies			8
answered question			100
skipped question			34

Audience question (company employed)

What is your level of understanding of copyright licences within your company?

1. I know we haven't got a licence
2. I know we have a licence, but I don't know which one/s
3. I know we have a licence, and I understand its/their content
4. I don't know if we have a licence

The law

What is copyright?

- A law that offers legal protection to creators of **original works** that are recorded in a **tangible form**
- **Original** works are those where the author/creator has used some **judgement, skill or creativity** to create the work
- **Works** such as:
 - > Journal articles, book chapters, magazines and newspaper articles
 - > Posters, congress abstracts
 - > Job adverts, industry reports, printed text excerpts
 - > Figures, tables, photographs
 - > Video/movie clips, music clips, sound recordings
 - > Web content
- **Tangible form** – a form that others can perceive, reproduce or otherwise communicate
 - > e.g. literary, dramatic, musical, pictorial, graphic, audiovisual etc.
- It is the law . . . so we have to comply with it!



Author's exclusive rights

- Reproduce, perform, distribute, translate, publicly display, publicly broadcast their work (literally 'copy rights')
- Develop derivative works/adaptations
- Communicate their work
- Authorise the above uses, or transfer the rights to someone else
- Be identified as the author of the work (even if rights are transferred)

What do we do with these works?

Presentations
Adapt
Meetings
Training
HCPs
Scan
Excerpt
Mark-up
Proposals
E-mail
Reports
Freelancers
Clients
Distribute
Websites
Share

What is not covered by copyright?

- Works not fixed in a tangible form
- Titles & names, short phrases & slogans
- Familiar (non-artistic) symbols or designs
- Mere variation of typographic lettering or colouring
- Mere lists of ingredients or contents
- Facts & data
- Ideas, methods, procedures, systems, processes, concepts, principles, discoveries (vs a description or illustration of such)
- Works consisting of natural or self-evident information e.g. height & weight charts, telephone book listings, standard calendars
- Works created by the US Government
- Works where copyright has expired
- Works in the public domain

Though beware of trademark protection!

Though beware of patent protection!

But check the small print!

Not the same as publicly accessible!

There are some 'exceptions'

- Copyright ownership
 - > Works made for hire are not owned by the author e.g.
 - Works we create for our employer
 - Works we create for our clients
- Fair use
 - > Permission not required for:
 - Commentary, parody, news reporting
 - Research and education (in modest amounts)
 - > Amount and substantiality
 - > Examples
 - Review paper that includes short quotations from the original works
 - Genuine personal use (small amounts)
 - Genuine educational use (e.g. copy for use in an educational establishment)



Copyright myths in med comms

Audience question

- You include several novel ideas in a client proposal. You ensure the proposal has a copyright statement. Can the client use your ideas without infringing copyright?

Answer

1. Yes
2. No
3. Don't know
4. Don't care

Myth: Copyright will protect my ideas

- Ideas themselves are not copyright protected
 - > Ideas are 'non-tangible'
 - > Only the expression of the idea is protected
 - > How it is described, graphically represented etc (tangible format)
- Where are we sharing 'ideas'?
 - > Proposals?
 - > Pitch slides?
 - > Meetings?
 - > Don't rely on copyright alone to protect the idea itself!

Myth: We bought a copy of a journal article so we are a copyright holder

- Purchased copy of a copyright protected work
 - > e.g. journal subscription, or journal article from document supplier
- Comes with certain usage rights (the small print)
- Company copyright licence also grants certain usage rights (e.g. photocopying, sharing internally, storing)
- Copyright remains with the original copyright owner (author, publisher)
- Permission may be required for usage outside of the stated rights
- Owning a copy does not give you rights for further distribution outside the terms of your licence
 - > Can't share with client unless permitted by licence (e.g. collaboration licence)
 - > Med comms are 'for-profit' companies
 - > Pharma are 'for-profit' companies

} Commercial use = permission

Myth: The work is not protected as it doesn't show a © symbol

- Copyright protection exists from the from the time the work is fixed in a tangible format
 - > It doesn't have to be officially 'published'
 - > It doesn't have to be registered
 - > It doesn't have to show a copyright symbol
 - > It doesn't have to have a copyright statement
- The © symbol serves as a form of warning, but is not strictly necessary

Myth: I downloaded it from the internet so it is public domain and therefore not copyright protected

- Public domain works are not copyright protected
- BUT, publicly available \neq public domain

- Public domain includes
 - > Works where copyright has expired (difficult to ascertain)
 - > Works created by the US Government (but take care!)
 - > Works that have been clearly provided for the public to use (it would normally say they are free to use)
 - Sometimes may still have restrictions, e.g. non-commercial use

- Online content (e.g. blogs, website content) is subject to same protection as printed or other original works – they are fixed in a tangible format
- Permission may be required unless website Terms of Use state otherwise
- OK to provide a link if the webpage was already openly accessible to your intended audience

Audience question

- If a website displays sharing tools such as Twitter or Facebook, does this mean that it is OK to download information and share it via e-mail instead?

Answer

1. Yes
2. No
3. Don't know
4. I'd chance it

Myth: The website displays sharing tools so it is OK for me to download content and share by e-mail

- Websites may include sharing tools such as Facebook or Twitter
 - > Encourages commentary on site content
 - > Encourages sharing links to the site
 - > Drives traffic to the site
 - > Can be used for site metrics
 - > BUT does not mean content is free to download and disseminate by other means
- Website content is copyright protected
- It would be acceptable to circulate a link to the website

Myth: A figure/table is data, and data are not copyright protected, so I don't need permission

- Data or unrelated facts are not copyright protected
- But consider:
 - > Might some skill or creativity have been used in selecting, compiling, presenting, categorising, arranging the data?
 - > Is the figure or table an expression of the data in a diagrammatic format?
 - > Do you have the actual data points (numbers)?
 - if not, could this be regarded as copying?
 - if you replicate a data error from a figure, is that proof of copying?
 - could you have used the data points and drawn the same/similar figure without looking at it?
- **So, might the figure/table be copyright protected?**
- **If in doubt, seek advice from the publisher and get permission to reproduce**

Audience question

- You want to use a figure from a journal? How much do you have to change it before permission is no longer required?

Answer

1. 20%
2. 40%
3. 60%
4. It depends . . .
5. Don't know

Myth: If I change the figure or table by 30% I won't need permission

- No magic number for how much a work can be changed
- No set threshold to differentiate between a derivative work and a new original work
- Using a different font, colour, slide template does not circumvent copyright
- Adapting a work could be breach of copyright
 - > may be regarded as a 'derived work' (copyright owner's rights)
- Substantial similarity + access = copying?
- Substantiality – defined quantitatively and qualitatively
 - > proportion used
 - > how important the part used is to the original work
- What did you change or add? Was it really judgement, skill or creativity or just editing?
- Effect of use on the potential market for, or value of, the original work
- Consider:
 - > potential for lost revenue/value to the original author/publisher?
 - > if it was my original work . . . ?
 - > common sense judgement

Myth: As long as I acknowledge the source, I won't need permission

- Citation or attribution is not a substitute for gaining permission from the copyright holder
- Majority of our use is for commercial purposes
 - > not 'fair use'
- Is intended usage covered under terms of licence?
 - > if not, permission will be required
 - > citation/attribution usually also required (author's right to be identified)

Myth: If congress presentations/webcast slides are not provided to attendees, I won't need permission

- Copyright holder's rights include the right to publicly display
- Copyright protected content on slides may therefore require permission
- Consider
 - > Whose slides are they anyway – the speaker's? the client's?
 - > What copyright licences/agreements does the slide owner have?
 - > Ask whether any content falls outside of permitted use and requires permission
 - > Don't rely on fair use 'education purposes'
 - publishers view this differently (e.g. only schools, colleges, universities?)
 - is the speaker being paid (may equate to commercial use?)
 - what type of meeting is it?

Myth: The materials are for internal client use only so no permission is needed

- May be true, but can't always be assumed
- Consider
 - > What licences does the client have in place?
 - > Do they have other arrangements/agreements (e.g. with publishers)?
 - > How widely will the materials be shared?
 - do licenses cover sharing with all client sites/locations?
 - > Need to ask – we can't possibly know!

Myth: Copyright infringement is low risk

- Copyright infringement results in loss of earnings, sales, royalties
- May be criminal liability if infringement is for financial gain
- Strict liability law – intent/awareness not required
- Vicarious liability – e.g. if ignore infringement or do nothing to prevent
- Claims/settlements can be substantial
 - > often settled out of court

Summary

- Know whether you need a copyright licence
- Know whether you have a copyright licence
- Know what it says – what is/is not permitted
 - > managers – simplify the language for employees to understand
- Know who it covers
 - > only employees in your own country?
 - > your employees in other countries?
 - > sharing with clients?
 - > sharing with freelancers/independents?
- Reflect on the copyright owner's rights
 - > lost revenue, lost value, lost site traffic etc
- Don't fall for the myths
- If in doubt, get permission