

Copyright Basics for Faculty of the ASPHO 2015 Review Course
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Summary of Copyright Law

Most of copyright law can be summarized in one thought: everything belongs to the copyright holder. The creator of the work is the copyright holder, unless the creator has assigned copyright to another party. There are two exceptions to this rule:

1. Works created in the course of employment automatically belong to the employer. If an employee writes an article or book as part of employment duties, the work would not automatically belong to the employer. If the writing was part of the person's job, it does automatically belong to the employer unless this is waived under an employment agreement.
2. Everything produced by the federal government is not under copyright; we already paid for it once as taxpayers.

An Author's Use of Others' Materials

The copyright holder has the sole right under law to display, copy, and distribute the works owned by him.

In general, an author may not utilize the works of others without the permission of the copyright holder.

The Fair Use Exception

Fair use refers to an exception of the copyright law which permits certain limited uses of the work of others without their permission. Section 107 of the United States Copyright Act sets out four factors to be considered in determining whether or not a particular use is fair:

1. the purpose and character of the use, including whether such use is of commercial nature or is for non-profit educational purposes;
2. the nature of the copyrighted work;
3. amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The distinction between "fair use" and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

The fair use exception permits the educational use of an excerpt of a work in certain settings, such as a classroom or scholarly article. The use cannot diminish the commercial market for the work. In other words, it must be such a small excerpt that it would not lessen the chance that someone would buy the whole work.

The fair use exception does not apply to cartoons, because a cartoon is considered an entire work. The author did not merely distribute an excerpt; the author has violated the cartoonist's copyright and could be liable for damages.

Use of Tables or Charts from Scientific Works

If an ASPHO author copies a table or chart without permission into an article and it is only one of several in the source article that fact will weigh in favor of fair use. If the main purpose of the ASPHO article is to publicize the research in the copied table that fact will weigh against fair use.

On the other hand, if the main purpose of the ASPHO article is to comment on or criticize the research in the table that fact will weigh in favor of fair use. But if the ASPHO speaker merely copies a table to save himself/herself the work of creating his/her own research, that fact will weigh against fair use.

Common Practice

The safest course is always to get permission from the copyright owner before using copyrighted material.