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# Copyright Handbook

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## COPYRIGHT OVERVIEW

### **So, what is copyright?**

Copyright is a form of protection provided by law for original published and unpublished works (see types of works listed below in this handbook) of authorship. It is unlawful for anyone to (i) use works that are protected by copyright law without express permission; and (ii) violate any of the rights provided by copyright law to the owner of the copyright. A copyright can be transferred from one party to another party through an assignment or a license. An assignment allows an author to transfer the copyright to another person or entity, which would result in the loss of the original copyright owner's control. A license allows the author to retain ownership in the copyright; however, the person to whom the license is granted (the licensee) can legally exercise the copyright owner's rights subject to the express requirements of the license.

### **Who is responsible for complying with copyright?**

As a presenter, author, or content matter expert, you have a **personal, legal, and ethical responsibility** to the copyright owner to be compliant with copyright law. By complying with copyright law, you are (i) demonstrating respect for another's property; (ii) ensuring that the integrity of their work will be maintained; and (iii) ensuring that you are not subjecting yourself and others to potential legal action.

### **Violations of Copyright Law**

Copyright is complicated and many people do not understand its legal ramifications. In fact, many people violate copyright law almost daily in their work. Works, including presentations (especially slides), can contain content that you may need permission to use.

For example, if you use someone else's work by photocopying and distributing journal articles in your office; use charts and graphs in slides and handouts; and use photos, logos, drawings, artwork, speeches, presentation slides, music and video clips without permission from the owner of the copyright, you are probably violating copyright law.

### **What types of works are protected by copyright law and require permission?**

The types of works that are protected by copyright law and require permission for use include (but are not limited to):

- **Literary works** – charts/tables, blogs, books, emails, letters, magazines, memos, newspapers, newsletters, trade journals, training materials and other written material, in paper or digital format.
- **Computer software** – on disc, downloaded or in other formats.
- **Images, graphics and illustrations** – logos, corporate branding [including covers of journals and books], artworks, cartoon characters, graphical images, maps, and photos, in paper or digital format.
- **Architectural works** – buildings and the like.
- **Sound recordings and accompanying words** – songs, music, spoken word, sounds and other recordings.
- **Audiovisual works** – videos, movies, television shows, multimedia presentations, demonstrations and slideshows, in analog or digital format (including, for example, "free" and "publicly available" material on the Internet, including YouTube videos, Google Images, and material from other aggregation sites).

### **When can you use copyrighted works without obtaining permission?**

The following works may be copied, performed, or distributed without obtaining permission:

- Works in the public domain, including works for which the copyright has expired.
- Facts.
- Photographs that are exact reproductions of works in the public domain.
- Works produced by the United States government, unless the work has been contracted for and produced by another entity. State government materials may or may not be in the public domain.
- Works that the author has made available through a commons or institutional repository.

- Other works if the use meets the criteria for fair use.

### **What is considered “Fair Use”?**

Fair use recognizes that certain uses of the copyright owner’s copyright-protected works do not require the copyright owner’s authorization. In these instances, it is presumed the use is minimal and does not interfere with the copyright holder’s exclusive rights.

Fair use is primarily designed to allow the use of the copyright protected work for commentary, parody, news reporting, research, and educational purposes only; provided such use is not for financial gain. However, fair use is a “legal defense.” For example, if you use a copyright-protected work and the copyright owner claims copyright infringement, you might claim a fair-use defense, but you would have to prove that the use of the copyright-protected work was indeed a fair use.

Fair use is a limited legal defense; and, as a result, usually does not apply to works created for ASHP. Consult with an ASHP Legal Division staff member in order to determine whether the work created for ASHP would be subject to a fair use defense.

### **What about the use of works that are considered “open access”?**

Open access is the free public availability and unrestricted access for users to copy, use, distribute, transmit, display and make derivative works, of original works of authorship in any digital medium, subject to proper attribution of authorship.

### **What about the use of works that are considered in the “public domain”?**

Public domain refers to works that are not protected by copyright law. Anyone can use a public domain work without obtaining permission, but no one can ever own it. The public domain comprises only those works that are either no longer protected by copyright or never were protected. A work may enter the public domain either because it does not meet the requirements for copyright protection or because its term of copyright protection has expired.

Public domain works generally fall into one of four categories:

1. Generic information, such as facts, numbers, and ideas.
2. Works whose copyrights have lapsed due to the passage of time or the failure of the copyright holder to renew a registration (a

requirement that applies to works created before 1978).

3. Works created prior to March 1989 that failed to include a proper notice of copyright.
4. Works created by the U.S. federal government.

The following are examples of online resources that contain public domain works:

- Smithsonian Institution Public Domain Images
- New York Times Public Domain Archives
- Project Gutenberg, a collection of public domain electronic books
- LibriVox, public domain audio books
- Prelinger Archives, a collection of advertising, education, industrial and amateur films
- Public Domain Sherpa (Links to public domain images)

### **What is Licensing?**

Licensing allows the release of a copyrighted work in the public domain and/or the grant of permission on a case-by-case basis. The grant of a copyright license does not negate the ownership of the copyright.

### **What are the different types of licenses?**

There are various types of licenses which grant authority to allow usages of copyrighted works. This handbook discusses licenses in two broad categories: public domain licenses and open access and open data commons. This handbook lists some of the licenses more common for works created for ASHP. This information is provided as a guide to understand the types of licenses that may be applicable to different types of works and guidelines governing the use of copyright works accordingly.

1. **Public Domain Licenses: Licenses to make copyrighted works usable by anyone.**

### **Creative Commons License: A copyright license which allows the free distribution of an otherwise copyrighted work.**

The Creative Commons license consists of the following types:

- **Attribution (CC BY):** A license that permits almost any use of the work, subject to providing credit and license notice. This type of license is frequently used for media assets and educational materials (commonly used for Open Access scientific publications). The

copyright owner must be attributed as the creator of the work. The work can be modified, distributed, copied and otherwise used for any purpose, including a commercial purpose.

- **Non-Commercial**: A license for the work to be modified and distributed, but not for commercial purposes.
- **No Derivative Works**: A license for the work to be copied and distributed, but prohibits the modification of the work. This license prohibits the creation of other work based on the original work.
- **Attribution-Share Alike (CC BY-SA)**: A license that allows the work to be reproduced, distributed, adapted, translated, and publicly performed, without explicit permission, provided that the work is accompanied by an acknowledgement that the original copyright owner is duly credited.
- **Attribution-No Derivative Works (CC BY-ND)**: A license that allows for commercial and non-commercial redistribution of the work, as long as it is passed along unchanged with full attribution to the copyright owner.
- **Attribution-Non-Commercial (CC BY-NC)**: A license that allows for non-commercial modifications to a work, but the modified work must acknowledge the original copyright owner and be non-commercial in nature.
- **Attribution-Non-Commercial-Share Alike (CC BY-NC-SA)**: A license that allows for non-commercial modifications to the work, but the modified work must acknowledge the original copyright owner and license any new work under the same licensing terms.
- **Attribution-Non-Commercial-No Derivative Works (CC BY-NC-ND)**: A license that allows the distribution of a work, but must include attribution to the copyright owner, and the work cannot be modified or used in any way commercially.
- **Creative Commons Zero Universal**: A license which waives copyright interest in any work by the copyright owner and dedicates the work to the world-wide public domain.

2. **Open Access and Open Data Commons: A public domain dedication and license which allows the licensee to freely share, modify, and use databases and their content for any purpose and without any restrictions.**

### ***What are the potential penalties of using a copyrighted work without permission?***

When a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner, a copyright infringement occurs. The penalty for copyright infringement can be the award of damages—statutory and/or actual damages, and/or attorneys’ fees, and potential criminal punishment.

Statutory damages can be awarded within three months of the occurrence of an infringed publication of the copyright. Statutory damage amounts can range from \$750.00 to \$30,000.00 for each work infringed. A judge can also award extra statutory damages up to \$150,000.00 for willful copyright infringement, or reduce damages to as low as \$200.00 for unknowing copyright infringement. Actual damages can be awarded for any actual damages incurred and profits derived from the infringing copyright activity.

While copyright infringement is ordinarily a civil action, the U.S. government can pursue criminal penalties against the infringer if the copyright infringement seems willful and involves commercial profit. If the copyright infringer makes a profit of more than \$2,500.00 by selling 10 copies or more within a 180-day period, the copyright infringement may become a felony with a maximum fine of up to \$250,000.00 and up to a five year prison sentence for a first offense, and up to a ten year prison sentence for a second offense.

### ***How do I find the copyright status of a work?***

Permission by way of a copyright release or license is required prior to using any copyrighted work. In order to locate the copyright status of a work, take the following steps:

1. **Assume that a work is always protected by copyright law and will require permission to use the work. This includes any text, illustrations, charts, tables, photographs, or other material from previously published sources.**
2. **Identify the copyright owner by determining whether the work has a copyright notice.**

- If the work contains images, videos and/or graphs—determine if there is a different copyright owner applicable to each image, video and/or graph by looking for the copyright notice beneath the image or in a footnote or endnote.
  - If the work is a book, look for a copyright page, which is typically found on the back side of the title page.
  - If the work is a magazine, look for a copyright notice near the Table of Contents at the beginning of an issue.
  - If the work is a photograph, examine the back of the image (if in print format) and the tag (if in digital format).
  - If the work is a report/journal, look for copyright information from the publisher.
  - For all other work types, if the work is found online, look for a copyright notice on the website itself and the requirements for obtaining permission.
3. **Determine the intended use of the work; for example, how the work will be utilized, where the work will be displayed, the terms conditioned on using the work and whether the use is applicable to a limited geographic region.**
  4. **Conduct an online search of the copyright catalog using the [United States Copyright Office's website](#).**
  5. **Examine whether there is an existing license (see various license types provided above) granted by the work's copyright owner that would permit the use of the work.**
  6. **Draft and send correspondence to the copyright owner to request permission by way of copyright release to use the work. (See the section on "Obtaining Permission" in this handbook for specific details about what the permission request should include).**
  7. **Upon receipt of the copyright release, use the work subject to use restrictions and instructions from the copyright owner.**

**ASHP uses the generally recognized rule of thumb regarding copyright:  
"When in doubt, obtain permission."**

## JUST BECAUSE CONTENT IS MADE AVAILABLE PUBLICLY DOES NOT MEAN THAT IT IS IN THE PUBLIC DOMAIN.

*I want to use a photo from a website (e.g. Google Images) and don't see any copyright mark. Does that mean it is in the public domain, and I can use it?*

Not necessarily. The public domain comprises only those works that are either no longer protected by copyright or never were protected by copyright. Moreover, you must also consider other forms of legal protection, such as trademark or patent protection, before reusing third-party content. In determining the use of the photo, it is important to examine whether the photo is actually *in* the public domain, which can be found by referring to the section on "How do I find the copyright status of a work?" in this handbook. It is unacceptable to use the photo (or any work) without permission if the status of the work is not readily determined.

*What about using a work created by ASHP, can I use it?*

It depends. You may not need to obtain copyright releases from ASHP for the work -- since the information is being used in another publication of the Society. However, it is always best to confirm the rights to the work with ASHP prior to its intended use.

*Can I use drawings and cartoons?*

Many people assume a photograph, cartoon, or drawing can be freely used once it has been published in a newspaper, book or website; however, that is not the case. Some images are released under the Creative Commons license, but there are different versions of this license. For some cartoons, you can arrange permission through syndicates or associations that cover many artists and offer a single place to pay for usage of a large number of works.

*Is permission required for a work that includes information considered as common knowledge?*

Common knowledge applies to commonly known facts that can be found in multiple sources. If the information is considered common knowledge then permission does not need to be obtained.

**The bottom line:  
Almost all content produced today is protected by copyright law.**

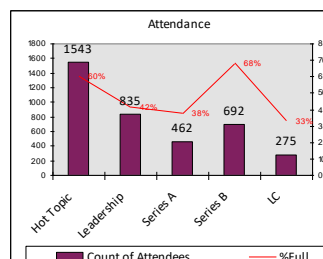
**From both a legal and ethical standpoint, you need permission of the copyright holder before you use copyright-protected material.**

*What are the copyright requirements for the use of a table, chart, or graph?*

It depends. Examine the table/chart/graph to determine the copyright status and obtain a copyright release accordingly. The following are some examples on citations for tables, charts and graphs.

**Table/Chart/Graph Excerpts.** If information is excerpted from a table, chart, or graph, it is generally acceptable to cite the particular source with the phrase "Adapted from \_\_\_\_\_." However, if the table is still easily recognizable as coming from a particular source, then a copyright release needs to be obtained and the citation should say "Adapted with permission from \_\_\_\_\_."

**Multiple Sources and Standard of Care.** If a table, chart, or graph is used to demonstrate/illustrate multiple sources and is considered the standard of care and is easily recognizable as coming from a particular source (for example, a particular therapeutic regimen plus dosage adjustments), then a copyright release does not need to be obtained.



*Adapted with permission, M. Abalos – ASHP – 2009*

**Use of Combined Table/Chart/Graph from Multiple Sources.** If a table, chart, or graph is combined from multiple sources, cite the particular sources with the phrase "Adapted from \_\_\_\_\_."

**Most tables / charts from studies require copyright permission.**

*Where can I find images that do NOT require copyright permission?*

Most images appearing on government websites (those ending in ".gov") are within the public domain and therefore are royalty-free and can be used without the requirement of copyright permission. Of note, NOAA and the CDC's Public Health Image Library contain royalty free images. Another option is to locate images that do not require copyright permission by searching the web using a search engine and keywords "royalty-free images".

*My presentation is for educational purposes. Do I still need to obtain copyright permission?*

Yes, the 'educational purposes' exception is quite limited in scope and applies to private study and research. When you present at a meeting, and your presentation includes copyrighted work, you are communicating copyrighted material to the public. This requires permission.

## ASHP COPYRIGHT LANGUAGE

All ASHP presenters, authors, and content matter experts must agree to adhere to ASHP guidelines and the following language regarding copyright:

"I have the full authority to execute this agreement and will obtain and provide to the American Society of Health-System Pharmacists ("ASHP") all necessary copyright permission(s) and license(s) from any individuals, entities, organizations, and/or journals, the material of which is included in or used in my materials/work created for ASHP (the "Work"). I agree to defend, hold harmless, and indemnify ASHP and their respective directors, officers, employees, agents, and contractors in connection with any and all allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgements, costs and expenses (including without limitation attorneys' fees and court costs) based on the allegation that the Work infringes on a copyright or patent or misappropriates a third party's trade secret. To the extent the Work contains third-party intellectual property, I agree to obtain for ASHP, in advance, at no additional cost to ASHP, an irrevocable, perpetual, nonexclusive, worldwide right and, where possible, a royalty-free license to use third-party intellectual property. If I am unable to obtain such a license, I shall promptly inform ASHP in writing.

The Work shall be considered specially commissioned works of ASHP, and I hereby assign and agree to assign to ASHP ownership of all right, title and interest in and to such Work, including ownership of the entire copyrights in the Work and, any and all rights associated with the copyrights."

## OBTAINING PERMISSION

If you intend to use a copyrighted work, unless the use is considered fair use materials (which is unlikely for a work developed and presented on behalf of ASHP), you must obtain the copyright owner's permission to use the copyrighted work.

### *How can I get permission to use something?*

Obtaining permission is not necessarily a Herculean task. All journals have permissions departments; contact information is usually provided on the inside cover of journals or texts. On websites, look for the [Terms and Conditions](#) and/or [Copyright](#). There are also copyright clearance centers (including, but not limited to, [The Copyright Clearance Center](#), [The Copyright Detective](#), [AGsoundtrax](#), and, for certain works, ASHP through the Copyright Clearance Center) which can assist you.

You may be able to get permission to use the work for free; just be sure to accurately explain how the work will be used. In some cases, there will be a fee for permission to use (see sample draft below).

Your permission request should include:

- Your name and contact information;
- Details identifying the work you wish to use (title, URL, etc.);
- The reason that you wish to use the work – for personal, research, commercial, commentary, criticism, review or educational purposes; and
- How you intend to use the work – the length of time, number of places.

At this time, ASHP cannot reimburse presenters for copyright permission costs.

Dear Sir/Madam:

I am writing to request permission to use the following material:

[list citation here]

These materials will be used in my presentation slides at the American Society of Health-System Pharmacists 2018 Midyear Clinical Meeting & Exhibition. This educational meeting is expected to draw approximately 20,000 pharmacists; my presentation is expected to draw under 1000 participants.

My slides will be reproduced on handouts available for download online to registered attendees. In addition, an audio-synched version of my presentation will be made available for download following the meeting for a fee.

Please indicate below your willingness to allow me to use this work. In concert with the educational nature of the intended use, I respectfully request that copyright permission fees be waived. I would appreciate hearing your response by\_\_\_\_\_. You may reply to \_\_\_\_\_@\_\_\_\_\_ or contact me by phone at \_\_\_\_\_.  
Thank you in advance for your consideration of this request.

Sincerely,  
John Doe, Pharm.D.

Permission granted to use this work.

Signed: \_\_\_\_\_  
Name (printed): \_\_\_\_\_ Date: \_\_\_\_\_

## FINAL WORD

ASHP reserves the right to remove material from slides and other distributed materials which ASHP deems to be a possible copyright violation.

**For more information:**

**United States Copyright Office**  
<http://www.copyright.gov/>

**ASHP Educational Services Division**  
[educserv@ashp.org](mailto:educserv@ashp.org)