

Copyright – Who Owns What?

NYSNA Continuing Education

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How to Take This Course

Please take a look at the steps below; these will help you to progress through the course material, complete the course examination and receive your certificate of completion.

1. REVIEW THE OBJECTIVES

The objectives provide an overview of the entire course and identify what information will be focused on. Objectives are stated in terms of what you, the learner, will know or be able to do upon successful completion of the course. They let you know what you should expect to learn by taking a particular course and can help focus your study.

2. STUDY EACH SECTION IN ORDER

Keep your learning "programmed" by reviewing the materials in order. This will help you understand the sections that follow.

3. COMPLETE THE COURSE EXAM

After studying the course, click on the "Course Exam" option located on the course navigation toolbar. Answer each question by clicking on the button corresponding to the correct answer. All questions must be answered before the test can be graded; there is only one correct answer per question. You may refer back to the course material by minimizing the course exam window.

4. GRADE THE TEST

Next, click on "Submit Test." You will know immediately whether you passed or failed. If you do not successfully complete the exam on the first attempt, you may take the exam again. If you do not pass the exam on your second attempt, you will need to purchase the course again.

5. FILL OUT THE EVALUATION FORM

Upon passing the course exam you will be prompted to complete a course evaluation. You will have access to the certificate of completion **after you complete the evaluation**. At this point, you should print the certificate and keep it for your records.

Introduction

Many situations occur each day in which questions of copyright arise. What do you think about the following cases?

- Is it copyright infringement to make copies of the monthly newsletter you subscribe to and give it to two of your coworkers?
- Can you make copies of an excellent journal article and distribute it in a continuing education workshop?
- What if you only make copies to be used during the class and turned in at its end?
- Can you use the manuscripts you wrote for a professional journal and distribute them to your students? Before it's published? After it's published?
- Can you copy and paste a file from someone's web site and use it in an online educational course you develop on the topic?
- Can you copy material from the US Centers for Disease Control web site and use it in the course?
- What about using a short videotape a hospital distributed to consumers describing its services in presentations about what constitutes a good hospital? Or a bad hospital?
- If you got permission to copy articles for a collection of convention handouts, can you distribute the collection to others who request it in the future? Can you publish those handouts on your website after the convention?
- Can you use excerpts from a commercial film as flash video presentations on your internet based learning module? What if you use less than 45 seconds of the film?

As we have increased computer technology and expanded classrooms and meetings into cyberspace, and as it has become easier and easier to make multiple copies quickly or to make an instant copy digitally, the kinds of situations and questions related to copyright have exploded. An understanding of copyright law, allows one to protect rights of ownership, use copyrighted materials appropriately, and avoid copyright infringement.

Information is personal property – at least original information can be. Questions of ownership of intellectual property, plagiarism, fair use, etc. are only the beginning in the age of the Internet. In 1992, in an article on copyright "rights," Garrett & Hawkes addressed some of these issues, but didn't look at the many facets of the transmission, storage, and sharing of digital information. Greenfield (2000) identified blurred lines regarding copyright and distance learning – this only compounds problems and requires even greater attention to clarifying copyright ownership and permissions for use.

This course will explore the legalities of copyright law and explain how to obtain copyright protection as well as how to avoid copyright infringement. It will discuss basic copyright law, the Digital Millennium Copyright Act, and the Sonny Bono Amendment of 1998. Although there have been recent amendments to the copyright laws, such as the Family Entertainment and Copyright Act, the Satellite Home Viewer Extension and Reauthorization Act and the Copyright Royalty Act and Distribution Reform Act, these have limited applicability to the nurse educators academic environment and will not be addressed in this material. Nurse educators, in particular will be able to use this course in their everyday practice – to protect their own rights and to avoid misuse of information and materials that legally belong to others.

Objectives

Upon completion of this course, the learner will be able to:

- Define copyright.
- Discuss ownership of copyrighted material.
- Explain implications of the doctrine of fair use for nurse educators.
- Identify how to obtain permission for use of copyrighted materials.
- State the procedure for registering copyright protection.

About the Authors

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This course was updated by Mr. Hawkes in August 2006.

Definitions

As you read forward it is helpful to have a few technical definitions that assist in creating a better understanding of certain components of the copyright laws.

Author - Under the copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or entity, such as a publisher. In cases of works made for hire, the employer or commissioning party is considered to be the author. See [Circular 9](#), *Copyright Basics, Work-Made-For-Hire Under the 1976 Copyright Act* for further information.

Deposit - A deposit is usually one copy (if unpublished) or two copies (if published) of the work to be registered for copyright. In certain cases such as works of the visual arts, identifying material such as a photograph may be used instead. See [Circular 40a](#), *Copyright Basics Deposit Requirements in Visual Arts Material*. The deposit is sent with the application and fee and becomes the property of the Library of Congress.

Publication - Publication has a technical meaning in copyright law. According to the statute, "Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication." Generally, publication occurs on the date on which copies of the work are first made available to the public. For further information see [Circular 1](#), *Copyright Basics*, section *Publication*.

Copyright notice - A copyright notice is an identifier placed on copies of the work to inform the world of copyright ownership. It generally consists of the symbol or word "copyright (or copr.)," the name of the copyright owner, and the year of first publication, e.g., ©2003 John Doe. While use of a copyright notice was once required as a condition of copyright protection, it is now optional. And the lack of a copyright notice on a publication is not an indication that the item is not protected by copyright law. Use of the notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the Copyright Office. While this notice does provide copyright protection and registration is not required, there are advantages for authors particularly in cases of infringement and assessment of damages. It is recommended that copyright be registered with the Copyright Office. See [Circular 3](#), *Copyright Basics, Copyright Notice*, for requirements for works published before March 1, 1989, and for more information on the form and position of the copyright notice.

Copyright infringement - As a general matter, copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

Public Domain - The public domain is not a place. A work of authorship is in the "public domain" if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright owner.

Work made for hire - Although the general rule is that the person who creates the work is its author, there is an exception to that principle; the exception is a work made for hire, which is a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned in certain specified circumstances. When a work qualifies as a work made for hire, the employer, or commissioning party, is considered to be the author. See [Circular 9](#), *Copyright Basics, Work-Made-For-Hire Under the 1976 Copyright Act*.

Library of Congress number - The Library of Congress Control Number is assigned by the Library at its discretion to assist librarians in acquiring and cataloging works. For further information call the [Cataloging in Publication Division](#) at (202) 707-6345.

What is Copyright?

According to *Copyright Basics* ([Circular 1](#)), available from the U.S. Copyright Office or their web site www.copyright.gov, copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works.

Copyright protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the copyrighted work in copies or phonorecords;
- To prepare derivative works based upon the copyrighted work;
- To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings – to perform the work publicly by means of a digital audio transmission.

It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. There are, however limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis in section 107 of the Copyright Act. In other instances, a "compulsory license" authorizes certain limited uses of copyrighted works upon payment of specified royalties and compliance with statutory conditions.

What Can be Copyrighted?

Generally the things that can be copyrighted are literary, pictorial, graphic, audiovisual works, computer programs and software. There are two basic criteria that determine whether something can be copyrighted or not. First, a work must be original. It cannot be copied from somewhere else and there must be an element of creativity. This means that you cannot use works from someone else in your work and get copyright protection for that portion of the material. You may not use someone else's copyrighted material without obtaining permission or meeting exceptions that will be discussed later. Secondly, the work must be in a fixed or tangible form (which may be published or unpublished.) It cannot, for instance, be stored in your head or mentioned in a conversation.

What Cannot Be Copyrighted?

There are things that cannot be copyrighted. Works that have not been fixed in a tangible form of expression such as an improvisational speech or performance that has not been written or recorded are not afforded copyright protection. Ideas, concepts, principles, discoveries, systems, and facts cannot be copyrighted (Garrett & Hawkes, 1992). Short phrases, titles, and trademarks, slogans, designs, or items such as the listing of ingredients in a recipe may not be copyrighted. Works such as calendars, height and weight charts, rulers that consist entirely of information that is common property and contains no original author cannot be copyrighted.

U.S. Government works or works employed by U. S. Government employees in their government service may not be copyrighted. These materials are in what is known as the "public domain."

What Are the Rights of Ownership?

Copyright protection subsists from the time the work is created in fixed form; that is, it is an incident of the process of authorship. The copyright in the work of authorship immediately becomes the property of the author who created it. Only the author or those deriving their rights through the author can rightfully claim copyright (Levy 2002).

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

One of the rights accorded to the owner of copyright is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords. This right is subject to certain limitations found in sections 107 through 118 of the copyright act ([title 17, U.S. Code](#)). One of the more important limitations is the doctrine of **fair use**. Although fair use was not mentioned in the previous copyright law, the doctrine has developed through a substantial number of court decisions over the years. This doctrine has been codified in [section 107](#) of the copyright law.

Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered “fair,” such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also 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 nonprofit 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.

Sometimes 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 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law cites examples of activities that courts have regarded as fair use:

- quotation of excerpts in a review or criticism for purposes of illustration or comment;
- quotation of short passages in a scholarly or technical work, for illustration or clarification of the author’s observations;
- use in a parody of some of the content of the work parodied;
- summary of an address or article, with brief quotations, in a news report;
- reproduction by a library of a portion of a work to replace part of a damaged copy;
- reproduction by a teacher or student of a small part of a work to illustrate a lesson;
- reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.

One case in which the author is not the property owner is what is defined in the Act as “works made for hire”. In the case of works made for hire, the employer and not the employee is presumptively considered the author. Section 101 of the copyright statute defines a "work made for hire" as: a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned for use.

There are two general principles that relate to copyright and it is important to remember them regardless of the specifics of a given situation.

- Mere ownership of a copy of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.
- Minors may claim copyright, but state laws may regulate the business dealings involving copyrights owned by minors. For information on relevant state laws, consult an attorney.

Copyright protection is available for all unpublished works, regardless of the nationality or domicile of the author.

Published works are eligible for copyright protection in the United States if any one of the following conditions is met:

- On the date of first publication, one or more of the authors is a national or domiciliary of the United States or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party, or is a stateless person wherever that person may be domiciled; or
- The work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention; or the work comes within the scope of a Presidential proclamation; or
- The work is first published on or after March 1, 1989, in a foreign nation that on the date of first publication, is a party to the Berne Convention; or, if the work is not first published in a country party to the Berne Convention, it is published (on or after March 1, 1989) within 30 days of first publication in a country that is party to the Berne Convention; or the work, first published on or after March 1, 1989, is a pictorial, graphic, or sculptural work that is incorporated in a permanent structure located in the United States; or, if the work, first published on or after March 1, 1989, is a published audiovisual work, all the authors are legal entities with headquarters in the United States. More information on the Berne Convention follows, but anyone involved in international work should seek guidance from the Copyright Office.

Works by the U.S. Government are not eligible for copyright protection. For works published on and after March 1, 1989, the previous notice requirement for works consisting primarily of one or more U.S. Government works has been eliminated. However, use of the copyright notice for these works is still strongly recommended. What a notice of copyright is will be discussed in a subsequent section of this course. Use of a notice on such a work will defeat a claim of innocent infringement, provided the notice also includes a statement that identifies one of the following: those portions of the work in which copyright is claimed or those portions that constitute U.S. Government material.

Works published before March 1, 1989, that consist primarily of one or more works of the U.S. Government must bear a notice and the identifying statement.

When Does Copyright Protection Expire?

The [Sonny Bono Copyright Term Extension Act](#), P.L. 105-298, signed into law on October 27, 1998, amends the provisions concerning duration of copyright protection. This legislation does not restore copyright protection to any works that are in the public domain. Effective immediately, the terms of copyright are generally extended for an additional 20 years from the original expiration date as determined by the specific provisions that follow:

For works created after January 1, 1978, copyright protection will endure for the life of the author plus an additional 70 years. In the case of a joint work, the term lasts for 70 years after the last surviving author's death. For anonymous and pseudonymous works and works made for hire, the term will be 95 years from the year of first publication or 120 years from the year of creation, whichever expires first;

For works created but not published or registered before January 1, 1978, the term endures for life of the author plus 70 years, but in no case will it expire earlier than December 31, 2002. If the work is published before December 31, 2002, the term will not expire before December 31, 2047;

For pre-1978 works still in their original or renewal term of copyright, the total term is extended to 95 years from the date that copyright was originally secured.

Public Law (PL) 102-307, enacted on June 26, 1992, amended the Copyright Act of 1976 to extend automatically the term of copyrights secured from January 1, 1964, through December 31, 1977 to the further term of 47 years and increased the filing fee from \$12 to \$20. A new series of fees took effect on July 1, 2006.

P.L. 102-307 makes renewal registration optional. There is no need to make the renewal filing in order to extend the original 28-year copyright term to the full 75 years. However, some benefits accrue to making a renewal registration during the 28th year of the original term.

In addition, P.L. 105-298, was joined with a second title entitled "Fairness in Music Licensing Act of 1998." This second title deals with matters unrelated to copyright term and has a different effective date.

For more detailed information on the copyright term, write to the Copyright Office and request Circulars 15, 15a, and 15t. For information on how to search the Copyright Office records concerning the copyright status of a work, request Circular 22. These circulars are also available at the Copyright Office's web site at: www.copyright.gov/circs.

How Can Copyright be Transferred?

Any or all of the exclusive rights of the copyright owner may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed (or such owner's duly authorized agent). Transfer of a right on a nonexclusive basis does not require a written agreement.

A copyright may also be conveyed by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

Copyright is a personal property right, and it is subject to the various state laws and regulations that govern the ownership, inheritance, or transfer of personal property as well as terms of contracts or conduct of business. For information about relevant state laws, consult an attorney.

What Are the Rules of International Copyright?

There is no such thing as an "international copyright" that will automatically protect an author's writings throughout the entire world. Protection against unauthorized use in a particular country depends, basically, on the national laws of that country. However, most countries do offer protection to foreign works under certain conditions, and these conditions have been greatly simplified by international copyright treaties and conventions. For a list of countries which maintain copyright relations with the United States, see [Circular 38a](#).

The United States belongs to global, multilateral copyright treaties, the Universal Copyright Convention (UCC) and the Berne Convention for the Protection of Literary and Artistic Works. The United States was a founding member of the UCC, which came into force on September 16, 1955.

By joining the Berne Convention on March 1, 1989, the United States gained protection for its authors in all member nations of the Berne Union with which the United States formerly had either no copyright relations or had bilateral treaty arrangements. Members of the Berne Union agree to a certain minimum level of copyright protection and agree to treat nationals of other member countries like their own nationals for purposes of copyright. A work first published in the United States or another Berne Union country (or first published in a non-Berne country, followed by publication within 30 days in a Berne Union country) is eligible for protection in all Berne member countries. There are no special requirements

How is Copyright Registered?

In general, copyright registration is a legal formality intended to make a public record of the basic facts of a particular copyright. Even though registration is not generally a requirement for protection, the copyright law provides several advantages to encourage copyright owners to make registration. Among these advantages are the following:

- Registration establishes a public record of the copyright claim.
- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin and for foreign works not originating in a Berne Union country.
- If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
- Copyright registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies.

Registration may be made at any time within the life of the copyright. Unlike the law before 1978, when a work has been registered in unpublished form, it is not necessary to make another registration when the work becomes published (although the copyright owner may register the published edition, if desired).

Specific details and forms for registering a work are available from the [Copyright Office](#) but we have provided a detailed overview of the process below. To register a work, send the following three elements in the same envelope or package to the Library of Congress, Copyright Office, 101 Independence Ave, SE, Washington, D.C. 20559-6000:

1. A properly completed application form;
2. A nonrefundable filing fee of \$45 for each application;
3. A nonrefundable deposit of the work being registered.

The deposit requirements vary in particular situations. The general requirements follow. Also note the information under "Special Deposit Requirements" immediately following this section.

- If the work is unpublished, one complete copy or phonorecord.
- If the work was first published in the United States, two complete copies or phonorecords of the best edition.
- If the work was first published outside the United States, one complete copy or phonorecord of the work as first published.

To register a renewal, send:

1. A properly completed RE application form; and
2. A nonrefundable filing fee of \$75 for each work.

What Are Special Deposit Requirements?

Special deposit requirements exist for many types of work. In some instances, only one copy is required for published works, in other instances only identifying material is required, and in still other instances, the deposit requirement may be unique. The following are prominent examples of exceptions to the general deposit requirements:

- If the work is a motion picture, the deposit requirement is one complete copy of the unpublished or published motion picture and a separate written description of its contents, such as a continuity, press book, or synopsis.
- If the work is a literary, dramatic or musical work published only on phonorecord, the deposit requirement is one complete copy of the phonorecord.
- If the work is an unpublished or published computer program, the deposit requirement is one visually perceptible copy in source code of the first and last 25 pages of the program. For a program of fewer than 50 pages, the deposit is a copy of the entire program. (For more information on computer program registration, including deposits for revised programs and provisions for trade secrets, request [Circular 61](#).)
- If the work is in a CD-ROM format, the deposit requirement is one complete copy of the material, that is, the CD-ROM, the operating software, and any manual(s) accompanying it. If the identical work is also available in print or hard copy form, send one complete copy of the print version and one complete copy of the CD-ROM version.

In the case of works reproduced in three-dimensional copies, identifying material such as photographs or drawings is ordinarily required. Other examples of special deposit requirements (but by no means an exhaustive list) include many works of the visual arts such as: greeting cards, toys, fabric, oversized material ([Circular 40a](#)), video games and other machine-readable audiovisual works ([Circular 61](#)), automated databases ([Circular 65](#)), and contributions to collective works.

The following persons are legally entitled to submit an application form:

- The author. This is either the person who actually created the work, or, if the work was made for hire, the employer or other person for whom the work was prepared.
- The copyright claimant. The copyright claimant is defined in Copyright Office regulations as either the author of the work or a person or organization that has obtained ownership of all the rights under the copyright initially belonging to the author. This category includes a person or organization who has obtained by contract the right to claim legal title to the copyright in an application for copyright registration.
- The owner of exclusive right(s). Under the law, any of the exclusive rights that go to make up a copyright and any subdivision of them can be transferred and owned separately, even though the transfer may be limited in time or place of effect. The term "copyright owner" with respect to any one of the exclusive rights contained in a copyright refers to the owner of that particular right. Any owner of an exclusive right may apply for registration of a claim in the work.
- The duly authorized agent of such author, other copyright claimant, or owner of exclusive right(s). Any person authorized to act on behalf of the author, other copyright claimant, or owner of exclusive rights may apply for registration.

There is no requirement that applications be prepared or filed by an attorney.

Mandatory Deposit for Works Published in the United States

Although a copyright registration is not required, the Copyright Act establishes a mandatory deposit requirement for works published in the United States (see definition of "publication," above). In general, the owner of copyright, or the owner of the exclusive right of publication in the work, has a legal obligation to deposit in the Copyright Office, within 3 months of publication in the United States, 2 copies (or, in the case of sound recordings, 2 phonorecords) for the use of the Library of Congress. Failure to make the deposit can result in fines and other penalties, but does not affect copyright protection.

Certain categories of works are exempt entirely from the mandatory deposit requirements, and

Rights of Educators to Use Copyright Materials: Fair Use Doctrine

The Copyright Act of 1976 included provisions that balanced the rights of users and owners (Dratler, 1990). Certain clarifications of issues related to the use of copyrighted materials for nonprofit educational use were made in the guidelines for fair use. In these guidelines determination of whether a use is “fair use” depends upon the extent and purpose of the use, the nature of the copyrighted work, and the effect of the use upon the value of the work (Garrett & Hawkes, 1992). It is important to note that this doctrine refers to non profit educational institutions. A brief interpretation of the guidelines follows.

Libraries can reproduce and distribute a single copy of a copyrighted work for library customers for private study, research, or scholarship without permission of the owner. Subsequent copies may be made on other, separate occasions. Teachers may make single copies of copyrighted works if they teach in not-for-profit institutions, if they make the copies themselves, or the single copy is made at the individual teacher’s request.

The fair use guidelines for books and periodicals that relate only to not-for-profit institutions do permit multiple copies of copyrighted materials to be made under specific rules. The rules fall into three categories: brevity, spontaneity, and cumulative effect. The rules of brevity discuss limitations of the number of words or portion of a work that can be copied. Spontaneity refers to using copies spontaneously when there is not enough time to obtain permission to reprint. Cumulative effect rules limit how often materials may be used, e.g., no more than one course per school and copying from a single author is limited to two excerpts per term. This interpretation of fair use prohibits a teacher from copying collections of articles for students to use each year rather than using a textbook or having the students go directly to the author’s works.

Other requirements for educators using copyrighted works under the fair use guidelines include the following: no more than one copy per student can be made, the original copyright notice must be placed on all copies, the charge for the copies cannot exceed the actual cost of copying, and copies cannot be used to replace available materials, workbooks, tests, etc.

Audiovisual materials purchased by educators may be used as often as liked, by as many teachers as wish – but copies cannot be made or used. Videotapes of television programs made at the time they are broadcast may be used by the educator only once. It is not permissible to use the tapes more than 10 days after the broadcast and they are to be erased within 45 days of the taping date.

What Is Copyright Infringement?

Copyright infringement occurs when exclusive rights of copyright are violated without permission of the owner or when no exception to the use is permitted by copyright law. It is also copyright infringement to adapt and change someone's work without permission (Levy, 2002). The fair use guidelines provide exceptions that allow educators to use copyrighted materials without permission as long as they meet the requirements mentioned earlier. Educators, who violate copyright protection, believing that their usage falls in the fair use guidelines and if there are no financial damages that result, are generally considered to be acting in good faith. It should be noted that reproduction means copying – this means duplicating or photocopying exact images, downloading files, copying large pieces of a work, or copying bits and pieces of someone else's work.

In an article in *CINAHL News*, Levy (1998) discussed the use of a report sent to a journal for publication. The author of the report had sent it by email to the publisher and maintained it on her computer hard drive. The author was notified that the journal would publish the report on its website. The author signed the copyright form and transferred ownership to the journal. She told her chairperson about the report and the upcoming website publication. The chairperson recommended that she post the report on their own departmental website so that it could be shared with colleagues. Who owned the copyright? Was there copyright protection even though there were no tangible, print copies made? Was it permissible to post it on the author's department website?

The author owned the copyright until the time she signed the transfer form even though the only copy was in her computer. It did not have to be in paper copy form. The author owned it when it was recorded on her hard drive. No one could have used the digital copy without permission before it was accepted for publication – the author had copyrights even though it was not registered with the Copyright Office.

Once the author signed the transfer, the journal owned the report by virtue of the signed transfer of copyright. Was it permissible to post the report on the department website? Laws related to implied license or protection according to the doctrine of fair use can be examined to determine whether this constituted infringement. The author could say that she has an implied license to use the report in this non-commercial manner to further her career, however the web site publication will not meet the implied license requirement if it is determined that could reduce the journal's readership. Fair use doctrine would also consider whether the "in-house" publication would reduce readership or sales on the journal's website. The kind of questions raised in this instance should always be asked!

Copyright infringement suits can only be filed in federal court and they must be filed within three years of the infringement. The court can issue a temporary or permanent injunction and can award damages in the form of actual damages, recovery of profits the infringer made, and statutory damages. Attorney's fees may be awarded only if the copyright was registered – a good reason for officially registering ownership with the Copyright Office.

How Can I Avoid Copyright Infringement?

There is one sure way to avoid copyright infringement, and that is to ask permission before using copyright protected material. Permission is requested from the author or publisher – whoever owns the copyright. Books and periodicals will have information about copyright policies published and directions for obtaining reprints are given. It is important to note here that an author who has signed a contract assigning rights to a publisher cannot give permission for use of the material. That permission must be obtained from the publisher. Regardless of the fact that the material was the author's original work, the copyright ownership has been transferred to the publisher.

Permission must be requested from the owner. The copyright notice will tell you who owns the copyright. A request should identify exactly what will be copied, from what source, and what the specific use will be. This means that permission is requested only for the specific use and instance described in the request. The more limited the scope, the more likely that permission will be granted. It is unlikely that permission will be granted if you request "general, ongoing distribution." Often there is a fee for use. Another approach to securing the use of copyrighted materials is by using a third party intermediary such as the Copyright Clearance Center, Inc. (CCC). Established in 1977 by a consortium of publishers, CCC is one of the various agencies that assist with copyright enforcement (Geitner, 1992). Companies and organizations can pay predetermined fees for individual items or they may acquire an institutional license to deal with reproducing materials registered with the CCC. The CCC forwards a portion of the fees it collects to the copyright owners.

What is the Digital Millenium Copyright Act of 1998 and the Future?

The Digital Millenium Copyright Act of 1998 (DMCA) implements two 1996 World Intellectual Property Organization (WIPO) treaties: The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The act also addresses other copyright issues such as functions of the Copyright Office, distance education, and webcasting of sound recordings on the internet.

The DMCA addresses liability of internet service providers (online services or network access). A service provider is eligible for the limitation on infringement only if it does not have actual knowledge of an infringement. Service providers must terminate accounts of subscribers who are repeat infringers and must accommodate standard technical measures. Material that is posted without the copyright owner's authorization must be removed or blocked immediately if the service provider is notified. The act also requires that an agent must be designated to receive notice of any claimed infringement. DMCA limits liability for acts of referring or linking users (online directories, search engines, etc.) to a site that contains infringing material if the provider does not have knowledge that the infringement is occurring and is not making financial profit related to the infringing activity.

The Copyright Office was directed to make recommendations to Congress on how to promote distance education through digital technologies. These recommendations should address the need for a new exemption, categories of work to be included in the new exemption, quantitative limitations, the extent to which use of technological protection measures should be mandated, and the extent to which availability of licenses should be considered in assessing eligibility for exemption. The recommendations were presented in 1999 in the Copyright Office's *Report on Copyright and Digital Distance Education*.

Guidelines for Educational Use of Electronic Copies

Levy (1998) discussed the problem of electronic copying in the classroom and identified some useful guidelines. These guidelines are useful in an age where electronic copying, scanning, and internet access are instantly available.

- Journal articles that are stored on a server and accessed by students must be necessary for a course. Instructors cannot supply materials that are of marginal relationship.
- The selection of the articles must be made each semester or term by the instructor of the course.
- The copy that is used to load on the server must be lawfully obtained with adequate documented permissions.
- Students should be instructed not to store articles on their computers after the course ends and not to allow other students to read or copy the articles.
- The articles should be accessible only to the instructor and students and should be password protected.
- Copying material from a website is no different from duplicating print materials. The same guidelines apply to both.
- A full copyright notice should be posted on the screen below the title and at the foot of each page.

The use of hyperlinks may or may not constitute infringement and court cases have been settled that identify the agency linking to a site that is infringing as party to the infringement. Many website owners are putting notices that prohibit linking to their sites. They are invoking their right to have exclusive distribution of the material. The wise user will get permission before creating a hyperlink to another site.

Conclusion

Information is, and always will be a most vital commodity for nurse educators. The US Copyright laws provide ownership rights and protections for persons whose original intellectual property is transformed into a fixed medium. What you think or know is not your protected intellectual property until it is put into a fixed form that can then be duplicated by someone else. It then becomes your property and it cannot be copied by others or presented as their own original work. There are frequently asked questions as well as the possibility of asking

While this is important for copyright owners, it can pose a problem for educators who need to use such information in their daily teaching. The doctrine of fair use provides rules about the use of copyrighted information by non-profit educational institutions. This doctrine balances the rights of the copyright owners with the needs of educational institutions and teachers. The doctrine of fair use has specific rules about what can be copied, when, how often, and how much material. The copyright ownership must be acknowledged in materials used. The school or college librarian is an expert and can answer questions and help educators meet their needs and avoid infringement. Don't hesitate to consult with the library staff. As the old adage says "It's better to be safe than sorry."

Use of copyrighted material by persons other than educators can only be done with permission of the owner and a notice stating that the permission was given must be affixed to the material. Permission can be obtained directly from the owner – you can tell who that is by the copyright notice, for example © Garrett & Hawkes, 2004, © New York State Nurses Association, 2004, or those warnings that show up at the beginning of your rental DVD. There are also third party agencies such as the Copyright Clearance Center, Inc. that arrange for permissions. There may, or may not be a cost to use the material.

Advances in technology for the creation of, and transmission of published works are rapidly evolving. These changes facilitate easy access and replication ability for a wide audience. The future will bring forth new technologies that will require additional laws and regulations to protect both the rights of owners and users of copyrighted materials.

Go back and review the questions at the beginning of the course. You will have the opportunity to answer them in the test at the end of this course.

Resources

U.S. Copyright Office. Web site www.copyright.gov.

This web site has been created with the desire to serve the copyright community of creators and users, as well as the general public. Here you will find all key publications, including [informational circulars](#); [application forms](#) for copyright registration; links to the [copyright law](#) and to the homepages of other copyright-related organizations; news of what the Office is doing, including business-process reengineering plans, Congressional [testimony](#) and [press releases](#); the latest [regulations](#); a link to online [copyright records](#) cataloged since 1978; and much more.

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Copyright – Who Owns What? Course Exam

After studying the downloaded course and completing the course exam, you need to enter your answers online. **Answers cannot be graded from this downloadable version of the course.** To enter your answers online, go to e-leaRN's Web site, www.elearnonline.net and click on the Login/My Account button. As a returning student, login using the username and password you created, click on the "Go to Course" link, and proceed to the course exam.

1. It is copyright infringement to make copies of the monthly newsletter you pay to subscribe to and give it to two of your coworkers.
 - A. True
 - B. False
2. You own a business that presents professional seminars for nurses. You make copies of an excellent journal article and distribute them in a continuing education seminar. You provide the name and address of the journal. This is an infringement of copyright.
 - A. True.
 - B. False.
3. If you ask for those copies to be turned in at the end of the seminar, this is not an infringement of copyright.
 - A. True.
 - B. False.
4. You wrote an article for a professional journal; the contract you signed with them gave them copyright ownership. You may use the manuscript you wrote for a professional journal and distribute them to your students after it's published.
 - A. True.
 - B. False.
5. It is permissible for you to copy and paste a file from someone's web site and use it in an online educational course you develop on the topic.
 - A. True.
 - B. False.
6. You are allowed to copy material from the US Centers for Disease Control web site and use it in the course without obtaining copyright permission.
 - A. True.
 - B. False.
7. You want to use a short videotape that a hospital distributed to consumers describing its services in your presentations about what constitutes a good hospital. It is not an infringement of copyright to do so.
 - A. True.
 - B. False.

Copyright – Who Owns What?

8. You obtained copyright permission to copy articles for a collection of convention handouts. You are allowed to distribute the collection to others who request it in the future.
- A. True.
 - B. False.
9. It is permissible for you to use excerpts from a commercial film as flash video presentations on your internet based learning module if you use less than 45 seconds of the film.
- A. True.
 - B. False.
10. Unless you have an understanding with your employers, the copyright ownership of all course materials you write belongs to them.
- A. True
 - B. False