

COXHEALTH

SYSTEM POLICY: Information Management

TITLE: Copyright and CoxHealth

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PURPOSE:

The following policy and procedures have been developed in an effort to guide CoxHealth Workforce Members in complying with U.S. Copyright Law.

POLICY:

In policy and practice, CoxHealth follows U.S. Copyright Law incorporated in Title 17 of the U.S. Code, as well as all subsequent legislation pertaining to copyright, trademarks and other issues of intellectual property. This policy is not comprehensive in scope; it merely provides guidance for dealing with copyright issues. Since accidental or unconscious copyright infringement is not a legal defense, where questions or uncertainty about copyright issues arise, a more thorough examination of resources and, ultimately, advice from the Legal Department or Corporate Integrity Department is advisable.

SCOPE:

All CoxHealth locations.

DEFINITIONS

WHAT IS COPYRIGHT?

Copyright is legal protection for creators of original works, including literary, dramatic, musical, artistic, audiovisual, and other intellectual creations. With the exceptions listed below, only copyright holders have the right to do the following and to authorize others to do the following: to reproduce the work; to make derivative works; to distribute copies of the work; to perform the work; and to display the work publicly. Mere ownership of a book, illustration, download, photograph/negative, videotape, or musical work does NOT give the possessor the copyright or the right to do any of the foregoing things. Everything a Workforce Member uses or distributes in any manner (advertising, PowerPoint presentations, flyers, internal documents shared inside and outside the system, intraweb pages, etc.) that is in a written, audio, or visual form must:

- be original (i.e., an original creation by a Workforce Member);
- be from a work which explicitly states the material is copyright free;

- have written permission for use from the copyright holder, with the permission received before copying or use takes place;
- fall within a legal exception to copyright (e.g., fair use); or
- be from a work in the public domain.

Additional information may be obtained at copyright.gov.

HOW CAN YOU TELL A COPYRIGHTED WORK?

No filing, registration or copyright notice (©) is required in order to have a copyright in an original work. The copyright exists automatically from the moment the original work is “fixed in a tangible medium of expression.” As such, absence of a copyright symbol does not imply lack of copyright. If not in the public domain, copyright protection should be assumed. For instance, most graphic or clip art on the Internet is copyright protected, but most often does not carry the familiar symbol. Copyright laws apply to other sources Workforce Members use, such as videotapes, CD-DVD duplications, slides, multiple copies of journal articles, clips from films, charts, images and tables from publications. The law also applies to the modification of images such as altering pictures (changing a picture of a healthy bone into a fracture, for instance).

WHAT IS COPYRIGHT INFRINGEMENT?

Anyone who exploits any of the exclusive rights of copyright without the copyright owner's permission commits copyright infringement. If a lawsuit is successful, the infringer will have to pay the copyright owner the amount of money the infringer made from using the work or that the owner would have made if the infringement had not happened. If the copyright is registered with the U.S. Copyright Office, the infringer may also have to pay the copyright owner what is called statutory damages -- an amount set by the court that will usually be much higher. In addition, an infringer may be found guilty on criminal charges and have to pay criminal penalties. Moreover, the infringer will also be stopped from making any further use of the work. In order for a court to determine that a copyright in a work has been infringed upon it must find that: (1) the infringing work is "substantially similar" to the copyrighted work, and (2) the alleged infringer had access to the copyrighted work -- meaning they actually saw it or heard it. There are no clear rules for deciding when "substantial similarity" exists between two works. Courts look for similarities in appearance, sound, words, format, layout, sequence, and other elements of the works.

ORIGINAL WORKS BY WORKFORCE MEMBERS

Although the general rule is that the person who creates a work is the author of that work, an exception to that rule is “works made for hire.” In general, a “work made for hire” is a work (document, proposal, presentation, etc.) prepared by an employee within the scope of her/his employment, or a work specifically ordered or commissioned by the employer. If a work is “made for hire” within our organization, CoxHealth, and not the employee, is considered the creator and CoxHealth therefore holds the copyright to such a work.

LEGAL EXCEPTIONS TO COPYRIGHT

1) COPYRIGHT-FREE MATERIAL

Materials which may be used without copyright permission are those which are explicitly marked in some way or the creator has given specific permission for use. Unless the material you want to use gives clear permission, as in the examples below, do NOT use the material; instead, either request permission to use it or find an alternative. Examples of explicit permission to use:

- “The art contained herein . . . may be reproduced for advertising, graphic design, and commercial use without permission.”
- “All photos on the following pages are copyright free and may be freely downloaded for press or media.”
- “Permission is granted to reprint articles for commercial purposes, provided the author and source are cited.”
- “You may use the designs and illustrations for graphics and crafts applications, free and without special permission, provided that you include no more than ten in the same publication or project.”
- “Except where otherwise noted, content on this site is licensed under a Creative Commons Attribution License.”

Note:

- **Creative Commons (CC)** licenses allow creators to tell others how they can legally share their work and always requires proper attribution. *See creativecommons.org for more information.*
- If the source allows “non-commercial” or “personal” use, CoxHealth cannot reproduce it. ***ALL use by CoxHealth is commercial.***

2) **FAIR USE**

Fair use permits certain good-faith uses that, in other contexts, would be copyright infringement. Fair use is a case-by-case determination. When deciding whether your use constitutes fair use, always err on the side of the creator; i.e., if you are unsure about the legality of using the material, do not use it. Four factors determine if a particular use of material is fair use. All four factors must be considered in making this determination:

- Purpose and character of the use. The first fair use factor generally refers to the function for which the copied material is being used. Since copyright law favors the encouragement of scholarship, research, education and commentary, use is more likely to be considered fair use if it is noncommercial, educational, scientific or historical. However, an educational or scientific use that is for commercial purposes may not be excused. This factor also looks at whether the use was “transformative,” makes a new statement using the work or incorporates the work in a new form of expression (for example: a parody).
 - **What about educational fair use?** Unfortunately, this exception does not apply to educational use such as employee training – it requires that the use must be for non-profit education institution use. CoxHealth is not an educational institution. The part of the copyright law that allows multiple copies for classroom use or distribution of works in other ways does not apply to educational activities, training, seminars and

conferences at CoxHealth, even though we are a not-for-profit corporation. Use of copyrighted works at a seminar or conference is usually considered a public display, a right reserved for the copyright owner. Copyright permission is often granted for such use, but such permission must be sought from the copyright owner

- Exemptions are allowed under certain circumstances for Cox College to make limited reproductions of copyright protected works. For all such exemptions, however, there are strict limitations.
- *Additional information may be found in **Reproduction of Copyrighted Works by Educators and Librarians** <https://www.copyright.gov/circs/circ21.pdf>*
- Nature of the copyrighted work. Works that involve more creativity (e.g., art works, photographs, fictional accounts), that are more informational than entertaining, and unpublished generally have a higher protection of copyright than works like reference materials or other more routine materials.
- Amount and substantiality of the portion used in relation to the copyrighted work as a whole. Generally, the greater the amount taken, the less likely it is that the use is fair. Certainly copying an entire copyrighted book would be illegal, as would copying an entire copyrighted photograph or design, no matter how small the image. There are no absolute rules on the amount. Even a small amount taken may be unfair if the borrowed material is the “heart” of the work.
- Effect of the use upon the potential market for or value of the copyrighted work. To negate fair use, it only needs to be shown that if the challenged use should become widespread, it would adversely affect the potential market for the copyrighted work.

3) **LIBRARY EXEMPTIONS**

Library exemptions are allowed under certain circumstances. For all such exemptions, however, the reproduction is limited to one copy, must include a notice of copyright (or a legend stating that the work may be protected by copyright if no such notice can be found on the copy), and does not apply to pictorial or graphic works (except for pictures and graphics “published as illustrations, diagrams or similar images”). When necessary, the CoxHealth Library will assist with alternatives to illegal copying such as borrowing entire issues, finding purchase sources, and guidance with obtaining ownership permissions.

4) **PUBLIC DOMAIN**

Copyright protection does not last forever. When copyrights expire, the works they protect fall into the public domain. Subject to certain exceptions, public domain works may be freely copied or used in the creation of other works without permission, or authorization, of the former copyright owners. Besides expired copyrights, the following categories of works are usually considered ineligible for copyright protection: (i) U.S. Government works, (ii) state judicial opinions, (iii) legislative enactments, and other official documents, (iv) unadorned ideas and facts, (v) blank forms, (vi) short phrases, (vii) names, titles and slogans, (viii) extemporaneous speeches, and (ix) standard plots and stock characters. For a list of the copyright terms and public domain guidance, please see <https://www.copyright.gov/circs/circ15a.pdf>.

PROCEDURE

WHEN DO I NEED TO WORRY ABOUT COPYRIGHT LAW?

CoxHealth Workforce Members need to worry about Copyright Law whenever they are creating any written or oral presentation, flyer, marketing campaign, communication, advertising, training documents, giving a speech, etc. and as part of that work/production are using information or images that were not created by them. No matter how informal such a creation might be, we need to be mindful of such acts as copying articles off the internet and distributing to large groups for informational purpose, using clip art in a PowerPoint presentation, taking slides created by another presenter and using them in your presentation, and incorporating music into training videos. Here are some tips on being compliant with Copyright Law:

- Permission is required to use photographs and graphics. (See exceptions above.) See the section entitled “Permission to Use” for more detailed information on how to get copyright permission.
- Digitization of slides is a reproduction. Permission must be obtained from the copyright owner for those that are purchased, reproduced from books, given to you at a conference, or found on the internet. To avoid copyright issues, you must “substantially” change such slides prior to using as your own.
- Motion pictures and television show clips are very difficult to get permissions for and very expensive if obtained.
- Musical selections are available through Corporate Communications as a result of CoxHealth's contract with other licensing agencies.
- Additional tips may be found in *Resources for permission to use copyrighted works* (last page) http://www.copyright.com/wp-content/uploads/2015/03/White_Paper_CR-Guidelines.pdf

You can contact Document Management for more resources on how to find alternative options to avoid copyright issues on printed materials.

PERMISSION FOR USE

1. When to get permission: Printing Services will not reproduce documents which are copyright protected or contain copyright protected elements without written permission of the copyright owner. Obtain permission from the publisher if the material is not your original work. Copyright violations are reported and prosecuted. Both CoxHealth and the Workforce Member are put at risk when someone knowingly circumvents the U.S. Copyright Law.
2. Where to get permission: If the copyright symbol (©) is present, the owner usually follows it. For example, look for the symbol on the reverse of the title page of the book, at the bottom of the first page of a journal article and at the beginning or end of the video. For literary works, direct your request to the publisher’s permissions department, not to the author. If publishers do not control the rights, they will tell you whom to contact. The CoxHealth Library is able to find publisher and contact information. Images can be more difficult. A good rule of thumb is, if the location where you find it doesn’t clearly list the

creator, don't use the location as a source of images. Legitimate sources will either list applicable copyright licenses in an easy to find way or specifically direct you to the original artist.

3. How to get permission: Use the sample letter (attached) and fax, email or mail the request to the copyright owner. When making a request, include all of the following information: author's/editor's/ composer's/publisher's/artist's full name(s); title, edition, and volume number of book or journal, or title and track or volume number of a musical work; copyright date (if known); ISBN for books, ISSN for magazines and journals; number(s) of the exact pages, figures, illustrations; whether material will be used alone or combined with other photocopied material; number of copies to be produced; name of program, exhibit, or other titled use; date(s) the material will be used; and method of reproduction (photocopying, scanning, etc.). Also, provide your complete address, a contact name, and a telephone number and/or email address, in case there are any questions. Some creators/publishers charge a licensing fee for permission. Should you learn that there is such an associated fee, obtain your supervisor's permission before proceeding. Also, note that most copyright holders impose strict limits on use, including how the material is used, how often it may be used (usually only once), and what copyright notice must be posted on the material.

What to do when permission is received: When permission is received, keep the permission documents on file. If submitting to Printing Services for reproduction, please provide copies of all permission forms, a copy of your permission request letter, and a copy of the material for which permission to use has been granted.

VIOLATIONS

Inappropriate use of copyrighted materials should be reported to the Corporate Integrity department.

EDUCATION

HealthStream Module - Copyright Basics

DOCUMENTATION

Copyright Clearance Center, Inc., www.copyright.com

U.S. Copyright Office, www.copyright.gov

Creative Commons, www.creativecommons.org

CoxHealth Document Management – 269-7572

CoxHealth Libraries - Library@coxhealth.com 269-3460

Corporate Communications – Digital Media 269-8106

Corporate Compliance Officer - 269- (LAWS) 5297