

Is anyone stealing your articles? Exploding copyright myths

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Abstract

Management of intellectual property rights, and copyright in particular, is usually handled by publishers on behalf of authors. However, many authors are worried about assigning copyright to publishers and are unclear about what this implies. This article looks at some of the common misconceptions about copyright and explains the truth behind the myths.

Keywords: Copyright, Plagiarism, Authorship

Introduction

Many people consider copyright to be too boring to read about or to be somebody else's problem. However, copyright not only is a fascinating subject, but it is something that every author should know something about.

The main reason that copyright causes problems is the many misconceptions about it. These lead to incorrect assumptions and accusations. In this article I hope to explode some of the common myths.

The concept of protecting ideas and their expression goes far back into history. In ancient Greece, for example, the theft of ideas was identified as a crime, and plagiarism was punishable. The modern concept of copyright started in China in the eleventh century, and in the Western world with the UK Statute of Anne, which was passed in 1710. Soon after the Statute of Anne, other countries (e.g. France) implemented similar laws to protect intellectual property. However, these legal protections only worked within national boundaries and did not protect works from being illegally copied in other countries. With the development of international trade treaties, copyright also became subject of international cooperation with the Berne Convention, originally signed in 1886. Today, 165 countries subscribe to this Convention, which was last updated in 1979. Signatory countries all respect the copyright of the other signatory

countries and afford them the same level of protection as they do for works published by their own nationals.

This means that you, as an author, have (almost) global protection for your work. The practical outcome of this is that if your article is published in a German journal and that article is made available (digitally or in print) in South Korea, then it is protected within Korea under Korean law. This is good news – especially in the digital environment.

Given this globalisation, who actually enforces copyright? As an individual author, if you discover that someone else has copied your work, what do you do about it? This is where publishers are really useful. Publishers are used to investigating and challenging potential copyright infringement. Not only do most of the major publishers have experience and resources to challenge infringement, but publishing associations also work on behalf of member publishers to address international piracy.

Given this international protection, why are there still myths about copyright? Partially, this is due to different national interpretations of the law, and not every country has exactly the same laws. But mostly it is because authors fear to lose something that they have created, and they worry that they are being taken advantage of by publishers.

Myth: only published items are copyrighted

This is the biggest myth. Many authors think that copyright only starts when you publish your article. However, when you, as authors, write anything, it is instantly protected under your national copyright legislation. You don't have to publish it to have ownership of the copyright. Similarly, if you create an image, take a photograph, draw a graph, or record a video clip, it is also protected under copyright law.

Many authors worry about allowing their article to become public before publication in case someone 'steals' it – but in fact the work is protected

by copyright the moment it is written (or video recorded, etc.).

One anomaly that scientific authors may experience is that your employer may actually own copyright on something you create – if it was created as part of your employment. Universities and large research institutions don't usually enforce this, but large corporations and government agencies usually do, although this varies between countries.

Myth: it's OK to copy so long as I credit the creator

Well, no, it's not OK to copy and simply credit the creator. If a work is protected by copyright then you must usually obtain permission to copy. It is allowable to use small portions of a work (e.g. a quotation, etc.) without permission. This is called 'fair use' or an 'exception to copyright,' but this needs to be done carefully.

One common infringement is copying artwork, for example, graphs and charts. Frequently, the author has been asked for permission, but if copyright or exclusive license has been assigned to the publisher, then the author cannot grant permission, although authors frequently think they can! Another problem is that authors who are unable to obtain permission from the publisher (e.g. they are unable to get a response from the publisher) often adapt the figure (e.g. change a bar chart to a line graph) and think that by saying 'adapted from...' they have given correct attribution and have not infringed copyright. This is actually not correct – an adaptation such as this still contravenes copyright if done without permission.

However, there are many publications that allow reuse of all or parts of a work without permission. To find out if you need permission, you should check the licence that the publication uses (Terms and Conditions). For example, some publications may say that you can reuse the work for a non-commercial reason without permission. Some others may say that you can reuse the work for any purpose without seeking permission. See, for example, the Terms and Conditions of the journal, *PLoS One*, which uses a Creative Commons licence that allows any reuse of the content for any purpose without seeking permission (<http://creativecommons.org/licenses/by/2.5/>). See also the *BMJ* licence, which allows use for non-commercial reasons, again using a Creative Commons licence (<http://creativecommons.org/licenses/by-nc/2.0/>).

There is, however, one big question that can be tricky to answer: What is 'commercial' and what is 'non-commercial?' In many cases, this is obvious –

if you are publishing a book for sale, this is commercial, whereas if you want to include content in materials that you hand out to colleagues for free, this is non-commercial. However there are 'grey areas' in-between, so you need to use your judgement – but play safe!

Myth: if I need to seek permission, I will have to pay

No, again, this is often untrue. If you want to include an item within an article (e.g. a graph or an image), then it is unlikely that the copyright owner will ask you to pay for this use. Most publishers who require you to ask permission do so because they want to know what people are doing with their content. So, for example, if you ask permission to use their work for a totally inappropriate reason, they can say 'no!' If you want to reuse their content for monetary gain (e.g. inclusion in a book that you want to sell), then they will probably ask you for a fee. How much this is will depend on what use you want to put the content.

Many publishers are now including a 'rights permission' link on their website for each article. These provide a 'ready reckoner' of charges for commercial uses. But beware: the way these are set up rarely – if ever – grants free permission. So if you honestly feel that your use is non-commercial, contact the publisher directly.

Myth: I need to keep my copyright to ensure that my name is associated with the work

This is definitely untrue! The Berne Convention includes the moral right of attribution. Although this is not enforced in all countries (e.g. the USA), you can assume that it is usually honoured in the scholarly environment. Where it is not honoured, assigning copyright would make no difference!

In some countries you can waive your moral right to be identified as the author of a work (e.g. the UK), but many European countries (e.g. France) will not allow you to do this. When you enter an agreement with the publisher, your name (and that of your co-authors) is identified and should always be associated with your article. Note that the moral right of attribution also covers the right not to be associated with an article that you did not write.

Myth: blogs and tweets are not covered by copyright

This is partially true. Tweets have been deemed to be too small to be covered by copyright, but blogs,

Wikis, and all other web content are protected just as strongly as any printed work. However, determining who owns the copyright in these cases is often difficult! For example, if a journal's online article includes comments from the public, then copyright in the comments may remain with the public authors or may be assigned to the publisher of the website or journal, depending on whether the publisher has included any licence agreement in the comment submission form. Copyright for a blog is usually owned by the blog site owner (e.g. *Nature* owns the copyright for all their blogs), but it may be owned by the individuals who write the blog entries, which is more often the case for less formal blog sites.

Myth: by assigning copyright you lose ownership of your work

Before answering this question, 'ownership' needs to be defined. To most authors, it means the right to reuse your work elsewhere. Whether you can do this depends on the agreement that you sign with the publisher – it is not really dictated by whether you sign over copyright to the publisher or not. Some publishers who require copyright allow authors reuse their works freely, whereas some publishers that ask only for a licence to publish may actually include conditions that allow the authors to do very little with their work after publication.

Most (good) publishers will allow you to retain the rights to reuse your work for non-commercial reasons such as training – and to do so without asking permission from them. Also you will almost certainly be able to produce derivative works (e.g. a book chapter) based on the same content without permission. *Copyright only protects the expression of an idea, and not the idea itself.* Therefore, if you have undertaken some research and write it up as a research article, you will not be infringing on the copyright if you subsequently re-write the research into, for example, a book chapter, or a presentation. However, you must read the contract that you sign with your publisher! Also, it is always good practice to cite your earlier works on which your later works are based. Not only does this confer greater credibility on your current work, but it may help to increase citations and raise awareness of your earlier works.

Publishers are often unwilling to allow you to republish your final work (i.e. the PDF of your final article) in an open repository, but many are willing to allow you to post pre-prints. A pre-print is any version of your article up to, and including, the accepted article but does not include the final

edited and formatted article. You may be required to post such pre-prints, if there is an institutional or grant-funding mandate.

Note that publishers who only ask you to assign them a licence to publish may require an exclusive licence. This means that you are not allowed to republish your work for commercial or non-commercial reasons. Although you retain ownership of your copyright in this case, you still can't make free use of your article. Again, the same principle applies: be sure to read and understand the contract that you have signed.

Myth: copyright infringement and plagiarism are the same

This is a common fallacy, and the difference is frequently misunderstood. Copyright infringement is copying the expression of an idea without permission (with or without attribution). Plagiarism is not attributing the author and pretending that the work is your own. For example, copying an article completely with the author's name but without permission is copyright infringement, whereas copying the article or a portion of the article and replacing the author's name with your own is both copyright infringement and plagiarism. Taking the ideas in the article and using them (unattributed) to write your own article is plagiarism.

In the academic and research world, plagiarism is extremely serious. For example, Hungarian President Pal Schmitt is currently under pressure to stand down after being accused of plagiarising parts of his doctoral thesis. His plagiarism has led critics to question the integrity of his office.

In the legal environment, suing for copyright infringement is often easier than suing for plagiarism because the laws are usually more robust. Also, plagiarising without copying some of the expression used by the original author is quite difficult, so copyright infringement usually occurs in most cases of plagiarism.

Interestingly, most plagiarism-checking software (e.g. TurnItIn and CrossCheck) looks for word similarity. Word similarity may indicate copyright infringement but does not necessarily indicate plagiarism. Not only can the software not check for concepts and ideas, but it can easily miss some plagiarised content. Therefore, these are more accurately called copyright-checking tools.

Myth: the lead author owns copyright

This is not true; all contributing authors share joint copyright ownership in a jointly-authored article. However, if one person created all the figures, then

they would own sole copyright for them. At least in theory, this means that every author should sign the copyright assignment form. In reality, common practice is to only ask the lead or corresponding author to sign the form, but this is legally dubious.

Myth: by submitting the author has implicitly granted the publisher copyright

This is commonly thought to be the case but it is certainly incorrect! Just because the guide for authors says that by submitting to the journal the authors assign copyright to the journal, does not make it so. This assumption is not legally watertight, at least not in all jurisdictions that I know of.

In exactly the same way as websites require you to tick the 'agree to the terms and conditions' box, within publishing, the authors (or the rights owner if this is not the author) must assert copyright assignment or grant a licence to the publisher for the article to be published. This is usually done either as part of the online submission system, or "offline" by signing and returning an assignment form.

Myth: if I cannot assign copyright, I cannot publish with you

Most quality journals will allow authors to sign a licence to publish agreement with them in cases where the author cannot assign copyright. This may happen, for example, if the author works for

a large organisation that owns copyright in all work generated by the organisation and is unwilling to assign it to anyone else. For example, employees of the World Health Organization (WHO) do not own copyright in articles that they create as part of their work. Instead, copyright is retained by the WHO. Therefore, when the author submits the article for publication, the WHO, as owners of the copyright, would have to sign the permissions form and would not assign copyright but only grant a licence to publish the article, reserving the copyright within the WHO.

Conclusion

Copyright protects the creator of a work by identifying them as the creator and protecting their commercial and moral interests. When you sub-contract the work of publishing to a publisher (in return for disseminating your research, increasing your academic/research credibility, and possibly enhancing your job prospects) they can help in protecting your work from being pirated or falsely attributed to another person. However, in return for this, they will often require the freedom to use your work (for the purposes which you agreed in your agreement with them) and may require copyright assignment. Despite this, journals are beginning to ask for an exclusive licence to publish instead of copyright assignment. This makes little difference to the business of the publisher or to the rights of the author but often makes authors feel better.

Author information

Pippa Smart is a publishing consultant who provides training for editors and publishers, most notably the Medical Editors short course which takes place in Oxford in November each year. She also works with the Association of Learned, Professional and Scholarly Publishers (ALPSP) to develop training courses for publishers, such as a distance learning course on copyright that was launched in September 2012. She provides advice and consultancy services to a range of journals and publishers on how to develop their publishing practices and platforms, how to ensure that their agreements are appropriate, and how to improve the quality of their publications. For more information, see her website at www.pspconsulting.org.