

COPYRIGHT GUIDANCE FOR MEDICINES INFORMATION STAFF

This document provides guidance for MI centres in England and Wales. The situation in Northern Ireland, Scotland, and the Isle of Man may vary in some respects. MI pharmacists in these home countries are advised to seek local advice where necessary.

Contents

Quick Reference	3
Why do MI staff need to know about Copyright?	4
What is Intellectual Property?	4
What is Copyright and what can be Copyrighted?	5
What are Crown Copyright and Parliamentary Copyright?	5
Crown Copyright	5
Parliamentary Copyright	5
How do you get a copyright?	6
Who owns the copyright?	6
Works created in the course of employment	6
Copyright: The Rights Conferred	7
What are the rights of the copyright owner?	7
How long does copyright last?	7
International Copyright	8
Using Copyright Material	9
What can you do with copyrighted material?	9
Copyright Licences	10
Open Government Licence	10
Copyright Licensing Agency (CLA) Licence	10
Creative Commons Licence	11
Individual Licence	11
Orphan Works	11
Interpreting Copyright Licences	11
Copyright Disclaimers	12
Infringement of Copyright	12

UKMi Quality and Risk Management Group
Copyright Guidance for Medicines Information Staff

Criminal Consequences	12
Civil Consequences	12
References	13
Disclaimer.....	14
Author	14

Quick Reference

Is it copyright?

- Nearly everything that is recorded in print/digital/film/audio will have some form of copyright attached to it, unless the author has been dead for at least 70 years.
- Before using someone else's work, check whether any copyrights apply. If you don't know, assume that any work where the author could still be alive + 70 years is copyright.

Can I use it?

- If a work is copyright, you can use it if you have a licence (permission) for the particular use you have in mind. Some licences are broad and cover lots of activities; some are very narrow.
- NHS staff have licences to use many works already. See:
 - NHS England: <https://www.cla.co.uk/nhs-england-licence>
 - NHS Scotland: <https://www.cla.co.uk/nhs-scotland-licence>
 - NHS Wales: <https://www.cla.co.uk/nhs-wales-licence>
 - Health & Social Care for Northern Ireland: <https://www.cla.co.uk/northern-ireland-health-service-licence>
- Having a licence to use a work doesn't mean that the work is not copyright; it means that the copyright owner is permitting you to use the work in the ways specified in the licence *in addition to* the (limited) ways anyone can use copyright material.
- For copyright works that you don't have a licence for, there are some limited ways in which you can still use the work.

How do I check if I have a licence?

- Check the CLA at www.cla.co.uk or ask your librarian.

What can I do?

- For the publications to which the licences above apply, if you already own/have access to the publication via an NHS source, you **can**:
 - **Make copies** (up to 1 chapter or 5% of a book, and up to 2 articles from a single journal issue).
 - **Make multiple copies** of the same article for a single purpose (e.g. for a journal club) provided you stick to the limits above.
 - **Share copies** with colleagues (which includes other persons working for the NHS). However, you should not take this to mean that articles may be distributed wholesale (e.g. by sending out to everyone on a general email list, rather than just to a colleague who requires it). For information on sending copyright disclaimers, see page 12.
 - **Store copies on a secure network** (e.g. attached to enquiries on MiDatabank). However, you should not use the copies to create a database of journal articles.

Consult the links above for further detail; the licences are slightly different for each home country.

Why do MI staff need to know about Copyright?

If you work in a Medicines Information Centre, the chances are that you will deal with many types of information, recorded in different ways, in a single day. As healthcare is a fast-moving discipline, it is likely that the majority of the information you handle will be relatively new – and therefore it is likely that it will be under copyright. This includes:

- Books
- Journal articles
- Bulletins and newsletters
- Letters and emails
- Social media posts
- Audiovisual recordings
- Slide presentations
- Mi-Databank entries.

And so on.

You also, on a daily basis, produce material that is copyrighted: if you record it, and it's not a simple list or something already exists (e.g. a quote from a book), the chances are that you are creating copyright material.

It is therefore important for you to know:

- What copyright is
- How the copyright system works
- How to avoid infringing copyright
- How your own rights are affected.

What is Intellectual Property?

Intellectual property is a type of intangible property. It refers to creations of the mind such as literary and artistic works, symbols, names, and images.⁽¹⁾ There are several categories of intellectual property:

- Copyright
- Patents
- Design Rights
- Trademarks
- Trade Secrets
- Geographical Indications

Intellectual Property is important because it allows non-physical creations to be owned and to have a monetary value, which enables the creator to be rewarded for its use by others, and to prevent others from using the creation without permission. It also provides protection for a creator's moral rights, such as the right to identified as the creator. This encourages the creation of further intellectual property, thus encouraging innovation (e.g. patents) and enriching society (e.g. artistic works).

This document concentrates on Copyright, therefore the other types of intellectual property will not be considered further.

More information is available at: <https://www.gov.uk/government/organisations/intellectual-property-office>

What is Copyright and what can be Copyrighted?

Copyright is a form of intellectual property. It is the protection assigned to original creative works such as:(2)

- 'Classic' works: Literary, dramatic, musical, and artistic works.
- 'Entrepreneurial' works: Films, sound recordings, broadcasts and cablecasts, and published editions.
- Databases.

Before a work can be copyrighted, it must exist in tangible form. For the 'classic' works, the work must also be 'original', but the bar for originality is quite low.(3) Therefore:

- The idea for the novel you have not yet written is not copyrighted.
- The first draft of the novel you have written is copyrighted, no matter how awful it is.

The types of work most likely to be created in the course of running a Medicines Information Service are of the 'classic' type, and most are likely to come under the 'literary' heading. Works include:

- Letters
- Bulletins
- Guidelines
- Lecture/presentation slides and supporting material (the performance itself is not copyright unless it is recorded, and then the recording is copyrighted separately – as a film or sound recording – to the slides and notes).
- Artwork of various kinds, e.g. graphics, logos, posters.
- Databases.

In short, if it fits into one of the listed categories and is recorded in some tangible form, it is likely that copyright applies. For instance, for some time there was doubt as to whether computer software could be copyrighted, but now computer programs are copyrighted 'literary' works.(2)

What are Crown Copyright and Parliamentary Copyright?

Crown Copyright

Where a work is made by the Queen or an officer or servant of the Crown in the course of their duties, and it qualifies for copyright, then the Crown is the first owner of the copyright.

"Officers and servants of the Crown" includes civil servants, ministers, and government departments (including the Ministry of Health) and agencies in the course of their work.(4)

Works published by NHS bodies (e.g. Foundation Trusts) are *not* Crown Copyright, because even though the NHS is a public body, it is not part of the government or civil service.

The National Archives maintain a list of public bodies which have Crown status, and therefore their output would have Crown Copyright. It is available at:

<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/uk-government-licensing-framework/crown-copyright/uk-crown-bodies/>

Parliamentary Copyright

Where a work is made by or under the direction or control of either the House of Commons or the House of Lords, and it qualifies for copyright, then the House which had control has copyright. If both had equal control, they are joint first owners of copyright.

How do you get a copyright?

For some intellectual property rights (e.g. patents) you have to make an application and have it accepted. This is not the case for copyright; copyright protection occurs automatically, as soon as an eligible work is produced – “before the ink is dry upon the paper”.

Registration of copyright is not necessary. Some countries have a system whereby registration of copyright gives the copyright owner extra rights (e.g. the United States of America), but the UK does not. Although UK organisations may say they ‘register your work’, this only means that they keep a record of your work and when you sent them a copy; this provides evidence that the work existed and was in your control at that time, but that is all.

The © symbol merely denotes that a work is copyright, and generally who owns the copyright. Absence of the symbol does not mean that the work is not copyright.

Therefore, provided a work falls into one of the categories of material protected by copyright, it will automatically gain copyright protection.

Who owns the copyright?

This can be quite a complex question. In the case of a book:

- The author owns copyright in the text.
- The photographer/artist owns copyright in the images.
- The publisher owns copyright in the layout.

However, copyright can be assigned (or inherited), or the original owner can sell or give a licence to someone else to do various things. Therefore, the copyright in a work may be owned by the publisher or the author may have granted the publisher an exclusive licence to publish the work. It is very common for academic publishers to own the copyright of articles they publish.

Sometimes, it can be difficult to identify the person who owns the copyright to a work, or to contact them if they can be identified. See ‘Orphan Works’ below.

Works created in the course of employment

In the case of most works produced by UK Medicines Information staff, those works will be produced as part of their employment (for example, this document).

- If the work is created by an employee as part of their normal job, as covered by their job description, the copyright will be owned by the employer, not the individual.
- If the work is created by an employee who is doing something outside their job description, then the copyright will belong to the employee.
- If the work is created ‘on commission’, the copyright is owned by the creator *unless* the contract under which the work was created specifies otherwise.

Most NHS organisations will have their own policies regarding copyright and other intellectual property.

Copyright: The Rights Conferred

What are the rights of the copyright owner?

The owner of copyright has the exclusive right to do the following things in the UK:

- Copy the work.
- Issue copies of the work to the public.
- Rent or lend the work to the public.
- Perform, show, or play the work in public.
- Communicate the work to the public.
- Make an adaptation of the work, or do any of the above in relation to an adaptation.

The moral rights the author, director or commissioner of the work has (even if they are not the copyright holder) are:

- The right to be identified as the author (or director)
- The right to object to derogatory treatment of the work.
- The right to privacy of certain photographs and films.

These moral rights cannot be assigned (i.e., they cannot be given away or sold), but they can be waived. Waiver of moral rights usually happens in the commercial sphere, in situations where it does not matter which specific person was the originator of the work – for example, a departmental newsletter, or an advertisement.

How long does copyright last?

- **Literary, dramatic, musical or artistic work.** 70 years from the end of the calendar year in which the author dies. For joint authorship, 70 years from the end of the year in which the last surviving author died. If the author is unknown, 70 years from the end of the calendar year in which the work was made or if the work was made available to the public, 70 years from the end of the year in which it was made available.
- **Computer-generated work.** 50 years from the end of the calendar year in which the work was made.
- **Sound recordings.** 50 years from the end of the calendar year in which the recording was made, or 70 years from the end of the calendar year in which it was first published.
- **Films.** 70 years from the end of the calendar year of the death of the final survivor of: the principal director, the author of the screenplay, the author of the dialogue, and the composer of music specially created for and used in the film. Alternatively, if the names of none of these are known, 70 years after the end of the calendar year in which the film was made, or 70 years from the end of the year in which the film was made available to the public. If the film did not have any of these people, then copyright expires 50 years from the end of the calendar year in which it was made.
- **Broadcasts.** 50 years from the end of the calendar year in which the broadcast is made.
- **Typographical arrangements of published editions (e.g. page layout).** 25 years from the end of the calendar year in which the edition was first published.
- **Crown copyright:** 125 years from the end of the calendar year in which the work was made, or if it was published commercially before the end of 75 years after it was made, until the end of 50 years from the end of the year in which it was published.
- **Parliamentary copyright:** 50 years from the end of the calendar year in which the work was made.

International Copyright

- Many countries (currently 164) are signatories to the Berne Convention, which set down many of the principles for modern copyright protection. An important principle is that if a work is copyrighted in any of the party countries, copyright applies in all of the party countries.
- The terms of copyright that apply are those of the country of origin, so if a member of NHS staff wishes to use copyrighted work first published in the USA, then it is USA copyright rules that apply.
- In the European Union, there is a certain amount of harmonization of copyright provisions between the member states, so in most EU countries, copyright protection is fairly similar. However, that does not apply outside the EU, so if you are planning to use work that is copyrighted in another country, it is wise to check what that country's copyright rules are before going ahead. In the USA, for instance, for works published after 1978, copyright protection lasts for the life of the author plus 70 years, which is the same as the UK. But for anonymous or pseudonymous work, or work made for hire, the copyright lasts for 95 years from first publication or 120 years from creation, whichever expires first.⁽⁵⁾ This is longer than in the UK.

Using Copyright Material

What can you do with copyrighted material?

There are certain circumstances – ‘exceptions’ – in which you may make a limited use of a copyright work without the permission of the copyright owner.(6)

These are:

- Non-commercial research and private study. You can copy limited extracts of works for this reason, but only if it is ‘fair dealing’.*
- Text and data-mining for non-commercial research. Copies may be made for this purpose, but only if the researcher already has the right to read the work.
- Criticism, review, and reporting current events. This does not apply to photographs. Fair dealing* is allowed, and sufficient acknowledgement† of the material is required.
- Teaching. Copying small sections of a work is allowed (e.g. a paragraph) provided it is not done for commercial purposes, sufficient acknowledgement is given, and the use is fair dealing.* One person making multiple photocopies of a whole work (e.g. a journal article for a journal club) is not likely to be allowed without a licence.
- Helping disabled people. If a disabled person owns/has the right to use a copy of the work, but the work is inaccessible due to a physical or mental impairment, then they can make (or someone can make on their behalf) an accessible copy, if an accessible copy is not commercially available.
- Time-shifting. Making a recording of a broadcast so you and your family can watch it later.
- Parody, caricature, and pastiche. Only to the extent that it is fair dealing.*
- Certain permitted uses of orphan works. Some heritage organisations are permitted to digitise orphan works and place them on their website for non-commercial use.

If you want to do something other than the above, for example you wish to copy a larger part of an article than would be ‘fair dealing’, or you wish to make multiple copies of an article (e.g. for a class) then you will need a *licence* (permission from the copyright holder).

* **Fair dealing in the UK:** there is no precise definition of what ‘fair dealing’ means in the UK, because what is ‘fair’ will depend on the circumstances. Factors that would be considered by a court include: does the use of the work affect the market for the original work? Would it cause the author to lose money (if so, it’s unlikely to be fair). Was the amount of the work used reasonable and appropriate? Was it necessary? Usually only part of a work may be used; there is no set amount of a work that can be used without infringement, either in number of words or percentage of the total. If the words are ‘important’ (e.g. the most famous lines of a poem) then use of very few words might count as infringement.

Note: These provisions are more restrictive than the US ‘fair use’ provisions.

† **Sufficient acknowledgement:** Where you make use of someone’s work under certain exceptions, you must ‘sufficiently acknowledge’ the author’s work, unless this is practically impossible. In the context of Medicines Information, appropriate referencing as per academic standards is likely to be sufficient.

For further information on exceptions to copyright, see: <https://www.gov.uk/government/publications/changes-to-copyright-law>

Copyright Licences

If you wish to do any of the things that usually only the copyright owner has the right to do – such as make a copy of the work – then you will need a *licence*.

Then the copyright owner can *grant a licence* (permission) for someone else to do anything that usually only the copyright owner could do, either for a limited time or for the life of the copyright, worldwide or only in one particular country or language – and so on. Copyright licences can therefore be very wide (a licence to do all the things the copyright owner can do, for the life of the copyright, everywhere), or very specific (a licence to print one edition, in paperback, of a story, to be sold in the UK only, for five years).

There are various options for getting a licence:

- Many 'official' publications in the UK can be used under the Open Government Licence.
- The Copyright Licensing Agency arranges 'blanket' licences for works by participating creators. Most academic works are included.
- Creative Commons licence.
- Individual licence.
- Orphan works.

If a work is published under the Open Government Licence or the Creative Commons licence, there will usually be a statement to that effect on the work itself. If you are not sure whether or not you have a licence to use a particular work, you should contact your organisation's librarian who will be able to help.

Open Government Licence

Most Crown Copyright material, and much information produced by other public sector bodies, is available to be used under the Open Government Licence (OGL). Where the OGL applies, you can:(7)

- Copy, publish, distribute and transmit the information.
- Adapt the information.
- Exploit the information commercially and non-commercially.

You must:

- Acknowledge the source of the information by including or linking to any attribution statement specified by the information provider(s).
- Where possible provide a link to the OGL.

For further information, see: <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

Copyright Licensing Agency (CLA) Licence

The Copyright Licensing Agency is a non-profit-making organisation which arranges 'blanket' licences for other organisations to use works by participating creators. The organisation (e.g. the NHS) pays for the licence, and the CLA pays royalties to the creators.

Each home country's NHS has a CLA licence. You can see what each licence covers, and what you can and cannot do here:

- NHS England: <https://www.cla.co.uk/nhs-england-licence>
- NHS Scotland: <https://www.cla.co.uk/nhs-scotland-licence>
- NHS Wales: <https://www.cla.co.uk/nhs-wales-licence>

UKMi Quality and Risk Management Group

Copyright Guidance for Medicines Information Staff

- Health & Social Care for Northern Ireland: <https://www.cla.co.uk/northern-ireland-health-service-licence>

You can check whether a particular work is covered by the CLA's licences here: <https://www.cla.co.uk/>

Creative Commons Licence

Creative Commons is a non-profit organisation which provides free legal tools – e.g. copyright licence texts – for creators. This means that a creator can pick one of the several licence texts provided by Creative Commons which suits how s/he wants to make their work available. Different licensed include:

- You can use the work commercially, or not.
- You can make derivative works, or not.
- All the rights under copyright, or only some of them.

In short, if a work has a Creative Commons licence, you may be able to use it (especially if your work is non-commercial). However, you will need to check exactly what the licence gives you permission to do.(8)

Individual Licence

If all else fails, you can contact the copyright holder directly for permission to use the work. The copyright holder does not have to give permission; if they do, you may need to pay.

Orphan Works

'Orphan works' are works which are copyrighted, but one or more of the copyright holders is unknown or cannot be traced. This may happen for many reasons:

- The work is anonymous or pseudonymous, and the details of the real author are not known.
- The author assigned the copyright to someone else, and that person cannot be traced. For instance, if an author assigned the copyright to the publisher, and the publisher went into liquidation, it might be difficult to trace the new owner of the copyright.
- The author died and left the copyright to an heir who cannot be traced.

There is a register of orphan works at: <https://www.orphanworkslicensing.service.gov.uk/view-register>

It is possible to apply for a licence to use an orphan work (either commercially or non-commercially) via the Intellectual Property Office.

Interpreting Copyright Licences

Copyright licences (e.g. the Copyright Licensing Agency licences) are often renegotiated every few years, and so the terms may change. This document is intended to last long than that with minimal updating, so only basic information on the provisions of specific licences has been included. However, when interpreting what a particular licence allows, the following tips should help.

A licence is intended to allow you to do *more* than you would be allowed to do under the exceptions to copyright listed above. Licences will include *who* is covered by the licence, and will often include:

- Specific limits on how much you are allowed to copy, either as a percentage of the document, or number of articles in a journal.
- How many copies you may make (either as a number or simply 'multiple').
- Whether you may share copies, and with whom.
- Whether you may store material on a network (storing articles on MiDatabank counts as storage on a 'secure network').

Copyright Disclaimers

If supplying an article to someone else, it is often wise to include a disclaimer, which informs the receiver what they do, and do not, have the right to do with the article, and what should be done if they receive the article in error.

Your organisation's library should be able to advise you on how your organisation deals with this.

Infringement of Copyright

If you do any of the things that are the copyright owner's exclusive right to do without their permission (i.e., without a licence), you *infringe* their copyright.

There are two aspects to the consequences of infringing copyright: criminal and civil.

Criminal Consequences

Under the Copyright, Designs and Patent Act 1988,(2) it is an offence to infringe the copyright holder's rights. Ways in which rights can be infringed include:

- Making an infringing article for sale.
- Selling, distributing or exhibiting an infringing article in the course of a business.
- Communicating the work to the public if you know you are infringing copyright and intend to make a gain for yourself or someone else, or intend or have reason to believe that communicating the work will cause a loss to the copyright owner (or expose them to the risk of making a loss).

The penalty for copyright infringement varies, but for some offences the maximum penalty is ten years in jail and/or an unlimited fine.

Civil Consequences

In addition to the criminal consequences above, the copyright owner has the right to sue you for compensation for any damage they have suffered.

References

1. World Intellectual Property Organization. What is Intellectual Property? [Internet]. [cited 2018 Dec 3]. Available from: <https://www.wipo.int/about-ip/en/index.html>
2. Copyright, Designs and Patents Act 1988 c.48 [Internet]. Available from: <http://www.legislation.gov.uk/ukpga/1988/48/contents>
3. Bamford K, Embley J, Hancock N. Commercial and Intellectual Property Law and Practice 2016. College of Law Publishing; 2016. 516 p.
4. Crown copyright | Copyright Licensing Agency [Internet]. [cited 2018 Dec 3]. Available from: <https://www.cla.co.uk/crown-copyright>
5. How Long Does Copyright Protection Last? (FAQ) | U.S. Copyright Office [Internet]. [cited 2019 Jan 16]. Available from: <https://www.copyright.gov/help/faq/faq-duration.html>
6. Exceptions to copyright [Internet]. GOV.UK. [cited 2019 Jan 16]. Available from: <https://www.gov.uk/guidance/exceptions-to-copyright>
7. Open Government Licence [Internet]. [cited 2019 Jan 21]. Available from: <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>
8. About The Licenses - Creative Commons [Internet]. [cited 2019 Jan 21]. Available from: <https://creativecommons.org/licenses/>

Disclaimer

You should always consult local policies and/or guidance. This document is intended to supplement these, not to replace them.

The information and opinion in this document are general information. The information and opinion are not legal advice, and should not be treated as such.

The information is provided without any representations or warranties, either express or implied.

Although we have attempted to ensure that the information and opinion are true, accurate, complete, current and non-misleading, to the best of our ability, we do not warrant that we have succeeded.

You must not rely on this document as an alternative to legal advice from a legal professional.

If you have any specific questions about a legal matter, you should contact your legal services provider.

Nothing in this disclaimer will:

- Limit or exclude any liability for death or personal injury resulting from negligence;
- Limit or exclude any liability for fraud or fraudulent misrepresentation;
- Limit or exclude any liabilities in any way that is not permitted under applicable law.

Author

This document includes information from the UKMi Legal and Ethical Briefing on Copyright produced in May 2003, September 2010, and December 2013, and updated by Katie Smith, Director, East Anglia Medicines Information Service, February 2017.

This document by: Jen Smith MRPharmS, West Midlands Medicines Information Service, on behalf of the UKMi Quality and Risk Management Group.