

A Question of Transfer

An author prepares a manuscript for a journal and, at submission, is required to have all coauthors sign a statement that “in consideration of the journal’s taking action in reviewing and editing the submission, all authors transfer, assign, or otherwise convey all copyright ownership to the publisher in the event that it is published in the journal.” A coauthor has created several of the illustrations. Upon acceptance of the manuscript, the authors receive a copyright transfer form for all to sign, but the illustrator-coauthor decides to retain copyright and publish the figures instead on a scientific Web site in his field to establish priority; he also removes his name from the paper. Do the main author and the journal representing the publisher have the right to publish these illustrations in the print journal without the now-former coauthor’s permission on the basis of the original letter he signed transferring copyright? What alternatives does the main author have?

Solutions

I think the practice of scientific publishers’ insisting on assignment of copyright is objectionable. As you see, it has caused some authors to bolt, and so it should. Publishers do not need assignment of copyright, but only a license. The more they insist on all copyrights, the more authors will revolt.

I am not in a position to give legal advice. I can say that a joint work—a work created by the creative contributions of more than one person that was intended by them to be an inseparable part of a whole—is jointly owned by the coauthors. The withdrawal of one person after the work is created would not seem to change the status of the work in the absence of a written agreement that transferred the exclusive rights to that one author in his or her contribution. Another general consideration would be the nature of the creative effort—what people intended when they developed the work.

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The original letter sent to the journal stated, “in consideration of the journal’s taking action in reviewing and editing the submission, all authors transfer, assign, or otherwise convey all copyright ownership to the publisher in the event that it is published in the journal.”

Specifically, the statement says that copyright is transferred when the article is published. The article had not yet been published, and the “official” copyright transfer form from the journal had not yet been signed, so copyright was not in possession of the main author or the journal. Furthermore, the illustrator had them published to “retain the copyright”, which precluded use of the illustrations by the main author and the journal (I assume the illustrator did not transfer copyright to the scientific Web site but retained copyright for himself). Use of the illustrations by the main author for the paper in question would require the author to obtain permission from the illustrator, pay the required fees for use (if the illustrator requests fees), and cite the source of illustrations in the text.

Another possibility for the main author is to find other illustrations. A different illustrator may be hired to create a new set of illustrations. Or illustrations may be found online on medical illustration Web sites, also for a fee. If the main author or one of the other authors is affiliated with a larger institution, the medical library or multimedia department of that institution may have medical images available to its staff that are publishable on compact disk without copyright permission.

Our hypothetical author may want to consider the following for future attempts at publication: draft a letter for the illustrator to sign that transfers copyright ownership to the organization that the main author is affiliated with: If the illustrator agrees, the main author will ensure use of the illustrations without having to acquire permissions.

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Our publisher is still extremely sensitive about the use of our material in an electronic setting, especially that of the Internet. In some cases, we will allow Internet use on the condition that it will be password-protected and used for a limited time only. If these are conditions that will be observed with our publisher's material, then we will be happy to consider such a request.

Peter Marino

Permissions Editor
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New Question: A Question of Approval

A resident physician who has described use of a new technology in several cases requests that the manuscript be edited before submission to her specialty journal. When the editor asks whether institutional review board (IRB) approval for analysis of the

cases has been obtained, the resident states that it is not necessary for case reports. The editor ascertains from the text that patient information was obtained from the facility's registry. Should the editor advise her that she may need to provide a letter of approval or evidence of exemption from the IRB? What recourse does the editor have if the resident declines but wants the paper edited and submitted anyway?

The situations described as new questions in this column are not necessarily based on actual situations, and the ones that are may have been modified to focus the question. Send your responses to the new question to Della Mundy, Department of Medical Editing, Kaiser Foundation Research Institute, 1800 Harrison Street, 16th Floor, Oakland CA 94712-3429. Telephone 510-987-3573; fax 510-873-5131; e-mail della.mundy@kp.org.

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Halifax, Nova Scotia
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**For information, please contact
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