

Copyright & Intellectual Property

I. POLICY

The purpose of this Copyright Policy is to provide guidance in the proper use of copyrightable materials and to set forth the terms applicable to any copyrightable materials that may be written, developed, recorded, generated, created, managed, presented or delivered for AO North America, Inc. (“AO NA”) by its Volunteers.

In this age of easy access to the Internet and almost constant sharing across multiple platforms, it is important to remember that not everything found on the Internet can be used freely. In fact, the opposite is true. Materials found on the Internet are subject to copyright protections just as a paper copy would be. Things like text, charts, graphs, tables, photographs, music, movies, graphics, postings to news groups, blogs, e-mail messages, images, video clips, and computer software do not lose copyright protection simply because they are posted on the Internet.

For purposes of this Copyright Policy, the following terms will have the following meanings:

1. “Author” means the person or persons who wrote, developed, recorded, generated or created a particular work.
2. “Copyrightable Materials” means all materials, documents, images, graphics, logos, designs, audio recordings, videos, photographs, and other copyrightable works that are written, developed, recorded, generated or created by a Volunteer (or his or her employees or agents), in any and all media and formats.
3. “Volunteer” means all persons who write, develop, record, generate, create, manage or deliver any copyrightable Materials for or on behalf of AO NA, other than AO NA’s employees (whether full-time or part-time), and other than anyone with a written agreement with AO NA. The term “Volunteer” includes, but is not limited to, all faculty, volunteers, speakers, presenters, moderators, Residents and Fellows, whether compensated or not.

II. COPYRIGHT LAW

United States copyright law protects original works of authorship that are fixed in a tangible medium of expression. Copyright law does not protect ideas, facts, processes, methods of operation, concepts or principles, although it does protect the original expression of such things. As used in this Copyright Policy, the terms “copyrighted work”, “copyrightable work” and “Copyrightable Materials” mean any work that can be protected by copyright law, including, but not limited to, books, articles, documents, outlines, PowerPoint presentations, music, audio recordings, movies, videos, photographs, artwork, images, graphics, designs, computer software, websites, and other similar literary and visual works.

¹ This Copyright Policy only applies to Volunteers. It does not apply to AO NA’s employees (whether full-time or part-time).

For a brief overview of U.S. copyright law, please see Exhibit A to this Copyright Policy.

III. RIGHTS IN COPYRIGHTABLE WORKS

A. Ownership by Authors.

1. The copyright in all Copyrightable Materials written, developed, recorded, generated or created by a Volunteer will be owned, as a matter of law, by the Author of those materials, except in those circumstances described in Article III, Paragraph B, or unless otherwise specified in a written agreement between AO NA and the Volunteer. In all other situations, AO NA relinquishes all claims to ownership that it might have in all such Copyrightable Materials, subject to Article III, Paragraph E of this Copyright Policy.
2. Where any Copyrightable Materials are written, developed, recorded, generated or created by more than one Author, each Authors will have an equal undivided interest in the work as a whole, unless the Authors otherwise agree between or among themselves in writing to some other sharing mechanism.
3. The following are examples of commonly occurring situations involving the ownership of Copyrightable Materials by a Volunteer. (This is not intended to be an exhaustive list.)
 - a) All rights in educational content, including on-line courses, created by a Volunteer as part of his or her faculty assignment with AO NA are owned by the Volunteer, except in those circumstances described in Article III, Paragraph B, or unless otherwise specified in a written agreement between AO NA and the Volunteer.
 - b) All rights in lectures and presentations electronically captured are owned by the Volunteer and licensed to AO NA under Article III, Paragraph E.
 - c) All rights in lectures written, developed, recorded, generated or created by Volunteers for international programming or domestic or international continuing education, including on-line education, are owned by the Volunteer and licensed to AO NA under Article III, Paragraph E, unless a written agreement is signed by the Volunteer and AO NA for the development and delivery of those lectures states that the work is owned by AO NA.

B. Ownership by AO NA. Notwithstanding the foregoing, there are certain circumstances in which AO NA will retain copyright ownership of Copyrightable Materials created by Volunteers or others. Examples of this kind of situation include the following. (This is not intended to be an exhaustive list.)

1. If AO NA hires or engages a Volunteer to write, develop, record, generate or create any Copyrightable Materials, that Volunteer may be required to sign a written agreement assigning and transferring the copyright in those Copyrightable Materials to AO NA.
2. If AO NA hires or engages a third-party consultant or independent contractor (who is

not a Volunteer) to write, develop, record, generate or create any Copyrightable Materials, that third party consultant or independent contractor may be required, before beginning the work, to assign and transfer all of his, her or its ownership rights in those Copyrightable Materials to AO NA.

- C. Editorial Changes. If any Volunteer makes any changes or improvements to any Copyrightable Materials written, developed, recorded, generated or created by one or more other Volunteers, or by a third party consultant or independent contractor, whether in connection with the management, presentation or delivery of those Copyrightable Materials or otherwise, such Volunteer will not own, obtain or acquire any rights or copyrightable interest in those Copyrightable Materials, unless the Author of those Copyrightable Materials otherwise agrees in writing.
- D. Ownership by Third Parties. If a copyrightable work results from or is written, developed, recorded, generated or created under a grant or other financing provided by the United States or any state government, or any of their respective commissions, agencies or authorities, any other administrative, legislative or judicial bodies, or any nongovernmental agencies or other entities, the ownership of rights in that work will be controlled by the terms of the applicable grant, contract or agreement under which the financing was provided. If there is no such grant, contract or agreement, or if any such grant, contract or agreement is silent on the issue of ownership, then the ownership of that work will be controlled by this Copyright Policy.
- E. Grant of Rights by Authors.
1. Each Author grants to AO NA a perpetual, royalty-free, non-exclusive, worldwide right and license to use (and re-use) all Copyrightable Materials that he or she writes, develops, records, generates or creates for AO NA, in any manner whatsoever, including in both print and electronic media of all types. Such license includes, but is not limited to, the right to copy, edit, reproduce, use, sell, lease, license to a third party, advertise, promote, market and distribute the Author's Copyrightable Materials and any products or services embodying, employing or utilizing in any manner all or any part of such Copyrightable Materials. Such right and license expressly includes the right of AO NA to grant sublicenses to any third party for any purpose whatsoever, which sublicenses may be restricted by AO NA in any lawful manner.
 2. Each Author acknowledges and agrees that AO NA may use his or her name, face, voice, likeness and/or biographical information in connection with the use, sale, advertisement, promotion, marketing and distribution of his or her Copyrightable Materials and/or any products or services embodying, employing or utilizing any or all of such Copyrightable Materials, if AO NA so chooses, in AO NA's sole discretion.
 3. Each Author waives all rights that he or she may have to any claim for payment of any kind, whether money, property or otherwise, related to the use or re-use of his or her Copyrightable Materials under this Copyright Policy.

IV. RESPECT FOR THE COPYRIGHTS OF OTHERS

- A. AO NA respects the copyrights of others, outside the confines of the organization. AO NA may distribute a copy of this Copyright Policy to all Volunteers, participants, learners, guests, visitors, consultants and independent contractors to assist them in complying with copyright law and this Copyright Policy. In addition, the AO NA may arrange for training for Volunteers and instructional sessions for participants and learners to assist them in complying with copyright law and this Copyright Policy.
- B. Volunteers are prohibited from copying, distributing or using any materials not specifically allowed by fair use, copyright law, or contractual agreements or permissions. Reasonable attempts will be made to assist any Volunteers who need information so that they can perform their duties within the intent of the law.
- C. Volunteers will be responsible for clearing all rights in or to any Copyrightable Materials owned by a third party that they may provide to AO NA or use, present or deliver for or on behalf of AO NA, including, but not limited to, by obtaining any required permissions or consents from the owner of the copyright in a work, or their agent, and to comply with any applicable license agreements, all in accordance with such procedures as AO NA may adopt from time to time. Volunteers will instruct participants and learners concerning copyrights, request permissions when appropriate, and comply with license requirements as and when appropriate.
- D. Violations of the copyright law can be a felony, punishable by fines, jail time, or both. The law permits a court to find individuals personally responsible for copyright infringement. AO NA neither permits nor condones copyright infringement by Volunteers, participants, learners, guests, visitors, consultants or independent contractors. Anyone who violates copyright law does so at their own risk and assumes all liability associated with their actions.

V. Disputes

- A. The ECVSC shall be responsible for overseeing all aspects of this Copyright Policy.
- B. If a dispute should arise over the ownership of the copyright in a work involving AO NA and any volunteer(s), consultant(s) or independent contractor(s), that dispute shall be presented to the copyright attorney for input and guidance and forwarded to the ECVSC for review. The ECVSC will prepare recommendations for the EAB for final determination

EXHIBIT A

A. Copyright: An Overview

United States copyright law protects original works of authorship that are fixed in a tangible medium of expression. Its coverage includes many types of creative works, including: literary, musical, pictorial, graphic, and sculptural. The category of literary works is especially broad and includes many forms of writing that have no “literary” component in an artistic sense. For example, literary works include computer programs, web pages, databases, directories, training manuals, repair manuals, user’s manuals, parts catalogs and the like.

A work is protected by copyright if it contains the requisite originality and creativity to qualify for protection. The standard of originality necessary to qualify for copyright protection is very low – most works qualify. Some literary works are clearly creative and original, like novels, poems, and short stories, but other literary works, like web pages, catalogs and manuals, are not so clearly original and creative.

Copyright protection begins as soon as a work is created. It is not necessary to register the copyright in order for a work to be protected. This means that every work that is copyrightable has copyright protection from the moment it is “fixed” in some medium – on paper, a disk, a hard drive, magnetic tape, etc.

Copyright protection does not extend to any “idea, procedure, process, system, method of operation, concept, principle, or discovery.” Accordingly, “facts” are not themselves copyrightable. However, compilations of factual materials are protected if the selection, arrangement or coordination of the materials is sufficiently original. For example, “yellow pages” in a telephone directory could be protected when the publisher uses a selection process for determining what to list and chooses a particular way of organizing the businesses into categories chosen by the publisher. This selection and arrangement is sufficiently original to qualify for copyright protection. Conversely, the “white pages” in a telephone directory would not be protected because white pages contain a listing for every person with a telephone number located within a particular geographic area, listed alphabetically by last name. Aside from choosing the geographic area to include, the publisher of a white pages telephone directory does not make any original selection or arrangement of the information included in the directory.

Nonetheless, many strictly factual works are protected by copyright. Among them are examinations and examination questions, maps, architectural designs, original sequences of numbers that express ideas, instruction sheets, menus, baseball statistics on baseball cards, databases of contractor’s bids for electrical work, and a ranking top 5,000 premier baseball cards. In all of these instances, the author of the work has demonstrated at least the minimal level of original or creative selection or arrangement in the factual materials contained in the work necessary to qualify for copyright protection.

B. What Rights does Copyright Provide?

A copyright owner has the exclusive right to (1) make copies of the work; (2) create “derivative works” (revisions or modifications of the original work); (3) distribute copies by sale, rental, lease or other methods; (4) perform the work publicly; and (5) display the work publicly.

Creating derivative works of a copyrightable work involves transforming or reusing an existing work in a newly created work. A derivative work, by definition, is a use that would require permission for the use of the underlying work.

Copyright law prevents anyone other than the copyright owner from copying or distributing copies of the work without the permission of the copyright owner, unless that work is in the public domain or the copy qualifies as a “fair use”. This protection applies to electronic formats just as it does to paper formats. A copy in any medium is still a copy.

Multiple copyrights can exist in the same material. For example, a user’s manual may contain a diagram of a device, as well as a written description of that device, plus a set of instructions for how to use that device. Each of these may be a separately copyrightable work, as would the user’s manual in its entirety. Copying the diagram would violate the copyright in the diagram, although copying a single page of text from a user’s manual probably would not violate the copyright in the manual. On the other hand, copying the entire manual, or a substantial portion of the manual, would violate the copyright in the manual.

C. What Constitutes Infringement?

The test for copyright infringement is generally stated in terms of “substantial similarity.” If it is shown that someone had access to the copyrighted work, and the allegedly infringing work is “substantially similar” to the copyrighted work, the work is infringed. Direct evidence of copying can also establish infringement. The scope of protection given to more creative works is broader than that given to less creative works, so even a small amount of copying from a very creative work (such as a novel or a poem) might infringe the work. Conversely, for a much less creative work (such as a compilation of factual material), the Shared documents/compliance & CME/ Policy & Procedure Manuals/Copyright & Intellectual Property copyright protection is quite “thin,” and generally more of the work must be copied before there will be infringement.

Suppose, for example, someone wanted to create a lab manual, using content obtained from other sources – an image from one website, a chart from another website, some text from a journal, etc. Each of those elements is likely protected by copyright and should not be included in the lab manual UNLESS: (1) permission is obtained from the copyright owner to include it in the lab manual, (2) the use of that content qualifies as fair use (see below), or (3) the content is in the public domain. This process must be repeated for EACH element obtained from a third-party source.

D. What about Fair Use?

Not all copies of a copyrightable work are infringing. Unauthorized copies or uses in a variety of contexts, including for educational purposes, are sometimes permissible under the legal doctrine known as “fair use”. However, fair use can be a complicated analysis. To determine whether unauthorized copies or use of a copyrighted work is a fair use, a court will consider four factors: (1) the purpose and character of the use being made; (2) the nature of the copyrighted work (whether the work is more informational or creative in nature); (3) the amount and substantiality of the portion of the work used in relation to the copyrighted work as a whole; and (4) the effect of the unauthorized copy or use on the potential market for or value of the copyrighted work.

In general, in an educational context, if the material copied constitutes a relatively small portion of the copyrightable work as a whole – such as a short quote from an article or book, a few lines from a poem, or a few frames from a video or movie – the use is likely to qualify as a fair use.

E. When is a Work in the Public Domain?

A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired, (2) the author failed to satisfy statutory formalities to perfect the copyright, (3) the author dedicated the work to the public domain, or (4) the work is a work of the U.S. government.

The rules for determining whether a work is or is not in the public domain are too complicated to summarize in this Copyright Policy. In general, however, any work published before 1923, or any unpublished work created before 1898, are now in the public domain. Of course, numerous other works are in the public domain, but determining whether that is or is not the case for any particular work can be an intensive exercise.

As noted above, all works created by the U.S. government and its various commissions, agencies and authorities are, as a matter of law, in the public domain. The same is true of many, but not all, state-created works. (The rules vary from state to state.) The same is Shared documents/compliance & CME/ Policy & Procedure Manuals/Copyright & Intellectual Property not necessarily true of works created by contractors hired by a state or federal governmental commission, agency or authority. Those works may or may not be in the public domain.

As discussed below, do NOT assume that merely because a work is available on the Internet it is in the public domain.

F. What About the © Symbol?

Any work protected by copyright should include a copyright notice, which often includes the © symbol. The presence of a copyright notice is a strong indication that the work is protected by copyright. However, the use of a copyright notice is entirely optional. An original creative work is protected by copyright regardless of whether the copyright symbol – © – is displayed.

G. When Should Credit Be Given?

If content is copied from a third-party source, whether print, electronic or otherwise, credit should be given to that source. However, giving credit to a thirdparty source does NOT mean that the use is not infringing, nor does it mean that the use qualifies as a fair use. It's just the fair and ethical thing to do.

H. Beware of the Internet!

Many people tend to believe that anything found on the Internet is freely available, or that, if something like a photograph or a manual can be found on the web, then anyone is free to copy and use it. This is NOT the case. Materials found on the Internet are subject to copyright protections just as a paper copy would be. Chances are that any website you may visit includes Terms of Use that spell out what you may, and may not, do with whatever materials are available on that website. When you want to use material you have found on a website, you should always look for Terms or Terms of Use. A link to such Terms is typically located at the very bottom of the website's home page (meaning that you may need to scroll down to find it), but the link might be somewhere else on the pages, such as the top. A website's Terms generally indicate that, by browsing the website, you agree to honor certain restrictions on use of the material dictated by the website owner, which sometimes includes displaying the original license agreement or maintaining certain logos on the material. Many websites prohibit ANY use of materials found there without permission.

In addition, please remember that, just because a work can be found on a particular website does NOT necessarily mean that the website owner is the owner of the copyright in that work. Often, the website is a mere licensee, or even an infringer.

This Copyright & Intellectual Property document was last updated in October 2020.