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Legal Issues in Publishing – Copyright and Reprint Requests

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Overview

Copyright Issues Related To:

- Understanding copyright “ownership”
- Ensuring adequate rights are obtained (and retained) for **your organization’s distribution**
- Handling **third-party reprint** requests



What Are Copyright Rights?

- What rights does a copyright owner enjoy?
 - The right to **copy** the work,
 - The right to **distribute** the work,
 - Make **derivative works**,
 - The right to **prevent others from using the work**,
 - Etc.
- Remember - Applies to **All Intellectual Property**
 - Text, Graphics, Photos, Video



How Are Copyright Rights Obtained – Created by Conduct/Relationship

- **CREATION** - Through creation (ownership resides in the author)
- **WORKS FOR HIRE** – Generally limited to employees – otherwise, must be in writing
- **IMPLIED LICENSE** – Where no written contract exists, “contract by conduct”



How Are Copyright Rights Obtained – Created by Written Agreement

- **ASSIGNMENT** - Transfer of all copyright ownership
 - Organization may use in any form, at any time
- **LICENSE** - Limited by scope, but can be very broad



Securing Rights - License

- Define **Future Uses**
 - Particularly important for previously published materials
 - Define **Electronic Rights**
- Define Any **First Publication** Rights



Securing Rights - License

- Define **Geographic Area**
- **Exclusive** or **Non-exclusive**
- **Perpetual** or **Limited in Duration**
- Define **Payment** (or **Non-Payment**) Terms



Copyright Law — Registration

- Registration is a **prerequisite to filing suit** to enforce rights where necessary.
 - Copyright on the **public record**
 - Registered works may eligible for **statutory damages** and attorney's fees in successful litigation.
 - If registration occurs within **five years of publication**, it is considered **prima facie evidence in a court of law**
- **Simple and inexpensive process** (small fee, two-to-three-month wait).
- Remember **international registrations**



Additional Considerations

- **Works by Volunteers/Committee Members** – Does not automatically vest in the organization
- **Contributions to Collective Works** - In the absence of an express transfer, limited to use in that particular collective work, any revision of that collective work, and any later collective work in the same series



Additional Considerations

- **Joint Authorship** – Need license from both authors.
- **Third Party Material** – Ensure that author obtains rights
- **Overlay of Third-Party Agreements/Acts**
 - Publishers (Wiley, etc.)
 - Translations



Additional Considerations

- Don't Overlook these Clauses:
 - **Indemnification** (particularly for infringement)
 - **Delivery and Acceptance**
 - **Options for Subsequent Work**
 - **Competing Works**
 - **Revisions and New Editions**
- **Beware of Revisions** – Understand impact on other contract clauses



Practical Tips

- **Strategy**
 - License, Assignment, or Shared Ownership?
- Adopt a **standard policy** and practice for all volunteer and committee work.
 - Volunteers sign from outset of work
- Adopt **standard agreements**
- Conduct an **Intellectual Property audit**



Protecting Your Intellectual Property

Clearly define **scope** of use

- **Identity** of user
- **Transferability**
- Clearly define **use and duration**
- **Ensure you have what you give away**
- **Monitoring** others' use
 - Use **cease and desist** letters



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