

Intellectual Property Quiz

by Laura King, MA, MFA, ELS

ANSWER KEY

Directions: Review §5.6, Intellectual Property: Ownership, Access, Rights, and Management of the *AMA Manual of Style* and respond to the following questions.

1. What is the proper procedure when an editor receives 2 or more manuscripts by different authors based on the same publicly available data but with conflicting results?
 - a. Publish both manuscripts and do not refer to the conflicting data
 - b. Publish both manuscripts with an editorial indicating which paper is more accurate
 - c. Consider the manuscripts independent of each other and accept or reject based on their own merits
 - d. Publish the paper of higher quality

ANSWER: c. Consider the manuscripts independent of each other and accept or reject based on their own merits

Editor's Note: On occasion, an editor may receive 2 or more manuscripts based on the same data (with concordant or contradictory interpretations and conclusions). If the authors of these manuscripts are not collaborators and the data are publicly available, the editor should consider each manuscript on its own merit (perhaps asking reviewers to examine the manuscripts simultaneously). Authors should attempt to resolve disputes over contradictory interpretations of the same data before submitting manuscripts to journals. When more than 1 manuscript is submitted by current or former coworkers or collaborators who disagree on the analysis and interpretation of the same unpublished data, the recipient editors are faced with a difficult dilemma. In such cases, the ICMJE recommends the following:

If editors receive manuscripts from separate research groups or from the same group analyzing the same data set (for example, from a public database, or systematic reviews or meta-analyses of the same evidence), the manuscripts should be considered independently because they may differ in their analytic methods, conclusions, or both. If the data interpretation and conclusions are similar, it may be reasonable although not mandatory for editors to give preference to the manuscript submitted first. Editors might consider publishing more than one manuscript that overlap in this way because different analytical approaches may be complementary and equally valid, but manuscripts based upon the same dataset should add substantially to each other to warrant consideration for publication as separate papers, with appropriate citation of previous publications from the same dataset to allow for transparency (§5.6.1.4, Manuscripts Based on the Same Data).

2. A scientist develops data when employed at Harvard University. She then moves to Stanford University and becomes faculty there, and at that time, she publishes an article using the original data in *JAMA*. Who owns the data?
- Harvard University
 - Stanford University
 - Scientist
 - JAMA*

ANSWER: a. Harvard University

Editor's Note: In scientific research, 3 common arenas exist for ownership of data: the government, the commercial sector, and academic or private institutions or foundations. Although perhaps a less frequent occurrence, when data are produced by a researcher or other individual without a relationship to a government agency, a commercial entity, or a private institution, the data are owned by that individual. Any information produced by an office or employee of the US federal government during his or her employment is owned by the government. Data produced by employees in the commercial sector (eg, a pharmaceutical, device, or biotechnology company, health insurance company, or for-profit hospital or managed care organization) are typically governed by the legal relationship between the employee and the commercial employer, granting all rights of data ownership and control to the employer. The US Bayh-Dole Act of 1980 permits universities or nonprofit institutions to have control of the intellectual property generated from federally funded research. For example, according to guidelines established by Harvard University and subsequently adopted by other US academic institutions (as well as those in other countries), data developed by employees of academic institutions are owned by the institutions (§5.6.1.1, Data: Definition and Types of Ownership).

3. Which of the following is true regarding data sharing?
- Authors should not be required to provide access to data during the peer review process.
 - Once the results from analyses of data have been published, the original data no longer need to be made available.
 - Journals should lessen their emphasis on reports of secondary analyses of original data.
 - Data sharing should be a regular practice.

ANSWER: d. Data sharing should be a regular practice

Editor's Note: In 1985, the US Committee on National Statistics released a report on data sharing that continues to serve as a useful guide for authors and editors. Among the committee's recommendations were the following: (1) data sharing should be a regular practice; (2) initial investigators should share their data by the time of the publication of initial major results of analyses of the data except in compelling circumstances, and they should share data relevant to public policy quickly and as widely as possible; (3) investigators should keep data available for a reasonable period after publication of results from analyses of the data; (4) subsequent analysts who request data from others should bear the associated incremental costs and they should endeavor to keep the burdens of data sharing to a

minimum. They should explicitly acknowledge the contribution of the initial investigators in all subsequent publications; (5) journal editors should require authors to provide access to data during the peer review process; (6) journals should give more emphasis to reports of secondary analyses and to replications; (7) journals should require full credit and appropriate citations to original data collections in reports based on secondary analyses; and (8) journals should strongly encourage authors to make detailed data accessible to other researchers (although some may view this as outside the purview of a journal's responsibilities) (§5.6.1.3, Data Sharing, Deposit, and Access Requirements of Journals).

4. Which of the following is true regarding open access journals?
- Content can be freely copied and distributed without author attribution.
 - Content is not under a copyright license.
 - Authors or author institutions may be asked to pay publication fees.
 - Readers can read but cannot download or print content.

ANSWER: c. Authors or author institutions may be asked to pay publication fees.

Editor's Note: Broadly defined, open access is the free and unrestricted online availability of content. In its most liberal application, open access publishing means that users have unrestricted access without typical copyright restrictions and can freely read, download, copy, distribute, print, search, or link to full text of articles, as well as reuse and modify such content in part or whole for any lawful purpose provided that authors are properly acknowledged and cited . . . The funding model for open access publishing requires author, institution, or funding agency payments, a subsidy from the owner or publisher, and/or external grants. . . . Open access payments for publication are called *article processing charges* (APCs) (also known as *article publication charges*). In parallel with the open access movement, Creative Commons (CC), a nonprofit organization, was created in 2001 and developed copyright licenses known as CC licenses that are intended to permit a wide range of permissions, sharing, and reuse without fees and often without individual point-of-use permissions. Six copyright license types are available, ranging from Attribution (CC BY) to Attribution-NonCommercial-NoDerivs (CC BY-NC-ND). The CC BY license permits others to copy, distribute, transform, and build on work for any purpose, even commercially, as long as they credit the original creator. This is the most liberal of the 6 licenses and is recommended for maximum dissemination and use of licensed materials. The CC BY-NC-ND license, which is the most restrictive of the CC licenses, permits others to download works and share them as long as they credit the original creator but does not permit alteration or commercial reuse of the work without additional permission. Additional information is available on the Creative Commons website (§5.6.2, Public Access and Open Access in Scientific Publication).

5. Which of the following is NOT protected by copyright?
- Pantomimes
 - Slogans
 - Sculptures
 - Songs

ANSWER: b. Slogans

Editor's Note: A copyrightable work must be fixed in a tangible medium of expression and includes the following: literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. The following are not protected by copyright, although they may be covered by patent and trademark laws: works not fixed in tangible form of expression (eg, speeches or performances that have not been written or recorded); titles; names; short phrases; slogans; familiar symbols or designs; mere variation of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents; ideas, procedures, methods, systems, processes, concepts, principles, discoveries, and devices, as distinguished from a description, explanation, or illustration; and works consisting entirely of information that is common property and containing no original authorship (§5.6.3, Copyright: Definition, History, and Current Law).

6. Works in the public domain may be freely used by anyone without permission. Which of the following are in the public domain for works covered under US copyright law?
- Unpublished works for the life of the author plus 70 years
 - Works published without a copyright notice or subsequent copyright registration
 - Works published with a copyright notice at 70 years after the death of the author; or for a work by multiple authors, 95 years from publication or 120 years from creation, whichever expires first
 - All of the above

ANSWER: d. All of the above.

Editor's Note: The length of copyright protection in the US depends on several factors: when the work was created (key dates are before or after January 1, 1978), the number of authors (ie, single-author vs joint-author works), and the type of work (eg, work made for hire or owned by the federal government). For more examples of types of works, conditions, and terms of copyright protection, see Table 5.6-1 and the continually updated table of copyright terms in the US maintained by Cornell University Library at <https://copyright.cornell.edu/publicdomain> (§5.6.4, Types of Works and Copyright Duration in the United States).

7. Typically, copyright of a work vests initially with the author (who may transfer rights). Which of the following is an exception to the initial assignment of copyright to authors?
- Work created by a federal government employee
 - Work created by an employee of an institution under a work-for-hire scenario
 - Both a and b
 - Neither a nor b

ANSWER: c. Both a and b

Editor's Note: Because copyright does not vest in works created by the US federal government, or perhaps that of other nations, no assignment from the author is necessary. In addition, a manuscript from an author or authors from a single institution may be submitted with a copyright transfer or publication license and signed on behalf of the institution, rather than by the individual authors. The institution presumably has an agreement with the authors, following the work-for-hire provision of the copyright law, that all work performed while the authors are employees of the institution is owned by the institution. Accordingly a representative of the institution may transfer copyright or grant a publication license (§5.6.5, Copyright Assignment or License).

8. A reasonable type and amount of use of copyrighted work is permitted under the fair use provision of US copyright law. Which of the following could be a violation of the fair use provision?
- Republication of abstracts for sale and redistribution without permission from the copyright owner
 - Reproduction of unpublished letters
 - Quoting passages of fewer than 300 words without permission
 - All of the above

ANSWER: d. All of the above

Editor's Note: What constitutes fair use of copyrighted material in a given case depends on the following 4 factors: (1) purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) nature of the copyrighted work; (3) amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) effect of the use on the potential market for or value of the copyrighted work. Although each of these factors may provide a safe haven for use of copyrighted works without permission from the owner, the fourth factor, the market value of the original work, has been considered important by the courts in copyright infringement cases. Fair use purposes include “criticism, comment, news reporting, teaching, scholarship, or research.” This allows authors to quote, copy, or reproduce small amounts of text or graphic material. Appropriate credit should always be given to the original source. In the case of a direct quote, quotation marks or setting off the quoted material, with an appropriate reference or footnote to the original source, is required (§5.6.7.1, Fair Use).

9. There is no international copyright law.
- True
 - False

ANSWER: a. True

Editor's Note: There is no international copyright law. Copyright law, scope, protections, and remedies are governed by individual nations and treaties among them. Thus, copyright laws do not automatically protect an author's work throughout the world. However, most countries offer protection to works from other nations. For a detailed discussion of the copyright laws of individual countries, consult the World Intellectual Property Organization (WIPO), which is under the auspices of the United Nations in Geneva, Switzerland (§5.6.3, Copyright: Definition, History, and Current Law and §5.6.11, International Copyright Protection).

10. Which of the following is not protected by trademark laws?

- a. Logos
- b. Book titles
- c. Pseudonyms
- d. Trade dress

ANSWER: b. Book titles

Editor's Note: Book titles are rarely protected under trademark law because of judicial reluctance to protect titles that are used only once. A few exceptions to this norm have occurred with book titles that have engendered common secondary meanings, that is, become widely recognized and associated with the name of the author or publisher (eg, *Gone With the Wind*). The title of a series of creative works (eg, book series, journals, magazines, newspapers, television series, or software) may more easily receive trademark protection than can the title of a single creative work. Thus, *JAMA* is a trademarked title. In the biomedical sciences, it may be difficult to trademark journal titles that are generic and may not be distinguishable from the science or field the journal serves, such as the journals *AIDS*, *Brain*, or *Stroke*. However, some seemingly generic titles have been trademarked, such as *Neurology* and *Pediatrics* (§5.6.15.1, Titles).