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## Obtaining and Using Copyrighted Research Journal Content—Convenience vs Ethics

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### From the Association — Ethics in Action

# Obtaining and Using Copyrighted Research Journal Content—Convenience vs Ethics

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and Leslie M. Delserone MS, MA

Members of American Dietetic Association (ADA) or those credentialed by the Commission on Dietetic Registration agree to abide by the ADA/Commission on Dietetic Registration Code of Ethics for the dietetics profession (1). A fundamental principle within the Code is to conduct dietetics practice with honor, integrity, and fairness and to comply with all laws and regulations applicable or related to the profession. Dietetics practitioners read and apply the results of research published in professional journals and other publications to guide their evidence-based practice. Authors of research articles can, in some cases, make their work more accessible to practitioners by amendment of the copyright transfer agreements required by the publisher. And practitioners working in the United States must understand and abide by the US copyright laws that govern the

fair use of these resources. In this digital age, inappropriate access to and distribution of copyrighted research content can occur.

This article briefly describes the key requirements of current US copyright law, generalized to situations that a dietetics practitioner might encounter, through scenarios that illustrate implications for practitioners and suggests options for the retrieval and use of copyrighted research information while abiding by the Code of Ethics. The discovery, access, and use of freely available literature ("open access") with proper attribution of authorship is also discussed.

### Authors and Users of Research Publications

Dietetics practitioners look to the scientific community to conduct studies that answer timely questions. The scientific record documents research and must be clear and sound. The gold standard for research is the peer-review process, the objective and frequently double-blind review of research by knowledgeable professional colleagues. The process of publishing in the scientific literature and, thus, adding to the scientific record, incorporates the review and acceptance of research by peers with the editorial and other value-added services provided by publishers. The author of an original scientific publication, under US copyright law, has the copyright for the work and, therefore, decides on the work's dissemination. If

the dissemination vehicle for the work is a journal owned by a publisher looking for cost-recovery and/or profit for its services, the publisher may request that the author transfer copyright as a requirement for publication.

Copyright transfer lessens or eliminates the author's control on the dissemination of research results. As illustrated in the following scenarios, research accessible only in copyrighted journals (whether print or electronic) may be difficult or costly for practitioners to access legitimately. Author rights vary among publishers, but may include the right to make copies of their article for teaching, sharing with other colleagues, and for distribution within their institution (see, for example, information from Elsevier, publisher of the *Journal of the American Dietetic Association*, available at <http://elsevier.com/wps/find/authorshome.print/copyright>). Authors may suggest amendments to the standard publisher's agreement to retain certain rights (eg, the Committee on Institutional Cooperation Author's Addendum available at <http://www.cic.net/Home/Projects/Library/Scholarly-Comm/AuthorsAddendumBrochure.aspx>). Judicious decisions made by authors before the publication of their work will allow easier postpublication access to their work (eg, amending a publisher's copyright transfer agreement to allow the postprint archiving of an article in an institutional repository or on a researchers' Web site; see <http://www.sherpa.ac.uk/romeo.php>). Those journals providing "open access" to scholarly work increase the

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accessibility to research publications (2), but still may have requirements and/or limitations on dissemination given licensing terms (see, eg, Creative Commons Attribution-NonCommercial 3.0 Unported License, available at <http://creativecommons.org/licenses/by-nc/3.0/>).

But what are the responsibilities of the user of research information, specifically the dietetics practitioner who may not have access to copyrighted journals? A number of these responsibilities fall into the categories of "Fair Use," (17 U.S.C. §106; see <http://www.law.cornell.edu/uscode/17/106.html>) or the "Classroom Use Exemption" (17 U.S.C. § 110 [1]; see <http://www.law.cornell.edu/uscode/17/110.html>). The following examples illustrate appropriate access and use of copyrighted materials.

### Scenario 1—Product Marketing

*A sales representative gives the registered dietitian (RD) a corporate-prepared flyer on the benefits of their product. After reviewing the flyer, the RD requests a copy of the 12 articles cited to review and evaluate the use of this product with coworkers. The sales representative, who is eager to make a sale, agrees to provide the articles. What are the ethical and legal implications of the dietetics practitioner's request?*

If the sales representative is not an author of any of these publications with retained rights for distribution, and the article is not openly available via an institutional repository or PubMed, she or he might request and purchase one copy of each article from the publisher(s) for personal use. In most cases, the representative may not duplicate the purchased copy, which includes forwarding an electronic copy for another's use (<http://www.copyright.gov/>) (3). The sales representative might send the RD the one hard copy she/he obtained of each article, although a given publisher might specifically forbid this transfer. If the representative pays a fee for each article, the potential cost incurred could be as much as \$32 per article or \$384 for the project. If this gift of 12 articles is even legal, it could be argued that it is excessive for the RD to accept, and presents an alleged conflict of interest (having a biased influence on product use) (4, 5). Ideally the RD will obtain the articles through her own resources rather than request them through the

sales representative. Most important, the RD should identify and review all pertinent research to guide her/his evidence-based practice, instead of limiting literature review to those references provided by the company.

### Scenario 2—Nutrition Consultant

*While providing consultative services to a long-term care facility, the RD determines a need for a policy on nutrition care. After a review of the literature using resources available to her, the RD identifies three studies demonstrating the cost-benefit of such a policy and orders a copy of each article to support the proposal. Is it ethical to make a copy of each article to give to the medical director who makes the decision to approve/disapprove the proposal?*

When retrieving a copyrighted article, the RD may not reproduce the article or distribute it electronically for further distribution without permission from the publisher (or, in some cases, from the author). However, sharing the RD's personal hard copies with others may be ethical as no replication has been made of the original articles obtained legally from the publishers, and the information is for educational purposes. To avoid any legal conflicts, the RD should provide citation information to the medical director who can obtain personal copies for further review.

### Scenario 3—Private Practice RD

*The RD provides educational presentations to other health care professionals on topics of current interest. As part of her business model, she maintains a Web site. In developing course content for a new presentation she obtains electronic copies of articles used as references. Is it ethical to post these articles on her commercial Web site as resources for her customers?*

In general, posting these articles to a Web site is not legal. The RD may post the citations to the articles on the Web site or links to the publisher's Web site so that clients could purchase a copy for personal use. If the RD is an author of the articles, she should review the copyright transfer agreement signed with the publisher for restrictions on dissemination.

Use of copyrighted materials may differ for teaching purposes (17 U.S.C. §110 [1, 2]). RDs who are dietetics educators use journal articles and other scholarly publications as re-

sources for course content. The Classroom Exemption Act covers this use of copyright material: see <http://www.lib.umn.edu/copyright/limitations>. Educators may provide students with citation information, and require the students to access the articles individually. Alternatively, educators teaching at institutions should check with their library for print and/or electronic "course reserve" services that can help them navigate classroom and fair use issues legally.

### Solutions for Obtaining Articles Legally and Ethically

What options are available for the RD or dietetic technician, registered (DTR), to obtain published research while abiding by the Code of Ethics? The following resources are conduits for accessing articles in a timely and convenient manner:

1. Use current professional memberships and accompanying journal subscriptions. For example, online access and hard copy subscription to the *Journal of the American Dietetic Association* is a benefit of American Dietetic Association (ADA) membership. In addition, ADA members may use the online document ordering service, <http://www.eatright.org/Members/content.aspx?id=1197>, to obtain articles published in other scientific journals at a small cost. Other subscriptions maintained by the RD's or DTR's employer also may be a resource.
2. Purchase the article directly from the publisher's Web site or via online searches in PubMed and search engines such as Google Scholar (<http://scholar.google.com>).
3. A local university, other educational institution, or public library can be a good resource. Land grant institutions have a commitment to make information available to residents in their state, and offer on-site access to electronic and/or print journals. Public libraries may have relevant journal subscriptions or can identify resources through WorldCat, a service connecting to more than 10,000 libraries worldwide. Some academic and public libraries offer interlibrary loans free of cost or at a small fee.

4. RDs and DTRs may check for electronic fee-based document delivery services that are housed within university or medical school libraries. One such service can be found at <http://www.lib.umn.edu/info>.
5. Currently, open access is available in a growing number of scholarly and scientific venues. PubMed identifies open access articles by a blue icon or "OA." The National Institutes of Health's (NIH) Public Access Policy— <http://publicaccess.nih.gov/FAQ.htm#753> —requires NIH-funded research publications to be publicly available at no cost 1 year after publication date through PubMed. As of June 2, 2011, the National Academy of Science, at <http://notes.nap.edu>, made all their publications freely available as PDFs from their Web site. Many universities, colleges, and research institutions collect and provide open access to the scholarly work of their faculty and students. Google Scholar is a useful search

engine to discover and access freely available publications.

RDs and DTRs have the obligation to know and understand laws regulating the legal acquisition and use of scholarly articles that are copyrighted. All authors of scholarly work should take responsibility to learn about author rights, making their published research available to a wider audience. ADA members and credentialed dietetics professionals must abide by the Code of Ethics to promote high standards of conduct. For further information on the Code of Ethics, go to <http://www.eatright.org/codeofethics>.

**Disclaimer** — The authors attempt to accurately provide general information about copyright and the appropriate use of information. This article does not provide legal advice; please consult an attorney for specific information.

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