

MEMORANDUM

TO: UNM Health System Community

FROM: Dusadee Sarangarm, M.D., UNM Health System Chief Medical Information System Officer
Scot Sauder, Esq., Deputy University Counsel for Health Sciences

AS OF: June 15, 2022

RE: Use of Third-Party Copyright Material

Introduction; Statement of Intent; Infringement of Copyright

As you may know, the UNM Health System (comprised of the UNM Hospital, UNM Sandoval Regional Medical Center, Inc., UNM Medical Group, Inc., and the medical faculty of the UNM School of Medicine) have agreed to operate as an “organized health care arrangement” under HIPAA. This intention is stated in the UNM Health System’s Notice of Privacy Practices we provide our patients. As an organized health care arrangement or “OHCA,” the components of the UNM Health System have agreed to use a singular electronic medical record system, which affords the opportunity use algorithms, checklists, documents, guidelines or other materials that may be copyright material of a third party.

The UNM Health System takes very seriously the importance of honoring copyright material and using copyright material only if the UNM Health System has a consent to use material in connection with its patient care activities, research, training and quality projects.

To assist you in starting a copyright analysis this Memorandum describes generally how copyright works and doesn’t work, the consequences of infringing a copyright, how the “fair use” exception to copyright infringement works, how and when copyright material ceases to have protection and be in the public domain, and whether materials generated by the U.S. Government generally are subject to copyright protection.

To support appropriate and compliant use of copyright materials, the office of the UNM Health System Chief Medical Information Officer (CMIO) and the Office of University Counsel (OUC) developed a process for obtaining an appropriate consent and tracking those consents as illustrated in the Flow Diagram attached to this Memorandum.

How Copyright Works

Copyright protection exists, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works
- (2) musical works, including any accompanying words
- (3) dramatic works, including any accompanying music

- (4) pantomimes and choreographic works
- (5) pictorial, graphic, and sculptural works
- (6) motion pictures and other audiovisual works
- (7) sound recordings
- (8) architectural works

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Infringement of Copyright

Anyone who violates any of the exclusive rights of the author or copyright owner is an infringer of the copyrighted materials. The owner or author is entitled to recover the actual damages as a result of the infringement of the copyrighted materials, and any profits from the infringement which were attributable to the infringement.

Fair Use of Copyrights

“Fair use” of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a “fair use,” the factors to be considered include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- (2) the nature of the copyrighted work
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and
- (4) the effect of the use upon the potential market for or value of the copyrighted work

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Copyrights Entering Into the Public Domain

The public domain contains creative materials that are not protected by copyright laws. There are several ways that works arrive in the public domain:

- the copyright owner failed to follow copyright renewal rules;
- the copyright owner dedicates a copyright to the public domain; or
- copyright law does not protect this type of work.
- all copyrights are expired as of 1924;
- works published in the U.S. after 1923 but before 1964 – Initial term of 28 years, if not renewed the work falls into the public domain
- works published in the U.S. after 1923 but before March 1, 1989 - Generally, if a work was published without copyright notice under the authorization of the copyright owner and the law does not provide an exception for the omission, the work is in the public domain

Short phrases, Taglines, Facts, and Theories are not covered by copyright:

- Short Phrase - an apple a day keeps the doctor away;
- Taglines - Keep Calm and Carry On;
- Facts - The Moon is an average of 238,855 miles away from Earth; and
- Theories - Darwin's theory of evolution.

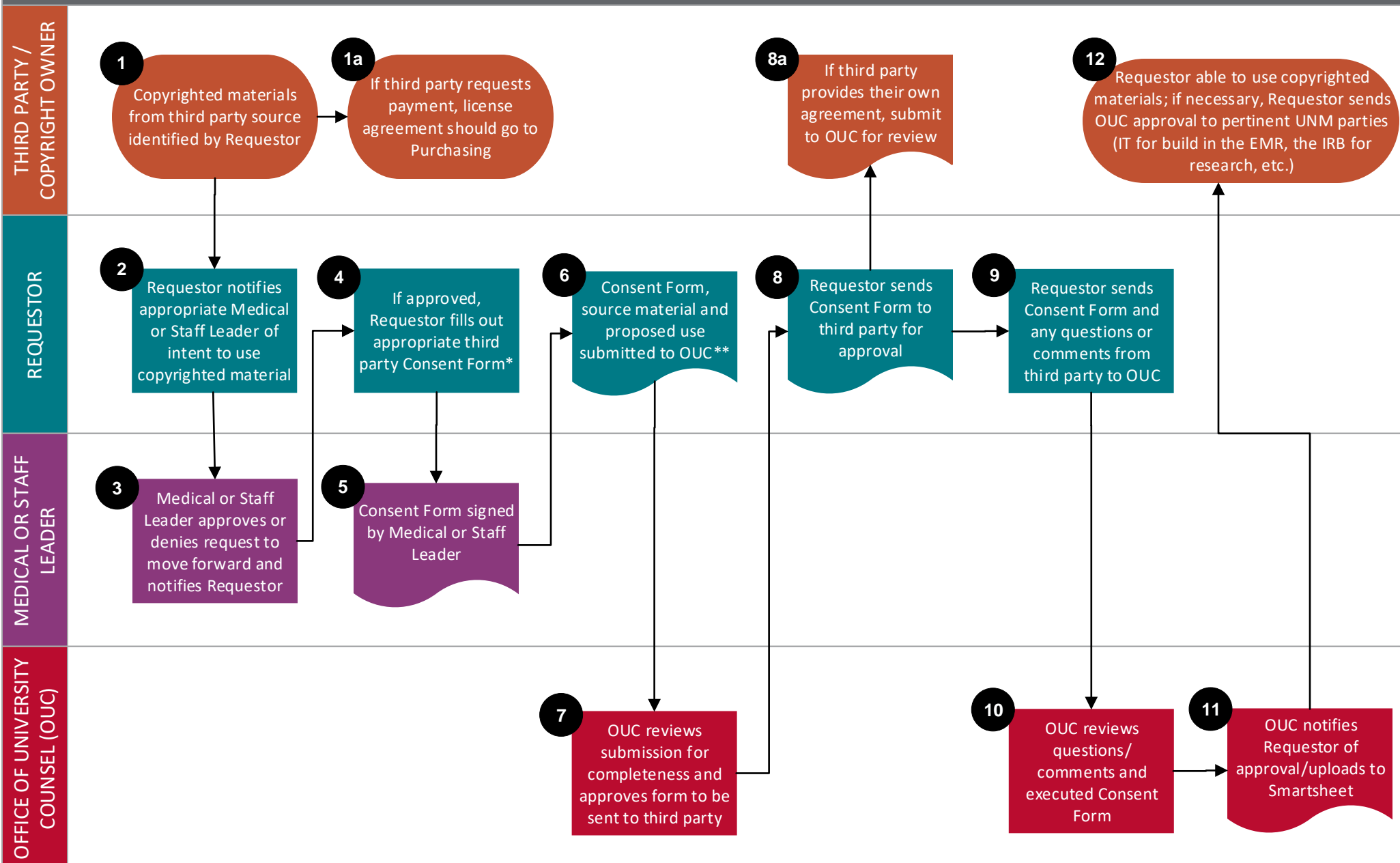
U.S. Government Works

In the U.S., any work created by a federal government employee or officer is in the public domain, provided that the work was created in that person's official capacity. E.g., during the 1980's, a songwriter used words from a speech by President Ronald Reagan as the basis for song lyrics. The words from the speech were in the public domain so the songwriter did not need permission from Ronald Reagan.

Conclusion

As stated previously, the UNM Health System takes very seriously the importance of honoring copyright material and using copyright material only if the UNM Health System has a consent to use the material in connection with its patient care activities, research, training and quality projects. Please review the Flow Diagram attached to this Memorandum as it will guide you on the process to ensure compliance with copyright laws.

COPYRIGHT FLOW CHART AS OF JUNE 2022



*Third-Party Consent Forms: Templates found at <https://counsel.unm.edu/resources/copyright-matters.html>

**OUC Smartsheet Submission Link: <https://app.smartsheet.com/b/form/b8e3587d880a486bae70e513802f1a32>