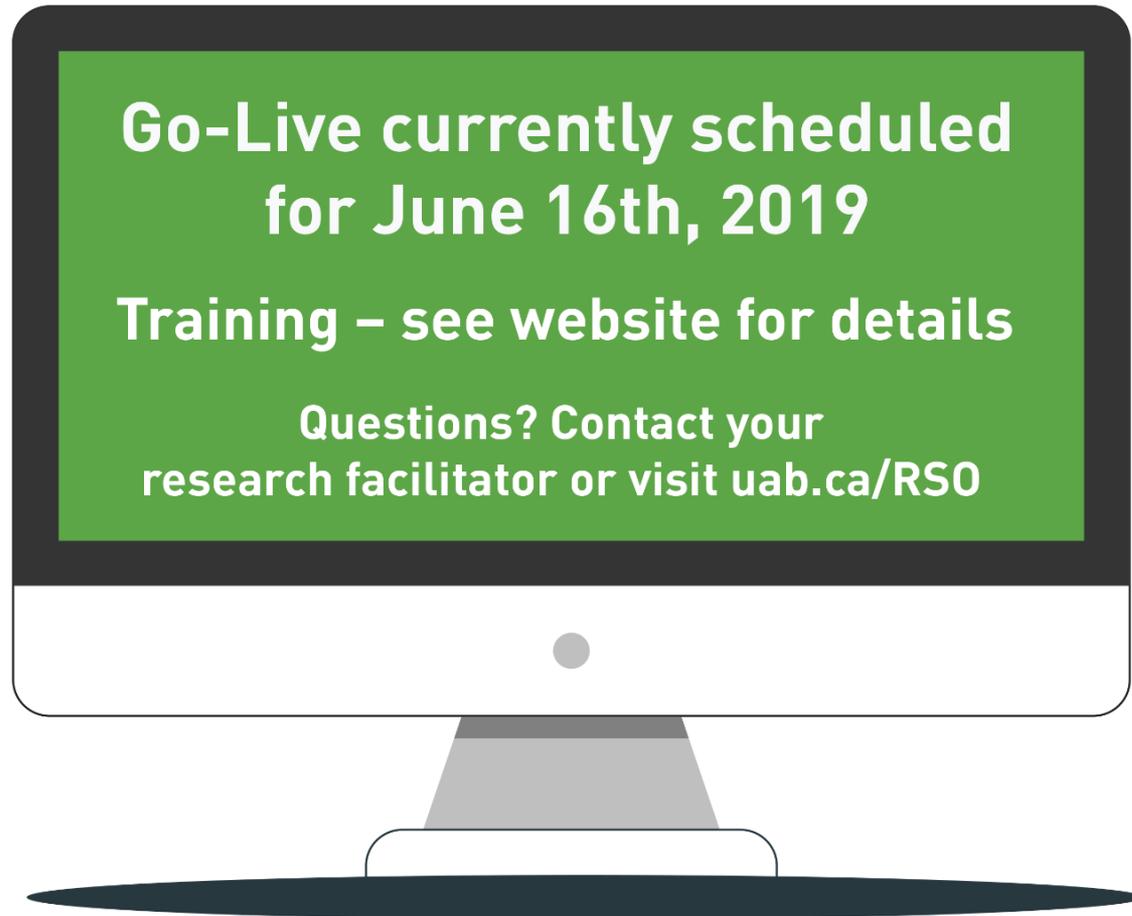


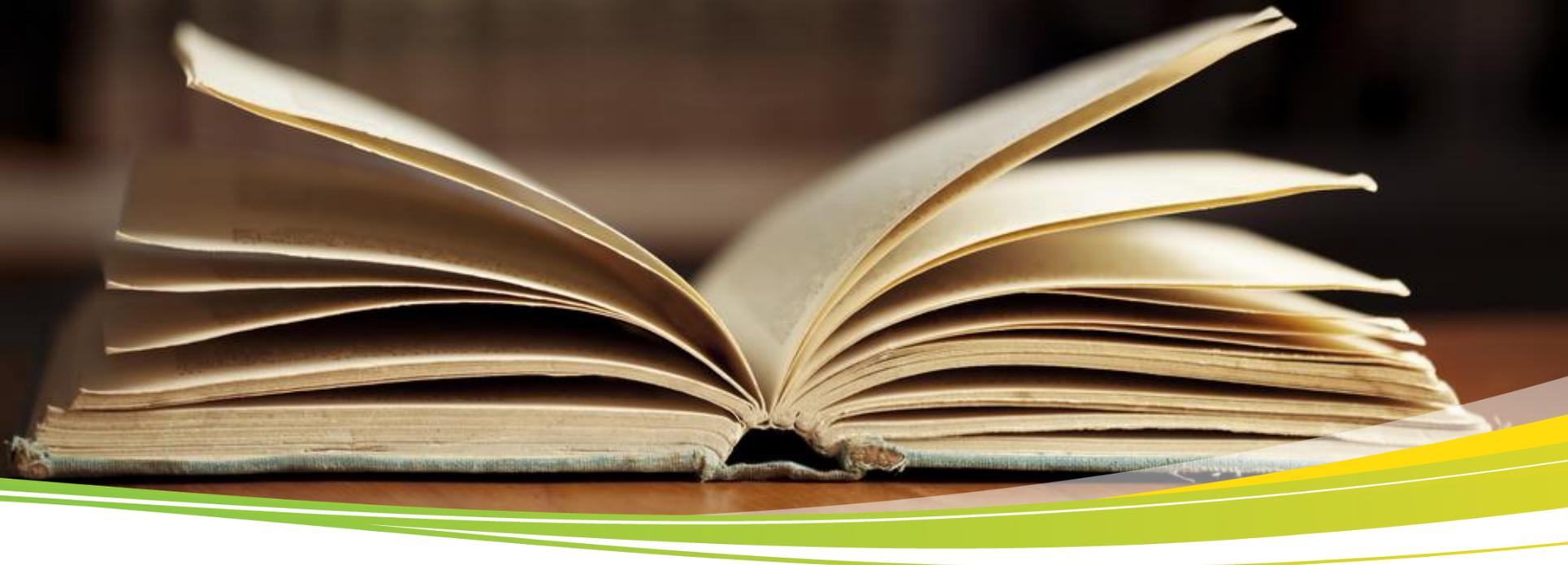
Research Administration Workflow (online approvals)



Understanding Moral Rights under Canadian Copyright Law in an Academic Context

Presented June 5, 2019 – Research Administration Day

By Francisco Marquez-Stricker & Julaine Herst, Research Services Office



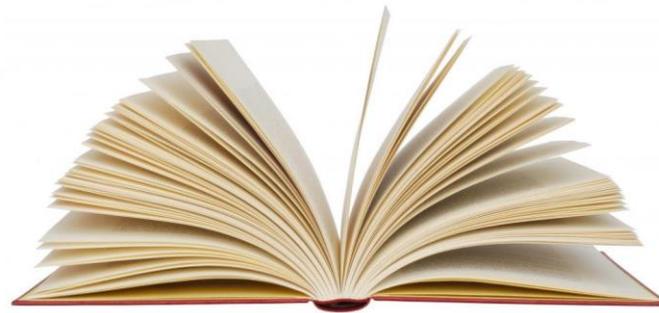
Overview

1. Copyright
2. Moral Rights
3. Moral Rights in Research Agreements
4. Things to Consider

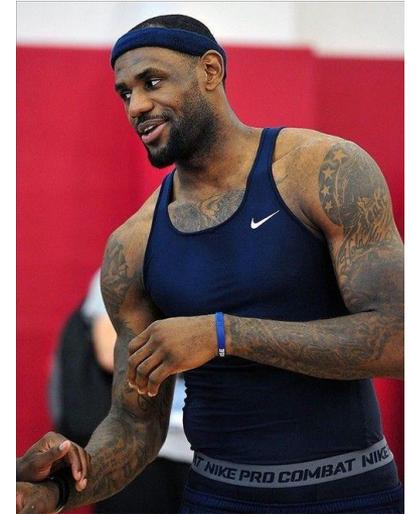
1. Copyright

What is Copyright?

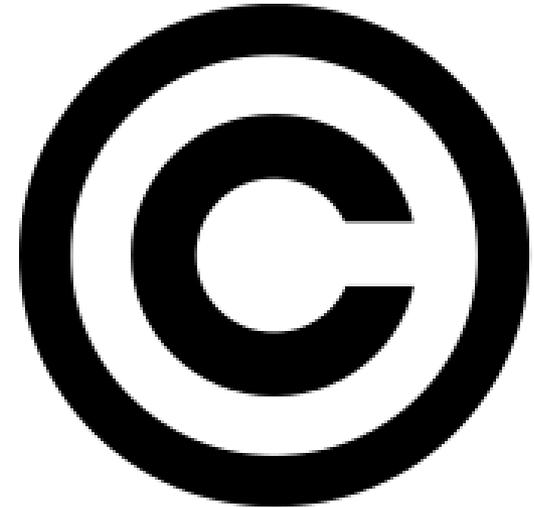
- Copyright protects “expression”



wiseGEEK



- **For our purposes:**
 - Copyright protects “Works”
 - E.g. Research Reports, publications, etc.
- **Key Right:** prevent others from “copying” a substantial part of the work:
 - Prevents *copying*. Does not prevent someone from independently arriving at the same work.
 - Stops someone from copying a “substantial part”; doesn’t have to be all, but not an infringement to copy a trivial portion.
 - “Substantial” refers to both quantity and quality of what was copied.



- Unlike patent, don't need to apply to have a copyright. Copyright protection the copyright automatically by virtue of being the author.
- For most works, the term of copyright is life of the author plus 50 years.

Who owns Copyright at the University of Alberta

- Staff members own copyright in Works they create connected to their employment
- Exception: where staff member creates a Work pursuant to “sponsored research funding agreement”, agreement governs.



2. Moral Rights

What are moral rights?

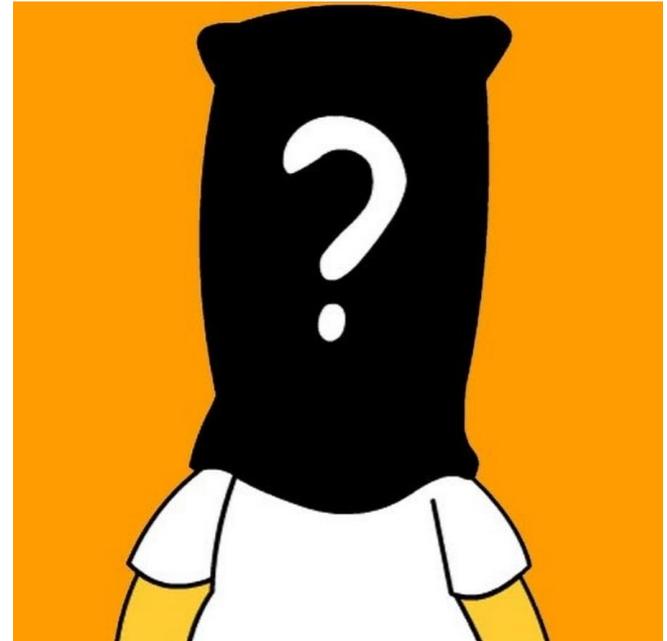
Moral Rights

- A series of rights held by the **author** of a copyrighted work:
 - Attribution
 - Integrity
 - Association
- Moral rights can be **waived** (in whole or in part), but **never assigned**
- Moral rights last for the duration of the copyright



Right to Attribution

- Right to be associated, or not be associated, with the work under own name or a pseudonym



Right to Integrity

- Right infringed if the work is:
 - (1) **distorted, mutilated** or otherwise **modified**;
 - (2) in a way that prejudices the **honour or reputation of the author**
- Gives the author some control over the way his/her work is presented.



Example- Snow v Eaton Centre Ltd

- Eaton Centre in Toronto purchased a sculpture of geese.
- At Christmas time, Eaton Centre hung red bows around the necks of the geese.
- Held: Use of bows impacted the integrity of the work.
- Author obtained order requiring bows to be removed.



Right re Association

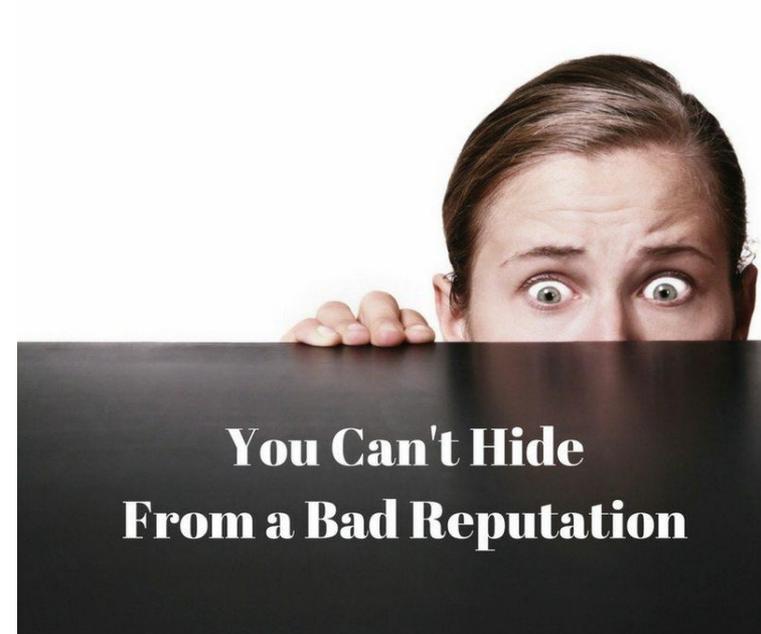
- Right infringed if the work is:
 - (1) **used** in association with a **product, service, cause or institution;**
 - (2) used in a way that prejudices the **honour or reputation of the author**
- E.g. Abba complained about the use of their song at a political rally of an “extremist” party



Why should I care about moral rights?

Moral Rights and the University of Alberta

- We care **a lot** about reputation. Can be affected when a report is modified.
- Attribution is also important, particularly in an academic context; PI's want to receive credit for their work.





Health

How candy makers shape nutrition science



Funding of nutrition research one of food industry's most powerful tactics

It was a startling scientific finding: Children who eat candy tend to weigh less than those who don't...

*It's not surprising that companies would pay for research likely to show the benefits of their products. But **critics say** the worry is that they're **hijacking science** for marketing purposes, and that **they cherry-pick or hype findings**.*

Research Report:

1. Based on our initial study, individuals who regularly consume candy were found to be 5% less likely to be overweight or obese.
2. Notwithstanding the foregoing, candy consumption did result in an increase in other cardiovascular risk factors, and thus poses a risk to health. Conclusive results cannot be reached without investigating a larger sample size.

Sponsor's Webpage:

“Candy Eaters are slimmer”:
A recent University of Alberta study conducted by Dr. X determined that “individuals who regularly consume candy were found to be...less likely to be overweight or obese”.

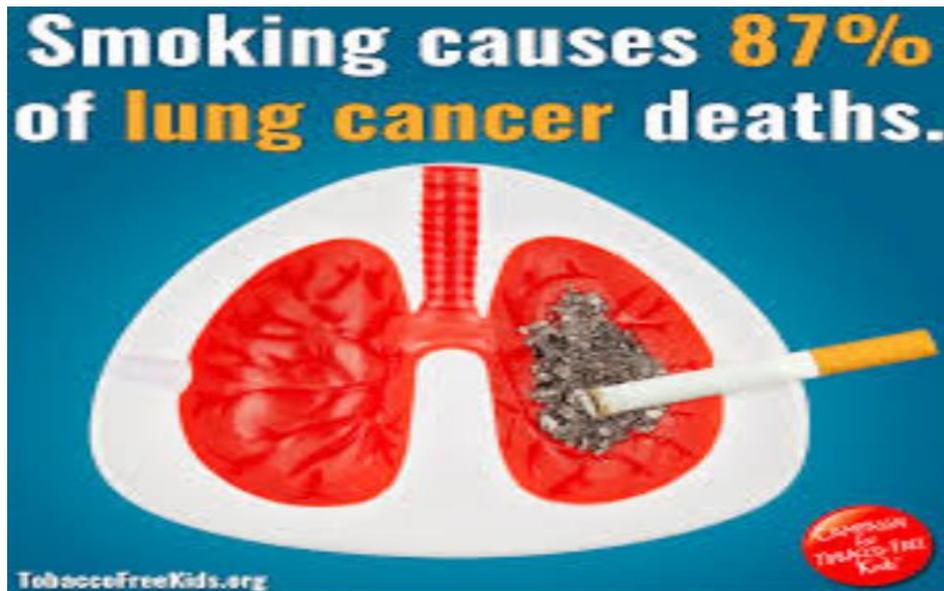
Research Report:

Sponsor X's environmental protocols are woefully inadequate, and demonstrate an exceptional disregard for the environment, and for society as a whole. Our review produced little evidence of any efforts to comply with applicable regulations, and massive improvement is necessary for them to achieve basic environmental compliance.

Sponsor's Webpage:

In an independent Research Report prepared by the University of Alberta, University Researchers found that "Sponsor X's environmental protocols are...
exceptional...and...little...
improvement is necessary..."

Moral rights waivers in health research....



Moral Rights and the University of Alberta (cont'd)

- University does not have a policy against waiving moral rights.
- Ultimately PI's decision, but they need to be informed of the consequences.
- Degree of concern depends on nature of work (e.g. software vs. research report vs. academic publication)
- Graduate students working towards their thesis are strongly discouraged from working on projects that contain moral rights waivers.



CAUSE FOR CONCERN

3. Moral Rights in Research Agreements



DAVINCI CODE CRYPTEX PUZZLE BOX

Moral Rights waivers in Research Agreements

- Moral rights waivers are often encountered in government contracts:
 - PWGSC
 - PHAC
 - DOD
 - HC
 - AB Health
 - AB Transportation
- Occasionally see requests for moral rights waivers from industry





Sample Clause #1:

- a) The Grant Recipient hereby **waives** to the Sponsor, and shall get the waiver of its employees, agents or contractors to the Sponsor, all rights including in whole **all moral rights to the Deliverables.**
- b) The Grant Recipient hereby grants, to the Sponsor an unrestricted, perpetual, worldwide, irrevocable, royalty-free, full paid up, non-exclusive license to use, reproduce, **modify** or **otherwise deal with the Deliverables including, without limitation, to distribute or sub-license the Deliverables.**

Sample Clause #2:

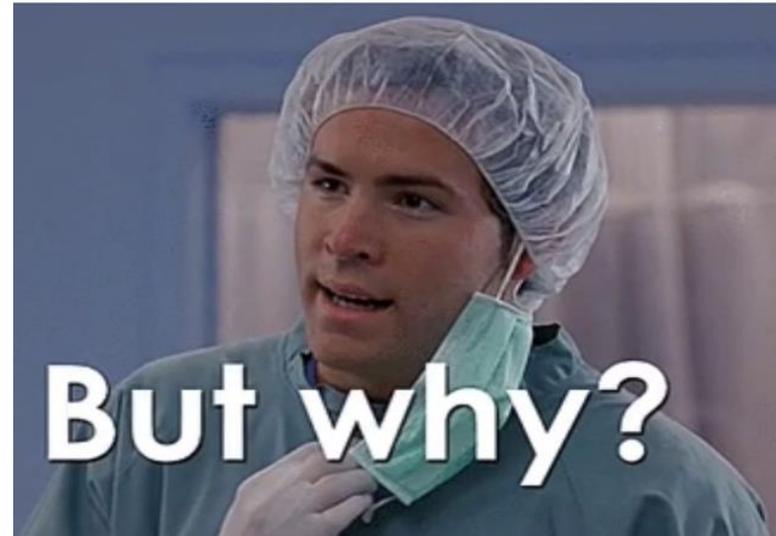
The Recipient grants to the Sponsor an irrevocable, royalty and fee free, worldwide, non-exclusive use to use the Final Report contemplated by Sections C.2 and C.3 for **publication internally, or to the public, and for any other purpose.** Upon request of the Sponsor, the **Recipient agrees to provide waivers of moral rights in form and substance satisfactory to the Sponsor of the authors of the Final Outcomes Report in favour of the Sponsor and the Sponsor's assignees and licensees.**



"According to Legal, just THINKING about this project is an infringement of someone's copyright!"

Why might a Sponsor seek a Moral Rights Waiver?

- Sponsor may want to ensure they are able to use and modify the work (e.g. Research Report) without limitation.
- Sponsors who include moral rights waivers are often involved in areas that are considered politically sensitive. Examples may include human safety and environmental concerns.



4. Things to consider



Things to Consider when asked to waive moral rights

- What are you being asked to waive moral rights in?
- Why is the waiver necessary?
- How does the Sponsor want to use the results?
- Is the research area politically sensitive?
- How strong is your relationship with the Sponsor?
- Are there any students working on the project?



In [“Bush Aide Edited Climate reports: Ex-Oil Lobbyist Softened Greenhouse Gas Links,”](#) (New York Times, June 8, 2005, page 1), Andrew C. Revkin reports that a “White House official who once led the oil industry’s fight against limits on greenhouse gases has repeatedly edited government climate reports in ways that play down links between such emissions and global warming.”

Excerpt from [full article](#) in New York Times, June 8, 2005 (from NYT online):



By Juliet Eilperin

*Washington Post Staff Writer
Thursday, October 25, 2007*

Bush administration officials acknowledged yesterday that they heavily edited testimony on global warming, delivered to Congress on Tuesday by the director of the Centers for Disease Control and Prevention, after the president's top science adviser and other officials questioned its scientific basis...

White House officials eliminated several successive pages of Gerberding's testimony, beginning with a section in which she planned to say that many organizations are working to address climate change but that, "despite this extensive activity, the public health effects of climate change remain largely unaddressed," and that the "CDC considers climate change a serious public concern."



- If permitting the sponsor to modify work.....
 - Ask for help from RSO!
 - However, if a researcher understands his/her rights and wishes to proceed in order to receive research funding, RSO will act in accordance with the researcher's wishes.
 - RSO forms to complete.



Questions:



Thanks for Participating....

Francisco Marquez-Stricker - Legal Counsel, Research Services Office

Julaine Herst - Assistant Director, Contracts & Agreements, Research Services Office

Online Evaluation Form

- We appreciate your help in evaluating this presentation!
- The RAD evaluation form is accessible online. [Click here](#) or click on the blue checkmark below (*right-click the hyperlink(s) and click **Open Hyperlink** to activate*).

