

ATP SOUTH AFRICA – COPYRIGHT POLICY

Copyright affects users, publishers and distributors of material alike. A copyright policy has become necessary in order to promote ethical use of assessment material.

Intellectual property is a very important consideration within the psychological assessment arena. Respecting copyright allows the authors of test instruments to receive recognition and royalties due to them: this facilitates further research, updates and new test development.

Copyright and Intellectual Property defined

Dean (1989) defines copyright as “the exclusive right in relation to work embodying intellectual content (i.e. the product of the intellect) to do or to authorise others to do certain acts in relation to that work... acts which represent the manners in which that work can be exploited for personal gain or for profit.”

Intellectual property includes patents, trademarks, copyright and designs. Copyright is the right to protect products from unauthorised use. COPYRIGHT IS **NOT** THE RIGHT TO COPY. Intellectual property, once registered, trademarked or patented, is treated as an asset and has monetary value associated with it.

The Copyright Act 98 of 1978, as amended, governs copyright. This act can be obtained from: <http://www.buys.co.za/publications/cyberlaw/CopyrightAct.htm>

It is not required to register copyright in South Africa – work is automatically protected. The creator/developer of a psychological instrument has the right to claim authorship, and may object to any distortion, modification or adaptation of his/her work. This includes, but is not limited to, plagiarism and copyright infringement.

Copyright is the right given to the creator, author, or other person who may own the copyright of a work, not to have that work reproduced without permission.

Copyright defined by ATP International

Copyright is the right of **the creator** to reproduce all or part of the work; to make and/or distribute copies; to create derivative works (new versions based on the original work); and to perform and display the work publicly.

Why purchase original material?

The purchaser of a work owns only that particular copy of the work. The purchaser does not own any rights in the copyright covering the contents of the purchased copy. Consequently, the purchaser cannot copy the purchased work, in whole or in part, without the copyright owner’s permission.

As test publishers or distributors, companies are contractually bound to protect the rights and interests of the original publishers and test creators.

Test developers are rewarded for work invested in creating psychological instruments. Copyright exists to foster the creation of all forms of intellectual property, including test instruments. Often, creators/developers use royalty income in order to further develop and research instruments. To the extent that any organisation – without permission – unlawfully makes and sells works protected by copyright, authors and publishers are deprived of revenue from the market for which they have researched, written and published.

A second consideration for using original material is the quality of test material offered to clients. Copied material detracts from the professional appearance of test material, and can often create difficulty in reading and understanding content due to poor legibility. This impacts on the face validity of an instrument, and possibly also the reliability of results.

The **Counterfeit Goods Act** could further render the making, sale and use of unauthorised copies of test material an act of dealing in counterfeit goods. In using copied material, the individual/company perpetrates one or more of the following acts:

- The infringement of the copyright of the particular instrument/material (both a civil and criminal offence)
- The infringement of the publisher's registered trademark
- An offence under the Counterfeit Goods Act

The publisher is hence entitled to institute civil proceedings for copyright infringement and/or trademark infringement and to lay a criminal complaint of copyright infringement and/or dealing in counterfeit goods.

When is it considered to be copyright infringement?

With regard to using psychological material, copyright infringement occurs when the material is used to create an adapted instrument, or if the instrument is modified and distributed as a separate tool. Copyright infringement also includes copying of test booklets or answer sheets.

Copying answer sheets and test booklets under any circumstance is considered to be an infringement; even if answer sheets are sent for scoring and software report generation with the publisher/distributor.

Training and research conducted using a psychometric instrument, or training and research on a particular psychometric instrument **does not** automatically allow users to infringe on the author's copyright. In most cases, authors/publishers/developers are willing to grant discounts or other assistance for trainers, universities or researchers.

Third party service providers at times offer derivative computer scoring systems for test instruments. While these systems are not infringing copyright if they are simply report writers, it is considered to be an infringement of software copyright if the system copies the algorithms used by the developers to score a particular test. Copyright of computer software programs resides in the source code. In other words, a third party software system should rely on T scores or raw scores already produced in order to write software reports. If the system offers a scoring option, it is considered to be an infringement.

ATP actions to prevent copyright infringement

ATP firstly relies on the ethical conduct of its professional clients. Explicit trust is placed in the psychologists / psychometrists taking responsibility for psychological acts where assessment is involved.

In order to keep track of test material distributed, most test publishers rely on a numbering system for answer sheets and other consumables. These numbers are checked against a database to ensure that duplicate answer sheets are not used.

When software is used for scoring and report generation, prepaid dongles, administrations or units are provided for report generation.

Derivative software programs, offering automatic report scoring, are considered to be copyright infringement. These programs are often not backed by validated research, and could pose a professional risk, particularly if used for selection, custody, placement or clinical purposes. ATP members undertake to only distribute original scoring and report writing systems from the developers of tests.

ATP policy when copyright infringement is proven

If copyright infringement is proven, a letter of demand will be written to the infringer, explaining the nature of the infringement.

If a second infringement is conducted, a second letter of demand will be written. A written undertaking will be required, guaranteeing that

- the unlawful conduct will be discontinued immediately,
- all infringing material will be handed over to the publisher/distributor, and
- no further such conduct will be perpetrated in the future.

Compensation will be claimed. For a first offence, the amount will equal the purchase price of the original material, per infringing item.

If the infringing conduct is not immediately ceased, a final written demand will be offered to the infringer through the involved publisher's attorneys, and the individual/company name will be published on the ATP website. The guilty party will be blacklisted by all ATP member companies, and will subsequently not be provided with any test material for a period of five years.

In extreme cases where these actions do not remedy the situation, civil and criminal proceedings will be instituted against the perpetrator.

Acknowledgements:

ATP Copyright and Policy document

www.testpublishers.org/copyrightFAQ.htm

Monica Seeber & Owen Dean: The Publisher's Association of South Africa

www.publishsa.co.za/copyright.htm

Owen Dean. 1989. Handbook of South African Copyright Law. (Juta & Co Ltd.)

PASA: Publisher's Association of South Africa

www.publishsa.co.za/copyright.htm

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<http://www.svw.co.za>