Copyright Matters:
What Every Corporate Counsel Should Know
Copyright infringement—it’s not just happening at other companies. It could happen at yours, too. Here’s what corporate counsel need to know, and how to mitigate risk.

The digital workplace thrives on information sharing, and copyrighted works at the heart of that collaboration. In the wake of this ongoing challenge, copyright law’s impact on businesses is growing as more employees exchange information at the click of a mouse and more rightsholders move to protect their works.

Copyright compliance has evolved into a hot button for companies. Even careful corporate agreements that reflect due diligence can fall short of securely covering the vast stores of copyrighted material that are the essence of the information workplace. Infringement can be costly: In January 2012, Warren Communications News filed a $19.5-million lawsuit in the United States against a subscriber for making unauthorized copies of a daily newsletter, approximately the same amount that a federal court jury granted in damages to publisher Lowry’s Reports several years ago on a substantially similar infringement claim.
Copyright is a two-way street

Copyrighted works’ evolving nature has taken the workplace by storm. The ease with which employees swap information has been swift and all-encompassing and, as a result, companies have been slow to recognize the potential for infringement. Then two important shifts began percolating through corporations and raised copyright’s profile. The first is companies’ realization of the extent of their own copyright-protected content. Copyright has traditionally been associated with creative works like music and books, it turns out that copyrighted materials are everywhere in corporations.

“There’s a whole host of material protected by copyright,” says Chicago intellectual property attorney Kevin Tottis. Web sites, catalogs, internal publications and company newsletters all qualify for copyright protection. So do images, videos and audio.

Appreciated, in some cases, for the first time for its strategic and economic value, corporate content has begun to attract attention — as has its unfettered way of slipping out of the company and across the Web. Technology giant Hewlett-Packard Company recently trained its gaze on copyright after years of emphasizing patents and trademarks in its IP portfolio. The company is launching its first program for capturing and mining copyrighted material as it is being created, says Jennifer T. Miller, HP senior intellectual property counsel.

“It’s so easy for our programming code, data sheets and manuals to be posted on the Internet and sold,” says Miller. “These are valuable things, and we can’t be throwing them away. Copyright is a really good way to protect our code and materials.”

Therein lies the second big shift: As companies uncover troves of copyrighted works to protect, they’re also realizing they are prolific users of others’ content. Most of the articles, newsletters, research papers, graphics, videos and images of all kinds that find their way into the workplace are subject to copyright protection. Third-party content, so simple to share in the digital age, is exploding in usage.

HP is among the companies taking steps to educate employees about the use of third-party content. “We want other people to respect our IP, and we have to respect the IP of others,” says Miller, who heads the Association of Corporate Counsel’s Intellectual Property Committee. “There’s a fundamental misconception about copyright and the Internet and how they work together.” She says she fields queries daily from employees who believe any material they find online is in the public domain and therefore at their disposal: “People think as long as they can right-click it, they can use it.”

Corporate executives often expect to get a pass on their employees’ actions. “The big misperception by corporate counsel and executives is that employee infringement is an employee issue rather than a corporate one,” says noted Washington, D.C. copyright attorney Thomas Kirby. But the doctrine of respondeat superior is clear, he says: When employees infringe in the course of their work, reliance on the concept of secondary liability is unnecessary; in fact, the company is liable, if at all, as a direct infringer.

“Corporate executives’ lawyers don’t appreciate that,” Kirby adds, “and they think there has to be a special showing before the employer is liable, but it just isn’t so.”
Employees share information regularly

How do workers put information into motion? Email is the primary vehicle. A whopping 87% of employees use email to send content by attaching documents, according to an extensive study conducted in 2013 by research and advisory firm Outsell, Inc. According to Outsell’s research, more than two-thirds of surveyed knowledge workers include links to content in emails and nearly half actually cut-and-paste content directly into e-mails. As Outsell points out, sending a link is often in compliance with the obligations created by copyright law, while attaching documents or cutting and pasting often is not — but the distinction appears lost on users.

Outsell finds other distinctions are lost, too. One is the difference between free information and freely shareable information. Sixty-five percent of respondents believe that information they obtain online or in print, at no charge, can be shared without the copyright holders’ permission.

In addition to clear misconceptions around when rights are required in order to share copyrighted material, there is also a significant proportion of workers who don’t pay attention to copyright. In fact, 40% of the workers Outsell surveyed say copyright is not top of mind in their day-to-day work.

Of course, the news isn’t all bad. In fact, according to Outsell’s research, 55% say they now think about copyright before forwarding information. That may be why information managers say copyright is more important than it was a year ago, according to a survey by research firm FreePint. (See chart, “Interest in Copyright is on the Rise.”)

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Legal trends could spell trouble for companies

One factor boosting awareness is the spike in infringement-related news stories, nearly all of which pertain to consumer violations. Most corporate infringement lawsuits settle out of court and include confidentiality clauses. Kirby says he closely follows the high-profile music-sharing cases and believes the legal precedents being set apply to all rightsholders.

“It’s become clear that juries are pretty generous with copyright owners,” says Kirby. “We’re finally getting some court of appeals decisions about how statutory damages work.” When it comes to multimillion dollar jury awards, Kirby should know: In 2003, he won a $20 million jury verdict on an infringement claim against investment firm Legg Mason.

Kirby points out that even though most illegal downloaders of music are merely listening to music and not making money from it, juries continue to levy heavy awards against them, even when they’re students or single mothers. It’s a trend he expects will bode well for the infringement claims he files against large companies on behalf of publishing clients: “Anything juries will do to a single mother, they’ll do in spades to an investment company.”

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In addition to the legal ramifications of infringement, companies also face the risk of damage to their reputations, which can ultimately impact the bottom line. But countries’ business cultures can also influence companies to adhere to copyright laws, said Carlo Scollo Lavizzari, an attorney in Switzerland and South Africa who frequently represents publishers and filmmakers. Companies considered to be disregarding the laws of a country in which they do business can suffer negative perceptions — and a threatened bottom line. “It’s perhaps more social pressure to comply with copyright law,” said Scollo Lavizzari.

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How Does That Copyright Policy Work Again?

Call it risky business. While employees are aware of their organization’s copyright policies, most don’t know the details.

Source: Copyright Clearance Center Information Consumption and Use Survey 2013
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Take responsibility for compliance

An important first step in mitigating your company’s infringement risk is to not only educate employees about compliance, but to put policies in place. It’s key to understand your company’s information needs. “When it comes to fashioning a corporate policy, you need to sit down with in-house folks and figure out what they’re using,” says attorney Tottis. But you also have to be careful with policies,” he cautions. For example, overly stringent or impractical copyright policies that are certain to be violated are no defense against infringement claims.

Outsell found that while most employees know their companies have copyright policies, they don’t know how they work. (See chart, “How Does That Copyright Policy Work Again?”) Nearly two-thirds (63%) are aware that their organization has a copyright policy. But the fact that 32% say they aren’t sure of the policies’ details and that 19% are not aware if their organization has a copyright policy underscores the need for companies to provide mechanisms that facilitate compliance.

Make copyright compliance easy

Subscriptions and publishing agreements are helpful but limited. Some publishers sell licenses that let employees share articles within their companies from specific periodicals, journals, or newsletters. In some cases, licenses are limited by location, offering content-sharing rights within countries, but not across geographic borders.

It’s important to understand that copyright is territorial, said Scollo Lavizzari. Companies should have clear rights in every country in which they have employees or consultants with whom they share information. It is a time-consuming task that collective licenses like the CCC (Copyright Clearance Center) license can address, he added.

Rights aggregation and licensing services, such as those of CCC, provide better, broader protections. They streamline the rights process and cover large portions of the content employees need to use and share. CCC’s Annual Copyright License facilitates copyright compliance, freeing employees to do their jobs and share information without running afoul of copyright law. The license furnishes rights to millions of titles and covers research and industry news as well as blogs, newspapers, e-books and more.

“Our licenses from CCC and our standard music licenses are important, because they give us a base level of protection across the board,” says HP’s Miller. “They help employees recognize what they need to do to get the rights they need. In a company our size — 300,000 plus people — it’s important to have tools like that.”
The Annual Copyright License is a risk mitigation tool for the digital age, letting employees across the organization worldwide make the most of the advantages of the Internet while still respecting copyright. With it, employees can:

- E-mail articles to coworkers
- Distribute copies of published articles at internal meetings
- Post excerpts of industry research on corporate intranet sites
- Print and copy articles to share with company colleagues
- Download content for use at company meetings
- Include published material with regulatory submissions to government agencies

The Annual Copyright License also includes the DirectPath™ rights advisory solution which quickly confirms whether employees can share specific content based on the rights included in the license.

In addition to licensing, CCC provides educational resources for today’s professionals to help build copyright awareness throughout their organizations. The OnCopyright Education team offers instructor-led programs incorporating group discussions, question and answer sessions, and analysis of real-world scenarios. CCC’s OnCopyright Education Certificate Program, developed for business and academic professionals who deal with copyright issues on a day-to-day basis, features industry-specific courses that target a variety of user communities and the challenges they face in managing copyright.

The digital workplace’s easy swapping of information is one of its most important assets. With the right tools and protections, businesses can encourage that exchange and achieve even greater levels of success.

How Can We Help You?

Thousands of companies depend on Copyright Clearance Center (CCC) for licensing solutions and copyright education resources. We can help you simplify copyright compliance at your company. Contact CCC at +1-978.750.8400, option 3, or visit www.copyright.com/acl.

About Copyright Clearance Center

Copyright Clearance Center (CCC), the rights licensing expert, is a global rights broker for the world’s most sought-after books, journals, blogs, movies and more. Founded in 1978 as a not-for-profit organization, CCC provides smart solutions that simplify the access and licensing of content. These solutions let businesses and academic institutions quickly get permission to share copyright-protected materials, while compensating publishers and creators for the use of their works. We make copyright work. For more information, visit www.copyright.com.

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