
COPYRIGHT

IN THE DIGITAL WORKSPACE

Content Use and Attitudes Toward Copyright in Corporate America

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INTRODUCTION

With corporate responsibility and intellectual property issues in the national spotlight, businesses are under greater ethical and legal scrutiny than ever before. Consider how the Sarbanes-Oxley Act, privacy laws and changes in corporate accounting principles are raising compliance standards and corporate transparency to new levels. Meanwhile, companies are more vigilantly protecting their intellectual property to retain value in an economy increasingly driven by conceptual outputs and threatened by technology-enabled piracy.

Within this context, today's corporate employees have unprecedented desktop access to vast stores of digital information, much of which is copyright-protected. Along with this access comes the ability to share content almost effortlessly. Unfortunately, most employees are unfamiliar with their responsibilities under U.S. copyright law—and unaware that their daily work-related activities may be in violation of the law. This creates challenges for organizations that do not have a copyright compliance strategy and solutions in place.

CONTENT USE IN THE WORKSPACE

The Dominance of Digital Information

Electronic access, fast data rates and universal formats enable easy and almost instantaneous information access and distribution. Combined with an exploding store of digital content and what some call the “democratization of search,” the digital workspace has redefined how corporate employees find, use and share information.

A study of more than 30,000 corporate employees shows that 91% prefer to receive information in digital formats and 79% usually seek out information for themselves.² Research suggests why employees are self-seeking information: in focus groups conducted by Copyright Clearance Center, virtually all participants agreed that the skillful use of research and content developed by others is critical to their success on the job.

Nearly all research by the focus group participants is done on the Internet. In fact, the Web is so closely tied to “research” in some participants’ minds that the two terms are interchangeable. Participants were nearly unanimous in their dependence upon online access. One claimed, “If my Internet wasn’t there tomorrow, I’d be out of business.”

Many *senior* executives rely on the Internet as a primary source of information. Forty-six percent report accessing the Web before going to work; 55% say they do online research as part of their daily at-work routine; and 57% name the Internet as their single most important source of business information.³

These content trends are driven by ease and enabled by technology. A corporate librarian in Copyright Clearance Center’s focus group summed up the drive for digital information: “Users want electronic delivery because it allows them to share content [and] post information....”

**“I go wherever
I need to go to
get whatever
[information]
I need.”**

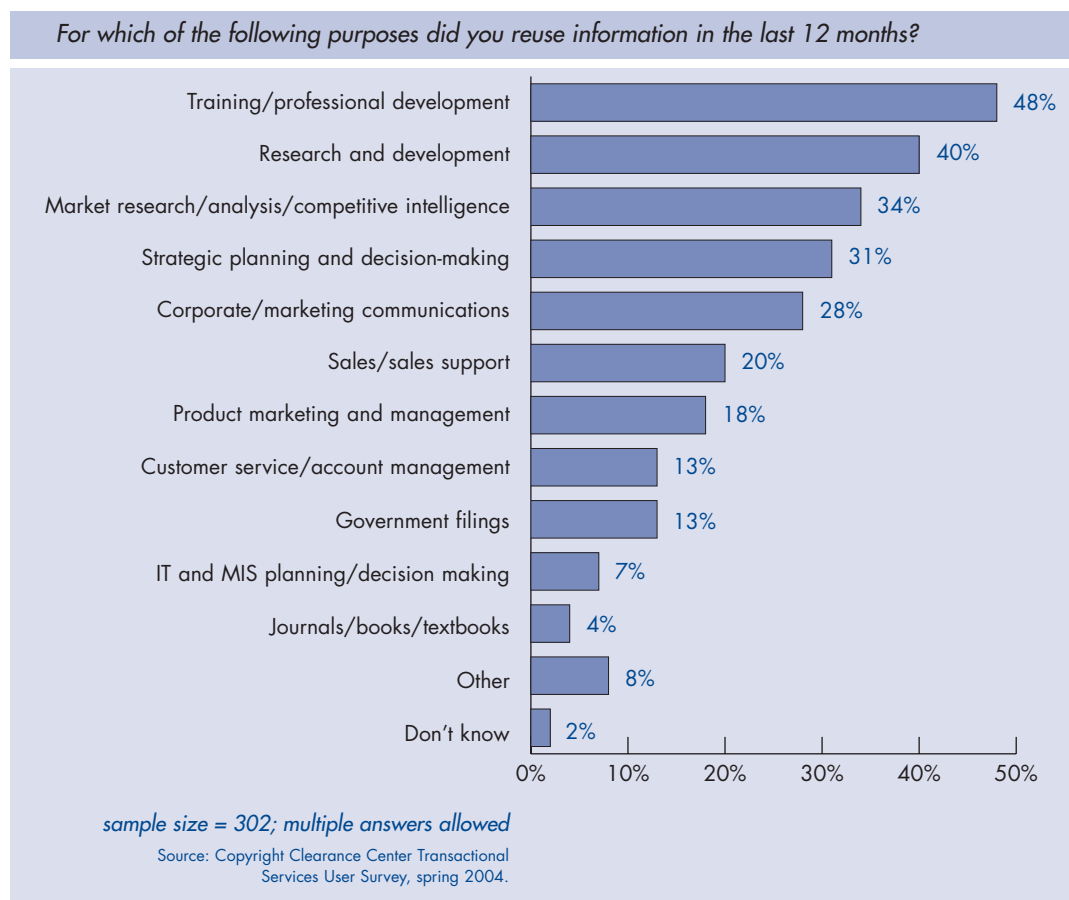
— IT director, medical
manufacturing company¹

Content Reuse Across the Organization is Widespread

Communication and information sharing form a cornerstone of corporate behavior. Employees seek out information that is relevant to business objectives. Once they find it, they frequently share it with others for a wide range of purposes—often without realizing that their actions may violate copyright law.

Copyright Clearance Center’s research found a diverse set of purposes for reusing copyrighted information including training and professional development, sales support, R&D and customer service (Table 1). These activities occur across a broad set of corporate functions. This suggests that the reuse of copyright-protected information is not limited to a few departments, but occurs throughout the company.

Table 1. Reasons for reusing content are diverse and occur across multiple functions.



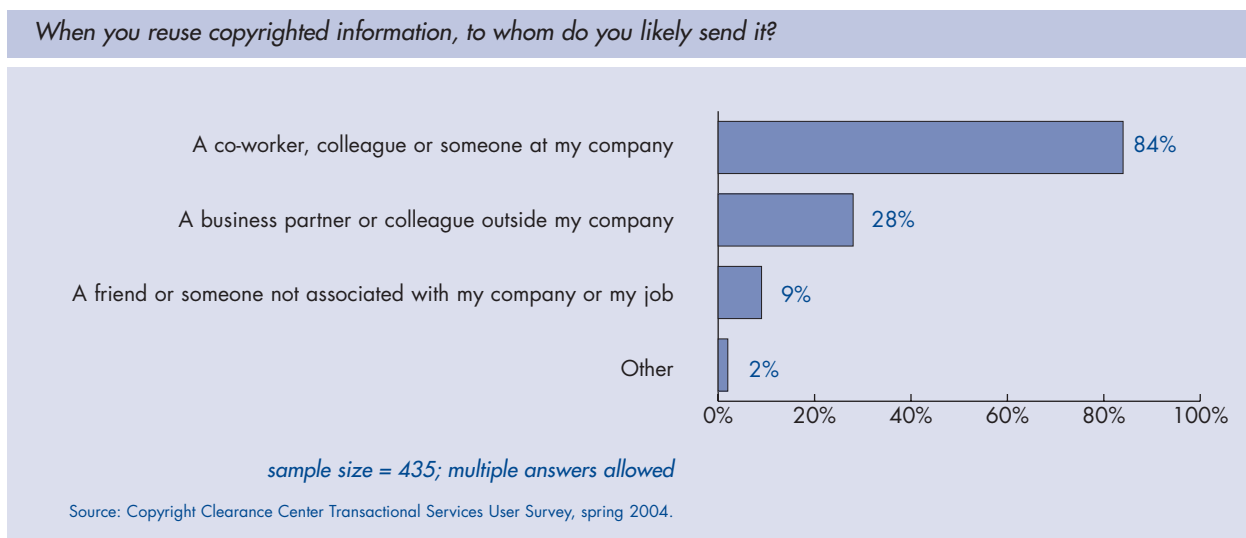
“I read the [newspaper] on the train in the morning. Then I go online at work and find the e-versions of interesting articles to forward to my colleagues.”

– legal analyst, global financial services firm

More than 70% of employees say they need to share copyrighted information with co-workers or business associates.⁴ And, sharing occurs frequently: employees report sharing content an average of 13 times per week, from an average of 11 different publications. Forty-three percent say they are most likely to share content from magazines, newspapers and newsletters; 36% name scientific or trade journals as the source of their shared content.⁵

Information sharing is not limited to staff employees. In fact, research shows that executives share copyright-protected information at almost twice the rate of their employees.

Research also shows that 84% of employees share information within their organizations and 37% distribute content externally (Table 2). This has important implications for obtaining the appropriate rights—*employees may not realize that different copyright permission is required depending upon whether information is shared internally or externally.*

Table 2. Content is most frequently shared internally.

Documents Migrate Between Print and Digital Formats

Information sharing in the workplace is extremely fluid as employees readily convert content back and forth between hard copy and digital formats. A document discovered in an online publication may be copied and e-mailed; printed and faxed; or printed, photocopied and distributed in hard copy. Just as easily, a printed document may be scanned into a computer and sent via e-mail.

Publishers and other rightsholders often license their copyright-protected works based upon the format of the original. Yet employees often cannot tell the original format of a document and seldom differentiate between print and digital formats. One participant commented, “I don’t want to have to care about format. I want whatever I need to have.” Another asked, “What exactly do you mean by ‘hard copy’?”

Simply stated, as the format of a document is changed, the requirements for copyright compliance may also change. *Permission to photocopy a document may not be sufficient permission to reuse that document in a digital format—and vice versa.* But employees are generally unaware of the legal implications of converting content from one format to another.

“I use the scanner to convert some of my articles—it makes them a lot easier to share.”

– product manager,
pharmaceutical company

EMPLOYEES’ COPYRIGHT AWARENESS AND PRACTICES

Individuals Are Aware of Copyright

Personal awareness of copyright laws is higher today than perhaps at any time since the laws were adopted. Promotional campaigns and announced lawsuits in the movie industry and media coverage of extensive legal actions in the music industry have brought copyright issues into the mainstream. In fact, “RIAA”⁶ was the fifth most popular Google NewsTM query in 2003.⁷ But personal awareness may not lead to workplace compliance.

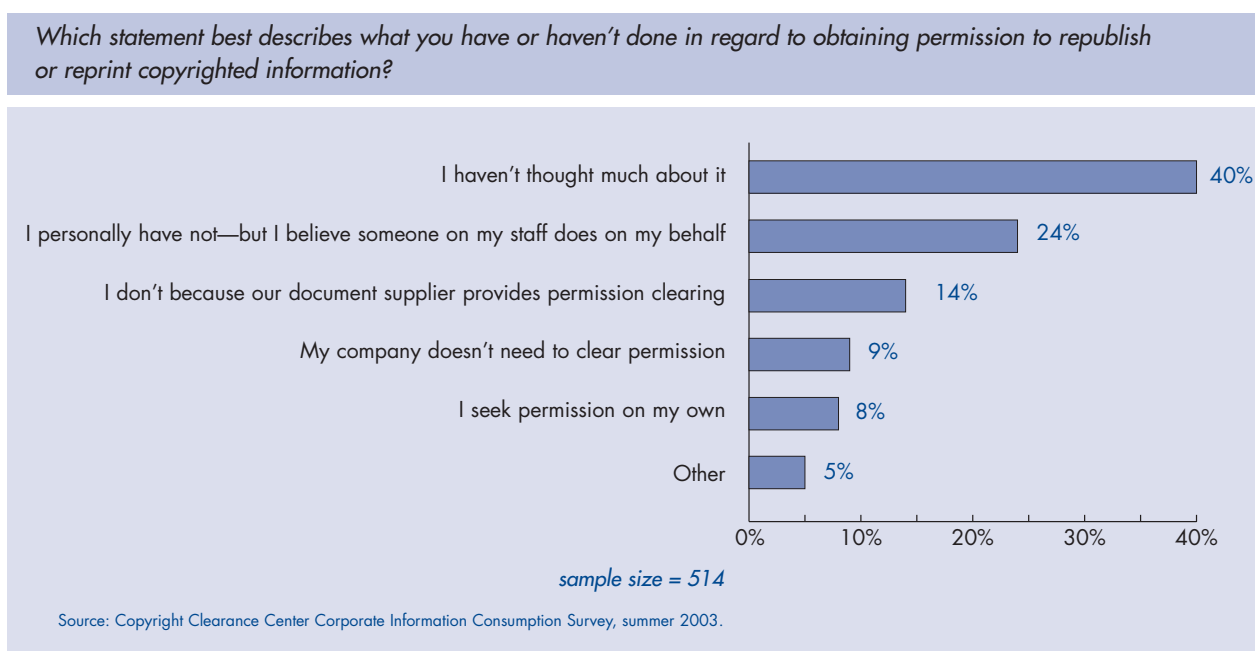
Confusion about Copyright Hinders Compliance

Copyright awareness is up and research shows that employees respect copyright law and its objectives. But, confusion is common. Employees often do not understand what content is protected by copyright law, what activities violate the law or where and how to seek copyright permission.

Further complicating matters is the widely held misconception that everything published on the Web is free and not protected by copyright. In reality, the opposite is closer to the truth.⁸ This misunderstanding is reinforced by the “printer-friendly format” and “e-mail to a friend” options found on many content providers’ Web sites. If it is not legal to do so, why is it so easy to print and share the online content?

Another factor that can hinder copyright compliance is confusion over who in the organization is responsible for obtaining copyright permission. Some employees think that another staff member obtains permission on their behalf. Others expect their document suppliers to do so. Some even think their company does not need to get copyright permission (Table 3).

Table 3. Few seek copyright permission on their own; many don’t think about it.



Yet another point of confusion is the wide range of license options from publishers and authors, because some allow subscribers to reproduce articles while others do not.

COPYRIGHT COMPLIANCE IN CORPORATE AMERICA

Few Employees Seek Copyright Permission

Some employees realize that a certain amount of reuse is often allowable, yet they do not always know where the boundaries are. One respondent explained, “I know since I am not mass producing something to distribute to all of my friends I am not doing anything wrong.” Others may believe there are no consequences to infringement. More often than not, however, it is simply a lack of thought that may lead to copyright infringement: a full 40% of respondents say they “haven’t thought much about” obtaining permission to republish or reprint copyrighted information (Table 3, above).

There are exceptions: Copyright Clearance Center’s research found that the employees most supportive of copyright compliance are those who create content or other intellectual property. Those that understand the potential impact of infringement seem more likely to comply.

The Corporate Safety Net of Centralization Has Been Lost

Before the shift to the digital workspace, corporate employees found information the old-fashioned way: through their corporate librarian. Now employees are more self-sufficient and the librarian's role has evolved. As one corporate librarian commented, "We have put tools in place so our users do their own searches and we don't get all the little requests that we used to."

None of the focus group participants mentioned the library when asked where they do their research. A representative response was, "My number one source is Google. I use it first with 95% of my information searches. Then the other sources I use are the ones Google takes me to."

Many corporate libraries have downsized or disappeared altogether due to economic conditions and employee autonomy. As one focus group participant put it, "What do I need a library for now? I don't even have to leave my desk to get what I need." While this decentralized information access can free up librarians for more complex research and other value-added tasks, it comes with a downside as well: it is no longer the copyright-savvy librarian who is sourcing information and ensuring its legal reuse. Instead, information is now self-service. This escalates the possibility for infringement because individual employees tend not to be as copyright-aware as librarians.

Corporate librarians rate compliance as extremely important at the corporate level. *Yet even those who have explicit corporate compliance policies in place acknowledge that the policy is not seriously enforced.*

One focus group participant lamented, "...I know people are not complying [with our corporate compliance policy] because they are laughing while they sign it." Librarians also say it is impossible to track how much sharing occurs, what content is shared or who the greatest offenders are.

To encourage compliance, librarians say they continue to employ a mix of educational outreach and warnings. However, today's digital tools make enforcement difficult. As one librarian explained, "We put a big red signature saying 'do not forward' on the bottom of every article we e-mail. Do I think our people go ahead and e-mail [it]? Of course."

Infringement May Be Inadvertent, Yet Poses a Significant Risk

Intellectual assets play an increasing role as a driver of corporate value in the economy. So it should come as no surprise that companies and individuals are eager to protect their conceptual outputs. Federal Reserve Chairman Alan Greenspan has pointed out that "the conceptualization of the GDP [gross domestic product]...is irreversibly increasing the emphasis on the protection of intellectual, relative to physical, property rights."⁹ Corporate America is taking steps to identify, manage and protect its intellectual assets to generate corporate value—and may care greatly if others violate its copyright protections.

While copyright infringement is often unintentional, technology enables it to occur on a routine and large-scale basis. With the librarian often out of the information-search workflow, it is difficult to track employees' information-sharing activities. The result? Even significant acts of copyright infringement can unknowingly occur.

In February 2004, a federal judge upheld a jury verdict in the case of *Lowry's Reports v. Legg Mason*, in which Legg Mason was held liable for \$19.7 million in damages for copyright infringement of a Lowry's newsletter. The award is being appealed, but it underscores the significant risks that companies may face due to employee actions and a lack of enforced compliance measures.

Outsell, Inc., a research and advisory firm in the information industry, notes that the size of this judgment "...should cause many organizations to reexamine their compliance practices. With a relatively small investment...companies can acquire reasonable levels of protection against infringement suits of this sort."¹⁰

"...it is a bit of a Wild West situation. Anything goes, pretty much, because I just can't get bogged down in trying to police everyone."

— corporate librarian,
consulting company

STEPS TO ENABLE COMPLIANCE

With today's self-service model of information access, infringement of copyright law may be occurring routinely in corporate America. However, there are steps that employers can take to educate employees and enable compliance.

Step 1. Develop a copyright compliance policy. The policy should summarize copyright procedures and provide a single, consistent approach to compliance throughout the organization. It should be developed as a collaborative effort involving corporate counsel, corporate librarians or information center employees, and representatives of different employee groups. The most successful policies are living documents that are reviewed and updated regularly to reflect changes in copyright law, information technology, online subscriptions, guidelines for reuse of copyright-protected materials and other company policies.

Step 2. Communicate the compliance policy throughout the organization. Copyright compliance education should be a standard component of new employee orientations. Mandatory attendance at an annual compliance training session would ensure that all employees are reminded of the policy each year and kept abreast of updates. It also would underscore compliance as a corporate value.

Step 3. Develop a culture of compliance. A compliance policy alone is not enough. To protect against infringement, an organization should develop a culture of compliance, both in principle and practice. Senior executives should set the example: in a survey of corporate directors and general counsel at public companies, respondents overwhelmingly agreed that the single measure that would most improve corporate governance is for senior management to create and sustain an ethical business culture.¹¹

Step 4. Create simple solutions for copyright compliance. Perhaps the most essential step to enable compliance with copyright law is to provide employees with simple and practical solutions for obtaining copyright permission. When faced with a time-consuming compliance process, many well-meaning employees may forgo compliance in favor of delivering their work on time—with the unauthorized information content they need.

COMPLIANCE SOLUTIONS FROM COPYRIGHT CLEARANCE CENTER

One of the biggest obstacles to compliance is the burden of seeking permission to reuse copyright-protected content. To address this problem, many of today's leading companies—including nearly all of the Fortune 100—turn to Copyright Clearance Center, the world's premier provider of copyright licensing and compliance solutions. This not-for-profit company was founded in 1978 at the suggestion of Congress to simplify and improve compliance with U.S. copyright law. Since then, Copyright Clearance Center has served as a trusted intermediary between copyright holders and content users, facilitating the exchange of rights and royalties. Today Copyright Clearance Center empowers more than 10,000 corporations and academic institutions to use lawfully the copyright-protected information they rely upon.

**“They are...looking
for practical and
friction-free means
of compliance.”**

– Outsell, Inc.

Copyright Clearance Center has developed a variety of compliance solutions designed to provide copyright coverage for content use both inside and outside an organization—throughout the U.S. or around the globe. Its annual licenses provide the most complete and effective compliance solution for employees to use and share copyright-protected information within their own organization. In exchange for an annual fee, company employees have easy access to get permission for millions of titles including the world's most sought-after content, in print and digital formats. For content use outside the organization, Copyright Clearance Center offers a range of pay-per-use permission services.

With Copyright Clearance Center's compliance solutions, employees gain a convenient and lawful way to use the content they need to achieve their goals. Meanwhile employers can rest assured that their company has the tools it needs to operate in accordance with copyright law.

To learn more about how Copyright Clearance Center's compliance solutions can help your business, please visit www.copyright.com or e-mail licensing@copyright.com or phone +1.978.750.8400.

IDENTIFY YOUR COMPANY'S RISK FACTORS

Many factors can affect a company's risk of non-compliant practices. Your answers to the questions below can help identify the elements of your business that may engender copyright infringement. If you check "Yes" in answer to multiple questions, you may want to consider a copyright compliance solution for your organization.

Market Environment

- | | | |
|--|------------------------------|-----------------------------|
| 1. Does your company depend on product or service innovation to maintain and grow market share? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Is it important that employees have access to up-to-the-minute industry news? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does your company's spending on research, subscriptions and data services meet or exceed the industry average? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Has your company experienced a significant amount of churn, layoffs or downsizing that could lead to disgruntled employees? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Is your company contemplating a major business transaction, such as an IPO, merger or spin-off, that will invite public scrutiny and would benefit from a positive corporate image? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Business Practices

- | | | |
|--|------------------------------|-----------------------------|
| 6. Does your sales and marketing organization rely on the reuse of article reprints, news clips and industry reports to raise awareness, generate sales leads or educate channel partners? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Is your company geographically dispersed across the United States, with employees working in different locations? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 8. Does your company have employees or outsourcing partners located outside the United States? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9. Does your company rely on communication and information sharing via e-mail, intranet and/or extranets? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Corporate Culture

- | | | |
|---|------------------------------|-----------------------------|
| 10. Do your employees have open access to the Internet? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. Does your company advocate a culture of openness, sharing and the free flow of information and ideas? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 12. Does your company distribute copyright-protected content from journals, industry newsletters, newspapers, books or other publications for training, competitive research or other purposes? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 13. Do your employees work in project teams that require them to share information internally or with individuals outside your company? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 14. Does your company find it difficult to monitor and control content use of every employee? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOTES

1. All quotations herein are from qualitative research conducted by an independent organization on behalf of Copyright Clearance Center. The study involved six focus groups split evenly between employees and corporate librarians. Focus groups involved a total of 52 participants and were conducted in New York City on December 9, 2003, in Chicago on December 10, 2003 and in Boston on December 16, 2003.
2. Outsell, Inc., *Content User Profile: Update on Corporate Information Users' Habits, Preferences and Needs*, December 2003.
3. Forbes.com and GartnerG2, "A Day in the Life of CEOs Online—Part IV," Forbes.com, March 2004. The results of the Web-based survey of 2,328 U.S. and international senior executives, managers and staff were accessed online at <http://www.forbes.com/fdc/research.shtml>.
4. Copyright Clearance Center, "Corporate Information Consumption Survey," summer 2003. The telephone survey of 752 white collar workers was executed by an independent survey organization.
5. Copyright Clearance Center, "Transactional Services User Survey," spring 2004. The private quantitative study of 435 transactional service customers was executed by an independent survey organization.
6. The Recording Industry Association of America (RIAA) has received widespread attention for its efforts to curtail illegal online song sharing by suing individuals for copyright infringement. As of September 2004, Reuters reports the number of lawsuits filed over the past year by the RIAA against individuals to be roughly 5,400. See Sullivan, Andy, "Recording industry sues 762 for Net music swaps," September 30, 2004; accessed online at <http://www.reuters.com/newsArticle.jhtml?type=topNews&storyID=6381458>.
7. The #1 most popular Google News search in 2003 was "Iraq" and the 10th most popular was "Dixie Chicks"; "2003 Year-End Google Zeitgeist," Google.com; accessed online at <http://www.google.com/press/zeitgeist2003.html>.
8. Copyright protection is in place once a work is fixed in a "tangible form of expression," e.g., written, recorded or captured electronically.
9. The Federal Reserve Board, "Remarks by Chairman Alan Greenspan: Intellectual Property Rights," delivered at the Stanford Institute for Economic Policy Research Economic Summit, Stanford, California, February 27, 2004.
10. Outsell, Inc., "Trend Alert: *Lowry's Reports v. Legg Mason*—The \$20 Million Copyright Wake-Up Call," *InfoAboutInfoSM Briefing*, Volume 7, April 9, 2004.
11. American Corporate Counsel Association (ACCA) and the National Association of Corporate Directors (NACD), "ACCA/NACD Corporate Director & Corporate Counsel Poll on Corporate Governance," Association of Corporate Counsel, May 2003; accessed online at http://www.acca.com/Surveys/resp_corpgov.pdf.



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