

Businesses Beware: Copyright Infringement on Your Intranet Can Be Costly

By Patricia S. Eyres, Attorney at Law; President, Litigation Management & Training Services, Inc.

Could your business be stung by employees' theft of content from copyright holders on the Web? A recent case highlights how even employees' exchange of resources through the company's Intranet can lead to a public courtroom battle and end with devastating costs.

Legg Mason, Inc., a Maryland financial services firm has learned the hard way that even seemingly innocent internal exchanges can result in huge liabilities. A jury in Baltimore federal court found that Legg Mason had willfully infringed the copyrights of Lowry's Reports, Inc., a newsletter covering stock market conditions. The verdict? A whopping \$20 million. The jury considered the infringement "willful," which led to enhanced penalties as specified under the Copyright Act.

Legg Mason purchased three subscriptions and its license agreement prohibited making extra copies. Yet, employees systematically distributed it by email to over 1,000 co-workers in violation of the terms of the subscription agreement. Each e-mail transmission was a copy that violated the license agreement.

How e-mail increases the risk: Before e-mail, firms that wanted their employees to benefit from educational resources purchased subscriptions for everyone to receive an individual copy, or they distributed limited subscription originals through the workplace with a distribution or routing list. Today, managers and employees alike have become accustomed to exchanging mountains of documents electronically; often in haste, and without deliberate thought about the legality of the transmission. Each electronic transfer is the legal equivalent of a photocopy.

Defenses Reflecting Common Misconceptions: Legg Mason claimed that the infringement was a good faith mistake by low-level employees. But, the publisher proved that the legal responsibility lay with corporate decisions that gave employees the technological means to infringe copyrights so easily without first training them to use it legally.

Lessons for subscribers: Read your subscription agreements carefully and fully understand the terms and limitations of your license. Don't assume that the doctrine of "fair use" permits you to distribute newly created copies (every forwarded e-mail is a new copy), even internally to your own staff. Most importantly, adopt appropriate policies to assure that your organization complies with the law and its agreements. Then, make sure that your staff understands and follows them. Legg Mason's copyright guidelines addressed only external distribution and employees were ill-informed. After agreeing to cease and desist, they apparently didn't inform or properly train their vast workforce.

Lessons for Employers: Good intentions aren't good enough. Written policies alone are insufficient to shield your organization from legal exposure if your employees violate those policies and if you fail to train them on both your policies and the law.

The company may be liable even when the employer is not aware of the direct act, when the employee copies copyrighted works in violation of the license, and even when it's policies prohibit such behavior. The employer has an obvious and direct financial interest in the exploitation of the material. Regular monitoring of employee activities may be appropriate to assure actual compliance with the company's stated policies. Put some disciplinary "teeth" into your policies and then train your corporate leaders to enforce them rigorously.

Lessons for Publishers: If you publish a subscription newsletter or e-zine, be sure to perfect and then protect your copyright. To perfect the copyright, register the work with the US Copyright Office. To protect your copyright from infringement, include language in your subscription agreement specifying that subscribers are prohibited from distributing the newsletter, in electronic or print format. Clearly state the terms of your license agreement with each subscription, including the number of permissible copies.

Patricia S. Eyres, Attorney at Law, is president of Litigation Management & Training Services, Inc., a member of NAWBO-OC, and served as a legal counsel for the chapter. She consults, speaks, trains, and writes on legal issues affecting the workplace. Patricia can be reached at (480) 607-5847.

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