

Whitepaper

The Risky Business of Information Sharing

Why You Need to Care about Copyright



It's easy—and costly—to run afoul of copyright in the Internet age. But if technology has escalated infringement, it has also brought new solutions that make it simple to comply with copyright law and still embrace the sharing that is the digital workplace's most valued asset.

The action was simple enough: one senior executive regularly forwarded copies of digital material to two other executives. It's the kind of routine, rapid-fire information swapping that's done on the fly every day in offices. The tab, though, was anything but common. To settle the resulting copyright infringement lawsuit, the executives' employer paid \$500,000.

Copyright is an essential tool in the spread of new ideas, and the workplace has become ground zero for infringement. Ask employees up and down the corporate hierarchy, and they'll tell you that sharing information electronically with co-workers is integral to their jobs. Their employers will emphatically agree.

But unauthorized swaps of information also carry enormous potential risk: Ordinary office exchanges, so natural to the digital world, can easily violate the copyright rights of others and bring costly lawsuits or settlements. Now the same technology that has dramatically defined the Internet age is drawing a new roadmap to compliance, with software tools that simplify adherence to copyright requirements.



What's protected by copyright?



Literary works: blogs, books, cartoons, emails, letters, magazines, memos, newspapers, newsletters, trade journals, training materials and other written material, in paper or digital format.



Computer software: on disc, downloaded or in other formats.



Pictures, graphics and sculptures: three-dimensional artworks and other creations, as well as two-dimensional cartoons, graphical images, maps and photographs, in paper or digital format.



Architectural works: buildings and the like.



Sound recordings and accompanying words: recorded or performed on compact discs, phonographic records, podcasts or other media.



Audiovisual works: motion pictures, multimedia presentations, demonstrations and slideshows, in analog or digital format.



Dramatic works and accompanying music: plays and screenplays, regardless of the medium in which performed or displayed.



Pantomimes and choreographic works: dance and mime performances.

What is copyright, and why is it important?

Copyright law encourages resourcefulness and originality while protecting creative output. The idea behind it is to grant ownership of the creative aspects of original works to the individuals and businesses that create them. Any original work of expression written, recorded, or captured in some fashion is protected by copyright. That includes art, music, and literature, as well as research, news, blogs, and e-books. The U.S. Copyright Office handles the registration of 550,000 copyright claims annually and this is only a small portion of the works that copyright protects.

With its ability to whisk information through cyberspace at the click of a key, the Internet, like copyright, is at the heart of new thoughts and ideas. In many ways, it's the perfect union, pairing fresh creativity with an engine for global transmission. The result is that access to vast stores of information has become nearly universal: Everyone has access. No longer reliant on corporate librarians to secure information, employees are sharing data whenever and wherever they want.

Copyright creates a form of ownership for original creative works and the law protects the works by giving exclusive rights for how that work can be used, which can then be enforced by the copyright holder, including through lawsuits. So any time employees share content, there's risk—potentially substantial legal and financial exposure — but ethical as well. In many cases, companies have a greater stake in copyright beyond observing protections for the works of others. They, too, have intellectual property they seek to protect and an interest in the application of a form of the Golden Rule: respect others' intellectual property as you would have them respect yours. Even if they don't create any new works or ideas of their own, systematically disregarding copyright requirements contradicts the values that are integral to most corporate missions. Observes Chris Gannon, vice president and general counsel for Blue Cross & Blue Shield of Vermont, "You can't say that integrity is a core value and then be a scofflaw on copyright infringement."

The realities of how employees use information

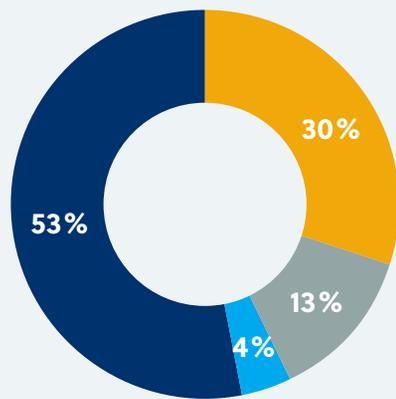
Corporate employees are sharing content an average of 16.5 times per week with 9 people, and 49% of that information is sourced from external providers, according to an extensive study conducted in 2020 by research and advisory firm Outsell, Inc.

The 2020 Outsell report showed that executives are the most prolific of content sharers and consumers. While email remains the most frequent means of sharing (84% sending an email attachment, and 63% sending a link in an email), behaviors are shifting. Intranet postings (29%) and collaboration tools are gaining in popularity (43% vs. 24% in a similar Outsell study conducted in 2016).

Outsell also found in 2020 the distinction between free information and freely sharable information is lost on many users. Sixty-three percent of respondents say they believe information they obtain online or in print at no charge can be shared without permission. In most cases, it cannot. When content is paid for, restrictions are more obvious to respondents: 77% of executives surveyed believe that it is okay to share free digital or print information with others within their organization and 80% believe it is okay to share paid digital or print information. It usually isn't.

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.



- Yes, I'm aware of our copyright policy
- I think so, but I'm not sure of the details
- I don't think so/unsure
- No, there is no copyright policy

Source: CCC 2020 Information Seeking and Consumption Study — Copyright 2020 Outsell, Inc. www.outsellinc.com

According to Outsell's 2020 research, 78% of respondents believe their organization is taking appropriate measures to ensure compliance. But in competitive, mission-critical, or time-critical situations, another 58% will also forward any and all relevant information that will help their organization be more competitive, indicating a gap between perceptions of personal and corporate responsibility.

No doubt one factor boosting awareness is the spate of copyright-related news stories. "Prominent copyright news stories raise the issue to the forefront and cause some people to change their actions," agrees R. David Donoghue, an intellectual property litigator for Holland & Knight and author of the Chicago IP Litigation Blog.

"But the bigger copyright issue is the incidental or unintentional infringement, such as an engineer who needs a few chapters from a textbook. That kind of copying is so prevalent that companies can't rely on cautionary news reports to inform employees, says Donoghue. Responsibility for educating them, he adds, rests with employers and their employees (see sidebar on page 3, "What's Protected by Copyright?").

Taking responsibility for compliance

So how does a company reach all of the employees it needs to about copyright? An important first step is taking responsibility to educate employees about compliance and then putting protections in place (see sidebar on page 5, "How to Create a Compliance Policy").

For many employers, that process begins by acknowledging that unauthorized use of copyrighted materials could cost them big bucks. Multimillion-dollar infringement lawsuits are a genuine risk.

Managers regularly shrug off infringement risks in the mistaken belief that, if caught, their employers face only modest settlement costs. They assume typical settlement payouts total relatively small sums, such as three times subscription costs, or that purchasing additional subscriptions will bring them into compliance.

Not true. The tab for infringement has risen dramatically. In 2003, publisher Lowry's Reports Inc. won a \$20-million jury award against investment firm Legg Mason for systematically faxing copies of a daily and weekly newsletter published by Lowry's.

Velocity of content

Corporate employees are sharing content an average of **16.5 times per week with 9 people.**

With 49% of that content sourced from external providers, **there is the potential that every employee is violating someone's copyright 74.6 times per week.**

Source: CCC 2020 Information Seeking and Consumption Study
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How to create a compliance policy

The following 10 steps will help craft a policy that meets your company's needs and decreases your risk of infringement.

- 1. Tap your organization for input.** Helpful suggestions for issues to address in your policy can come from a variety of departments. In addition to legal, compliance, and library/information services, expand the policy team to include IT, marketing, and corporate communications.
- 2. Establish your policy objective.** Be clear on why your organization is implementing a copyright policy. Maybe the goal is for your company to fulfill its obligations under copyright law. Perhaps it is to provide employees with a uniform approach to addressing copyright issues. Whatever the reason, state it concisely.
- 3. Define copyright.** Explanations of copyright law and what it covers don't have to be complex. Be sure your policy includes concise definitions and examples of information that is and, equally important, is not copyright protected.
- 4. Demystify "fair use."** The premise of fair use — to allow limited use of copyrighted material without permission — is often misunderstood. Be sure your policy includes details on the factors to be considered when deciding whether a particular use is a fair use, and your organization's policies for balancing fair use and copyright holders' rights. Educate employees about the fair use of your company's own copyrighted materials, and prepare them to address the issue with customers, vendors, or competitors.
- 5. Address international copyright issues.** If your organization employs workers in multiple countries, provide information to ensure they comply with the copyright laws of the country in which they are based.

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The case and its substantial award motivated more than a few corporate counsel and librarians to sharpen their companies' observance of copyright requirements. That's a smart strategy, because copyright infringement lawsuits are on the rise, with many being settled and often out of the headlines. In 2019, Dow Jones & Company, publisher of The Wall Street Journal and other publications, received more than \$1.5 million in two separate copyright-infringement settlements as a result of unauthorized online republishing and posting of their articles. But, still, within the hallways of many companies, awareness of copyright often remains limited and casual.

"When I tell them they're talking about statutory damages and exposure to millions of dollars in judgments, they express great surprise," says Thomas Kirby, a senior litigation partner at law firm Wiley Rein LLP in Washington, DC, who frequently represents publishing companies.

But not for long, says Kirby, who represented Lowry's Reports in its suit against Legg Mason. "There's an increasing recognition among copyright specialist lawyers that a company that gets caught forwarding or otherwise infringing publications has a serious problem and should expect some pretty serious consequences."

Managing compliance

When it comes to managing copyright compliance, a major hurdle—and potential risk—is employees' perception that obtaining permission is a cumbersome process that interferes with their ability to do their jobs.

Just more than half of knowledge workers believe copyright permission is easy to obtain in their organizations, according to Outsell's research. Most are either ambivalent about the efficiency with which they're granted permission, or they disagree that the process is convenient. Their impressions are largely accurate: the outreach and phone calls required to garner permission can absorb hours of work over the course of several days.

Outsell, isn't surprised by the survey's finding that busy employees and managers take a dim view of compliance procedures. "It speaks to the breadth of items on any knowledge worker's mind today," says Outsell. "We're all doing more with less, and we're moving faster."

Outsell points out that publishers convey mixed messages to website visitors by routinely accompanying articles with multiple sharing options, such as allowing readers to email links and to post article-related comments on Facebook and social news websites like Digg. "Certainly it seems fine to share if everyone is enabling it," Outsell's advice? Education is critical.

So far, the education isn't occurring, especially within corporations. 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?"). Although 83% are aware that their organization has a copyright policy, 30% say they aren't sure of the policy's details. The fact that another 17% are not aware if their organization has a copyright policy underscores the need for companies to provide mechanisms that facilitate compliance.

How to create a compliance policy

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6. **Clarify copyright's reach across formats.** When it comes to copyright, pixels are as protected as paper. Be sure your policy clearly explains that copyright covers content across multiple formats. Employees are often surprised to find out that an article is copyright protected whether it's in a newspaper, electronic newsletter, website, or blog.
7. **Outline compliance procedures.** Identify who is responsible for answering compliance questions within your company. Explain the steps employees should take to determine if copyright permission is needed and to request or secure permissions.
8. **Create guidelines for the use of your organization's copyrighted materials.** How should employees handle the issue of works for hire with contractors and other nonemployees who produce work for the organization? When is it okay to distribute your organization's own materials?
9. **Advise on proper handling of infringement.** Encourage employees to do the right thing, and to follow specific procedures when they witness instances of copyright infringement within your organization. Outline the steps they should take if they encounter your company's works infringed on the Internet or in the marketplace.
10. **Once you have a copyright policy, promote it.** Many corporate copyright policies are too low profile to be useful, largely unread and squirreled away in manuals and on hard drives. Post yours on the corporate intranet or other shared sites where colleagues can easily find it. Issue periodic reminders company-wide.

Scared straight

Make no mistake: Most employees want to avoid infringing. Employees of different ages take somewhat different approaches to copyright—with seasoned employees in general more aware of their copyright obligations, and younger ones less familiar—but their actions share a common thread. “Most people want to follow the law,” says attorney Donoghue of Holland & Knight. Employees “become frightened when they realize there’s something they’re doing that’s creating liability, and they always want to fix it because they didn’t mean to do it. In this digital culture, they didn’t realize it was infringement.”

It’s true that under-30 employees have more of a sense that all information is free and shareable, Donoghue adds, “yet that group is no less willing to change their behavior when it’s pointed out that copyright law may prohibit some of the sharing.”

Interestingly, a far more immovable force resides in executive suites, especially in those of sizable corporations. “In large companies, we often find that the infringer is not a low-level, uninformed employee but instead a high-level executive who views himself as immune to the policies everyone else is expected to follow,” says attorney Kirby of Wiley Rein.

Executive respondents to the 2020 Outsell survey have a greater appetite for content than middle management and individual contributors; they share it more regularly, with more people, and are more likely to share information published by third parties than individual contributors. This is especially true when faced with competitive or mission-critical/time-critical situations.

Velocity of content sharing, by job role

| | Executives | Middle Management | Individual Contributor |
|---|--------------|-------------------|------------------------|
| Frequency of sharing per week (mean) | 24.5 | 15.8 | 10.5 |
| Number of people shared with | 11.7 | 9.4 | 6.3 |
| % of information shared that is externally sourced | 50% | 50% | 45% |
| Number of potential instances of unlicensed sharing by employees | 143.6 | 74.4 | 30 |

Q6. What percentage of the information you share is published internally versus content by third parties? (Base = 598)

Q7. How many times during an average day do you share work-related information such as news articles, journal articles, book excerpts, blog posts and other content from digital or print sources with colleagues? (Base = 570)

Q8. When you share work-related information via email, collaboration tools, or hard copy print-out/photocopy, how many people do you typically share it with? (Base = 498)

Source: CCC 2020 Information Seeking and Consumption Study, Copyright 2020 Outsell, Inc. www.outsellinc.com

Executive behavior and immediate information needs

| | Total | Executives | Middle Management | Individual Contributor |
|---|-------|------------|-------------------|------------------------|
| In competitive, mission-critical or time-critical situations, I will forward any and all relevant information that will help my organization be more competitive. | 58% | 74% | 59% | 46% |

Q10. Please indicate how strongly you agree or disagree with each of the following statements pertaining to your organization.

Source: CCC 2020 Information Seeking and Consumption Study, Copyright 2020 Outsell, Inc. www.outsellinc.com



Making compliance easy

Subscriptions and publishing agreements are helpful but limited. Some publishers sell licenses that let employees reuse articles within their companies from specific periodicals, journals, or newsletters. They permit employees to exchange information without infringing on their copyrights.

Broader protections come from Copyright Clearance Center’s Annual Copyright License. The Annual Copyright License facilitates compliance, enabling employees to more easily collaborate using content from a wide range of sources, no matter where they are located without running afoul of copyright. The license compliments publisher agreements and subscriptions by providing a consistent set of reuse rights to millions of titles and covers research and industry news as well as blogs, newspapers, e-books, and more. It’s a risk mitigation tool for the digital age, letting employees make the most of the advantages of the Internet while still respecting copyright.

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There’s an increasing recognition among copyright specialist lawyers that a company that gets caught forwarding or otherwise infringing publications has a serious problem and should expect some pretty serious consequences.”

Thomas Kirby
Senior Litigation Partner, Wiley Rein LLP

Sharing is the strength of the digital age, and copyrighted works are the fuel for its collaborative engine.

With it, employees can:

- E-mail an online articles to coworkers in conjunction with a collaborative project you are working on together
- Distribute copies of a published article at an internal meeting
- Post excerpts of industry research on a corporate intranet site
- Host a competitive intelligence collaboration site for project teams that includes news articles, published literature, press releases, market reports, and other content related to direct competitors
- Use portions of a work in an internal presentation at a company meeting or in an employee education program
- Annotate and submit supporting articles to a government agency as required as part of a regulatory or patent filing

The Annual Copyright License also includes RightFind® Advisor, CCC's complementary rights lookup tool, the quickest, most reliable way for employees to confirm rights included in the license to reuse lawfully-acquired content, all without leaving their workflow.

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.

Sharing is the strength of the digital age, and copyrighted works are the fuel for its collaborative engine. With the right tools, companies can thrive in this new era and grow their way to greater profits.

Sources

CCC 2020 Information Seeking and Consumption Study
Copyright 2020 Outsell, Inc. www.outsellinc.com

CCC and RightsDirect 2016 Information Seeking, Consumption, and Use Report – North America and Europe
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Copyright Clearance Center (CCC)

A pioneer in voluntary collective licensing, Copyright Clearance Center (CCC) helps organizations integrate, access, and share information through licensing, content, software, and professional services. With expertise in copyright and information management, CCC and its subsidiary RightsDirect collaborate with stakeholders to design and deliver innovative information solutions that power decision-making by helping people integrate and navigate data sources and content assets.

Learn more about our licensing,
content, and data solutions:

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