



Copyrighted

A Compliance Guide for Businesses*

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If you don't own it, you may have blown it.

Many years ago a client directed a marketing company I was working for to use a piece of music popular on the radio in a video we were producing for him. I followed standard clearance channels and told him the price to license it for the video, around \$7-8K (reasonable since it was once a Whitney Houston top 40 hit). He told us to just use it and not tell anyone, and

became angry when we refused. We lost him as a client after that job, even after explaining that he could lose his company and more by using music for which he didn't have written permission. A similar situation arose when another client didn't want to pay \$50,000 for a Michael Jackson hit for a video that cost half that amount. They were more reasonable and agreed to use stock music within their budget.

This should be obvious, but we spell it out for our clients just in case. If you don't own it (or have written permission) don't use it. In a media saturated world, copyright infringement is relatively easy to prove, the consequences severe, and can needlessly ruin entire companies. Because obtaining material through electronic copying is so ubiquitous, it stands to reason that businesses could become lax in pursuing or bothering to understand the implications of unauthorized use.

Our company creates branded content, video, print, photography for all types of clients—all elements of which are copyrighted without the client knowing it, either through us shooting video, taking photos, designing a logo, or by licensing third-party materials. We take copyright very seriously and even though our standard practice is above board, we can still be challenged. We created the 2nd edition of a book for a client, using fonts for which we had licenses. The publisher challenged the use of one font used for chapter titles. I presented the purchase receipt the font foundry told me to use and still the publisher substituted the font. I wasn't happy with the substitution since they went to print without informing me or the author so we could contest the decision, yet I still respect their complete devotion to copyright. The foundry could have done a better job with their licensing, but they were a small operation without a legal team. Either way, copyright was not infringed, no one was sued or held liable, and no damage done, except to the book designer's ego.

This paper provides practical guidance to help business owners understand and navigate copyright law, focusing on best practices for compliance.*

Understanding Copyright Law

Copyright law protects original works of authorship, including literary, artistic, musical works, and software, among others. In the United States, these rights are governed by Title 17 of the U.S. Code. Copyright protects both published *and* unpublished works, granting the owner exclusive rights to reproduce, distribute, perform, display, and create derivative works. The essence of copyright law is to protect the livelihood of creators of intellectual property, to ensure that others don't make money from someone else's creative work without payment, permission, or attribution.

Key points to understand:

1. **Automatic Protection:** Copyright is automatic upon the creation of an original work fixed in a tangible medium (e.g., a recorded song or written document). Registration with the U.S. Copyright Office enhances legal protection but is not required.

2. **Duration of Protection:** Generally, the protection lasts for the life of the author plus 70 years. For corporate works, it extends 95 years from publication or 120 years from creation, whichever is shorter.
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Common Copyright Violations

1. **Unauthorized Use of Images:** Businesses often use images from the internet without realizing they are copyrighted. For example, in *Bell v. Wilmott Storage Services*, a photographer sued a company for using his image without permission. The court awarded damages, demonstrating that ignorance of copyright law is not a defense.
 2. **Unlicensed Software:** The Business Software Alliance (BSA) actively enforces software licensing, resulting in numerous settlements for unlicensed use. In one case, a company paid over \$100,000 for using unlicensed software.
 3. **Plagiarism:** Copying blog posts, website text, or marketing materials can lead to lawsuits. In *Nichols v. Universal Pictures Corp.*, even subtle similarities between works were contested.
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Why Copyright Compliance Matters

1. **Financial Risks:** Penalties for infringement can range from statutory damages of \$750 to \$150,000 per work, plus legal fees.
 2. **Reputational Damage:** Being sued for infringement can tarnish a business's reputation and erode customer trust.
 3. **Operational Disruptions:** Court cases can be time-consuming and divert resources from core business activities.
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Fair Use Doctrine

The **fair use doctrine** allows limited use of copyrighted material without permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Businesses should exercise great caution when relying on fair use, as courts weigh multiple factors, especially the purpose and amount of use.

Fair use is slippery in court. Judges have broad leeway in determining what is considered fair use. Fair use isn't a guarantee of legal protection for the user. Misinterpreting *fair use* can lead to costly litigation.

Handling Copyright Infringement Claims

If accused of infringement:

1. **Stop Using the Material:** Cease all use immediately to mitigate damages.
 2. **Consult Legal Counsel:** Seek expert advice to evaluate the claim's validity.
 3. **Negotiate Settlements:** In some cases, amicable settlements can avoid costly litigation.
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Key Cases Demonstrating Copyright Infringement Risks

1. **Bell v. Wilmott Storage Services, LLC**

This case highlights the risks businesses face when using imagery without proper licensing. Jeffrey R. Bell, a professional photographer, discovered that his copyrighted photograph was used without permission by Wilmott Storage Services on their website. The court ruled in Bell's favor, awarding damages that underscored the non-negotiable nature of copyright compliance. Seemingly minor infringements—like the use of an image for a website—can escalate into significant financial liabilities.

2. **Capitol Records, Inc. v. MP3Tunes, LLC**

In this high-profile case, Michael Robertson, founder of MP3Tunes, allowed users to store and access copyrighted music without obtaining proper licenses. The court found MP3Tunes liable for copyright infringement, resulting in damages exceeding \$40 million. This case underscores the dangers of assuming that technological innovation obviates the need for licensing agreements. Businesses employing digital platforms must tread carefully in ensuring that user-generated content does not violate copyright. Further reading available via Cornell Law School.

3. **Lenz v. Universal Music Corp.**

Known colloquially as the "Dancing Baby" case, this lawsuit revolved around a viral YouTube video in which a woman's children danced to Prince's song *Let's Go Crazy*. Universal Music issued a takedown notice under the Digital Millennium Copyright Act (DMCA), prompting Stephanie Lenz to sue, arguing that her use constituted *fair use*. The court ruled that copyright holders must consider *fair use* before issuing takedown notices, setting an important precedent for businesses relying on transformative uses of copyrighted material. Details available via the [Electronic Frontier Foundation](https://www.eff.org/issues/dmca/lenz).

Economic and Cultural Implications of Copyright Noncompliance

Copyright infringement is not merely a legal issue; it represents an economic inefficiency. Unlicensed use of intellectual property deprives creators of the financial returns necessary to sustain their work, reducing the incentive to innovate. This dynamic reverberates through industries, stifling competition and fostering monopolistic tendencies as only well-capitalized entities can afford extensive legal protections. Small and medium-sized businesses must

recognize their role in this ecosystem, ensuring that their operations do not undermine the creative economy they depend upon.

Best Practices for Copyright Compliance

1. Conduct Regular Copyright Audits

Audit all creative assets, including software, images, and marketing materials, to ensure compliance. A thorough review can identify unauthorized uses before they escalate into litigation.

Example: A mid-sized architecture firm discovered unlicensed design software during a routine audit. By purchasing legitimate licenses, they avoided potential penalties exceeding \$200,000 from the Business Software Alliance.

2. Leverage Public Domain and Creative Commons

Public domain works and those licensed under Creative Commons provide legal alternatives for creative projects. Businesses must adhere strictly to licensing terms, including attribution requirements.

Practical Tips: Royalty-free does NOT mean free to use. Royalties are recurring license fees, usually paid annually. Royalty free may be free from ongoing fees, but can still be subject to a one-time payment for use, either on a per project basis or in perpetuity. Some sites hosting royalty-free images, video, and/or audio allow personal use for free and a fee for commercial use. Platforms like Project Gutenberg offer public domain texts. Unsplash or Pexels require only attribution.

3. Develop Licensing Protocols

Establish clear guidelines for acquiring and managing licenses. Centralized documentation ensures that usage rights are not overlooked during staff transitions or project handoffs.

4. Invest in Employee Training

Ignorance is not a defense in copyright law. Regularly educating employees on copyright basics, including the specifics of *fair use*, reduces the likelihood of accidental infringements.

5. Adopt Digital Rights Management (DRM)

DRM tools safeguard your proprietary content from unauthorized use while ensuring compliance with third-party licenses.

Technological Tools for Copyright Compliance

1. **Reverse Image Search:** Tools like Google Images or TinEye detect unauthorized uses of visual content.
 2. **Content Identification Systems:** YouTube's Content ID automatically flags infringing material, allowing rights holders to monetize or block unauthorized uses.
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Copyright Ownership and Transfer: Understanding the Distinctions

Copyright ownership lies at the heart of intellectual property rights, determining who has the legal authority to exploit, license, or transfer a creative work. For businesses, it is crucial to understand who owns the copyright to works created in connection with the company, whether they are produced by employees, contractors, or external partners. Misunderstandings in this area can lead to disputes, operational disruptions, and potential litigation.

Work Made for Hire vs. Work Not Made for Hire

Work Made for Hire

Under U.S. copyright law (17 U.S.C. § 101), a "work made for hire" refers to two specific situations:

1. **Work Created by an Employee within the Scope of Employment:** If an employee produces a creative work as part of their job duties, the copyright automatically belongs to the employer. For example, a graphic designer employed by a marketing firm who creates branding materials for a client does so as part of a "work made for hire."
2. **Commissioned Works Explicitly Designated as Work Made for Hire:** If an independent contractor creates a work, it can only qualify as a "work made for hire" if it falls into specific categories (e.g., translations, instructional texts, tests, compilations, or audiovisual works) **and** there is a signed written agreement stating this designation.

Work Not Made for Hire

If a creative work does not meet the strict criteria for "work made for hire," the copyright remains with the creator unless it is explicitly transferred in writing. For example, if a freelance web designer builds a website for a company without a written agreement transferring the copyright, the designer retains ownership, even if the company has paid for the work.

The Importance of Written Agreements

To avoid confusion, businesses must establish clear agreements that outline copyright ownership for works produced by employees and contractors. These agreements should specify:

- Whether the work is considered "work made for hire."
- If the work is not a "work made for hire," whether copyright ownership is transferred to the business.
- The scope of rights being transferred (e.g., exclusive or non-exclusive).
- Compensation for the transfer of rights, if applicable.

Without such agreements, businesses risk losing control over materials critical to their operations, such as logos, marketing content, or software code.

Copyright Transfer and Licensing

When a copyright owner wishes to transfer ownership or grant usage rights, they must comply with the legal requirements of the U.S. Copyright Act.

- **Transfer of Ownership:** The transfer of copyright ownership must be in writing and signed by the owner or their authorized agent. This ensures clarity and enforceability.
- **Licensing:** Copyright holders can grant usage rights through a license, which may be exclusive (restricting use to one party) or non-exclusive (allowing multiple parties to use the work). Licenses can also specify the duration, geographic scope, and purpose of use.

Case Example: *Community for Creative Non-Violence v. Reid* (1989)

In this landmark case, the U.S. Supreme Court addressed the distinction between "work made for hire" and works created by independent contractors. A sculptor was commissioned to create a statue, but there was no written agreement designating it as a "work made for hire." The Court ruled that the sculptor retained copyright because he was an independent contractor and the work did not fall into one of the statutory categories. [Read the full case here.](#)

Best Practices for Copyright Ownership Management

1. **Draft Work Agreements with Care:** Always include a clause specifying whether the work qualifies as "work made for hire" or if ownership is transferred to the business.
2. **Consult Legal Counsel:** To ensure compliance with copyright law, have contracts and agreements reviewed by an attorney familiar with intellectual property law.
3. **Train Employees and Contractors:** Educate employees and contractors about copyright ownership and the importance of signed agreements.

Conclusion

Business owners and internal marketers must recognize copyright compliance as a non-negotiable aspect of their operations. By understanding the law, leveraging legal alternatives, and implementing robust internal protocols, businesses can mitigate risks while fostering a culture that respects intellectual property. The costs of compliance pale in comparison to the potentially catastrophic consequences of infringement.

By understanding the nuances of copyright ownership and proactively addressing potential conflicts, businesses can safeguard their intellectual property, maintain operational continuity, and foster productive relationships with creative professionals.

***Legal Disclaimer**

The information provided in this document is for informational purposes only and is not intended to be legal advice. I am not a lawyer, and this document does not create an attorney-client relationship. While every effort has been made to ensure the accuracy of the information presented, copyright law is complex and subject to change, and its application can vary depending on specific circumstances.

Readers are strongly encouraged to seek professional legal counsel to address any questions or concerns regarding copyright law and its implications for their specific situation. By reading and using the information provided, you agree to hold me harmless from any and all liability arising from reliance on this document.

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