

# Exchanging hands

RightsDirect's **Kim Zwollo** takes a look at the copyright challenges and solutions surrounding content exchange



Businesses thrive on the exchange of information to drive innovation and stay ahead of the competition. Employees of multinational companies exchange information on a daily basis with their colleagues, outside collaborators, customers and others, regardless of their location. Yet, copyright obligations vary from one country to the next, creating a complex set of challenges for global organisations with employees working in multiple countries. From excerpting articles for sales and training presentations to sharing the latest research findings and industry news with colleagues, the intersection of content use and copyright has the potential to expose organisations to unintended infringement risk, as well as damage to reputation and brand. For those organisations that do comply with copyright, the effort to obtain copyright permissions individually can be inefficient and costly, especially where there is a high volume of permissions needed on a routine basis. In this article, I will address some of the challenges global businesses face in managing copyright, and discuss ways for businesses to address those challenges.

## How copyright aware are we?

According to a recent survey on information sharing and copyright awareness by independent research firm Outsell,<sup>1</sup> three out of four workers share information with their team members at least once a week and more than likely every day. On average, corporate employees forward content about 13 times per week, a jump of more than 60% from just five years ago. Yet, more than half of survey participants admitted that they do not think about copyright or do not care about the issue.

In those organisations where a copyright policy does exist, awareness among employees tends to vary considerably. The same Outsell study revealed that only 35% of respondents were even aware of their own organisation's copyright policy. Of those that were, 44% were not certain of the details, and 23% were either unaware of a policy or said that such a policy did not exist.

## What is copyright?

In general, copyright is a form of legal protection given to content creators (and their licensees and assignees) in the form of specific, exclusive rights to their creative works that qualify for protection. Those rights include reproduction, distribution, the creation of derivative works, public display and performance, and transmission to the public.

As a matter of economics (a principal basis for copyright), the main goal of copyright is to encourage the development of culture, science and innovation by providing financial or other benefits (such as recognition) to copyright holders as an incentive for them to create and distribute their works, and thereby, to facilitate access to knowledge and entertainment for the public. In many countries, particularly in

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Continental Europe, copyright has another basis as well – often referred to as “moral right” – under which the law recognises the uniquely human aspect of creative work and provides the creator with a right to manage the ways in which the creative work can be used, so as to preserve the creative vision and the creator's reputation. Under both theories, copyright provides the foundation for relationships between the different players in the content industries, as well as for relationships between rightsholders and the consumers of content, by allowing them to negotiate the terms for access to and use of copyrighted works.

### Copyright on an international stage

Copyright is national in scope, meaning that each country has its own copyright laws. While there is no such thing as an international copyright law, there are international treaties – most significantly the Berne Convention, which has been ratified by more than 160 countries – that sets minimum standards for the protection of copyrighted works under the laws of all participating countries. However, it is up to each country to determine how those treaties are implemented under its own national laws, and each country is free to set additional limitations or higher standards than those required by Berne, resulting in an uneven (and sometimes difficult to navigate) cross-border copyright landscape.

Most countries in Europe have their own collective licensing systems in which the rights from many copyright holders are aggregated and made available for content users through a single licensing source. These collective management organisations (CMOs) typically license content on behalf of publishers, authors and other copyright holders, allowing them to make their materials from many different publications available for users to conveniently use them in many different ways. CMOs also collect royalties from content users and then distribute those royalties back to the copyright holders.

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CMOs that specialise in text and image-based works are known as reproduction rights organisations (RROs). There are currently RROs in about 70 countries. These organisations license (and some collect statutorily-set royalties for) secondary or reuse rights so that employees of user organisations may, for example, lawfully photocopy or email copyrighted material to share with fellow employees. The content may come from a variety of print and electronic information sources.

RROs offer a single access point to massive collections of rights, giving users a more efficient way to clear permissions than pursuing rights on their own from thousands of individual copyright holders. In turn, RROs serve copyright holders as a licensing channel for clearing rights they find too inefficient or difficult to license themselves. The copyright holders also benefit from the revenue RROs generate for them.

RROs can vary significantly in the content usage rights they offer, the markets they serve, and the licensing models they implement. For example, some RROs may offer copyright permissions only for photocopying, and not for digital uses such as email. Some may provide licences only for academic institutions, while others license

both academic and business organisations. It all depends on local copyright practices (including local laws) and the level of copyright holder participation.

Given the variations in copyright law from one country to the next, legislators, copyright experts, authors, publishers and CMOs around the world have been working hard to address these issues. Several national, regional and international initiatives around the issue of copyright are currently underway, including the following:

- A 2011 report<sup>2</sup> commissioned by the UK government made headlines with its statement that current copyright law in the country creates a “regulatory barrier” to innovation and growth. The report called for the creation of a “digital copyright exchange” to address problems with existing licensing procedures. A follow-up report<sup>3</sup> referred to this concept as a “Copyright Hub”.
- In July 2012, the European Commission announced a proposal<sup>4</sup> for a directive on collective management of copyright.
- The Commission also has put forward a proposal<sup>5</sup> for a separate directive on certain permitted uses of orphan works – that is, those pieces of content that are still protected by copyright law, but whose copyright holder(s) are no longer alive or cannot be found.
- In June 2012, Google and groups representing French publishers and authors announced<sup>6</sup> an end to a copyright infringement case against the online search giant, as well as a plan to begin the joint marketing of e-books.

If the above activities are any indication of what is to come, copyright law across Europe seems to be entering a new cycle of review in regards to the traditional balance between the rights of copyright holders to control, manage and benefit from their works and the needs of users and society to benefit from the latest creative works.

In this age of instant communication, geographic boundaries have all but disappeared. Employees will continue to exchange information regardless of where they are located. Content users can certainly benefit from services that make content licensing and compliance easy, fast and seamless. At the same time, authors and publishers deserve ways to further the reach of the work they create and distribute, to receive adequate compensation for it, and to streamline the rights and permissions process from their end. Respecting the copyright rights of content creators and distributors ensures the continued flow of valuable information, demonstrates corporate responsibility, and minimises the organisation’s risk of copyright infringement.

#### Footnotes

1. Oustell Inc, “*The State of Copyright in the Digital Age – What is a Publisher to Do?*” February, 2010.
2. <http://www.ipo.gov.uk/ipreview-finalreport.pdf>.
3. <http://www.ipo.gov.uk/dce-report-phase2.pdf>.
4. [http://ec.europa.eu/internal\\_market/copyright/docs/management/com-2012-3722\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/management/com-2012-3722_en.pdf).
5. [http://europa.eu/rapid/press-release\\_MEMO-12-421\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-421_en.htm?locale=en).
6. <http://googlepolicyeurope.blogspot.co.uk/2012/06/writing-new-chapter-for-french-books.html>.

#### Author



Kim Zwollo is general manager of RightsDirect, a subsidiary of the global rights licensing provider Copyright Clearance Center (CCC). CCC offers copyright licensing solutions to companies of all sizes, and to academic institutions, law firms, healthcare organisations and government agencies.