

The Consequences of Improper Use of Intellectual Property in the Workplace

A Whitepaper on the corporate misuse of Intellectual Property, and what you can do to protect your content and your business



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In today's competitive marketplace, companies are constantly looking for ways to increase profits and reduce costs. New revenue streams are sought, new clients are developed, innovative marketing tactics are introduced. But new business is not enough. Companies must also maintain existing business and revenues. Management stresses cost-cutting measures to protect the "bottom-line". Along with these measures, companies also must protect their assets, their existing business, and their property.



Intellectual Property Protection- the New Corporate Imperative

In the on-line world of this new millennium, the management of rights is taking on a new dimension. Protected works are digitized, compressed, uploaded, downloaded, copied and distributed at lightning speeds to any place in the world. The expanding power of digital networks allows more and more mass storage and online delivery of protected material. The possibility of downloading the contents of a book, or of listening to and recording music from cyberspace is a daily reality. Is the protection of copyrighted content a dinosaur from the past?

The copyrighted materials most widely used by corporate America and the international community are standards and specifications such as those produced by Underwriter's Labs (UL), the Institute of Electrical and Electronics Engineers (IEEE), and the International Organization for Standardization (ISO). There are well over one million standards and specifications in use worldwide today, developed and published by more than 600 Standards Development Organizations (SDOs) which are being used by every corporation that designs or builds products or provides services.

Small Mistakes, Big Problem

Everyday throughout corporations, unintentional infringements of intellectual property occur. An engineer will ask his/her colleague about a design standard, and that colleague will simply offer the file or documentation. These people by their very nature are "fixers." If lending a document solves the problem at hand, then everyone is satisfied and they can get back to work.

But the effect of this seemingly innocent practice is staggering: Companies or individuals who infringe are costing the industry several million dollars in uncollected revenues. One large SDO conservatively estimates that they inadvertently give away more than \$1M of their own IP annually.

The New Corporate Workforce?

According to a study* conducted by Ipsos Public Affairs, two-thirds of college and university students surveyed see nothing unethical about swapping or downloading digital copyrighted files (software, music and movies) without paying for them and **more than half (52 percent) think it is also acceptable behavior in the workplace.** The survey also reveals that 45 percent of students are using the campus networks for downloading activities, with 36 percent of them more likely to report increased downloading.

** Higher Education Unlicensed Software Experience – Student and Academics, conducted by Ipsos Public Affairs 2005*

*This is not usually
willful
infringement:
most intellectual
property misuse is
inadvertent or
uninformed.*



**Washington, D.C.,
(Thurs., September 9) –**

The Business Software Alliance (BSA), a watchdog group representing the nation's leading software manufacturers, today announced that Broadbent & Associates, Inc. (www.broadbentinc.com), an environmental, water resources and civil engineering firm with offices in Henderson and Reno, Nevada, and Phoenix, Arizona, paid BSA \$227,709.95 to settle claims that it had unlicensed software programs on its computers.

Intellectual Property Shield believes that the large percentage of misuse is not malicious, it stems from simple lack of knowledge. We need to foster awareness through education and continuing education so that people understand the need to protect their own IP, their partners', and the property they get from others.

For example, take the case of a manufacturer that issues a procurement specification that references copyrighted standards. When the supplier calls to inform the manufacturer that they don't have one of the referenced standards, the manufacturer provides a copy of the document to the supplier, and in so doing, is violating someone else's protected content.

Also, the acquisition of copyrighted materials usually involves few individuals from the enterprise. While a license agreement may be signed at the time of purchase, the restrictions and permissions invoked by that agreement are seldom disseminated to every potential end user. In a large manufacturing enterprise, it is difficult to keep track of not only who is using the content, but who knows and understands the terms of the license agreement. This leads to unintentional misuse due to lack of knowledge for which the enterprise can still be held liable.

“The actions of a few affect the costs for the many”

Both stakeholders, the unaware individual and the company they work for, are at risk. Left unchecked, these practices can result in hundreds of thousands of dollars in fines for the enterprise and lost revenues to the SDO. It's like shoplifting: in order to recover the lost revenues associated with this theft, retailers fight back by keeping their prices high. This affects all consumers. Following this logic, the very large users with subscriptions will absorb a much greater penalty over time. Ultimately, the SDO either loses out on substantial revenue or the end-user/consumer pays for the lost revenue through price increases. The ideal situation is where the SDO retains its revenue without passing the cost along to its consumers of content.

"These infractions are relatively simple to identify and prosecute with today's electronic discovery, and incredibly costly to defend against. Fines and settlements can include repayment to the copyright owner of lost revenues and business opportunities, an accounting of all profits received by the infringer, statutory penalties, attorneys' fees and costs for the litigation (which alone can be in the hundreds of thousands of dollars); punitive damages, seizure and forfeiture of infringing products, and potentially even criminal sanctions. While certain standards have fallen into the public domain, either through misuse or through becoming indoctrinated into the law, Federal and State Courts have established precedents that the expression of certain fixed standards are afforded copyright protection. Established case law from a very similar industry – software- demonstrates how significantly and quickly the damages and costs easily add up." *(Brian A. Rosenblatt, partner at Chicago law firm Smith Amundsen, LLC.)*



Protecting Your Company

Anyone who has ever been involved in a corporate diversity, litigation or infringement action knows just how disruptive and costly it can be in terms of time, effort and employee morale. The legal fees to defend these actions can be crippling, not to mention the actual settlement or fines imposed.

"Enterprises who show good faith efforts to avoid infringing the copyright they acquire will stand a better chance of defending intentional infringement claims. If, say, a VP of Human Resources can prove that they provided annual training for their staff, and had verification that the training occurred and employees were certified, that would go a long way in showing good faith efforts to a judge or jury. It would further suggest that such infringements were unintentional, and were merely one-time infractions as opposed to part of an on-going pattern of abuses." *(Kevin M. O'Hagan, Partner, O'Hagan, Spencer LLC.)*

Intellectual Property: Our New National Treasure

"Intellectual Property is an awesome engineer of growth which nourishes the national economy. Not only is intellectual property America's largest trade export, bringing in more international revenues than agriculture, aircraft, automobiles and auto-parts, but it is creating new jobs at three times the rate of the rest of the economy, and is responsible for over five percent of the GDP."

(Testimony of Jack Valenti, Former Chairman and Chief Executive Officer, Motion Picture Association of America, Given during Full Congressional Committee Hearing regarding Consumer Privacy and Government Technology Mandates in Digital Media Marketplace, 9-17-03.)

A Call to Action

The entire industry will benefit through better protection of copyrighted materials. Any company who creates intellectual property can appreciate that improved protection increases the value of the property. Standards Development Organizations will increase sales when their customers and their supply chains become aware of the proper use of intellectual property. The SDO will gain the added respect of their colleagues and partners for standing up for their rights and protecting their assets. Finally, cost increases to the enterprise will be more in-tune with proper use rather than reflecting an attempt to recover lost revenues.

IP-Shield is excited to announce a partnership opportunity for SDOs to protect their intellectual property. Through a membership Alliance with IP-Shield, the Alliance will work together with its members to monitor, maintain, and protect their assets. First, users of content are educated and certified. The Alliance tracks certified users and participating companies via a database. This database is maintained on an on-going basis to ensure that a company remains proficient by re-certifying users and educating new hires. Finally, the Alliance protects its members' assets by providing a vehicle to report possible misuse, and by informing the offending party or company that a case of misuse has been reported.

Fostering Awareness Through Education



Currently, there is no single entity focused on the protection of intellectual property via web-based training for SDOs and the corporate end user. Enterprises and consumers of content will benefit by learning the permissions and restrictions that apply to the protected content they use in the workplace. On any given day, an engineer may reference dozens of copyrighted documents from many sources- all with varied levels of access and restrictions. Keeping track of these rules does not need to be a daunting undertaking – a simple web-based tutorial and central repository of such “permissions” are the first steps toward the understanding and ultimate compliance by users and corporations alike.

About IP- Shield

Intellectual Property Shield, Inc., protects the users and providers of copyrighted materials in the workplace. Their mission is to foster better understanding through educational and certification programs for users of intellectual property. The Company offers consumers of content a robust package called *Copyright Aware™*, which includes web-based courseware, certification, on-going support, and an annual re-certification step to ensure on-going corporate and individual competence. IP-Shield has tackled the challenge of tracking the status of each user with a Knowledge Management Database that allows training administrators to manage, track and view the certification status of all individual users. The Company supports creators of copyrighted materials through a membership called **IP Alliance**, designed to promote the continued effort to understand copyright protection and enforce correct usage.



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