

IS YOUR COPYRIGHT NOTICE ENOUGH?

How to know whether
you need to do more to
protect your content
and your brand

By
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You invest a lot in your content. As a publisher, it's everything. You commit money, time, and talent to creating original content that's valuable to your particular audience — and this resulting content effectively constitutes your brand. It's who you are.

As such, you want your content to be available and accessible only through you (or through established relationships that preserve the stamp of your brand). To leverage your investment, you want readers to get *your* magazine to read your content. Go to *your* website to access it. Attend *your* events to see, hear, and experience it. You don't want anyone copying and distributing your content in a way that separates it from your publishing brand.

This is what copyright is for.





Copyright (per the U.S. Copyright Act of 1976) is a legal right that grants the creator of an original work exclusive rights for its use and distribution. The rights of the copyright owner (author or publisher) typically include reproduction, control over derivative works, distribution, public performance, and “moral rights,” such as attribution. The intent of copyright is (at the very least) to discourage and (at the most) to lawfully prevent the illegal duplication and distribution of your intellectual property.

Copyright and how to enforce it is tricky and often misunderstood. After all, there is no foolproof way to prevent someone from copying your content. As media software scientist Dov Isaacs, principal scientist at Adobe Systems, once said, “If you can see it, you can copy it. If you want to prevent infringement, don’t share it with a second person.”

So how can you, as a magazine publisher, guard against copyright infringement? You can know your rights, recognize the areas of highest risk, and understand your options for addressing infringement when you detect it.

What’s the Big Fuss?

Creators of content have long believed that including a copyright statement in their works should suffice to protect the related material. In the days of print, this was largely true. The easiest way to share such content was to make a photocopy of it — which, arguably, would most often include a header or footer indicating its origin. And generally speaking, printed works were harder to re-distribute far and wide.

Times have changed. The age of digital media has made copyright protection far more challenging. It is simply easier to cut and paste content from a digital shell — a content application, website, digital edition, e-newsletter, e-book, you name it. And in the cutting, it’s easier to leave behind the owner attribution. In the pasting and subsequent sharing via electronic media, it’s easier to distribute the content without the copyright owner’s permission. Mobile devices make it easier still.

In this regard, copyright law is being tested in new ways. And as digital communication continues to grow as a means of educating and informing, the issues surrounding freedom of access to information and the distribution of it will have to be further addressed in copyright law. However, today, the U.S. copyright code as written is law. It’s what you have to leverage.

What Can You Do?

While you may not be able to prevent all instances of copyright infringement, there are some steps you can take to protect your content, depending on what is right for your organization and type of intellectual property. To start, here are three things all publishers should do.

Know the Fair Use Standard

In order to fully understand what constitutes copyright infringement, it's vital to first understand what's not infringement. The fair use standard is a U.S. legal doctrine that permits limited use of copyrighted material without acquiring permission from the rights holder.

Fair use is based on the belief that the public is entitled to use portions of copyrighted materials freely for purposes of commentary and criticism. The fair use privilege is perhaps the most significant limitation on a copyright owner's exclusive rights.

The following types of uses can be considered fair uses:

- **Criticism and Comment** – for example, quoting or excerpting a work in a review or criticism for purposes of illustration or comment;
- **News Reporting** — for example, summarizing an address or article, with brief quotations, in a news report;
- **Research and Scholarship** – for example, quoting a short passage in a scholarly, scientific, or technical work for illustration or clarification of the author's observations;
- **Nonprofit Educational Uses** – for example, photocopying limited portions of written works by teachers for classroom use; and
- **Parody** – for example, a work that ridicules another, usually well-known work by imitating it in a comic way.

Use Copyright

When it comes to implementing a copyright for your intellectual property, you have three distinctly different options.

1. Do nothing

This first option is easy. The fact is, you don't actually need to include a copyright notice with your works in order to protect them under the provisions. According to current copyright law (Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code - December 2016), all original documents are automatically copyrighted regardless of visible notification.

2. Place a copyright notice

That said, you clarify and strengthen your copyright warning when you place a copyright notice and symbol on your original document.

A U.S. copyright notice contains four elements:

How to Register a Copyright

a. Complete an application

- Go to www.copyright.gov > "Register a Copyright" (apply online or by hardcopy).
- Include the correct fee (www.copyright.gov/docs/fees.html).
- Include nonreturnable copies, as specified.

b. If applying by hardcopy, send package to:

Library of Congress
Copyright Office
101 Independence Avenue S.E.
Washington, D.C. 20559-6000

c. Wait for copyright office to:

- Receive your package. Your registration becomes effective on that day.
- Examine your application to ensure it meets requirements.
- Assign your registration a number and issue a certificate of registration.
- Guide you through creating an online, searchable public record of your registration.

FAQs: tinyurl.com/CopyHelp

- a. copyright symbol
- b. year of the creation
- c. name of publisher or author
- d. rights statement

For example, "COPYRIGHT © [YEAR] by [publisher]. All rights reserved."

The degree to which the copyright notice includes further details varies from publication to publication, depending on publisher or author preferences. For example, notices can include specific guidelines for permissible sharing; requirements for seeking permission; or explicit statements prohibiting all forms of reproduction and transmission. With today's sophisticated distribution systems, some copyright statements will go so far as to prohibit distribution via local- and wide-area networks and intranets, and even prohibit sharing passwords that are given to authorized recipients enabling them to access publications and documents. For a sampling of copyright statements, see sidebar, page 29.

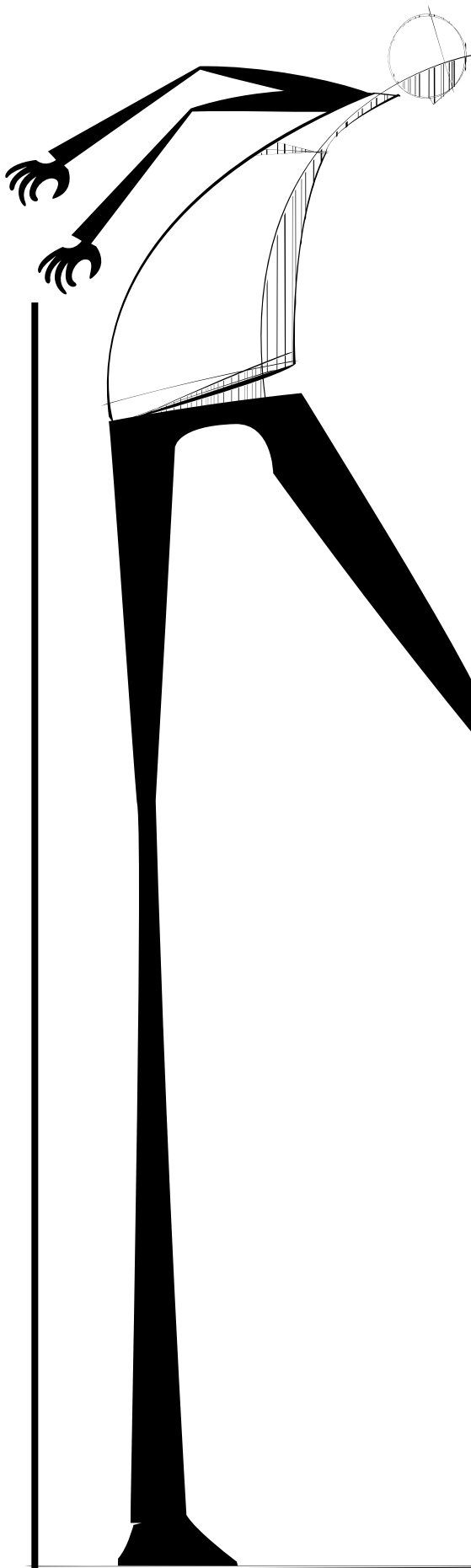
3. Register your copyright

The third and most thorough option is to register your copyright with the U.S. Copyright Office. In fact, copyright registration is required in all disputes involving lawsuits, so this necessitates some forethought.

That is, if your content is of such a nature that illegal duplication and distribution would indelibly hurt your brand and/or your revenue streams — and, as such, that you may want to fight cases of infringement within the legal system — then you should consider registering your individual copyrights.

Understand the Limitations of Digital Rights Management

Digital Rights Management (DRM) is the use of technology to restrict the access, use, and distribution of copyrighted digital content (documents, text, and video). There are many suppliers offering DRM software solutions but not a lot of consensus on whether or not they are effective. Proponents believe DRM is necessary to prevent intellectual property from being copied freely and, in



Copyright Notices

The degree to which the copyright notice is detailed varies greatly from publication to publication, depending on publisher or author preferences. Here are a few examples.

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2) COPYRIGHT © [YEAR] All rights reserved. No part of this publication may be reproduced or transmitted in any form by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the authors.

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4) COPYRIGHT © [YEAR] All rights reserved. This publication or parts thereof may not be reproduced in any form, stored in any retrieval system, or transmitted in any form by any means — electronic, mechanical, photocopy, recording, or otherwise — without prior written permission of the publisher, except as provided by United States of America copyright law.

5) COPYRIGHT © [YEAR] [name of publication] All rights reserved. Reproduction or distribution internally or externally in any manner (photocopy, electronically, or via facsimile), including by sharing printed copies, or forwarding or posting on local- and wide-area networks and intranets, or sharing username and password, is strictly prohibited without appropriate license from [name of publisher].

6) COPYRIGHT © [YEAR] by [name of publisher] All rights reserved. Access, distribution, and reproduction are subject to the terms and conditions of the subscription agreement and/or license with [the publisher]. Access, distribution, reproduction, or electronic forwarding not specifically defined and authorized in a valid subscription agreement or license with [the publisher] is willful copyright infringement. Additional copies of individual articles may be obtained using the pay-per-article feature offered [by the publisher].

7) COPYRIGHT © [YEAR] by [name of publisher] All rights reserved. No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law.

DRM Mechanisms

Some types of technology DRM uses to (attempt to) control unauthorized document access and distribution:

CAPTCHA – Distorted alphanumeric images protect websites against search engine “bots.” Typically used on submission forms.

Digital watermarking – Embedded into an image and often invisible, digital watermarking is detected electronically and can send information on unauthorized copying to the publisher or author. It can also be used to monitor broadcasts and Internet distribution, license compliance, and websites 24 hours a day.

Fingerprint readers – A fingerprint can be used as a “passcode” so that only those whose fingerprint has been registered have access to the protected content.

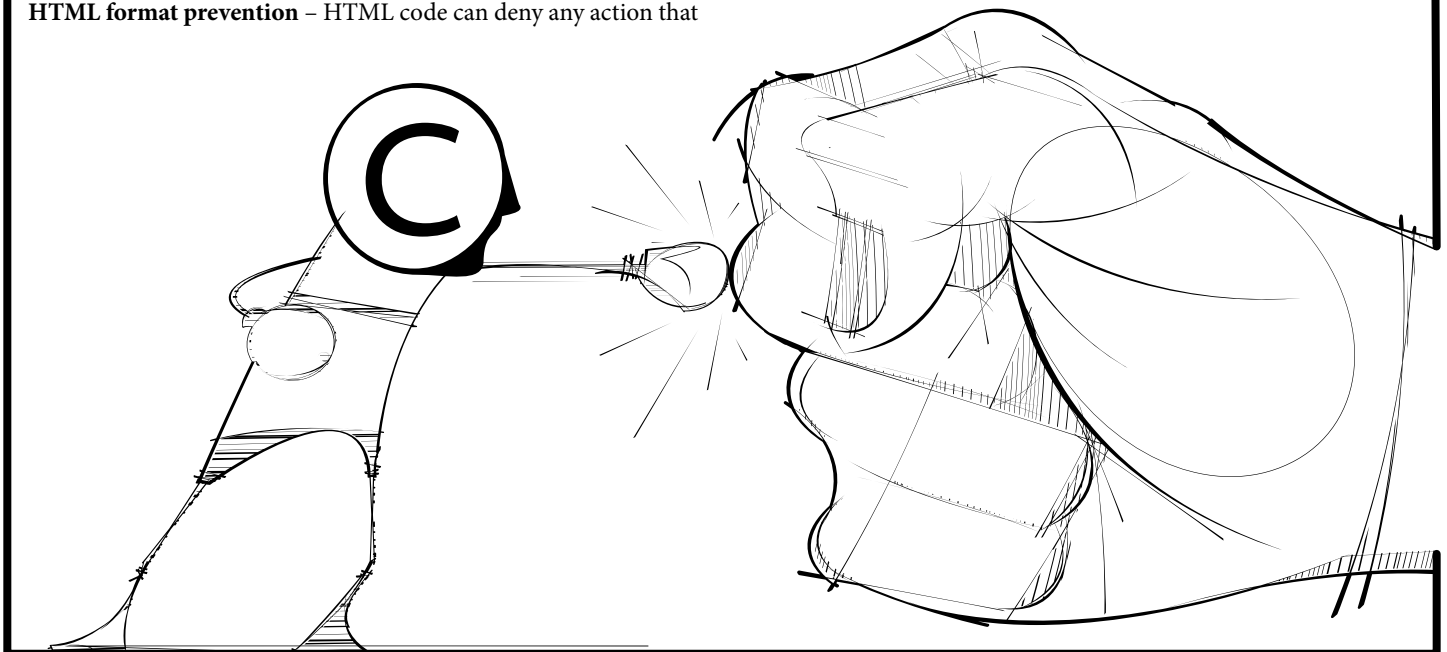
HTML format prevention – HTML code can deny any action that

is not specifically allowed to a user, such as freely accessing articles for sale or publications requiring paid subscriptions.

Push button security tokens – Physical devices can be used to restrict access to an electronic resource. The token is used in addition to or in place of a password and acts like an electronic key. Examples include a wireless keycard to open a locked door or a dongle inserted into a computer to access licensed software.

Two-factor authentication – This requires a static password plus a random one tied to a particular computer monitor or device, and thus prevents someone from opening the same document on more than one computer or device.

Vitrium Protectedpdf – This PDF-specific protection prevents users from opening PDF files unless they have valid passcodes.



some cases, to protect revenue streams. But those opposed to DRM say it presents an onerous barrier to content and that there's little evidence to prove it works to prevent infringement.

In reality, DRM is not a means of preventing copyright infringement because, again, just about any content, digital or analog, can be copied. What DRM can sometimes do is detect unauthorized copying and redistribution of digital media and attempt (not always successfully) to restrict the ways that copyrighted content can be copied.

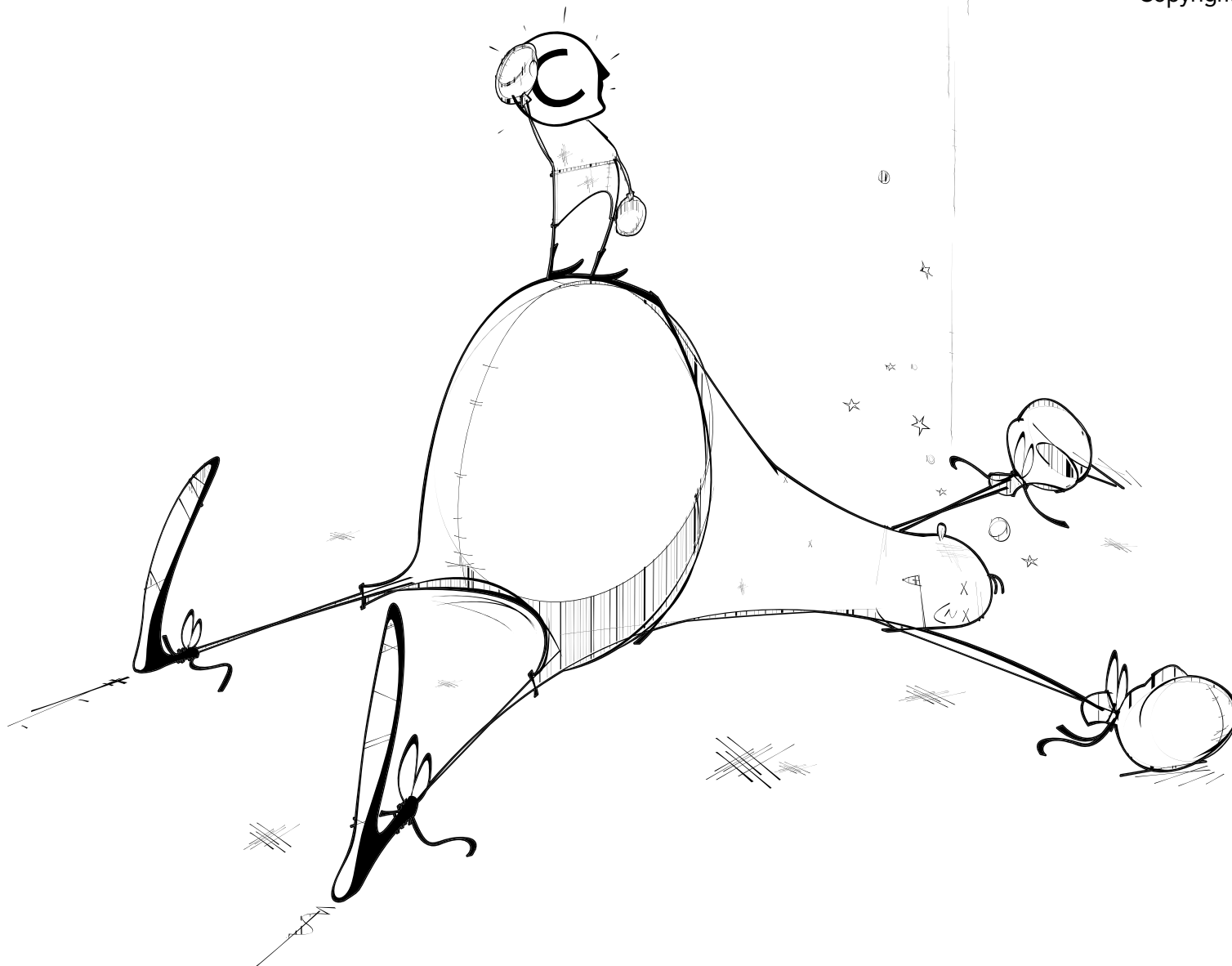
Knowing DRM has limited effectiveness, publishers need to decide whether or not to invest in it based on a cost-benefit analysis. It's important to note that U.S. copyright code does not require the use of DRM. Under the law, the strongest protection of copyrighted material is the copyright statement applied to the material. This statement reigns supreme.

Addressing Infringement

Unfortunately, copyright infringement is increasingly difficult to detect, particularly in the electronic age. Perhaps the best approach to protection is to make your copyright notice more conspicuous than usual. Instead

of being hidden away in small type, include it at the start of protected content and again at the end. Also include it in correspondence with your readers and subscribers, such as on renewal statements and invoices.

If you detect a copyright violation, I recommend informing the alleged violator. It may be a case of an innocent oversight, and the alleged violator may be agreeable to paying a reasonable fee to access or utilize your content. On the other hand, if the violation continues, I recommend seeking the advice of an intellectual property attorney who specializes in copyright disputes. Given



my background and experience, I would be happy to provide free advice on how to proceed before getting involved in costly litigations.

So, is your copyright notice enough? This is a question that ultimately only you can answer.

If you don't have significant concerns about the illegal copying and unauthorized access to or distribution of your intellectual property, then yes, your placed copyright statement is enough. This may be the case if your content is available for free or if the nature of your content is such that users sharing it (with or without your name associated with it) would benefit your brand.

However, if you derive revenue from the sale of individual pieces of original content, or if your content distribution model is structured to provide access only to those who pay for it, then the placed statement alone may not be enough. You may need to register your copyright to allow for legal disputes, and you may benefit from a proactive approach to detecting infringement.

Ultimately, a publisher must first understand what's at stake for its brand and enterprise. What's the level of risk? What are the potential ramifications of infringement? And only based on those answers can you determine the appropriate steps you should take to best protect your content assets.

Please note that I am a technical expert

on intellectual property for printing and publishing, and the information in this article is not a legal interpretation. I recommend consulting an IP attorney if you have specific legal questions about your copyrights.

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