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Debunking Myths Every Copyright Defendant Has Told Themselves

Be wary of hiding behind shield of fair use

WRITTEN BY

Di'Vennci K. Lucas | Michael D. Hobbs, Jr.

Organizations that still believe well-worn myths concerning copyrighted materials do so to their own peril. Di'Vennci K. Lucas and Michael D. Hobbs Jr. of Troutman Pepper Locke break down several copyright-related fallacies that can turn into costly litigation.

Corporate and organizational defendants rarely wake up thinking, "Today, we shall break federal law!" More often, they are operating under comfortable myths that have been repeated so many times they have become the equivalent of urban legends — like albino alligators living in a city's sewers, or the belief that waiting 30 minutes after eating prevents drowning. From the breezy organizational assumption that "It's on the internet, so it's free," to the earnest belief that "We credited the author, so we're good," to the mathematically creative "30% rule," these misconceptions can transform what feel like routine business operations into costly federal litigation.

Copyright infringement occurs when someone uses copyright-protected work in a way that is reserved as an exclusive right of the copyright owner without permission and without a valid legal defense. Yet, popular stories organizations and corporations tell themselves to justify unlicensed use of creative works persist. Those narratives crumble under modern copyright law.

Myth No. 1: "It's on the Internet, so it's free to use"

The siren song: If someone posted it online, they must want people to use it. Otherwise, why would it be there? It's basically a digital version of a free cruise ship buffet, right? And if the marketing team needs an image for a presentation or a product launch, pulling something from a Google Image search is just … efficient.

The reality check: Let's start with what copyright actually protects. Copyright protection attaches to original works of authorship fixed in any tangible medium of expression. That means we need (1) originality, (2) human authorship and (3) fixation in a tangible medium.

Here's the plot twist: Practically everything on the internet meets these requirements. That blog post? Fixed. That product photograph? Fixed. Copyright protection is automatic upon creation — no registration needed, no © notice prerequisite, no sacrificial offering to the copyright gods required.

When a marketing department copies images, text, videos or music from websites for use in advertising campaigns, internal presentations, social media posts or product materials without permission, that is infringement, full stop. The fact that someone made content easy to right-click and download does not mean they granted a license any more than an unlocked car door gives a passerby permission to drive away in it. Organizations face particular exposure here because infringing content often gets incorporated into commercial materials with wide distribution — amplifying both the infringement and the potential damages.

Best practice: Organizations should establish a clear content acquisition policy requiring that all third-party creative content — images, text, video, music — be licensed through a reputable stock platform, obtained with written permission from the rights holder or verified as genuinely in the public domain. Employees responsible for content creation and marketing should be trained on this policy, and a compliance checkpoint should be built into the content approval workflow. Remember, public accessibility is not the same as public domain.

Myth No. 2: “We credited the author, so we’re in the clear”

The siren song: Attributing “Photo by Jane Smith” or “Lyrics © John Doe” in a company presentation, on a corporate website or in a published report makes everything legal, right? The organization is being respectful! It is giving credit where credit is due!

The reality check: Attribution is lovely. It demonstrates good organizational **ethics**. It shows the company is not claiming ownership of another’s work. But attribution does not create a legal defense against copyright infringement.

Think of it this way: If a company representative took a bicycle from a rack and left a business card saying, “Borrowed for the afternoon — Company XYZ,” the company would still be liable for theft. The card just makes the company a polite wrongdoer. Copyright works the same way. Permission or a valid legal defense, like fair use, is what matters, not the courtesy of a credit line. Attribution without permission is simply well-documented infringement.

Even when an organization’s infringement is unintentional and attributions are clearly expressed throughout the infringing materials, copyright infringement remains copyright infringement. Courts do not award points for organizational courtesy — and copyright owners have been known to pursue infringement claims more aggressively against commercial entities precisely because the potential damages are larger.

Best practice: Organizations should treat attribution as the bare minimum for ethical conduct, not a substitute for proper licensing. Attribution policies should be implemented *in addition to*, not *instead of*, content licensing protocols. Legal and compliance teams should make clear to all departments — particularly marketing, communications and **training** — that a credit line provides no legal protection absent a license or valid fair use defense.

Myth No. 3: “If it has no © symbol, it’s not protected”

The siren song: No copyright notice means no copyright. It’s like the legal version of “If a tree falls in the forest and no one’s around …” The company checked, and there was no © symbol on the image anywhere.

The reality check: This myth is a nostalgic throwback to pre-1989 US law, when copyright notice was required for protection under certain circumstances. But since the US joined the **Berne Convention** in 1989, copyright protection automatically vests upon creation. The © symbol is helpful for warning potential infringers and can affect the availability of certain remedies, but it is not required for protection to exist.

Works created since March 1, 1989, are protected whether or not they display copyright notice. That unlabeled product photograph? Protected. That corporate design inspiration image saved to a shared drive? Protected. That stock image a vendor included in a pitch deck without proper attribution? Still protected — and still the organization's problem if it is reused without a license.

Organizations are particularly susceptible to this myth because infringing content tends to migrate through shared drives, template libraries and internal repositories, quietly accumulating **risk** long after the original source has been forgotten. By the time a rights holder sends a demand letter, the image may have appeared in dozens of published materials.

Best practice: Organizations should adopt a default assumption that all original creative works are protected by copyright regardless of whether a © symbol is visible. Periodic audits of shared content libraries, template files and marketing asset repositories can help identify and remediate improperly licensed content before it becomes a litigation issue. Document the licensing status of all content assets so that provenance is traceable.

Myth No. 4: "Imitation is the sincerest form of flattery"

The siren song: Artists and companies borrow from each other all the time. It's how creativity works! Besides, replicating a competitor's design or format to see what performs well in the market is just industry practice — competitive intelligence, really.

The reality check: While imitation may be considered a tribute, it can also result in a lawsuit. The law distinguishes between drawing inspiration from an *idea* (usually permissible) and copying *protectable expression* (often not).

Consider a common organizational scenario: A marketing team attends an industry conference and photographs a competitor's booth graphics, product displays or creative signage. They return to headquarters and instruct the design team to reproduce those visuals for use in the company's own materials or at its next trade show appearance. The fact that photographs were taken in a public space and that the reproduction happens behind closed doors does not insulate the organization from liability. The copyright owner holds exclusive rights to reproduce, distribute and create derivative works based on their creation. Corporate photography skills do not transfer those rights.

Whether the reproduced work is used internally or commercially will affect the analysis, but unauthorized copying is the threshold issue. And commercial organizations using infringing content in revenue-generating activities face heightened exposure on fair-use factors.

Best practice: Organizations should build a creative workflow that channels competitive inspiration into original output. Mood boards and competitive analysis are legitimate business tools. Reproduction is not. Ensure that design teams understand the distinction between drawing inspiration from a style, layout or concept and reproducing specific protectable elements. Brief legal counsel before any project that involves close adaptation of third-party creative work.

Myth #5: The "30% rule"

The siren song: Everyone in the company knows you can change 30% of something, and it is legally yours! Or was it 20%? Maybe 40%? One of those numbers definitely makes it OK! The HR department covered this in compliance training.

The reality check: Let's be absolutely clear: In US copyright law, there is no "30% rule" (or 10%, 20%, 50% or 99% rule). None. Zero. This "rule" has no basis in the **Copyright Act** or in federal case law. It does not exist in any legal universe.

So where did this persistent myth originate? The 30% figure appears to stem from informal institutional guidelines — corporate training materials, school fair-use policies or someone's well-meaning but legally inaccurate workshop handout. These internal aspirational guidelines are not law. They never were law. They will never become law through sheer repetition. Most importantly, a company's reliance on such internal guidelines provides no legal protection and can actually underscore willfulness in an infringement analysis if the guidelines demonstrate that the organization was aware of the copyright issue and chose to proceed anyway.

The myth also fundamentally misunderstands how copyright infringement analysis works. Courts do not pull out calculators to determine whether a corporate defendant copied 29% or 31% of a work. Instead, they assess whether the organization took the "heart of the work" — the most important, valuable, recognizable or creative elements. An organization can infringe by copying well under 30% if the taken part was the most distinctive or commercially valuable portion of the work. Similarly, no organization can defensibly copy the single most iconic line from a three-hour film and claim safety in the fraction of a percentage point it represents.

The "30% rule" also conflicts directly with fair-use analysis, which requires courts to examine "the amount and substantiality of the portion used in relation to the copyrighted work as a whole" — a qualitative, not merely quantitative, inquiry.

Best practice: Organizations should immediately eliminate percentage-based copyright guidance from all internal training materials and **compliance** programs. Replace it with accurate instruction on the four-factor fair-use analysis and a clear directive to involve legal counsel before using any third-party creative content in ways that go beyond an existing license. An internal training manual is not a legal shield, and reliance on one may make a bad situation worse.

Myth No. 6: "Fair use is a sure thing"

The siren song: The company's use is educational! It's transformative! We're not making money specifically from the copied content! We only used a small part! Fair use has got our back! It must be fair use because, well, that seems fair to us.

The reality check: If there is one certainty about fair use, it is that fair use is gloriously, frustratingly, maddeningly uncertain. Fair use is not a general moral concept. It is a context-specific defense that courts evaluate using four statutory factors:

- The purpose and character of the use (Is it transformative? Commercial or nonprofit?)
- The nature of the copyrighted work (Is it creative or factual? Published or unpublished?)
- The amount and substantiality of the portion used (How much was taken, both quantitatively and qualitatively?)
- The effect on the potential market or value (Does the use harm the copyright owner's market for its work?)

Courts weigh these factors together, and no single factor is dispositive. For commercial organizations, the first factor is often an uphill climb. Courts treat commercial use as presumptively unfavorable, meaning a for-profit company using third-party content in connection with revenue-generating activities starts the analysis at a disadvantage even if the specific use seems incidental or minor.

Consider the **Google Books case**, where Google scanned millions of copyrighted books for a searchable database. Courts found it was fair use because the purpose was highly transformative and the use did not serve as a market substitute for the original works. By contrast, a company reproducing a few seconds of a copyrighted song in a commercial advertisement, even as background music, may find that the recognizable hook it selected is the very element that defeats a fair-use defense. And a corporation that reproduces editorial photographs in a commercial newsletter or annual report without licensing them is unlikely to prevail on a fair-use argument regardless of how small a portion of the publication those images represent.

The practical reality for organizations is that fair use is a defense raised in court often after expensive litigation has already commenced. It is not a compliance policy, and it cannot substitute for one. Organizations that allow departments to self-assess fair use without legal input are systematically accumulating litigation risk.

Best practice: Organizations should not treat fair use as a license to copy freely and should never allow business units to make unilateral fair-use determinations without legal review. If a planned use might implicate fair use, consult qualified counsel before publication or distribution. Evaluate the strength of the defense under all four factors in light of the organization's commercial nature. And remember, securing permission, while occasionally inconvenient, is always the legally safest path when a solid fair use defense is not clearly available.

Conclusion

Copyright myths persist within organizations because they are operationally convenient. They give teams permission to do what they want without the friction of licensing negotiations, legal analysis or the investment of creating original content. But convenience and legality are not synonyms, and the gap between them can be measured in statutory damages, attorney's fees, injunctive relief and reputational harm — consequences that fall squarely on the organization and, in some cases, on the individuals within it who made the infringing decisions.

The goal of unpacking these myths is not to paralyze organizations with fear of copyright liability or to portray copyright as an impenetrable legal minefield. Rather, the goal is to recalibrate institutional expectations before they harden into costly mistakes. Understanding where informal "rules" diverge from actual law allows businesses to spot risk earlier, build better compliance infrastructure and make more intentional decisions about when to seek permission, when to rely on fair use and when to walk away from content use altogether.

So, before your team copies that image for a social media campaign, reproduces that text in a client presentation or modifies that design for a branded product, pause and ask: “Are we relying on actual law, or are we banking on a myth?“ Your organization’s legal budget — and its reputation — will thank you for knowing the difference.

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