



## 610 - What to Do When the Software Police Come Knocking!

**Dror Futter**

*General Counsel and Partner*  
New Ventures Partners LLC

**Frederic Haber**

*Vice President and General Counsel*  
Copyright Clearance Center Inc.

**Keith Kupferschmid**

*Vice President, Intellectual Property Policy & Enforcement*  
Software & Information Industry Association

## Faculty Biographies

### **Dror Futter**

Dror Futter is partner and general counsel of New Venture Partners LLC, a Murray Hill, New Jersey based venture capital firm specializing in corporate spin-outs. Mr. Futter is responsible for negotiating partnership agreements with corporate partners, as well as the asset transfer, intellectual property, and commercial agreements that form the core of the firm's business process. He also actively supports all syndication and follow-on funding negotiations.

Previously, Mr. Futter supported several groups within Lucent Technologies and served as lead counsel for Lucent's \$500 million year 2000 effort. Prior to joining Lucent, Mr. Futter worked at the law firm of McCarter & English, LLP, where he focused on the intellectual property and computer and high technology practice groups.

He has served as co-chair of Practising Law Institute's venture capital law seminar, and has spoken on various venture capital related subjects.

Mr. Futter holds an A.B. magna cum laude from Princeton University and a J.D. from the Columbia University School of Law.

### **Frederic Haber**

Vice President and General Counsel  
Copyright Clearance Center Inc.

### **Keith Kupferschmid**

Vice President, Intellectual Property Policy & Enforcement  
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## Copyright Basics

Dror Futter  
General Counsel and Partner  
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## § 102 What is Protected?

- Copyright protection subsists in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

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## What is Protected - Cont'

- Works of authorship include the following categories:
  - literary works;
  - musical works, including any accompanying words;
  - dramatic works, including any accompanying music;
  - pantomimes and choreographic works;
  - pictorial, graphic, and sculptural works;
  - motion pictures and other audiovisual works;
  - sound recordings; and
  - architectural works.

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## § 106 Copyright Rights

- (1) to **reproduce** the copyrighted work in copies;
- (2) to prepare **derivative works** based upon the copyrighted work;
- (3) to **distribute** copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

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## § 106 - cont'

- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform** the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to **display** the copyrighted work publicly; and
- (6) in the case of sound recordings, to **perform** the copyrighted work publicly **by means of a digital audio transmission**.

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## § 107 Fair Use

- [t]he fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

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## § 107 Cont'

- Fair Use Factors:
  - (1) the **purpose and character of the use**, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  - (2) the **nature** of the copyrighted work;
  - (3) the **amount and substantiality** of the portion used in relation to the copyrighted work as a whole; and
  - (4) the **effect** of the use upon the **potential market** for or **value** of the copyrighted work.

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## Penalties for Infringement

- § 502. Injunctions
- § 503. Impounding and disposition of infringing articles
- § 504. Damages and Profits
  - (1) the copyright owner's actual damages and any additional profits of the infringer; or
  - (2) statutory damages

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## Penalties for Infringement

- Statutory Damages
  - with respect to any **one work** . . . a sum of not less than **\$750** or more than **\$30,000** as the court considers just
  - “Willful infringement” court may increase the award of statutory damages to a sum of not more than **\$150,000**
  - “Innocent Infringement” court may reduce the award of statutory damages to a sum of at least **\$200**

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## Penalties

- § 505. Costs and attorney's fees
- § 506. Criminal Offenses
- Criminal Infringement. - Any person who infringes a copyright willfully either -
  - (1) for purposes of commercial advantage or private financial gain, or
  - (2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000,

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## Criminal Penalties

- Infringement for Financial Gain
  - (1) shall be **imprisoned not more than 5 years, or fined in the amount set forth in this title, or both**, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least **10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500;**
  - (2) shall be **imprisoned not more than 10 years, or fined in the amount set forth in this title, or both**, if the offense is a **second or subsequent offense** under paragraph (1);
  - and (3) shall be imprisoned not more than **1 year, or fined in the amount set forth in this title, or both**, in any **other case**.

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## Criminal Penalties

- Infringement Involving Copyrighted Works in Excess of \$1,000
  - (1) shall be **imprisoned not more than 3 years, or fined in the amount set forth in this title, or both**, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of \$2,500 or more;
  - (2) shall be **imprisoned not more than 6 years, or fined in the amount set forth in this title, or both**, if the offense is a **second or subsequent offense** under paragraph (1); and
  - (3) shall be **imprisoned not more than 1 year, or fined in the amount set forth in this title, or both**, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000.

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## § 109 First Sale Doctrine

- The owner of a lawful copy is entitled, **without the authority of the copyright owner**, to sell or otherwise dispose of the possession of that copy.
- Owner of a phonorecord or any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), **may not, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of**, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) **by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending**.

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## First Sale - Cont'

- The owner of a copy lawfully made is entitled, without the authority of the copyright owner, to **display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.**
- **These privileges do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.**

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**Software & Information  
Industry Association**  
BUILDING THE DIGITAL ECONOMY

## *SIIA: Not Just The Software Police*

**Keith Kupferschmid**

*October 30, 2007  
ACC Annual Meeting*

**COPY SOFTWARE ILLEGALLY  
AND YOU COULD GET THIS HARDWARE  
ABSOLUTELY FREE.**



Visit the Software Publishers Association  
Web site at [www.spa.org/piracy](http://www.spa.org/piracy)  
or to report a case of software piracy,  
call us at (800) 388-7478.

**Don't Copy That Floppy™**

© 1999 Software Publishers Association.

## About SIIA

- SIIA is the trade association of the U.S. software and electronic publishing industries
- Formerly the Software Publishers Association (SPA) and Information Industry Association (IIA)

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## Who We Represent – Software



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## Enforcement

- Over 50 companies grant SIA authority to investigate and settle claims of copyright infringement on their behalf.
- On a case by case basis, members grant authority to litigate on their behalf.

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## Combating Piracy

- Law
- Technology
- Education
- New Business Models and Contracts
- Software Management Plan (self-audits)

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## SIIA's Software Anti-Piracy Programs

- Corporate Anti-piracy Program
- Internet Anti-piracy Program
  - Auction Litigation Program
  - Nathan Peterson/iBackups
- "Certification" Programs
  - Certified Software Reseller Program (CSR)
  - Certified Audit Software Program (CASP)
  - Certified Audit Defense Facilitator Program

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## Combating Piracy – Educational Courses



- Certification Courses
- One day course
- Certification upon completion
- Registration and more info at [www.licenselogic.com](http://www.licenselogic.com)

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## Combating Piracy - Educational Materials

- Educational Tools
- Videos & Posters
  - A Shared Set of Values
  - It Could Have Been So Easy
- Sample Policies and Procedures
- Software Use and the Law brochure
- [www.siiia.net/piracy](http://www.siiia.net/piracy)

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## Who We Represent - Information Publishers

The McGraw-Hill Companies

LexisNexis

Houghton Mifflin

THOMSON

TIME

AP Associated Press

Reed Elsevier

REUTERS

nielsen

DOW JONES

CAS  
A Division of the American Chemical Society

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## SIIA's Content Anti-Piracy Programs

- Internet Anti-Piracy Program
- Corporate Content Anti-Piracy Program
- Educational Programs

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## Internet Content Piracy

- *Adam Perahia*
  - SIIA investigated pediatrician for distribution of medical textbooks
  - Handed the case to the FBI who seized his computer further revealing incorrect medical dosage charts and child pornography
  - 2005 - Perahia sentenced to two years in prison and five years supervised release

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## Corporate Content Cases

- American Geophysical Union v. Texaco
- Lowry's Reports v. Legg Mason
- The Graham Co. v. USI Mid-Atlantic, Inc.
- Therapeutic Research Faculty v. NBTY
- SIIA v. Knowledge Networks

...to be continued

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## Best Practices

- Similar principles to software asset management
  - education and incentives for compliance
  - clear and well publicized usage policies
  - centralization of license recordkeeping
  - strong management oversight
  - possible role for technical tools
  - periodic review
- Internal legal guidance
- Get licensed by CCC or publisher


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## Copyright Clearance Center: Compliance Through Education and Licensing ACC 2007

**Frederic Haber**  
V.P. and General Counsel  
Copyright Clearance Center, Inc.



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## Introduction to CCC

- Not-for-profit, private organization formed in 1978 at the suggestion of Congress
- The Reproduction Rights Organization (RRO) for text for the United States
- Bilateral agreements with RRO's in other countries to license foreign titles and exchange royalties
- World's largest copyright licensing and compliance solutions company for the text content industry

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## CCC Participants

- Rightsholders
  - more than 10,000 on-paper and online publishers worldwide (books, journals, magazines, newspapers, newsletters, other)
  - hundreds of thousands of authors and other creators, either directly or through their representatives
  - collecting societies from around the world
- Content Users
  - more than 2500 businesses, incl. majority of Fortune 500, representing more than 20 million employees
  - more than 1000 colleges and universities for their paper coursepacks, digital distributions, classroom use and ILL
  - government agencies at all levels

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## CCC's Mission

- To make it easy for content users to “do the right thing”
  - Remove barriers to licensing and enable content users to lawfully reuse content
- To serve as a valued intermediary for content users and copyright holders
  - Facilitate the collection and equitable distribution of royalties
- To meet the changing needs of our constituents
  - Respond to changes in technologies, markets and the law

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## Why Copyright Matters

- It is the law
  - U.S. copyright law entitles copyright holders to protect their rights
  - Compliance in general and the protection of intellectual property have become top priorities for both business and law enforcement
- It is “the right thing to do”
  - Corporate ethics (and Ethics Officers) are playing an increasingly larger role in corporate governance and policy making
  - Respect the intellectual property rights of others (Golden Rule)
  - Employees need to understand their responsibilities under copyright law
- It ensures the continued availability of high-value content
  - As the Constitution envisions, compliance encourages creativity from, and compensation to, creators and copyright holders

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## Infringement Can Be Expensive

- Lowry's Reports v. Legg Mason (2005)
  - Distribution of newsletter via fax, email and intranet
  - \$20 million statutory in damages awarded
  - Case apparently settled privately for \$11-12 million
- American Geophysical Union v. Texaco (1995)
  - Spontaneous photocopying by researchers
  - Seven-figure settlement and probably millions of dollars in legal fees
- Basic Books v. Kinko's (1991)
  - Production of university course packs
  - \$2 million in fees, costs and damages

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## What Content Users Want

- Ability to use and share information as needed
- Convenient access to information when needed
- Information delivered in the format required
- Minimal systems, processes, applications, etc.

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## What Copyright Holders Want

- To protect their intellectual property, as provided by law and the Constitution
- To be compensated fairly for the use of their content
- To produce materials catering to customers' needs
- To understand how their content is being used



## The Impact of Digital Networks

- Employees are obtaining content on their own
  - Shift from centralized to decentralized models
  - Decreased reliance on copyright-savvy librarians
  - Corporate libraries have been downsized or eliminated
- More information; more easily accessible
  - Proliferation of online content, both paid and free
- Information is easier to share
  - Mass distribution can occur with the click of a mouse
  - Sharing news, data and analysis is most common
- Librarians say it is impossible to track information sharing
  - "... it is a bit of a Wild West situation ..."

## So What Should a Company Seeking Copyright Compliance Do?

- Evaluate needs
- Assess policies and practices (most often the responsibility of the Legal Department and the Library/Information Department)
- Educate employees about their responsibilities around copyright and their rights to fair use, etc.
- Seek licenses when necessary

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## Copyright.com Homepage



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## Copyright.com Business Landing Page

The screenshot shows the Copyright.com Business landing page. At the top, there is a navigation bar with the Copyright Clearance Center logo and links for 'Welcome', 'Log in', 'Cart (0)', 'Manage Account', and 'Help'. Below this is a secondary navigation bar with categories: 'BUSINESS', 'ACADEMIC', 'PUBLISHERS', 'AUTHORS', 'PARTNERS', and 'COPYRIGHT CENTRAL'. The main header area includes the Copyright.com logo and a search bar with the text 'Get Permission / Find Title' and a 'Go' button. The main content area is titled 'Business' and features several sections:
 

- Communicate, Collaborate and Innovate:** A paragraph explaining how CCC makes knowledge sharing possible with a suite of content licensing and permissions services.
- Business Licensing Services:** A section titled 'ANNUAL LICENSING SERVICES' describing CCC's Annual Copyright License.
- PAY-PER-USE PERMISSIONS SERVICE:** A section explaining how CCC's website makes it easy to purchase instant permission to distribute published content.
- RIGHTSPHERE™:** A section describing a groundbreaking service for organizing and managing rights assets.

 A sidebar on the right contains 'QUICK LINKS' (Verify sites under your annual license, etc.) and 'EDUCATION & RESOURCES' (Access the online Guide to Copyright Compliance, etc.).

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## Copyright Central on Copyright.com

The screenshot shows the Copyright Central page on Copyright.com. It has the same navigation bar as the Business page. The main header area is titled 'Copyright Central' and includes a search bar. The main content area is divided into three columns:
 

- BLOGS OF INTEREST:** A list of links to various content sources like 'Collectanea', 'ContentBlogger', 'Copyright', etc.
- On Copyright:** A section with news items:
  - Harry Potter's Newest Curse:** News about the publication of 'Harry Potter and the Deathly Hallows'.
  - Honeywell Targeted in Scotland for Illegal File-Sharing:** News about a global clamp-down on music piracy.
  - Sicko Makes Unauthorized YouTube Premiere:** News about Michael Moore's movie Sicko.
  - Copyright Registration is Going Digital:** News about the U.S. Copyright Office's new system.
  - Court Ruled Google Did Not Violate Copyright:** News about a federal appeals court ruling.
- RESOURCES:** A list of links for 'Getting started', 'Tour the New Copyright.com', 'Register a copyright', etc.

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## Copyright Central = Education Tools

- Guides and Guidelines for customers' use and adaptation
- FAQs on CCC Licenses
- Links to other organizations
- CCC blog
- We also speak and display at conferences and shows, and offer copyright webinars to customers (to help them help their internal customers)

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## CCC License Services

- Corporate
  - Repertory (internal use, both US-domestic and multinational)
  - Pay-per-use (primarily external use)
- Academic
  - Pay-per-use (course packs, e-reserves)
  - Repertory (introduced in 2007)
- Publisher-enabled
  - Rightslink (point of content)
- International
  - Bi-lateral agreements with other RROs (foreign works used in US and US works used abroad)

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## Corporate Repertory Licenses

- Annual Copyright License (ACL)
  - Unlimited internal photocopy and digital uses as long as not used to replace the legitimate need for subscriptions or other purchases of originals
  - Wide scope of rights designed by a group of rightsholders and early users
  - Larger companies calculated as \$ per professional employee
  - For smaller to mid-size companies, we use a table of bands reflecting those same per-employee costs
- Multinational Copyright License
  - Very similar to ACL, but covering almost the entire world with a slightly different repertory, and reflecting price discounts by country based on GDP

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## Corporate Pay-per-Use Licenses

- Traditionally referred to as “permissions”
- Prices and specific terms determined entirely by applicable rightsholder
- Program is unique in the world of collecting societies – multiple rights to millions of works from thousands of rightsholders worldwide, all available in one place

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## Corporate Pay-per-Use Licenses

- Allows external distributions (customers, trade shows, etc.) and, in some cases, republication and other uses
- Repertory is accessible at [copyright.com](http://copyright.com), including “quick prices” for particular transactions, all without needing an account or to sign in
- Accounts are free; online “check-out cart” model
- CCC is also working on integrating access to these services with other tools (example: Elsevier’s SCOPUS)

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## Online Permissions at Point of Content

- Rightslink® is CCC service offered to online publishers to make licensing easy
- User never leaves the publisher’s site but can buy traditional paper reprints for overnight delivery or digital reprints for use on intranets and Websites
- User carries one Rightslink account to obtain licenses from thousands of online publications

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## Accessing Rightslink®

Customers find content they are interested in licensing from the publisher and click a link to launch the Rightslink application.



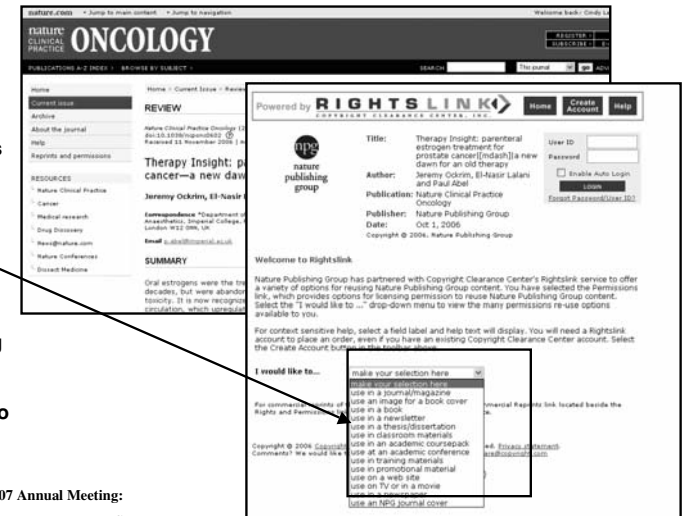
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## Selecting The Type of Use

Once the Rightslink application is opened, customers select the desired licensing option.

The licensing options and pricing are customized to each publication.



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## A Few of CCC's Rightslink Partners

- **Magazine Publishers**  
Time Inc.  
Reed Business Info.  
CMP Media
- **Newspaper Publishers**  
Dow Jones  
The New York Times  
USA Today
- **Book Publishers**  
O'Reilly Media
- **STM Publishers**  
Elsevier  
Springer  
Nature Publishing Group  
Blackwell  
Taylor & Francis  
BMJ Publishing Group  
Am. Med. Ass'n
- **Academic Publishers**  
Oxford Univ. Press  
Univ. of Chicago Press  
Univ. of California Press

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## This is Complicated – Can CCC Help?

- Yes – with Rightsphere™
- Provides an instant, unambiguous answer to the question:  
    **“What am I allowed to do with this content?”**
- Raises copyright awareness for employees worldwide
- Organizes and manages rights
- Enables a corporation to simultaneously manage, and therefore leverage, all of its rights assets
  - From publishers, aggregators, collecting societies, statutes, etc.

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## Rightsphere is Deployed to Users' Desktops . . . as a Link, Not Software

Icon is on user's Links toolbar

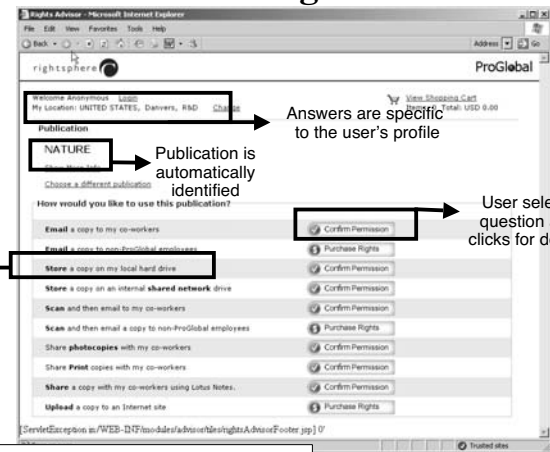


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## User Immediately Sees Her Type-of-Use Options and Associated Rights Status

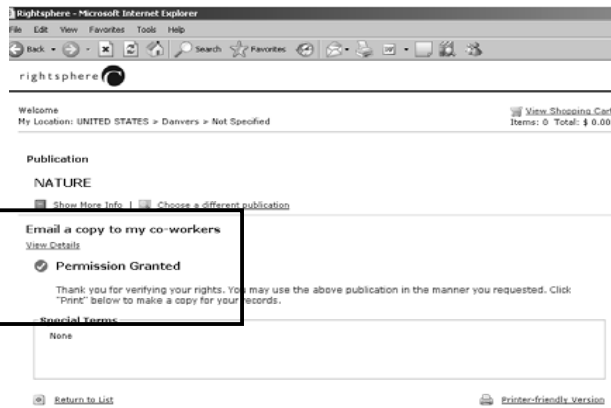
Types of use are customized



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## With a Clear Answer in Hand, User Can Share Content with Confidence



User friendly, non-legalese answer

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[My Profile](#) | [ProGlobal Enterprise Link](#) | [Contact Librarians](#) | [CCC's Copyright Resources](#) | [Help](#)

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## REPRISE: So What Should a Company Seeking Copyright Compliance Do?

- Evaluate needs
- Assess policies and practices (most often the responsibility of the Legal Department and the Library/Information Department)
- Educate employees about their responsibilities around copyright and their rights to fair use, etc.
- Seek licenses when necessary

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