

Intellectual Property and the Web Portfolios of Technical Communication Businesses

Killoran, J. (2009, March 12). Intellectual Property and the Web Portfolios of Technical Communication Businesses. Paper presented at the CCCC Conference, San Francisco, CA. <myweb.brooklyn.liu.edu/jkillora/research/2009cccc.pdf>

In composition and professional communication pedagogy and practice, the increased use of web portfolios raises ongoing intellectual property challenges for teachers, students, and professional communication practitioners alike. To understand how such challenges are dealt with in the “real world,” my presentation examines the IP practices behind the web portfolios of technical communication companies, consultants, and independent contractors. Many of these, which I will refer to collectively as *businesses*, maintain business websites on which they showcase samples of their work to illustrate their skills and accomplishments to prospective clients. Yet most such samples that would be relevant to showcase are from work created for previous clients, who typically hold some legal or ethical rights to such work. In principle, such issues—involving copyright, trademarks, work contracts, the work for hire doctrine, fair use principles, permissions, releases, and other IP practices—are clearly governed by legal statutes and a legacy of case law. But in practice, many business and their technical communicators are obviously not legal specialists, and instead often solve potential IP problems in practical ways that avoid, rather than confront, the disputatious and expensive clarity of legal solutions. Today, I’ll discuss the methods and results of a study I am conducting that is exploring how technical communication businesses deal with potential IP problems in their web portfolios.

METHODS

To systematically explore the web portfolios of tech comm. businesses, I collected an international sample of English-language sites of just over 1000 businesses, solicited survey participation from over 600 proprietors of these businesses, and received 240 completed surveys from 15 countries.

1. The main survey question pertinent here asked about how helpful various features of their site were to marketing their businesses, including their posted portfolio or samples of their work, plus eleven other features of their site.
2. Follow-up e-mail interviews with approximately half the survey respondents often—but not always—asked how they proceeded to post samples of work done for their clients, and whether they wanted to post other similar client work but did not because of client sensitivities or copyright concerns.
3. Finally, the websites of all survey respondents were downloaded so that I could analyze their posted portfolio or work samples.

RESULTS

My ongoing content analysis of these small-business websites indicates that at least half included samples of their work, that is, work above and beyond the writing and design of the website itself.

My survey results show that these posted work samples were among the most useful features of these sites: On a scale from 0 to 3, with 3 indicating that their posted work samples or web portfolio helped a lot in marketing their services, participants rated their posted work on average at just above 2 (2.08). Among the dozen website features they

were asked to rate in this way, only one feature was rated higher, that being a description of their tech comm. services (average of 2.31), which of course would be essential for sites devoted to marketing tech comm. services. By contrast, posting work samples is not entirely essential, and many sites did not include them, so the relatively high rating among those who did post them underscores how helpful posted work samples were to many other respondents. Indeed, when asked to explain how useful, or useless, their site was to their business, participants frequently mentioned their portfolio or posted samples of their work. Some respondents indicated that they created and used their sites primarily to display samples of their work, and several mentioned that they would direct prospects explicitly to the posted samples, or that the samples were the part of the site that prospects most frequently examined. For instance, a California-based participant, who rated only two features of his site as helped a lot in marketing his tech comm. services—his portfolio and a posted list of clients—explained:

My web site is primarily a vehicle to show a portfolio of work that I have performed for clients. As such, it provides me with tremendous credibility when I reach out to new prospects. By featuring the names of clients that I know other web site visitors will recognize, along with the work I have done for them, prospects are able to overcome a significant barrier to doing business with me: the fact that I am otherwise unknown to them. I think my web site is able to achieve this better than I could ever convey through alternative communication channels.

As useful as a website is for such purposes, however, participants also indicated that posting samples of their work presented many challenges, such as issues of IP,

confidentiality, on-going business-client relations, and so forth, challenges that complicated their hopes and in many cases prevented them from posting their work. For instance, this same California-based participant recalled an episode early in his business when he had done work he wanted to post on his site but, because of such challenges, did not:

I have worked on material that was for my client's internal use only. I specialize in the storage sector of the technology industry. On one project I wrote material for the largest vendor in the market. At the time I did not have many clients and posting the work on my site would definitely have given my services substantial credibility. However, I knew the material was for internal consumption only and could not be used for my personal marketing purposes.

As he explains, the confidentiality of his work, and presumably his hope for on-going positive relations with this client, were important enough to lead him to sacrifice this otherwise promising opportunity to grow his business.

Participants' interview responses, and also evidence from analyzing their websites, show the wide variety of ways businesses work with, and around, these IP issues. Indeed, what gets posted or not is the result not of legal IP statutes but the sometimes direct, sometimes indirect contestation for *control* of the text and its display by the technical communicators and the clients for whom they did the work.

1. I'll first discuss how participants communicated with, or did not communicate with, their clients to seek permission to post their work.

2. Then I'll discuss how participants modified their work samples, thereby removing them to some degree from the direct control of their clients, who owned the originals.

1. Communicating with clients, or not

Asking and hearing *Yes* or *No*

When exact IP rights and non-disclosure agreements were not explicitly or implicitly spelled out at the beginning of a project, many participants mentioned requesting permission to post clients' work after a project has been completed. Waiting until afterward also avoided creating an impression before or during a client's project that the technical communicator was preoccupied with chasing other clients. Several participants reported that they were gladly given permission to post marketing documentation, as some companies recognized the opportunity to receive a bit of free advertising. However, several participants reported that they had been denied permission, typically because of the sensitive or competitive nature of their clients' industries or their own work, and some made a deliberate decision not to post clients' work at all or not to bother asking when they knew the answer would be *No*.

To preclude denial, several participants mentioned posting or linking only to work that is already in the public domain, such as documentation already widely disseminated with a client's products or posted on a client's website. Some participants indicated that they sought out work samples that their clients would likely find innocuous, choosing a safe topic or an outdated sample of past work, or in the case of longer documents, an unrevealing excerpt such as a table of contents. For instance, an Australian participant

who had never been refused permission to post work she had done for clients explained that she thought of her clients' concerns when selecting work for her portfolio:

I ALWAYS choose something that's innocuous and definitely not confidential - that makes it much easier! For example, for the retail jeweller, I used a page about diamonds, NOT about their security alarm policies!

Not asking because client goes out of business

However, it's not always feasible to ask a client for permission. From one year to the next, approximately 10% of all American businesses cease to exist (US Census Bureau). Some industries that technical communicators serve, such as the computer industry, have been particularly turbulent over the past decade, and some participants mentioned posting material they did for a past client without permission because the client no longer existed. For instance, a Colorado-based participant who specializes in writing user documentation for technology companies explained that, because both a client for whom he wrote documentation and the products about which he wrote the documentation were now defunct, he did not bother to seek permission from the legal copyright owner to post a couple of the samples on his site:

I posted work for a company that was bought out by another company that was in turn bought out by still another company. I didn't have permission to post the samples, but I figured that since the products and company no longer existed, no one was likely to care. I tried to say nice things about the company on the pages with the samples. If the current owner of the copyright asks me to take the samples down, obviously I will.

On his site, he introduces each of his many samples by mentioning the company by name and describing their product, sometimes flattering one or the other by using such endearing adjectives as “innovative,” “reliable,” and “economical.”

Not asking because of the bureaucratic process

At the other end of the spectrum from companies that no longer exist, companies that are large or especially hierarchical also presented problems for participants. A few mentioned that the process of pushing a permission request up a company’s bureaucratic ladder was so time-consuming or intimidating that it discouraged them from trying. A New York-based participant whose site features fictionalized case studies explained that she did not use real case studies or real samples of her work or name some of her real clients because “this would require obtaining permissions—often from folks several levels above the actual clients. I am not sure the effort to do this is worth it.”

Not asking because of cultural practice

Some participants who posted work without permission pointed to unwritten understandings not with clients per se but based on traditional practice within the culture of outsourcing. For instance, a Canadian participant acknowledged that IP rights reside with her clients but countered with what she described as standard practice within the field for promotional uses of such work:

I didn't advise anyone that I was using the material. I know that copyright passes to my clients, but I also know that web developers routinely post thumbnails of the work they themselves have done, sometimes showing that copyright is shared, and sometimes not. In a similar way, my photographer gave me copyright of the photo she took, but expressly retained the right to

use the photo for her own promotion. I looked upon the building of my portfolio with this knowledge and experience in mind and easily concluded: why rock the boat when what I really, really needed was an online portfolio. Why give clients the opportunity to object when it's not entirely clear that they have grounds for objection, and when I'm not at all well placed to deal with any objection.

2. Modifying work samples to render them less problematic

We've seen how tech comm. businesses post the IP of their clients to display as samples of their own work, whether with their clients' permission or, in some cases, without. To free themselves and their work from the influence of their clients, both participants and their sites also revealed how they posted work that was removed by varying degrees from identification with and the control of their clients. For instance, several participants described how they modified work they did for clients so that they could placate clients' confidentiality concerns or get around clients' IP rights, sometimes with a client's consent, and sometimes without. Participants described not only removing from their work all identifying information about their client or the product, sometimes by inventing alternative fictional names, but also rewriting passages and creating new graphics, which would further obscure its original owner and informally render the work even more a possession of the tech comm. business itself.

Alternatively, a couple of participants even posted unmodified but obscured versions of their work, such as thumbnail graphics without corresponding regular-sized graphics, so

that the text itself cannot be read. Of course, such samples would have limited use among prospective clients hoping to see and read a technical communicator's work clearly.

Modifying work as requested by client

When done at a client's request, such modifications enabled businesses to post work samples that they would otherwise not have been permitted to post. For instance, a Colorado-based participant related an experience in which she was able to create a publishable sample of work that she knew was otherwise too sensitive to publish:

I did some work for a company that dealt in security. I wrote a lot of documentation for their systems and was very pleased with my work. It would have made me look very good to use as samples. However, I knew that the information was sensitive and confidential and did not ask to use any of it. However, I did ask if I could use a revised version of the Visio diagrams I did for them, if I changed all the text to sample text. They allowed that, as long as I made other changes in the diagram as well. I complied with their stipulation and have posted the sample Visio diagrams on my website.

Disguising work to evade client

In some cases, businesses appeared to disguise a client's work not to placate their client's confidentiality concerns but to evade their client's discovery entirely. For instance, a Colorado-based participant described how he would disguise clients' work:

In a couple of instances, I created work samples based on projects my company has done, but I redid the content including fake screen captures so that the work was no longer identifiable. (Yeah, if someone we worked with thought about it, they'd know I modelled a sample on their project.)

Sometimes, however, a disguised sample is still recognizable to the client. Such was the experience of a California-based participant, who regularly “sanitized” his samples before posting them:

Once or twice I wasn't careful enough about my "sanitizing." The client emailed and asked me to take it down. I did immediately with profuse apologies. Had I gotten it right the first time, I would have been OK; but after that, I don't use that sample at all.

To further evade client's eyes, a few participants posted work samples with access restricted by a password they would disclose only to prospective clients. For instance, a Belgian participant described posting password-protected samples from which he had removed identifying information, but without his client's permission:

Well, strictly speaking I should ask my client for permission, but it's a huge corporation, and I know that it would take forever and would probably (if I'm honest) be turned down just because that's company policy. So I adopted the approach of removing all company-specific references and password-protecting files. Should my client(s) find out, I'll argue the case. I include the password in the cover letter for job applications, so the only people who would see them are prospective employers—so I justify it as being no worse than having a printed copy that I take to interview. I think it's important for prospective clients to see what you can do (and I am proud of some of my work items) so I'd rather have them there than not.

Pedagogical application

In closing, I would suggest that this research can contribute to teaching, research, and professional practice, and I'll focus in particular here on teaching. As teachers, we can draw lessons from the IP problems and solutions of practitioners that may arise in the web portfolios of our students, especially portfolios that include service learning projects, in which our students are creating work for real clients who may not be entirely enthusiastic about having such work disseminated indiscriminately in students' portfolios. By drawing lessons from practitioners, I don't mean to suggest that we following their practices uncritically. Rather, we can use their challenges and responses as scenarios or case studies through which to raise questions and discuss the legal and ethical and professional challenges of IP problems and solutions.

Reference

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