

INFRINGEMENT RISK IN COPYRIGHT-INTENSIVE INDUSTRIES

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SUMMARY

In the context of the copyright policy debates, the large copyright holders insist that infringement is causing job loss and serious economic harm in the United States. Numerous impartial studies, however, have demonstrated that the actual impact of infringement on individual firms, on industry sectors, and on the U.S. economy as a whole, is extremely difficult to quantify.¹ Moreover, by all objective measures, the copyright industries in the United States are very healthy.² Employment in copyright-intensive industries increased by 46.3 percent between 1990 and 2011.³ During the first decade of this century, the entertainment industry's global revenue increased 50 percent.⁴ In June 2013, we reported that firms in copyright-intensive industries were significantly more profitable than firms in other industries.⁵ Additionally, in the ten-year period between 2003 and

¹ See, e.g., National Research Council, *Copyright in the Digital Era: Building Evidence for Policy* (2013); *Intellectual Property: Insights Gained from Efforts to Quantify the Effects of Counterfeit and Pirated Goods in the U.S. Economy Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce, 113th Cong. 7-10 2013* (statement of Susan Offutt, Chief Economist, U.S. Government Accountability Office).

² See Computer & Communications Industry Association, *Hearing on Innovation in America: The Role of Copyrights*, Subcomm. On Courts, Intellectual Property, and the Internet, 113th Congress (2013).

³ Economics and Statistics Administration & U.S. Patent and Trademark Office, U.S. Department of Commerce, *Intellectual Property and the U.S. Economy: Industries in Focus* (2012) at vii.

⁴ Michael Masnick & Michael Ho, Floor64, *The Sky is Rising* (2012), available at <http://www.ccianet.org/CCIA/files/ccLibraryFiles/Filename/00000000586/TheSkyIsRising7-130.pdf>.

⁵ Jonathan Band and Jonathan Gerafi, *Profitability of Copyright Intensive Industries* (2013), available at <http://infojustice.org/archives/29916>.

2012, the copyright-intensive industries' profit margins on average grew by 3.98%, while the other industries' profit margins on average decreased by 0.75%.

The copyright holders respond that they would have been even more profitable, and would have been able to employ even more Americans, but for infringement. This sort of argument is difficult for policymakers to evaluate. While it is almost certainly true that infringement has at least a marginal impact on the profitability of some firms, industry assertions concerning the extent of this impact must be viewed with skepticism. And, as noted above, impartial economists have experienced great difficulty in quantifying the impact of infringement.

Notwithstanding the challenges of quantifying the impact of infringement on particular companies or industry sectors, there is a useful neutral source of qualitative information on the likely impact of infringement: the reports prepared by investment advisors concerning publicly traded companies. These equity research reports make investment recommendations (*e.g.*, buy, hold, or sell) based on the companies' performance and the risks they face.

We have reviewed the equity research reports issued over the past 90 days for eight leading companies in copyright-intensive industries: two software firms (Microsoft and Adobe); two publishers (Pearson and Reed Elsevier); the owners of two major motion picture studios (Disney and Viacom, owner of Paramount); and the owners of two major record labels (Sony, owner of Sony Music Entertainment, and Vivendi, owner of Universal Music Group). In addition to Sony Music Entertainment, Sony owns Sony Pictures Entertainment (which in turn owns Columbia Pictures), while Vivendi also owns the Canal+ motion picture and television production and distribution company.⁶

We found that the overwhelming majority of the equity research reports did not mention copyright infringement as a possible risk factor.

- None of the 14 reports for Reed Elsevier and 18 reports for Pearson identified copyright infringement as a risk factor.
- Only 13% of the 15 reports for Sony and 22% of the 23 reports for Vivendi mentioned copyright infringement as a potential risk.
- Just 8% of the 26 reports for Viacom and 27% of the 26 reports for Disney referred to copyright infringement as a risk factor.
- 26% of the 19 reports concerning Adobe and 41% of the 27 reports concerning Microsoft identified copyright infringement as a risk factor.
- Cumulatively, only 19% (32) of the 168 reports referred to copyright infringement as a possible risk; 81% did not.

⁶ We reviewed the equity research reports for each of these eight companies contained in the Thomson One Banker database. Often a given investment advisor, *e.g.*, Marketline, would issue several versions of essentially the same report within the past 90 days. We treated these different versions as one report. We used a variety of search terms, including "piracy" and "infringement."

The equity research reports that did not list infringement as a risk factor did identify a wide range of other possible risks, both specific to the industry and of more general applicability. For example, the equity research reports for the publishers mentioned factors such as the market uncertainty due to the conversion to ebooks and other digital formats; competition from open educational resources and open access journals; increased competition from Internet companies such as Google and Yahoo; increased competition due to industry consolidation; diminished government budgets for textbook and library purchases; purchasing delays due to the adoption of Common Core standards; shifting emphasis from products to services; the global economic slowdown reducing demand and investor confidence; and foreign exchange risk. In other words, these equity research reports were by no means superficial; they just did not consider copyright infringement as important a risk factor as the other threats confronting the companies under review.

Interestingly, the annual reports for 2012 for six of the eight companies (all but Reed Elsevier and Sony) did identify infringement as a potential risk. This suggests that the analysts writing the equity research reports gave little weight to the companies' concerns about infringement.

To be sure, one could argue that the analysts did not understand the industries they studied. Nonetheless, these reports are issued by the world's most sophisticated investment advisors to their clients, the world's most sophisticated investors. Both the investment advisors and their clients believe that the analysts have expertise in these industries. And the vast majority of the reports written by these analysts simply do not consider copyright infringement a significant enough threat to the subject companies' financial health to merit mention to potential investors. If the analysts with expertise in these industries are not concerned about the possible impact of copyright infringement, perhaps policymakers should not be either.

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PUBLISHING

Pearson

Risks Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
0	18
0.0%	100.0%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
Barclays		x
Credit Suisse		x
Deutsche Bank		x
Globaldata		x
Investec Bank (UK) PLC		x
Jefferies & Company		x
JPMorgan		x
Kepler Cheuvreux		x
Liberum Capital		x
Macquarie		x
Marketline		x
Morgan Stanley		x
Natixis		x
Numis Securities		x
S&P Capital IQ		x
SADIF-Investment Analytics		x
Societe Generale		x
Wright Investor Service		x

INFRINGEMENT RISK IN COPYRIGHT-INTENSIVE INDUSTRIES

Reed Elsevier

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
0	14
0.0%	100.0%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
Barclays		x
Credit Suisse		x
Deutsche Bank		x
Globaldata		x
Investec Bank (UK) PLC		x
Jefferies & Company		x
JPMorgan		x
Kepler Cheuvreux		x
Liberum Capital		x
Marketline		x
Numis Securities		x
S&P Capital IQ		x
SADIF-Investment Analytics		x
Societe Generale		x

RECORD LABELS

Sony

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
2	13
13.3%	86.7%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
Credit Suisse		x
Deutsche Bank		x
Globaldata	x	
Jefferies & Company		x
JPMorgan		x
Macquarie	x	
Marketline		x
Mitsubishi UFJ Morgan Stanley		x
Morgan Stanley		x
S&P Capital IQ		x
SADIF-Investment Analytics		x
SMBC Nikke Securities		x
Valengine, Inc.		x
World Market Intelligence		x
Wright Investors Service		x

INFRINGEMENT RISK IN COPYRIGHT-INTENSIVE INDUSTRIES

Vivendi

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
5	18
21.7%	78.3%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
Analisis Banco Sabadell		x
Barclays		x
Credit Suisse		x
Deutsche Bank	x	
ESN / CM-CIC Securities		x
Finlabo Sim SPA		x
Globaldata	x	
HSBC Global Research		x
ICD Research	x	
Jefferies & Company		x
JPMorgan		x
Kepler Cheuvreux		x
Liberum Capital		x
Macquarie		x
Marketline	x	
Morgan Stanley		x
Morningstar		x
Natixis		x
Raymond James Euro Equities	x	
RBS		x
SADIF-Investment Analytics		x
Santander GBM		x
Societe Generale		x

MOTION PICTURE STUDIOS

Disney

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
7	19
26.9%	73.1%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
BMO Capital Markets		x
Cowen and Company		x
Credit Suisse		x
Deutsche Bank		x
Evercore Partners	x	
Gabelli & Company		x
Globaldata	x	
Guggenheim Securities		x
ICD Research	x	
Indigo Equity Research	x	
Janney Montgomery Scott		x
JJB Hilliard, WL Lyons		x
JPMorgan		x
Macquarie		x
Marketline	x	
Morgan Stanley		x
Morningstar	x	
Piper Jaffray		x
RBC Capital Markets	x	
S&P Capital IQ		x
Sadif-Investment Analytics		x
Sterne, Agee & Leach		x
Trefis		x
Wells Fargo Securities		x
Wright Investors Service		x
Wunderlich Securities		x

INFRINGEMENT RISK IN COPYRIGHT-INTENSIVE INDUSTRIES

Viacom

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
2	24
7.7%	92.3%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
Barrington Research Associates		x
BMO Capital Markets		x
Cowen and Company		x
Credit Suisse		x
Deutsche Bank		x
Evercore Partners		x
Gabelli & Company		x
Globaldata	x	
Guggenheim Securities		x
Janney Montgomery Scott		x
JPMorgan		x
Macquarie		x
Marketline		x
Maxin Group LLC		x
Morgan Stanley		x
Morningstar		x
Pivotal Research Group		x
RBC Capital Markets	x	
S&P Capital IQ		x
Sterne, Agee & Leach		x
Trefis		x
Wedbush Securities		x
Wedge Partners		x
Wells Fargo		x
Wright Investor Service		x
Wunderlich Securities		x

SOFTWARE PUBLISHERS

Adobe

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
5	14
26.3%	73.7%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
Cowen and Company		x
Credit Suisse - North America		x
Deutsche Bank		x
Evercore Partners		x
Globaldata	x	
Griffin Securities		x
Jefferies & Company		x
JMP Securities	x	
Macquarie	x	
Marketline	x	
Morgan Stanley		x
Morningstar		x
Piper Jaffray		x
RBC Capital Markets		x
S&P Capital IQ		x
Trefis	x	
Wedge Partners		x
Wells Fargo		x
Wright Investors Service		x

INFRINGEMENT RISK IN COPYRIGHT-INTENSIVE INDUSTRIES

Microsoft

Risk Assessment Data

Infringement Risk Mentioned	Infringement Risk Not Mentioned
11	16
40.7%	59.3%

Equity Research Report Issuer

Issuer	Infringement Risk Mentioned	Infringement Risk Not Mentioned
AXIA Financial Research		x
Barclays		x
Cowen and Company		x
Credit Suisse	x	
Deutsche Bank		x
Evercore Partners	x	
Globaldata	x	
Griffin Securities		x
Hamburger Sparkasse		x
Indigo Equity Research		x
Janney Montgomery Scott	x	
Jefferies & Company		x
JJB Hilliard WL Lyons	x	
JPMorgan	x	
Marketline	x	
McAdams Wright Ragen	x	
MKM Partners		x
Morgan Stanley		x
Morningstar		x
Oppenheimer		x
RBC Capital Markets	x	
S&P Capital IQ		x
SADIF-Investment Analytics		x
Saibus Research		x
Trefis	x	
Wells Fargo	x	
Wright Investor Service		x