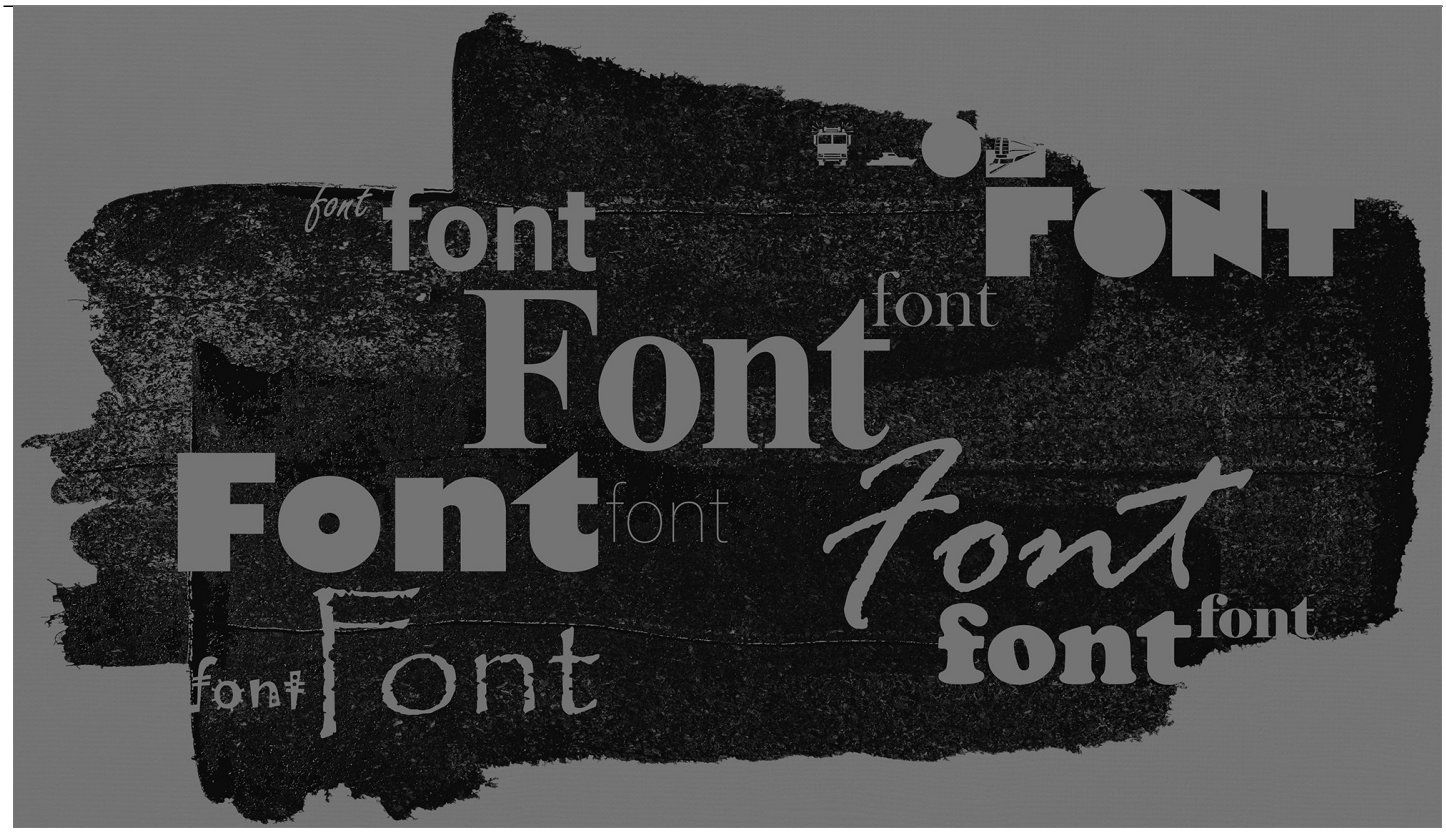
Font Fight: Font Software Infringement Claims and How to Handle Them

Intellectual Property

Technology, Privacy, and eCommerce



Cheat Sheet

- **Fonts as software.** Fonts aren't just design — they're licensed software. Usage restrictions vary (desktop vs. web vs. logo rights), and are often buried in small print.
- **Easy misstep, easy detection.** While common font files are simple to copy, embedding fonts on websites makes unlicensed use visible — and type foundries actively audit for misuse.
- **Increasingly common claims.** Though lawsuits happen, they are relatively infrequent. Font companies typically send pay-to-license demand letters rather than cease-and-desist notices.
- **In-house counsel's playbook.** When faced with a claim: (1) check license records (including bundled rights), (2) verify claimant legitimacy and copyright registrations, (3) weigh paying vs. ceasing use, and (4) consider prevention via font audits or shifting to open-source fonts.

If you're reading this article on your phone, press your finger to a word and watch how "Copy" pops up. If you're palming a mouse, drag your cursor over some text — see, it's now selected.

You couldn't do those things if you were reading this in a newspaper. That's because *these* words

aren’t just words. Website text behaves like it does because, behind the letters, font software is at work.

In-house counsel, watch out. Sometimes that software gets your company into hot water.

Ye olde software company

Font companies — “type foundries” in fontese — trace their origins back to the mid-15th century. In Mainz, Germany inventor Johannes Gutenberg melted metal alloys and poured them into cavities to produce moveable type, in a process called “founding” (hence the name “foundry”). Later in London the Caslon foundry created the type used to print the original Declaration of Independence in 1776.

In the 21st-century type foundries sell software. Largest and most well-known among them is Massachusetts-based Monotype, originator of *the* Times New Roman. Founded as a typesetting machine company in the late 1800s, Monotype and its growing number of affiliate brands now offer 250,000 “fonts” — that is, files that render digital typefaces — for license and download on its website.

Because fonts are software, many other font industry players are software companies. Google has Google Fonts, Adobe its Adobe Fonts. And a long tail of smaller type foundries also persists.

> Defusing a claim is good. But you may prefer to avoid claims altogether.

The sincerest form of flattery

In today’s digital world copying takes a quick click, whether you’re duplicating a lone letter or every Tay Tay song ever recorded.

Monotype’s Times New Roman font

That copying encounters practical limits. Digital rights management (DRM) technology, in particular, stops you from dragging the new season of *Too Much* from Netflix into an email and blasting it to all your friends. But the most common font file types — Microsoft's OpenType (.otf), Apple's TrueType (.tff), and Web Open Font Format (.woff) — don't come equipped with DRM. So you can, technologically, copy font files.

"Technologically" is an important qualifier. In the late 90s users *could* share Metallica songs with each other over Napster. But they *couldn't* because if they did the record industry — who at the time was lobbing lawsuits at every grandmother and 12-year old in sight — might sue them for copyright infringement.

In the font world some providers welcome sharing. Google for instance makes its fonts available for free under permissive open-source licenses. More commonly though, licensors tie strings to their software. So-called "desktop" font licenses, for example, limit usage to licensed users or "seats." "Web" licenses, for embedding fonts on websites, typically require licensees to pay for usage based on webpage views.

Many font companies also forbid licensees from modifying the font software or its "glyphs" — that is, the visual manifestation of the font software (like letters). Other licenses prohibit using font software for commercial purposes or in logos. The restrictions vary and abound.

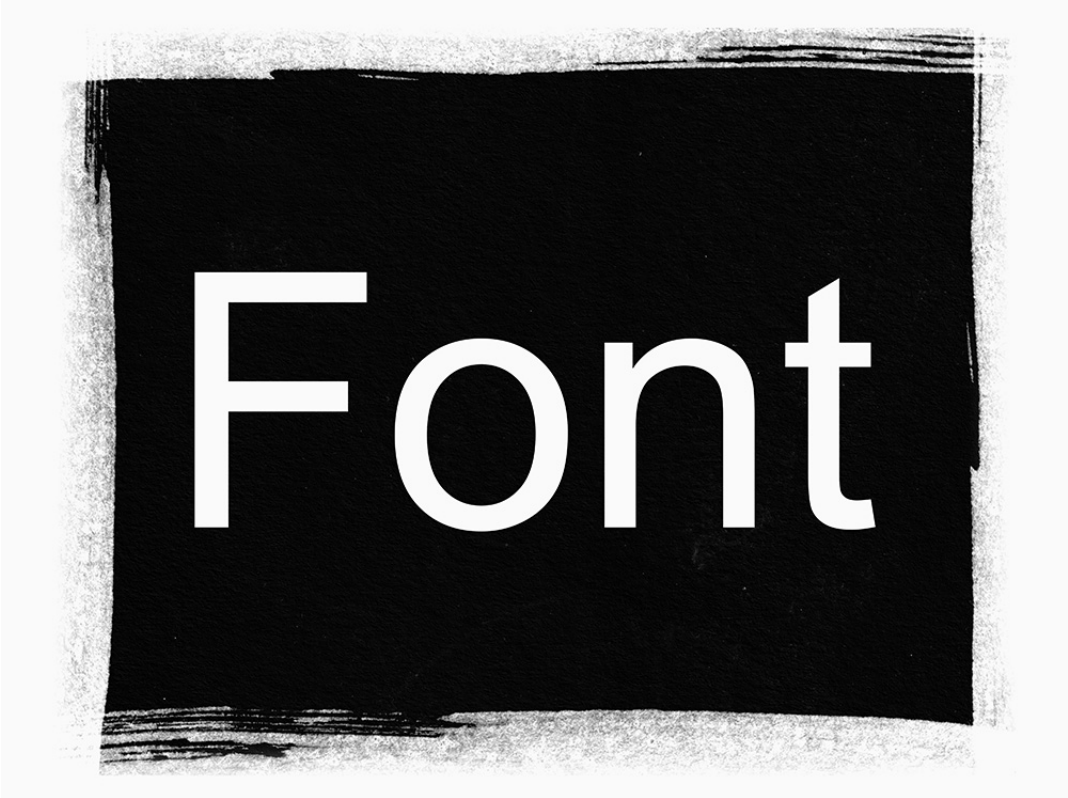
Still, these restrictions ultimately just *tell* users what not to do. And like many software legal terms, they often live in clickwrap or small print. It may not even cross an employee's mind to ask in-house counsel to review those terms.

And since the font software itself doesn't actually *stop* users from copying fonts or taking other actions the font company doesn't like, it's easy to step outside the bounds of a license, even accidentally.

If you do, beware — licensors are watching.

"Not my type"

You might wonder how font companies watch your font usage.



Monotype’s Arial font

Font files are downloadable “on-prem” software, meaning the program operates locally on your computer or server. In contrast to cloud-based software hosted by a provider — who can easily check what users on its cloud do — on-prem software can’t be similarly monitored; it sits on your hardware, not theirs.

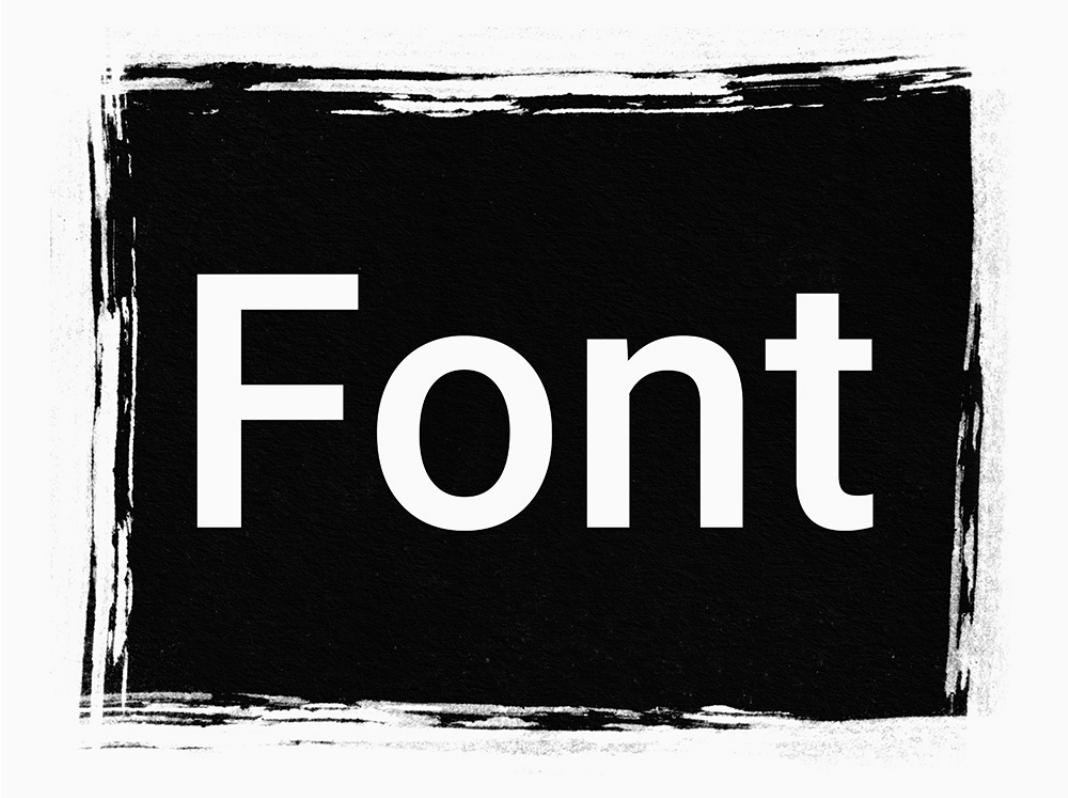
But once a user embeds font files into an external webpage or application, usage and misusage become easier to detect. A webpage’s source code — hit Control + U to see it — is viewable to outsiders. That includes font companies, who conduct audits to catch unlicensed instances of their fonts or usage beyond the license limits.

When they find suspected infractions they send the website owner a claim letter. Rather than demand that the recipient cease and desist using the font, the font company instead tells them to continue — but pony up. In exchange for a fee, the company offers a retroactive license covering past usage as well as a license for ongoing use.

Because these claim letters rarely transform into public court filings, it’s difficult to estimate how often they’re sent. But anecdotally they’re common. And font audit services and font license compliance software — those exist for a reason.

Handling a font licensing claim

Of the sundry legal matters an in-house lawyer might face, font claims are only minor headaches. Font companies are generally rational actors, the dollar amounts at issue usually modest, and the stakes relatively low.



Google's Roboto font

But before an organization pulls out its checkbook, its in-house counsel should take these steps.

- ***Check your records.*** No organization has perfect records. And that goes for font companies too. So even if a claimant alleges that your site's fonts are unlicensed, don't take them at their word. First check your company's files to see if your company holds any existing rights to use the font. Font licenses may take the form of standalone licenses, or they may dwell inside agreements for other software. Adobe desktop programs, including Photoshop, bundle font usage rights with their software.

- ***Ask for info.*** Even if you can't locate a license, don't assume that you're dealing with a legitimate claimant. Demanding payment to withdraw a claim remains a time-tested tactic for scammers and trolls too.

  If you suspect phishing or a cyberattack, avoid responding and contact your IT instead. But if you've confirmed that the claimant is a real entity, then seek as much information as possible, including which fonts are allegedly at issue, and on which of your sites.

  If the claimant alleges that it owns the font, also press for a copy of their copyright registration certificate. Not only does a certificate provide support for their ownership claim; it also tells you what the claimant actually owns. Under case law and Copyright Office regulation, typefaces aren't eligible for copyright protection, though font software code may be. So make sure that the work referenced in the demand letters matches the work listed on the certificate.

- ***Pay — or stop and see what happens.*** If you're comfortable that the claimant holds a legitimate claim, even one you might dispute, one option is to pay a fee in return for a license. The license should fully release your company from any past claims. Also, the licensor should warrant that the font software you're now paying for doesn't infringe *others'* IP. And if another claim comes your way, they should indemnify you.

Another option is to stop using the font software and see if the claimant continues pursuit. Font copyright lawsuits exist, but a suit isn't a certainty. So investigate whether the claimant is likely to make good on its legal threats — for instance, check on PACER how often they've federal copyright infringement lawsuits. If the claimant can't produce a copyright registration certificate, that also suggests they won't bring you to court: registration is a prerequisite to filing a federal copyright infringement suit.

Even if you're open to paying a license fee, it's still important to assess the alternative — that is, ceasing use and seeing what happens. The more confident you are that the claimant won't pursue, the harder you should negotiate your license, including any fee.

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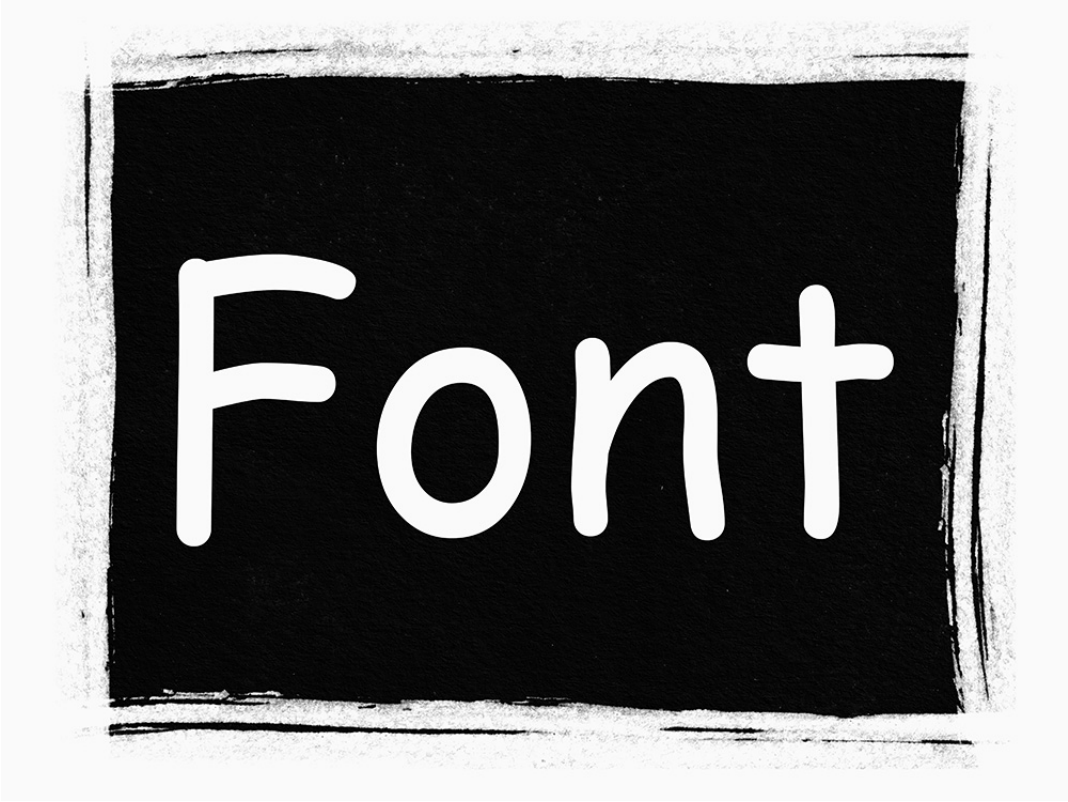
Prevention is (sometimes) the best medicine

Defusing a claim is good. But you may prefer to avoid claims altogether.



Microsoft's Comic Sans font

One option is to engage a font management company to conduct a font audit and ensure that appropriate licenses are in place. Expect to encounter some licensing gaps — and to pay some fees to bridge them.

A cheaper option is to preemptively shift your organization to free open-source fonts. Stick to reputable names, as some websites providing free fonts may provide viruses too. Free fonts typically also lack the warranties and indemnities that type foundries offer, but if you're securing fonts from trusted sources the risk of needing those protections tends to be low.

Prevention isn't necessarily the best medicine. Unless you've previously faced infringement claims or consider yourself a likely target, you might also just take any claims as they come. That means knowingly riding some risk, but where the potential exposure isn't massive — a font infringement claim isn't a data breach — it's a risk you might be willing to stomach.

Whatever your organization's approach, in-house lawyers should recognize that the texts they read and the keyboard they tap conceal legal issues waiting to sprout.

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Christopher Wlach

Senior Director, Legal

Acxiom

Chris Wlach is the senior director, legal of Acxiom. Before moving in-house he focused on complex commercial litigation at Arnold & Porter. He is a certified information privacy professional (CIPP/US) through the International Association of Privacy Professionals. He also chairs the board of HEART, a humane education nonprofit.