

Understanding Ethical and Legal Considerations

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ETHICAL AND LEGAL ISSUES are all around you in your work life. If you look at the website of any bike manufacturer, for example, you will see that bicyclists are always shown wearing helmets. Is this because bike manufacturers care about safety? Certainly. But bike makers also care about product liability. If a company website showed cyclists without helmets, an injured cyclist might sue, claiming that the company was suggesting it is safe to ride without a helmet.

Ethical and legal pitfalls lurk in the words and graphics of many kinds of formal documents. In producing a proposal, you might be tempted to exaggerate or lie about your organization's past accomplishments, pad the résumés of the project personnel, list as project personnel some workers who will not be contributing to the project, or present an unrealistically short work schedule. In drafting product information, you might feel pressured to exaggerate the quality of the products shown in catalogs or manuals or to downplay the hazards of using those products. In creating graphics, you might be asked to hide an item's weaknesses by manipulating a photo of a product.

One thing is certain: there are many serious ethical and legal issues related to technical communication, and all professionals need a basic understanding of them.

A Brief Introduction to Ethics

Ethics is the study of the principles of conduct that apply to an individual or a group. For some people, ethics is a matter of intuition—what their gut feelings tell them about the rightness or wrongness of an act. Others see ethics in terms of their own religion or the Golden Rule: treat others as you would

like them to treat you. Ethicist Manuel G. Velasquez outlines four moral standards that are useful in thinking about ethical dilemmas (2011):

- **Rights.** This standard concerns individuals' basic needs and welfare. Everyone agrees, for example, that people have a right to a reasonably safe workplace. When we buy a product, we have a right to expect that the information that accompanies it is honest and clear. However, not everything that is desirable is necessarily a right. For example, in some countries, high-quality health care is considered a right. That is, the government is required to provide it, regardless of whether a person can afford to pay for it. In other countries, health care is not considered a right.
- **Justice.** This standard concerns how the costs and benefits of an action or a policy are distributed among a group. For example, the cost of maintaining a high-speed broadband infrastructure should be borne, in part, by people who use it. However, because everyone benefits from the infrastructure, the standard of justice suggests that general funds can also be used to pay for it. Another example: justice requires that people doing the same job receive the same pay, regardless of whether they are male or female, black or white.
- **Utility.** This standard concerns the positive and negative effects that an action or a policy has, will have, or might have on others. For example, if a company is considering closing a plant, the company's leaders should consider not only the money they would save but also the financial hardship of laid-off workers and the economic effects on the community. One tricky issue in thinking about utility is figuring out the time frame to examine. An action such as laying off employees can have one effect in the short run—improving the company's quarterly balance sheet—and a very different effect in the long run—hurting the company's productivity or the quality of its products.
- **Care.** This standard concerns the relationships we have with other individuals. We owe care and consideration to all people, but we have greater responsibilities to people in our families, our workplaces, and our communities. The closer a person is to us, the greater care we owe that person. Therefore, we have greater obligations to members of our family than we do to others in our community.

Although these standards provide a vocabulary for thinking about how to resolve ethical conflicts, they are imprecise and often conflict with each other. Therefore, they cannot provide a systematic method of resolving ethical conflicts. Take the case of a job opportunity in your company. You are a member of the committee that will recommend which of six applicants to hire. One of the six is a friend of yours who has been unable to secure a professional job since graduating from college two years ago. She therefore does not have as much relevant workplace experience as the other five candidates. However, she is enthusiastic about gaining experience in this particular field—and eager to start paying off her student loans.

UNDERSTANDING ETHICAL AND LEGAL CONSIDERATIONS

How can the four standards help you think through the situation? According to the *rights* standard, lobbying for your friend or against the other applicants would be wrong because all applicants have an ethical right to an evaluation process that considers only their qualifications to do the job. Looking at the situation from the perspective of *justice* yields the same conclusion: it would be wrong to favor your friend. From the perspective of *utility*, lobbying for your friend would probably not be in the best interests of the organization, although it might be in your friend's best interests. Only according to the *care* standard does lobbying for your friend seem reasonable.

As you think about this case, you have to consider a related question: should you tell the other people on the hiring committee that one of the applicants is your friend? Yes, because they have a right to know about your personal relationship so that they can better evaluate your contributions to the discussion. You might also offer to *recuse* yourself (that is, not participate in the discussion of this position), leaving it to the other committee members to decide whether your friendship with a candidate represents a conflict of interest.

One more complication in thinking about this case: Let's say your friend is one of the top two candidates for the job. In your committee, which is made up of seven members, three vote for your friend, but four vote for the other candidate, who already has a very good job. She is a young, highly skilled employee with degrees from prestigious universities. In other words, she is likely to be very successful in the working world, regardless of whether she is offered this particular job. Should the fact that your friend has yet to start her own career affect your thinking about this problem? Some people would say no: the job should be offered to the most qualified applicant. Others would say yes: society does not adequately provide for its less-fortunate members, and because your friend needs the job more and is almost as qualified as the other top applicant, she should get the offer. In other words, some people would focus on the narrow, technical question of determining the best candidate for the job, whereas others would see a much broader social question involving human rights.

Most people do not explore the conflict among rights, justice, utility, and care when they confront a serious ethical dilemma; instead, they simply do what they think is right. Perhaps this is good news. However, the depth of ethical thinking varies dramatically from one person to another, and the consequences of superficial ethical thinking can be profound. For these reasons, ethicists have described a general set of principles that can help people organize their thinking about the role of ethics within an organizational context. These principles form a web of rights and obligations that connect an employee, an organization, and the world in which the organization is situated.

For example, in exchange for their labor, employees enjoy three basic rights: fair wages, safe and healthy working conditions, and due process in the handling of such matters as promotions, salary increases, and firing.

Although there is still serious debate about the details of employee rights, such as whether they have the right to freedom from surreptitious surveillance and unreasonable searches in drug investigations, the debate almost always concerns the extent of employees' rights, not the existence of the basic rights themselves. For instance, ethicists disagree about whether hiring undercover investigators to identify drug users at a job site is an unwarranted intrusion on employees' rights, but there is no debate about employees' right to freedom from unwarranted intrusion.

Your Ethical Obligations

In addition to enjoying rights, an employee assumes obligations, which can form a clear and reasonable framework for discussing the ethics of technical communication. The following discussion outlines three sets of obligations that you have as an employee: to your employer, to the public, and to the environment.

OBLIGATIONS TO YOUR EMPLOYER

You are hired to further your employer's legitimate aims and to refrain from any activities that run counter to those aims. Specifically, you have five obligations:

- **Competence and diligence.** *Competence* refers to your skills; you should have the training and experience to do the job adequately. *Diligence* simply means hard work. Unfortunately, in a recent survey of 10,000 workers, the typical worker wastes nearly two hours of his or her eight-hour day surfing the web, socializing with co-workers, and doing other tasks unrelated to his or her job (Malachowski, 2013).
- **Generosity.** Although *generosity* might sound like an unusual obligation, you are obligated to help your co-workers and stakeholders outside your organization by sharing your knowledge and expertise. What this means is that if you are asked to respond to appropriate questions or provide recommendations on some aspect of your organization's work, you should do so. If a customer or supplier contacts you, make the time to respond helpfully. Generosity shows professionalism and furthers your organization's goals.
- **Honesty and candor.** You should not steal from your employer. Stealing includes such practices as embezzlement, "borrowing" office supplies, and padding expense accounts. *Candor* means truthfulness; you should report to your employer problems that might threaten the quality or safety of the organization's product or service.

Issues of honesty and candor include what Sigma Xi, the Scientific Research Society, calls trimming, cooking, and forging (Sigma Xi, 2000, p. 11). *Trimming* is the smoothing of irregularities to make research data look extremely accurate and precise. *Cooking* is retaining only those results

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that fit the theory and discarding the others. And *forging* is inventing some or all of the data or even reporting experiments that were never performed. In carrying out research, employees must resist any pressure to report only positive findings.

- **Confidentiality.** You should not divulge company business outside of the company. If a competitor finds out that your company is planning to introduce a new product, it might introduce its own version of that product, robbing you of your competitive advantage. Many other kinds of privileged information—such as information on quality-control problems, personnel matters, relocation or expansion plans, and financial restructuring—also could be used against the company. A well-known confidentiality problem involves *insider information*: an employee who knows about a development that will increase (or decrease) the value of the company's stock, for example, buys (or sells) the stock before the information is made public, thus unfairly—and illegally—reaping a profit (or avoiding a loss).
- **Loyalty.** You should act in the employer's interest, not in your own. Therefore, it is unethical to invest heavily in a competitor's stock, because that could jeopardize your objectivity and judgment. For the same reason, it is unethical (and illegal) to accept bribes or kickbacks. It is unethical to devote considerable time to moonlighting (performing an outside job, such as private consulting), because the outside job could lead to a conflict of interest and because the heavy workload could make you less productive in your primary position. However, you do not owe your employer absolute loyalty; if your employer is acting unethically, you have an obligation to try to change that behavior—even, if necessary, by blowing the whistle.

For more about whistle-blowing, see p. 31.

OBLIGATIONS TO THE PUBLIC

Every organization that offers products or provides services is obligated to treat its customers fairly. As a representative of an organization, and especially as an employee communicating technical information, you will frequently confront ethical questions.

In general, an organization is acting ethically if its product or service is both *safe* and *effective*. The product or service must not injure or harm the consumer, and it must fulfill its promised function. However, these commonsense principles provide little guidance in dealing with the complicated ethical problems that arise routinely.

According to the U.S. Consumer Product Safety Commission (2011), more than 4,500 deaths and 14 million injuries occur each year in the United States because of consumer products—not counting automobiles and medications. Even more common, of course, are product and service failures: products or services don't do what they are supposed to do, products are difficult to assemble or operate, they break down, or they require more expensive maintenance than the product information indicates.

Who is responsible for injuries and product failures: the company that provides the product or service or the consumer who purchases it? In individual cases, blame is sometimes easy enough to determine. A person who operates a chainsaw without reading the safety information and without seeking any instruction in how to use it is to blame for any injuries caused by the normal operation of the saw. But a manufacturer that knows that the chain on the saw is liable to break under certain circumstances and fails to remedy this problem or warn the consumer is responsible for any resulting accidents.

Unfortunately, these principles do not outline a rational theory that can help companies understand how to act ethically in fulfilling their obligations to the public. Today, most court rulings are based on the premise that the manufacturer knows more about its products than the consumer does and therefore has a greater responsibility to make sure the products comply with all of the manufacturer's claims and are safe. Therefore, in designing, manufacturing, testing, and communicating about a product, the manufacturer has to make sure the product will be safe and effective when used according to the instructions. However, the manufacturer is not liable when something goes wrong that it could not have foreseen or prevented.

OBLIGATIONS TO THE ENVIRONMENT

One of the most important lessons we have learned in recent decades is that we are polluting and depleting our limited natural resources at an unacceptably high rate. Our excessive use of fossil fuels not only deprives future generations of them but also causes possibly irreversible pollution problems, such as global warming. Everyone—government, businesses, and individuals—must work to preserve the environment to ensure the survival not only of our own species but also of the other species with which we share the planet.

But what does this have to do with you? In your daily work, you probably do not cause pollution or deplete the environment in any extraordinary way. Yet you will often know how your organization's actions affect the environment. For example, if you work for a manufacturing company, you might be aware of the environmental effects of making or using your company's products. Or you might help write an environmental impact statement.

As communicators, we should treat every actual or potential occurrence of environmental damage seriously. We should alert our supervisors to the situation and work with them to try to reduce the damage. The difficulty, of course, is that protecting the environment can be expensive. Clean fuels usually cost more than dirty ones. Disposing of hazardous waste properly costs more (in the short run) than merely dumping it. Organizations that want to reduce costs may be tempted to cut corners on environmental protection.

Your Legal Obligations

Although most people believe that ethical obligations are more comprehensive and more important than legal obligations, the two sets of obligations are closely related. Our ethical values have shaped many of our laws. For this reason, professionals should know the basics of four different bodies of law: copyright, trademark, contract, and liability.

COPYRIGHT LAW

As a student, you are frequently reminded to avoid plagiarism. A student caught plagiarizing would likely fail the assignment and possibly the course and might even be expelled from school. A medical researcher or a reporter caught plagiarizing would likely be fired or at least find it difficult to publish in the future. But plagiarism is an ethical, not a legal, issue. Although a plagiarist might be expelled from school or be fired, he or she will not be fined or sent to prison.

By contrast, copyright is a legal issue. Copyright law is the body of law that relates to the appropriate use of a person's intellectual property: written documents, pictures, musical compositions, and the like. Copyright literally refers to a person's *right to copy* the work that he or she has created.

The most important concept in copyright law is that only the copyright holder—the person or organization that owns the work—can copy it. For instance, if you work for Zipcar, you can legally copy information from the Zipcar website and use it in other Zipcar documents. This reuse of information is routine in business, industry, and government because it helps ensure that the information a company distributes is both consistent and accurate.

However, if you work for Zipcar, you cannot simply copy information that you find on the Car2Go website and put it in Zipcar publications. Unless you obtained written permission from Car2Go to use its intellectual property, you would be infringing on Car2Go's copyright.

Why doesn't the Zipcar employee who writes the information for Zipcar own the copyright to that information? The answer lies in a legal concept known as *work made for hire*. Anything written or revised by an employee on the job is the company's property, not the employee's.

Although copyright gives the owner of the intellectual property some rights, it doesn't give the owner all rights. You can place small portions of copyrighted text in your own document without getting formal permission from the copyright holder. When you quote a few lines from an article, for example, you are taking advantage of a part of copyright law called *fair use*. Under fair-use guidelines, you have the right to use a portion of a published work, without getting permission, for purposes such as criticism, commentary, news reporting, teaching, scholarship, or research. Because fair use is based on a set of general guidelines that are meant to be interpreted on a case-by-case basis, you should still cite the source accurately to avoid potential plagiarism.

GUIDELINES Determining Fair Use

Courts consider four factors in disputes over fair use:

- ▶ **The purpose and character of the use, especially whether the use is for profit.** Profit-making organizations are scrutinized more carefully than nonprofits.
- ▶ **The nature and purpose of the copyrighted work.** When the information is essential to the public—for example, medical information—the fair-use principle is applied more liberally.
- ▶ **The amount and substantiality of the portion of the work used.** A 200-word passage would be a small portion of a book but a large portion of a 500-word brochure.
- ▶ **The effect of the use on the potential market for the copyrighted work.** Any use of the work that is likely to hurt the author's potential to profit from the original work would probably not be considered fair use.

A new trend is for copyright owners to stipulate which rights they wish to retain and which they wish to give up. You might see references to Creative Commons, a not-for-profit organization that provides symbols for copyright owners to use to communicate their preferences. Figure 2.1 shows four of the Creative Commons symbols.

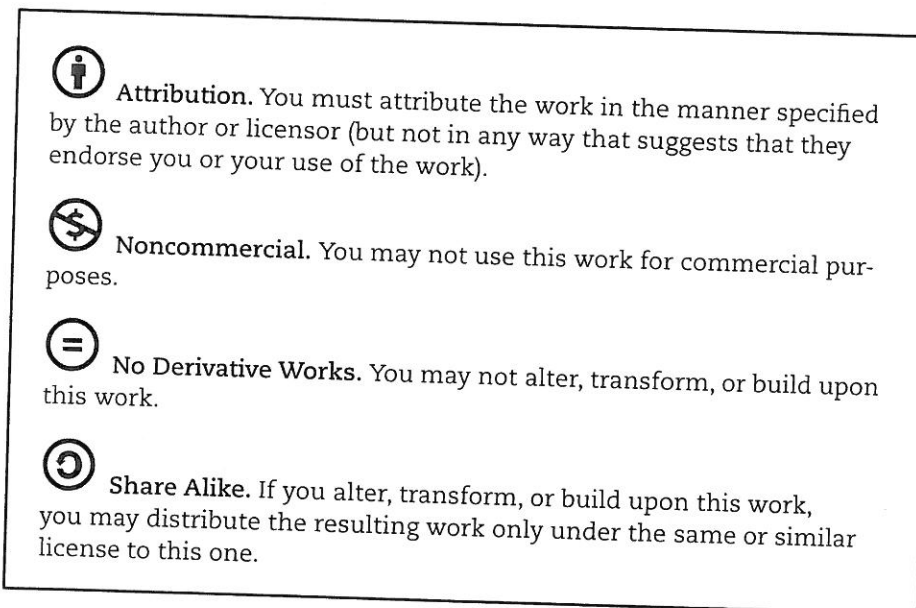


FIGURE 2.1 Selected Licensing Symbols from Creative Commons

The organization has created a number of symbols to represent rights that copyright owners can retain or surrender.

Licensed under Creative Commons Attribution 3.0 License, <http://creativecommons.org/licenses/by/3.0/>.

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GUIDELINES Dealing with Copyright Questions

Consider the following advice when using material from another source.

- ▶ **Abide by the fair-use concept.** Do not rely on excessive amounts of another source's work (unless the information is your company's own boilerplate).
- ▶ **Seek permission.** Write to the source, stating what portion of the work you wish to use and the publication you wish to use it in. The source is likely to charge you for permission.
- ▶ **Cite your sources accurately.** Citing sources fulfills your ethical obligation and strengthens your writing by showing the reader the range of your research.
- ▶ **Consult legal counsel if you have questions.** Copyright law is complex. Don't rely on instinct or common sense.

For more about documenting your sources, see Appendix, Part B.

ETHICS NOTE**DISTINGUISHING PLAGIARISM FROM ACCEPTABLE REUSE OF INFORMATION**

Plagiarism is the act of using someone else's words or ideas without giving credit to the original author. It doesn't matter whether the writer intended to plagiarize. Obviously, it is plagiarism to borrow or steal graphics, video or audio media, written passages, or entire documents and then use them without attribution. Web-based sources are particularly vulnerable to plagiarism, partly because people mistakenly think that if information is on the web it is free to borrow and partly because this material is so easy to copy, paste, and reformat.

However, writers within a company often reuse one another's information without giving credit—and it is completely ethical. For instance, companies publish press releases when they wish to publicize news. These press releases typically conclude with descriptions of the company and how to get in touch with an employee who can answer questions about the company's products or services. These descriptions, sometimes called *boilerplate*, are simply copied and pasted from previous press releases. Because these descriptions are legally the intellectual property of the company, reusing them in this way is completely honest. Similarly, companies often *repurpose* their writing. That is, they copy a description of the company from a press release and paste it into a proposal or an annual report. This reuse also is acceptable.

When you are writing a document and need a passage that you suspect someone in your organization might already have written, ask a more-experienced co-worker whether the culture of your organization permits reusing someone else's writing. If the answer is yes, check with your supervisor to see whether he or she approves of what you plan to do.

TRADEMARK LAW

Companies use *trademarks* and *registered trademarks* to ensure that the public recognizes the name or logo of a product.

- A *trademark* is a word, phrase, name, or symbol that is identified with a company. The company uses the TM symbol after the product name to claim the design or device as a trademark. However, using this symbol

does not grant the company any legal rights. It simply sends a message to other organizations that the company is claiming a trademark.

- A *registered trademark* is a word, phrase, name, or symbol that the company has registered with the U.S. Patent and Trademark Office. The company can then use the ® symbol after the trademarked item. Registering a trademark, a process that can take years, ensures much more legal protection than a simple trademark throughout the United States, as well as in other nations. Although a company is not required to use the symbol, doing so makes it easier to take legal action against another organization that it believes has infringed on its trademark.

All employees are responsible for using trademark and registered trademark symbols accurately when referring to a company's products.

GUIDELINES Protecting Trademarks

Use the following techniques to protect your client's or employer's trademark.

- ▶ **Distinguish trademarks from other material.** Use boldface, italics, a different typeface, a different type size, or a different color to distinguish the trademarked item.
- ▶ **Use the trademark symbol.** At least once in each document—preferably the first time the name or logo appears—use the appropriate symbol after the name or logo, followed by an asterisk. At the bottom of the page, include a statement such as the following: “*COKE is a registered trademark of the Coca-Cola Company.”
- ▶ **Use the trademarked item's name as an adjective, not as a noun or verb.** Trademarks can become confused with the generic term they refer to. Use the trademarked name along with the generic term, as in Xerox® photocopier or LaserJet® printer.

DOES NOT PROTECT TRADEMARK	buy three LaserJets®
PROTECTS TRADEMARK	buy three LaserJet® printers

- ▶ **Do not use the possessive form of the trademarked name.** Doing so reduces the uniqueness of the item and encourages the public to think of the term as generic.

DOES NOT PROTECT TRADEMARK	iPad's® fine quality
PROTECTS TRADEMARK	the fine quality of iPad® tablets

CONTRACT LAW

Contract law deals with agreements between two parties. In most cases, disputes concern whether a product lives up to the manufacturer's claims. These claims take the form of express warranties or implied warranties.

An *express warranty* is a written or oral statement that the product has a particular feature or can perform a particular function. For example, a state-



FIGURE 2.2 A Warning Label

This warning label uses symbols—such as the orange box, the red circle with the slash, and the image of the heart and pacemaker—and words to visually and verbally warn people with pacemakers to stay away from a device that can hurt them. The warning helps the company do the right thing—and avoid product-liability lawsuits.

Source: Safety Label Solutions, 2013; http://www.safetylabelsolutions.com/C7003-38_c_179.html. Courtesy of Safety Label Solutions, Inc.

ment in a printer manual that the printer produces 17 pages per minute is an express warranty. An *implied warranty* is one of two kinds of non-written guarantees:

- The *merchantability warranty* guarantees that the product is of at least average quality and appropriate for the ordinary purposes it was intended to serve.
- The *fitness warranty* guarantees that the product is suitable for the buyer's purpose if the seller knows that purpose. For example, if a car salesperson knows that a buyer wishes to pull a 5,000-pound trailer but also knows that a car cannot pull such a load, the salesperson is required to inform the buyer of this fact.

LIABILITY LAW

Under product-liability law, a manufacturer or seller of a product is liable for injuries or damages caused by the use of that product. Liability is an important

concern for communicators, because courts frequently rule that manufacturers are responsible for providing adequate operating instructions and for warning consumers about the risks of using their products. Figure 2.2 shows a warning label used to inform people of how to avoid a safety risk.

Manufacturers of products used in the United States have a legal duty to warn users by providing safety labels on products (and the same information in their accompanying instructions) and by explaining in the instructions how to use the products safely. According to intellectual-property attorney Kenneth Ross (2011), the manufacturer has this duty to warn when all four of these characteristics apply:

1. The product is dangerous.
2. The danger is or should be known by the manufacturer.
3. The danger is present when the product is used in the usual and expected manner.
4. The danger is not obvious to or well known by the user.

The complication for technical communicators is that one set of guidelines regarding duty to warn is used in the United States (the American National Standards Institute's ANSI Z535, last revised in 2011) and another set is used in the European Union (the International Organization for Standardization's ISO 3864, which is updated periodically). Both sets of guidelines are relatively vague, and they contradict each other in important ways. Therefore, before publishing labels or instructions for products that can be dangerous, consult with an attorney who specializes in liability issues.

GUIDELINES Abiding by Liability Laws

Pamela S. Helyar summarizes the communicator's obligations and offers ten guidelines for abiding by liability laws (1992):

- ▶ **Understand the product and its likely users.** Learn everything you can about the product and its users.
- ▶ **Describe the product's functions and limitations.** Help people determine whether it is the right product to buy. In one case, a manufacturer was found liable for not stating that its electric smoke alarm does not work during a power outage.
- ▶ **Instruct users on all aspects of ownership.** Include assembly, installation, use and storage, testing, maintenance, first aid and emergencies, and disposal.
- ▶ **Use appropriate words and graphics.** Use common terms, simple sentences, and brief paragraphs. Structure the document logically, and include specific directions. Make graphics clear and easy to understand; where necessary, show people performing tasks. Make the words and graphics appropriate to the educational level, mechanical ability, manual dexterity, and intelligence of intended users. For products that will be used by children or nonnative speakers of your language, include graphics illustrating important information.
- ▶ **Warn users about the risks of using or misusing the product.** Warn users about the dangers of using the product, such as chemical poisoning. Describe the cause, extent, and seriousness of the danger. A car manufacturer was found liable for not having warned consumers that parking a car on grass, leaves, or other combustible material could cause a fire. For particularly dangerous products, explain the danger and how to avoid it, and then describe how to use the product safely. Use *mandatory language*, such as *must* and *shall*, rather than *might*, *could*, or *should*. Use the words *warning* and *caution* appropriately.
- ▶ **Include warnings along with assertions of safety.** When product information says that a product is safe, readers tend to pay less attention to warnings. Therefore, include detailed warnings to balance the safety claims.
- ▶ **Make directions and warnings conspicuous.** Safety information must be in large type and easily visible, appear in an appropriate location, and be durable enough to withstand ordinary use of the product.
- ▶ **Make sure that the instructions comply with applicable company standards and local, state, and federal laws.**
- ▶ **Perform usability testing on the product (to make sure it is safe and easy to use) and on the instructions (to make sure they are accurate and easy to understand).**
- ▶ **Make sure users receive the information.** If you discover a problem after the product has been shipped to retailers, tell users by direct mail or email, if possible, or newspaper and online advertising if not. Automobile-recall notices are one example of how manufacturers contact their users.

For a discussion of danger, warning, and caution, see Ch. 20, p. 559.

For a discussion of usability testing, see Ch. 13, p. 348.

2017 Fall Calendar

Enter Year
2017

JANUARY						
S	M	T	W	T	F	S
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AUGUST						
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29	30	31				

NOVEMBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

DECEMBER						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Important Dates
 Classes begin: 09/06/17
 Classes end: 12/21/17
 First Quarter: 9/6/17-10/24/17
 Second Quarter: 10/25/17-12/21/17

Pay Dates:
 09/22/17
 10/06/17
 10/20/17
 11/03/17
 11/17/17
 12/01/17
 12/15/17
 12/29/17

Semester Begin/End Dates	
Pay Period Begin/End Dates	
Last Day to Acknowledge Contract for next pay date	
Pay Date	

The Role of Corporate Culture in Ethical and Legal Conduct

Most employees work within organizations, such as corporations and government agencies. We know that organizations exert a powerful influence on their employees' actions. According to a study by the Ethics Resource Center of more than 4,600 employees in various businesses (2012), organizations with strong ethical cultures—organizations in which ethical values are promoted at all levels and employees see that everyone lives up to the organization's stated values—experience fewer ethical problems than organizations with weak ethical cultures. In organizations with strong ethical cultures, far fewer employees feel pressure to commit misconduct, far fewer employees observe misconduct, far more employees report the misconduct that they see, and there is far less retaliation against employees who report misconduct.

Companies can take specific steps to improve their ethical culture:

- The organization's leaders can set the right tone by living up to their commitment to ethical conduct.
- Supervisors can set good examples and encourage ethical conduct.
- Peers can support those employees who act ethically.
- The organization can use informal communication to reinforce the formal policies, such as those presented in a company code of conduct.

In other words, it is not enough for an organization to issue a statement that ethical and legal behavior is important. The organization has to create a culture that values and rewards ethical and legal behavior. That culture starts at the top and extends to all employees, and it permeates the day-to-day operations of the organization.

One company that has earned praise for its commitment to ethical and legal conduct is Texas Instruments (TI). Its culture is communicated on its website, which contains a comprehensive set of materials that describes how TI employees and suppliers are required to act and why (Texas Instruments, 2010). On the TI site are a number of resources, including a statement from the President and Chief Executive Officer, Rich Templeton, on the company's core values of respect for people and the environment and trust in business relationships; the company's formal code of conduct for all employees; its code of ethics for company officers; information about the company's Ethics Office; links to all of its ethics publications; its statement of ethics for its suppliers; and detailed information on how to contact the IT Ethics Office confidentially.

Does the Texas Instruments culture improve conduct? Although that question is difficult to answer, the TI site lists some of the major awards the company has won for its ethics program, presents data from its own employee surveys showing that employees think the company's ethical culture is good,

and describes the company's outreach to communities and other organizations that have established their own ethics programs.

An important element of a culture of ethical and legal conduct is a formal code of conduct. Most large corporations in the United States have one, as do almost all professional societies. (U.S. companies that are traded publicly are required to state whether they have a code of conduct—and if not, why not.) Codes of conduct vary greatly from organization to organization, but most of them address such issues as the following:

- adhering to local laws and regulations, including those intended to protect the environment
- avoiding discrimination
- maintaining a safe and healthy workplace
- respecting privacy
- avoiding conflicts of interest
- protecting the company's intellectual property
- avoiding bribery and kickbacks in working with suppliers and customers

A code of conduct focuses on behavior, including such topics as adhering to the law. Many codes of conduct are only a few paragraphs long; others are lengthy and detailed, some consisting of several volumes.

An effective code has three major characteristics:

- **It protects the public rather than members of the organization or profession.** For instance, the code should condemn unsafe building practices but not advertising, which increases competition and thus lowers prices.
- **It is specific and comprehensive.** A code is ineffective if it merely states that people must not steal or if it does not address typical ethical offenses such as bribery in companies that do business in other countries.
- **It is enforceable.** A code is ineffective if it does not stipulate penalties, including dismissal from the company or expulsion from the profession.

Although many codes are too vague to be useful in determining whether a person has violated one of their principles, writing and implementing a code can be valuable because it forces an organization to clarify its own values and fosters an increased awareness of ethical issues. Texas Instruments, like many organizations, encourages employees to report ethical problems to a committee or a person (sometimes called an *ethics officer* or an *ombudsperson*) who investigates and reaches an impartial decision.

If you think there is a serious ethical problem in your organization, find out what resources your organization offers to deal with it. If there are no resources, work with your supervisor to solve the problem.

What do you do if the ethical problem persists even after you have exhausted all the resources at your organization and, if appropriate, the professional organization in your field? The next step will likely involve *whistleblowing*—the practice of going public with information about serious unethi-

UNDERSTANDING ETHICAL AND LEGAL CONSIDERATIONS

cal conduct within an organization. For example, an engineer is blowing the whistle when she tells a regulatory agency or a newspaper that quality-control tests on a company product were faked.

Ethicists such as Velasquez (2011) argue that whistle-blowing is justified if you have tried to resolve the problem through internal channels, if you have strong evidence that the problem is hurting or will hurt other parties, and if the whistle-blowing is reasonably certain to prevent or stop the wrongdoing. But Velasquez also points out that whistle-blowing is likely to hurt the employee, his or her family, and other parties. Whistle-blowers can be penalized through negative performance appraisals, transfers to undesirable locations, or isolation within the company. The Ethics Resource Center reports in its 2012 survey that 22 percent of whistle-blowers experienced retaliation (2012, p. 12).

Understanding Ethical and Legal Issues Related to Social Media

There is probably some truth to social-media consultant Peter Shankman's comment "For the majority of us, social media is nothing more than a faster way to screw up in front of a larger number of people in a shorter amount of time" (Trillos-Decarie, 2012). As social media have become more important in the workplace, we are starting to get a better idea of both their rewards and their risks. Certainly, social media have created many new and exciting ways for people in the workplace to connect with each other and with other stakeholders outside the organization. However, the widespread use of social media by employees in the workplace and in their private lives also presents challenges.

User-generated content, whether it is posted to Facebook, Twitter, LinkedIn, YouTube, Google Groups, Yelp, Pinterest, or any of the many other online services, presents significant new ethical and legal issues. Just as employers are trying to produce social-media policies that promote the interests of the organization without infringing on employees' rights of free expression, all of us need to understand the basics of ethical and legal principles related to these new media.

A 2012 report by the law firm Proskauer Rose LLP, "Social Media in the Workplace Around the World 2.0," surveyed some 250 companies from the United States and many other countries. Here are some of the survey findings (Proskauer Rose LLP, 2012, p. 2):

- More than two-thirds of employers have social-media policies.
- More than one-third of employers monitor their employees' use of social-media sites.

- One-quarter of employers block employee access to social media.
- Half of the employers reported problems caused by misuse of social media by employees. One-third of businesses have had to take disciplinary action against an employee for misuse of social media.

Over the next few years, organizations will revise their policies about how employees may use social media in the workplace, just as courts will clarify some of the more complicated issues related to social media and the law. For these reasons, what we now see as permissible and ethical is likely to change. Still, it is possible to identify a list of best practices that can help you use social media wisely—and legally—in your career.

GUIDELINES Using Social Media Ethically and Legally

These nine guidelines can help you use social media to your advantage in your career.

- ▶ **Keep your private social-media accounts separate from your company-sponsored accounts.** After you leave a company, you don't want to get into a dispute over who "owns" an account. Companies can argue, for example, that your collection of Twitter followers is in fact a customer list and therefore the company's intellectual property. Regardless of whether you post from the workplace or at home, post only about business on your company-sponsored accounts.
- ▶ **Read the terms of service of every service to which you post.** Although you retain the copyright on original content that you post, most social-media services state that they can re-post your content wherever and whenever they want, without informing you, getting your permission, or paying you. Many employers would consider this policy unacceptable.
- ▶ **Avoid revealing unauthorized news about your own company.** A company that wishes to apply for a patent for one of its products or processes has, according to the law, only one year to do so after the product or process is first mentioned or illustrated in a "printed publication." Because courts have found that a photo on Facebook or a blog or even a tweet is equivalent to a printed publication (Bettinger, 2010), you could inadvertently start the clock ticking. Even worse, some other company could use the information to apply for a patent for the product or process that *your* company is developing. Or suppose that on your personal blog, you reveal that your company's profits will dip in the next quarter. This information could prompt investors to sell shares of your company's stock, thereby hurting everyone who owns shares—including you and most of your co-workers.
- ▶ **Avoid self-plagiarism.** Self-plagiarizing is the act of publishing something you have already published. If you write an article for your company newsletter and later publish it on a blog, you are violating your company's copyright, because your newsletter article was a work made for hire and therefore the company's intellectual property.

(continued)

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- ▶ **Avoid defaming anyone.** Defamation is the legal term for making false statements of fact about a person that could harm that person. Defamation includes libel (making such statements in writing, as in a blog post) and slander (making them in speech, as in a video posted online). In addition, you should not re-post libelous or slanderous content that someone else has created.
- ▶ **Don't live stream or quote from a speech or meeting without permission.** Although you may describe a speech or meeting online, you may not stream video or post quotations without permission.
- ▶ **Avoid false endorsements.** The Federal Trade Commission has clear rules defining false advertising. The most common type of false advertising involves posting a positive review of a product or company in exchange for some compensation. For instance, some unscrupulous software companies give reviewers a copy of the software to be reviewed (which is perfectly legal) loaded on an expensive computer that the reviewers can keep. Unless the reviewer explicitly notes in the review the compensation from the software company, posting the positive review is considered false advertising. Similarly, you should not endorse your own company's products without stating your relationship with the company (U.S. Federal Trade Commission, 2009).
- ▶ **Avoid impersonating someone else online.** If that person is real (whether alive or dead), you could be violating his or her right of publicity (the right to control his or her name, image, or likeness). If that person is a fictional character, such as a character on a TV show or in a movie, you could be infringing on the copyright of whoever created that character.
- ▶ **Avoid infringing on trademarks by using protected logos or names.** Don't include copyrighted or trademarked names, slogans, or logos in your posts unless you have received permission to do so. Even if the trademark owner likes your content, you probably will be asked to stop posting it. If the trademark owner dislikes your content, you are likely to face a more aggressive legal response.

Finally, a related suggestion: avoid criticizing your employer online. Although defamation laws forbid making untrue factual statements about your employer, you are in fact permitted to criticize your employer, online or offline. The National Labor Relations Board has ruled that doing so is legal because it is protected discussion about "working conditions." My advice: if you're angry, move away from the keyboard. Once you post something, you've lost control of it.

However, if you think your employer is acting illegally or unethically, start by investigating the company's own resources for addressing such problems. Then, if you are still dissatisfied, consider whistle-blowing, which is discussed on p. 31.

DOCUMENT ANALYSIS ACTIVITY**Presenting Guidelines for Using Social Media****1 Overview**

In today's world, just about everything we do online can be traced back to us and can have an impact (for better or worse) on a company. Paragon wants to remind you that the company policies on anti-harassment, ethics, and company loyalty extend to all media. There is a certain etiquette you should abide by when you participate online. This document is not intended to be restrictive, but to provide some guidelines on proper social-networking etiquette.

2 What Are Social Media?

Social media are the tools and content that enable people to connect online, share their interests, and engage in conversations.

Guidelines

These policies apply to individuals who want to participate in social-media conversations on behalf of Paragon. Please be mindful that your behavior at all times reflects on Paragon as a whole. Do not write or post anything that might reflect negatively on Paragon.

- 3** • Always use your best judgment and be honest.
- Be respectful of confidential information (such as clients, financials).
- Always be professional, especially when accepting criticism.
- Participate, don't promote. Bring value. Give to get.
- Write only about what you know.
- When in doubt, ask for help/clarification.
- Seek approval before commenting on any articles that portray Paragon negatively.

This excerpt is from a corporate social-media policy statement. The questions below ask you to think about how to make the policy statement clearer and more useful (as discussed on page 33).

- 1.** The "Overview" section discusses the company's social-media policy guidelines in terms of etiquette. In what way is "etiquette" an appropriate word to describe the policy? In what way is it inappropriate?
- 2.** The "What Are Social Media?" section provides little useful information. What other information might it include to make the document more useful to Paragon employees?
- 3.** The bulleted guidelines are vague. Revise any two of them to include more specific information.

Communicating Ethically Across Cultures

Every year, the United States exports more than \$2.1 trillion worth of goods and services to the rest of the world (U.S. Census Bureau, 2012, p. 832). U.S. companies do not necessarily have the same ethical and legal obligations when they export as when they sell in the United States. For this reason, communicators should understand the basics of two aspects of writing for people in other countries: communicating with cultures with different ethical beliefs and communicating in countries with different laws.

COMMUNICATING WITH CULTURES WITH DIFFERENT ETHICAL BELIEFS

Companies face special challenges when they market their products and services to people in other countries (and to people in their home countries who come from other cultures). Companies need to decide how to deal with situations in which the target culture's ethical beliefs clash with those of their own culture. For instance, in many countries, sexual discrimination makes it difficult for women to assume responsible positions in the workplace. If a U.S. company that sells cell phones, for example, wishes to present product information in such a country, should it reinforce this discrimination by excluding women from photographs of its products? Ethicist Thomas Donaldson argues that doing so is wrong (1991). According to the principle he calls the *moral minimum*, companies are ethically obligated not to reinforce patterns of discrimination in product information.

However, Donaldson argues, companies are not obligated to challenge the prevailing prejudice directly. A company is not obligated, for example, to include photographs that show women performing roles they do not normally perform within a particular culture, nor is it obligated to portray women wearing clothing, makeup, or jewelry that is likely to offend local standards. But there is nothing to prevent an organization from adopting a more activist stance. Organizations that actively oppose discrimination are acting admirably.

COMMUNICATING IN COUNTRIES WITH DIFFERENT LAWS

When U.S. companies export goods and services to other countries, they need to adhere to those countries' federal and regional laws. For instance, a company that wishes to export to Montreal must abide by the laws of Quebec Province and of Canada. A company that wishes to export to Germany must abide by the laws of Germany and of the European Union, of which it is a part. In many cases, the target region will not allow the importation of goods and services that do not conform to local laws. The hazardous-product laws of the European Union, in particular, are typically more stringent than those of the United States.

Because exporting goods to countries with different laws is such a complex topic, companies that export devote considerable resources to finding

out what they need to do, not only in designing and manufacturing products but also in writing the product information. For a good introduction to this topic, see Lipus (2006).

Principles for Ethical Communication

Although it is impossible to state principles for ethical communication that will guide you through all the challenges you will face communicating in the workplace, the following ten principles provide a starting point.

ABIDE BY RELEVANT LAWS

You must adhere to the laws governing intellectual property. Here are some examples:

- **Do not violate copyright.** When you want to publish someone else's copyrighted material, such as graphics you find on the Web, get written permission from the copyright owner.
- **Honor the laws regarding trademarks.** For instance, use the trademark symbol (™) and the registered trademark symbol (®) properly.
- **Live up to the express and implied warranties on your company's products.**
- **Abide by all laws governing product liability.** Helyar's (1992) guidelines, presented on page 29, are a good introduction for products to be sold in the United States. Lipus's (2006) guidelines are useful for products to be sold outside the United States.

ABIDE BY THE APPROPRIATE PROFESSIONAL CODE OF CONDUCT

Your field's professional organization, such as the American Society of Civil Engineers, is likely to have a code that goes beyond legal issues to express ethical principles, such as telling the truth, reporting information accurately, respecting the privacy of others, and avoiding conflicts of interest.

ABIDE BY YOUR ORGANIZATION'S POLICY ON SOCIAL MEDIA

If your employer has a written policy about how employees may use social media, study it. If there is no written policy, check with Human Resources or your supervisor for advice. If you think that you will be unable to abide by the employer's policy—whether written or not—you should not work there or you should abide by it while you try to change it.

TAKE ADVANTAGE OF YOUR EMPLOYER'S ETHICS RESOURCES

Your employer is likely to have a code of conduct, as well as other resources, such as an Ethics Office, which can help you find information to guide you in resolving ethical challenges you encounter. Your employer will likely have a mechanism for registering complaints about unethical conduct anonymously.

For a more detailed discussion of misleading writing, see Ch. 10. For a discussion of avoiding misleading graphics, see Ch. 12.

For techniques for writing clearly, including avoiding discriminatory language, see Ch. 10.

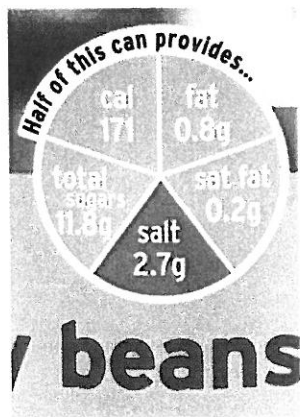


FIGURE 2.3 Using Design to Emphasize Important Information

This nutritional labeling system is called “traffic-light labeling” because it uses red and green to indicate how healthful a food is.

Shaun Finch—
Coyote-Photography.co.uk/Alamy.

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TELL THE TRUTH

Sometimes, employees are asked to lie about their companies’ products or about those of their competitors. Obviously, lying is unethical. Your responsibility is to resist this pressure, going over your supervisor’s head if necessary.

DON’T MISLEAD YOUR READERS

A misleading statement—one that invites or even encourages the reader to reach a false conclusion—is ethically no better than lying. Avoid these four common kinds of misleading technical communication:

- **False implications.** If, as an employee of SuperBright, you write “Use only SuperBright batteries in your new flashlight,” you imply that only that brand will work. If that is untrue, the statement is misleading. Communicators sometimes use clichés such as *user-friendly*, *ergonomic*, and *state-of-the-art* to make a product sound better than it is; use specific, accurate information to back up your claims about a product.
- **Exaggerations.** If you say “Our new Operating System 2500 makes system crashes a thing of the past” when the product only makes them less likely, you are exaggerating. Provide specific technical information on the reduction of crashes. Similarly, do not write “We carried out extensive market research” if all you did was make a few phone calls.
- **Legalistic constructions.** It is unethical to write “The 3000X was designed to operate in extreme temperatures, from –40 degrees to 120 degrees Fahrenheit” if the product does not operate reliably in those temperatures. Although the statement might technically be accurate—the product was *designed* to operate in those temperatures—it is misleading.
- **Euphemisms.** If you refer to someone’s being fired, say *released*, not *granted permanent leave* or *offered an alternative career opportunity*.

USE DESIGN TO HIGHLIGHT IMPORTANT ETHICAL AND LEGAL INFORMATION

Courts have found that burying information in footnotes or printing it in very small type violates a company’s obligation to inform consumers and warn them about hazards in using a product. When you want to communicate safety information or other facts that readers need to know, use design features to make that information easy to see and understand. Figure 2.3 shows how design principles can be used to communicate nutritional information on food labels.

BE CLEAR

Clear writing helps your readers understand your message easily. Your responsibility is to write as clearly as you can to help your audience understand what you are saying. For instance, if you are writing a product warranty, make it as simple and straightforward as possible. Don’t hide behind big words and complicated sentences. Use tables of contents, indexes, and other accessing devices to help your readers find what they need.

AVOID DISCRIMINATORY LANGUAGE

Don't use language that discriminates against people because of their sex, religion, ethnicity, race, sexual orientation, or physical or mental abilities. Employees have been disciplined or fired for sending inappropriate jokes through the company email system.

ACKNOWLEDGE ASSISTANCE FROM OTHERS

Don't suggest that you did all the work yourself if you didn't. Cite your sources and your collaborators accurately and graciously. For more about citing sources, see Appendix, Part B, page 614.

WRITER'S CHECKLIST

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Did you abide by relevant laws? (p. 37) <input type="checkbox"/> Did you abide by the appropriate corporate or professional code of conduct? (p. 37) <input type="checkbox"/> Did you abide by your organization's policy on social media? (p. 37) <input type="checkbox"/> Did you take advantage of your company's ethics resources? (p. 37) <input type="checkbox"/> Did you tell the truth? (p. 38) | <p>Did you avoid using</p> <ul style="list-style-type: none"> <input type="checkbox"/> false implications? (p. 38) <input type="checkbox"/> exaggerations? (p. 38) <input type="checkbox"/> legalistic constructions? (p. 38) <input type="checkbox"/> euphemisms? (p. 38) <ul style="list-style-type: none"> <input type="checkbox"/> Did you use design to highlight important ethical and legal information? (p. 38) <input type="checkbox"/> Did you write clearly? (p. 38) <input type="checkbox"/> Did you avoid discriminatory language? (p. 39) <input type="checkbox"/> Did you acknowledge any assistance you received from others? (p. 39) |
|--|---|

EXERCISES

For more about memos, see Ch. 14, p. 372.

1. It is late April, and you need a summer job. On your town's news website, you see an ad for a potential job. The only problem is that the ad specifically mentions that the job is "a continuing, full-time position." You know that you will be returning to college in the fall. Is it ethical for you to apply for the job without mentioning this fact? Why or why not? If you believe it is unethical to withhold that information, is there any ethical way you can apply? Be prepared to share your ideas with the class.
2. You serve on the Advisory Committee of your college's bookstore, which is a private business that leases space on campus and donates 10 percent of its profits to student scholarships. The head of the bookstore wishes to stock Simple Study Guides, a popular series of plot summaries and character analyses of classic literary works. In similar bookstores, the sale of Simple Study Guides yields annual profits of over \$10,000. Six academic departments have signed a statement condemning the idea. Should you support the bookstore head or the academic departments? Be prepared to discuss your answer with the class.
3. Using the search term "social media policy examples," find a corporate policy statement on employee use of social media. In a 500-word memo to your instructor, explain whether the policy statement is clear, specific, and comprehensive. Does the statement include a persuasive explanation of why the policy is necessary? Is the tone of the statement positive or negative? How would you feel if you were required to abide by this policy? If appropriate, include a copy of the policy statement (or a portion of it) so that you can refer to it in your memo.