Copyright Concerns: Why Should Ministries Care?

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The information being presented relies on legal principles based on federal laws in the United States.

The information being presented is not intended to be specific legal advice - even if you ask questions.

Always consult local legal counsel to ensure you are in compliance with the law.
The Background

• Techy Theresa convinces her local church to bolster their online presence to help it reach a broader audience.

• Local church hires a website designer to design a fresh, engaging site that will be user friendly.

• The pastor of local church oversees this project and is also involved in some of the content that is posted online. He also takes a number of photos and videos of the church to be included on the website.

• The new website design is eye catching and local church has received a lot of positive responses. The website includes links to past sermons and services, information about upcoming events and ministry opportunities, blogposts from church staff and members, and photos and videos that members have uploaded unto the site.
Question 1:

• The church’s website is so popular that the local conference notices and wants to use the new design for its website and all of the conference area churches.

• Can the local church share its website design with the Conference and other churches?
Is a Website Design Protected by Copyright?
What is a Copyright?

• A set of rights granted to creators of “original works of authorship” that are fixed in “a tangible form of expression”

• Works that Can be Copyrighted:
  • Literary works (books) – all texts including computer software;
  • Musical works
  • Dramatic works (skits, screenplays, etc.)
  • Pantomimes and choreographic works
  • Pictorial, graphic and sculptural works
  • Motion pictures and other audiovisual works
  • Sound recordings
  • Architectural works
Ownership Rights

• Copy
• Distribute
• Publicly Perform
• Display
• Derivative works (including modifications, adaptations or other new uses of work, or translating the work)
Copyright Ownership- (Who Owns the Website Design?)

• Copyright is obtained automatically without the need for registration or other formalities.
  • Registration does provide some benefits

• Who owns these rights?
  • Authors of the works
    • Or under a work for hire agreement, the employer or one who commissioned the work
Work for hire

- Does this qualify as a work for hire?
- Can occur in two ways
  - Works created for an employer by an employee during the course of employment
  - Works commissioned by an independent contractor
    - If there is a Work for Hire Agreement in place
- What was included in the terms of the independent contractor agreement?
• The written agreement should include a provision assigning the copyrights to the organization. Such as:
  • “To the extent that the Work Product is not recognized as a ‘work made for hire’ as a matter of law, the Contractor hereby assigns to the Company any and all copyrights in and to the Work Product.”
  • By including such a copyright assignment clause, a business will be able to obtain the copyrights it expects, even if the work does not qualify as a “work made for hire.”
Question 2:

- The pastor is writing a book on the history of the local town.
- He wants to include some of the photos that he took for the local church in his book that he is writing. Can he?
• If he gets permission from the copyright owner.
• Under the Work for Hire doctrine, work prepared by an employee within the scope of his or her employment belongs to the employer— in this case, the owner is the Conference.
Question 3

• Some months later local church receives a Cease and Desist Email from a stock photo company, stating that some of the images used on local church’s website were used without permission.

• What should they do?
What is Copyright Infringement?

• Use of whole or part (the heart) of copyrighted material without permission
• Adaptation of copyrighted material
  • i.e. changing an image or lyrics without permission;
  • Recreating an image
• Use beyond the scope of a license
• Examples:
  • Use of copyrighted songs in a webcast without permission
  • Taping or transmitting a live performance without permission
  • Using an image or video on your website without permission
Penalties of Infringement

• U.S. Copyright law provides remedies for the owner of an infringed work.
• Penalties include:
  • a) actual damages and any profits of the infringer or
  • b) statutory damages.
  • Statutory damages range from not less than $750 to no more than $30,000 for each work. Willful infringement – up to $150,000
• Prison terms can be given for willful violations.

U.S. Copyright Law, Title 17 of U.S. Code §504
Infringement: Who Can Be Held Responsible

- The entity that directly infringed
- Employees who participated in the infringement or should have supervised
- Anyone who publishes an infringing image or work whether they had knowledge or not
• The local church takes down the potentially infringing material, but still wants images on its website.

• What are some alternatives for the church?
How to Avoid Copyright Infringement

• Determine whether the work you want to use is copyright protected
• Get Permission!
  • Seek written permission before using material that appears to be copyright-protected work to obtain a license or release for all the uses that will be needed
  • Creative Commons License*
    • Pay close attention to the terms and conditions of permitted use
Works that Do Not Require Permission

• Original material (work that you create)
• Material in the Public Domain
• Use that qualifies under the Fair Use*
A copyright lasts for a fixed period of time. While the length of a work's copyright will depend, among other things, on when the work was created and/or published, all copyrights eventually expire.

Once a copyright lapses or expires, the work falls into the public domain and can be used without permission of the owner.
Fair Use

• Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports.

• There are no clear rules defining specified number of words, a certain number of musical notes, or percentage of a work that can be used and considered fair use.

• Whether a particular use qualifies as fair use depends on all the circumstances
Section 107 of USC Title 17

• Courts will look at the following factors to determine fair use:
  • (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  • (2) the nature of the copyrighted work;
  • (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  • (4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.
Some Examples of Fair Use

- **Criticism and comment** -- for example, quoting or excerpting a work in a review or criticism for purposes of illustration or comment.
- **News reporting** -- for example, summarizing an address or article, with brief quotations, in a news report.
- **Research and scholarship** -- for example, quoting a short passage in a scholarly, scientific, or technical work for illustration or clarification of the author's observations.
- **Nonprofit educational uses** -- for example, photocopying of limited portions of written works by teachers for classroom use.
- **Parody** -- that is, a work that ridicules another, usually well-known, work by imitating it in a comic way.
Public Copyright License

• aka (open copyright license)
• copyright holders give permission for others to use their work in ways that would otherwise infringe copyright law provided that the licensees obey the terms and conditions of the license.
• Creative Commons License is one of the most common types of public copyright license
Places to Find Public Copyright Licenses:

- Flickr
- Wikipedia Commons

Note: just because something is available on google or another search engine, it does not mean that it is in the public domain.
## CC License Types

<table>
<thead>
<tr>
<th>Icon</th>
<th>Right</th>
<th>Description</th>
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<tr>
<td><img src="https://via.placeholder.com/35x35.png" alt="Attribution" /></td>
<td>Attribution (BY)</td>
<td>Licensees may copy, distribute, display and perform the work and make derivative works and remixes based on it only if they give the author or licensor the credits (attribution) in the manner specified by these.</td>
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<td><img src="https://via.placeholder.com/35x35.png" alt="Share-alike" /></td>
<td>Share-alike (SA)</td>
<td>Licensees may distribute derivative works only under a license identical (&quot;not more restrictive&quot;) to the license that governs the original work. (See also copyleft.) Without share-alike, derivative works might be sublicensed with compatible but more restrictive license clauses, e.g. CC BY to CC BY-NC.)</td>
</tr>
<tr>
<td><img src="https://via.placeholder.com/35x35.png" alt="Non-commercial" /></td>
<td>Non-commercial (NC)</td>
<td>Licensees may copy, distribute, display, and perform the work and make derivative works and remixes based on it only for non-commercial purposes.</td>
</tr>
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<td><img src="https://via.placeholder.com/35x35.png" alt="No Derivative Works" /></td>
<td>No Derivative Works (ND)</td>
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Question 4

• A member of local church’s media ministries team says that he has found a solution for the images and shows some images that he found online.
• “look this is free to use” says the team member. “I found it online and there is no copyright information included so it’s public domain”.
• Is this right?
Answer:

- Not Necessarily
Question 5

- A church member notices that local church has not been streaming just the sermon portion of its service, but the entire service and post the archived services on the website.
- Is this a problem?
• Possibly- does the church have permission to stream the music?
Music Licensing

- **Master Use (Dubbing) License**
  - Cover the Actual recorded version of a song (rights usually held by the record label or artist)

- **Performance Rights**
  - Performance or transmission of the work in public.
  - Performance License through a PRO (BMI, ASCAP, SESAC)

- **Mechanical License**
  - Reproduction rights
  - Needed to reproduce and distribute a specific composition (such as making a dvd)
  - Work with a rights society or publisher on behalf of the record company (Harry Fox Agency)

- **Synchronization License**
  - the licensing of musical works to be synchronized with moving pictures as background in a motion picture, television program, video, DVD, etc
  - Cover the Composition and lyrics of a song (rights usually held by the music publisher representing the composer/writer)
Music Permission Process

• **Step 1- gather information**
  • Name of song
  • Writer/composer
  • Publisher
  • Record label
  • Is the song an arrangement

• **Step 2- determine whether you need permission**
  • Song is completely original
  • Public Domain

• **Step 3- request necessary permissions**
  • (performance; recording; sync)
Production Music Library

• aka: stock music
• Owns Sync and Master Rights
• Example
  • Audio Network
  • Omnimusic
  • The music bed
  • Shutterstock stock music
• Important to know the terms and conditions of use
Music in Church

• “...performance of a non-dramatic literary or musical work or of a dramatico-musical work of a religious nature or display of a work, in the course of services at a place of worship or other religious assembly” .......”shall not constitute infringement of copyright”. 17 USC 110

• Applies to:
  • Performance during religious service

• Does not apply to:
  • Streaming
  • Copying the lyrics to display

• CCLI; CCS or other license recommended to fill in the gap
CCS and CCLI License

- **CCS License**
  - Performmusic license (performances)
  - Worshipcast license (streaming)
- **CCLI License**
  - Copyright license (print; translate; project)
  - SongSelect (music search tool)
  - Church Video license and ScreenVue (videos; movies)
  - Streaming license
Copyright and Social Media

- Be sure that you are not posting, or reposting, copyrighted material.
- Be sure to read the terms and conditions before posting material to social media sites:
  - You may be giving up some of your ownership rights when you post to these sites.
• Rights and Responsibilities: “…For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.”

• “When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).”
• “...You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed).”
Common Copyright Mistakes

• Just because something is available on the internet it does not mean that it is in the public domain
• Just because you do not see a © symbol next to a work it does not mean that it is no longer protected by copyright
• If you get permission for one use, it doesn’t give you permission for all uses
  • Inter-ministry uses of copyrighted material
One Last Caution

- A ministry wants to make a powerpoint on healthy eating.
- They go online to find images.
- Years later they receive....
The Infringement Letter

Re: Unauthorized Use of StockFood America, Inc.'s Imagery - Case# 381141347 (Ref: 0369-9246-7334)

StockFood America, Inc., a global provider of digital imagery, has become aware of an instance(s) of its represented imagery being used on your company's website. Our records do not indicate that valid licensing has been issued to your company for the use of the image(s). If your company does in fact hold a valid license(s) for the image(s) in question, please email any relevant documentation (valid license, purchase records, documentation of authorization). We will review your documentation and update our records if appropriate.

This letter has been sent to you by License Compliance Services, Inc. ("LCS"), a company that specializes in assisting copyright holders with the management and protection of their content. With regards to this case, StockFood America, Inc. has mandated LCS to resolve the matter of your online use of StockFood America, Inc.'s imagery.

Use of imagery represented by StockFood America, Inc. without proper licensing is considered copyright infringement and entitles StockFood America, Inc. to pursue compensation for infringing uses (Copyright Act, Title 17, United States Code).

At the bottom of this letter we have attached a visual showing the imagery and its use on your website. For all details go to https://settle.lcs.global/036992467334
Bonus topic - trademark

- A trademark is a distinctive word, phrase, logo or sign that identifies certain goods or services produced or provided by an individual or a company.

- 15 USC 1127 “a word, name, symbol or device, or a combination thereof, that is adopted and used by a person or other entity to identify his or her goods and distinguish them from the goods manufactured or sold by others, and to indicate the source of the goods...”

- The system helps consumers to identify and purchase a product or service

- Must be:
  - Distinctive
  - Used in Commerce
Trademark Use by the Church

- The General Conference owns and has registered a number of trademarks in many countries including:
  - SEVENTH-DAY ADVENTIST
  - ADVENTIST
  - CHURCH LOGO

- Governed by General Conference Working Policy

- For lay organizations and individuals:
  - Permission must be given by the GC prior to use
  - Permission is at the GC’s discretion and there are a number of requirements in policy that must be met.