Copyright Review
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The Scenario
• Techy Theresa convinces her local church to bolster their online presence to help it reach a broader audience.
• One of local church’s members is a website designer who volunteers to create a fresh, engaging site that will be user friendly. The church is excited since the member has decided to take on this project at no cost.
• Local church’s pastor for media ministries is 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, blog posts from church staff and members, and photos and videos that members have uploaded unto the site.

Question
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?

What is a Copyright?
Protects “original works of authorship” that are fixed in “a tangible form of expression”
The purpose is to give the creator control and a monopoly on royalties for a period of time—to promote creativity
What can and can’t be copyrighted?

Copyrightable:
• Literary works
• Musical works
• Dramatic works (skits, screenplays, etc.)
• Pantomimes and choreographic works
• Pictorial, graphic and sculptural works (including photographs)
• Motion pictures and other audiovisual works
• Sound recordings
• Architectural works

Not Copyrightable:
• Ideas, Data, Concepts, or Discoveries
• Works that are not fixed in a tangible form of expression such as improvised speech or dance
• Works consisting entirely of information that is commonly available and contains no originality

Who owns the copyright to the website design?

Copyright Ownership- (Who Owns the Website Design?)
• Copyright is obtained automatically without the need for registration or other formalities.
• Registration, notice and publication do provide some benefits.

Benefits of Registration and Notice ©
• Creates a public record
• Necessary before an infringement lawsuit may be brought
• Eligibility for Statutory damages
• Protection against importation of infringing copies

Work for Hire
• Exception to the general rule for claiming copyright.
• The author is not the individual who actually created the work. Instead, the party that hired the individual is considered the author and copyright owner.
• Can apply in situations of 1) employment and 2) contractors
• Commissioned works require a signed agreement
• The written agreement should include a provision assigning the copyrights to the business, 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.”
• However, assignment of copyright does not confer all of the same benefits as Work for Hire.
Benefit of Work for Hire

• Authors and heirs can terminate a transfer after 35 years under certain circumstances
  • Written notice is required
  • Recordation requirement
  • Fee requirement

What did the contract say?

• Does the website design qualify as a work for hire?
  • What was included in the terms of the independent contractor agreement?

The pastor is writing a book on the history of the local town.

Question

He wants to include some of the photos that he took for the local church in his book that he is writing. Can he?

Answer

• If he gets permission from the copyright owner.

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.

Question

• What should they do?

Answer

• Take down the work and determine if the work is infringing.
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

Penalties for Infringement

- U.S. Copyright 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.

Question 3 - continued...

- 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!
- Pay close attention to the terms and conditions of permitted use
Works that Do Not Require Permission

- Original material
- Material in the Public Domain
- Use that qualifies under the Fair Use/Fair Dealing*

Fair Use/Fair Dealing

- Exception to Copyright law Title 17 of the United States Code section 107 states:
  - "the fair use of a copyrighted work,......, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
    - (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."

Is This Fair Use?

Creative Commons License

- Free licenses to the public
- Creators can reserve certain rights and waive others

Question

- 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?
Length of Copyright Protection

• 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 creator.
• For Berne Convention member countries the length of copyright protection is at least 50 years after the death of the work’s creator.
• In the US works that were created on or after 1978 generally last until one of the following:
  • 70 years after the creator of the work dies
  • 95 years from the first publication of the work.
  • 120 years from creation of the work, if the work is unpublished.

Duration of Copyright - Pre 1978 works

• Works under the 1909 Act
  • Depended on date of publication or registration
  • 28 year term
  • Eligible for second 28 year term if renewed during the 28th year
• The 1976 Copyright Act
  • The renewal term was increased to 47 years
• The 1998 Copyright Term Extension Act
  • The renewal term was increased to 67 years
• Protection of up to 95 years
  • All works published in the US before 1923 are in public domain
  • Automatic extension for post-1922 works

Jurisdictional reach of copyright

• No international copyright
  • Dependent on national laws
• Reliance on international treaties - Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)
• The United States became a member of the Berne Convention on March 1, 1989.
• It has been a member of the UCC since September 16, 1955.
• 176 member countries

Bern Convention

• 3 basic principles of protection under the Bern Convention
  • National treatment
  • Automatic protection
  • Independence of protection
• Minimum Standards of Protection
• Protection of Moral Rights

How To Determine Who Owns a Copyright?

• Often difficult
• No requirement to register or use a copyright notice
• Can search US Copyright Office records
• Copyright Office has a resource on investigating copyright status:
  [General Conference of Seventh-day Adventists]

Question

• 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?
Music Licensing

- Master Use (Dubbing) License
- Performance Rights
- Mechanical License (Reproduction rights)
- Synchronization License

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

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

Question

- Church wants to make an arrangement of the classic hymn amazing grace. They are planning to record this new arrangement and have it as background music on their website.
- What type of licenses will they need?
- What if they want to use the song "We Have This Hope" instead?
- Does it matter that the songs are in the hymnal?
- What if the music they want to use is music from a CD that they purchased?
Best Practices

• Get permission from the copyright holder
• Search for works in the public domain
• Don’t assume material on the internet is ok to use
• Contact your legal counsel - if you have questions

Questions:
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