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CHRISTIAN COPYRIGHT SOLUTIONS™

We help you do music right.

Copyrights 101



Copyrights 101

Overview

In order to establish a solid foundation for copyright compliance, Christian leaders need to have a firm grasp on three basic building blocks:

1. What is a copyright?
2. What works can be copyrighted?
3. What are the rights of copyright owners?

This fact sheet will walk through each of these building blocks, explaining along the way how each impacts the church's use of copyrighted material.

What is a Copyright?

Intellectual property refers to intangible properties that are protected under the U.S. Copyright, Patent, and Trademark Laws. Let's look at an example of tangible property vs. intellectual property. A copyright is a particular kind of property right.

It's often difficult to grasp the fact that a copyrighted work is someone's property, because it is an intangible or intellectual property, rather than physical property, like a house. There are many similarities, however between a copyright, like a song, and a house. Let's see how owning a house and owning a song are quite similar.

Selling

I can sell my house and I can sell my song. Michael Jackson bought several hundred Beatles songs for $47 million dollars.

Partial ownership

I can own part of a house and I can own part of a song. Co-authors of a song have joint ownership of that song.

Leasing

I can lease out my house and I can lease out use of my song. For example, I can license a web site to use my song for a set time period.

Inheritance

Like a house, I can inherit a song from a favorite aunt.

Donation

Like a house, I can donate a song to my church.

The novels or songs that you have purchased (hopefully) and loaded onto your iPad are copyrights or intellectual properties and are also owned by someone. Although they are intangible assets that cannot be touched, the owner of the works has

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the exclusive right to reproduce or make copies of them, or authorize a third party to do so. The right to reproduce that novel, however, cannot be touched and felt like the iPad or physical book because it is an intangible right. Nonetheless, the author of the literary work has, from the time of the novel's creation, the exclusive right to reproduce (or adapt, display, distribute or perform) the novel. The author's exclusive rights can be very valuable and can be assigned to a third party, such as a publisher, if the assignment is in writing.

Copyright literally means the right to copy. The term has come to mean that body of exclusive rights granted by statute to authors for protection of their writing. It includes the exclusive right to make and publish copies of the copyrighted work, to make other versions of work, and, with certain limitations, to make recording of the work and to perform the work in public.

The rights described in our United States Copyright Act derive from the United States Constitution which, in Article 1, Section 8, Clause 8, grants our citizens special protection: "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Consequently, those who create "original works of authorship fixed in any tangible medium of expression" have, according to the Copyright Act [Section 102], created works subject to copyright protection.

What can be Copyrighted?

Only certain works are eligible for copyright protection. Section 102 of the Copyright Act defines copyrightable "works of authorship" to include the following eight works

Music

Music including any accompanying words, lyrics, notes, and composition in some published format. Musical works include both original compositions and original arrangements or other new versions of earlier compositions to which new copyrightable authorship has been added.

Sound Recordings

Aural reproduction of some material (which may or may not itself be copyrighted). They are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work. They may include recordings of music, literary works, drama, etc. For example, Michael W. Smith's recording of Paul Baloche and Lenny LeBlanc's "Above All" would be a sound recording copyright and the actual composition would be a Music copyright; in this case, the Sound Recording is owned and copyrighted by a record label, and the music is owned and copyrighted by a different publishing company.

Literary Works

Words captured as a book, periodical, poem, essay, spoken work (i.e. speeches), etc. and including non-dramatic textual works with or without illustrations. They may be published or non-published. Computer programs and databases also are considered literary works. Plays, dramas, and screenplays are not in the literary works category

Visual Arts

Pictorial, graphic, or sculptural works, including 2-dimensional and 3-dimensional works of fine, graphic, and applied art. Examples include photos, visual images, maps, illustrations, cartoons, maps, sculptures, etc.

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Choreography / Dance / Pantomime

Choreography is the composition and arrangement of dance movements and patterns usually intended to be accompanied by music. As distinct from choreography, pantomime is the art of imitating or acting out situations, characters, or other events.

Drama

The play itself including dialog, stage direction, etc. The Drama copyright may also include the musical score. Individual musical numbers may also be copyrighted as a Music copyright. Dramatic works such as plays, screenplays, and radio or television scripts are works intended to be performed. Dramatic works usually include spoken text, plot, and directions for action.

Video / Films

Series of related visual images that impart an impression of motion, which may or may not be accompanied by sound, such as films, videos, slides presentations and video games.

Architecture

An original design of a building embodied in any tangible medium of expression, including a building, architectural plans, or drawings.

It's vital for church leaders to have knowledge of all the types of works that can be copyrighted, because of the increasing use of a variety of creative works and the growing risk of liabilities. Copyright infringement penalties can be severe, up to $150,000 for each infringement. Fifteen years ago, churches primarily reproduced and used music (only one of the eight copyrightable works), but today more innovation and creativity has resulted in churches using just about every type of work listed above.

What are the Rights of Copyright Owners?

To understand copyright law and how it impacts your ministry, you need to understand the six rights that are exclusive to the owner of a copyrighted work, as outlined above. These rights apply to all works that can be copyrighted. If you want to engage in any of the activities that are the exclusive right of a work's owner, you need to get permission to engage in that activity.

Reproduction

Only the owner of a copyrighted work is allowed to reproduce or copy that work.

Examples: photocopying lyrics, rehearsal CDs, creating a copy of a video.

Making Derivative Work

Only the owner of a copyrighted work is allowed to create new works that are "based" on a pre-existing work. U.S. copyright law describes this derivative work as: "...a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted." Examples: arrangements of songs, adaptations of plays into movies.

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Distribution

Only the owner of that work can make that work available to the public by sale, rental, lease, lending or gifting. There is a “first sale” doctrine that limits the work’s owner’s control to the “first sale” of a copy. This means that if you buy a CD, you are allowed to then re-sell that CD without getting the permission of the work’s owner.
Examples: giving CDs of worship service, podcasts of worship services.

Performance

The owner of a work controls if and when that work will be performed publicly. U.S. copyright law defines a public performance as an instance of music being performed “in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.” That is the legal definition and most church performances, with the exception of during a religious service, fit the criteria. Public performances extend to more than just in-person performances. Playing music on TV, radio and the Internet also are under the control of the work’s owner.
Examples: concerts, music played at church social events, on-hold music.

Public Display

The owner of a work controls if and when that work will be displayed publicly. This right is similar to the performance right but it is for visual works such as photos or videos. The criteria for a public display are the same as those for public performances detailed above.
Examples: hanging art in church lobby, displaying a photograph on screens during worship services.

Digital Recording Performance

The owner of a sound recording controls if and when that work will be transmitted digitally. This is a relatively new right that was added in “The Digital Performance Right in Sound Recordings Act of 1995.
Examples: webcasting sound recording in a worship services, internet radio.

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