

Using Works to Further Your
Message: How Copyright Law
Applies to Communities of Faith

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Copyright Basics ©

- Copyright protects “original works of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a).
- Copyright protects the expression of an idea, not the idea itself.



Copyright Basics ©

- Types of works that qualify for copyright protection
 - Literary works
 - Musical works
 - Dramatic works
 - Pantomimes and Choreographic works
 - Pictorial, Graphic, and Sculptural works
 - Motion Pictures and other audiovisual works
 - Sound Recordings
 - Architectural works



Copyright Basics ©

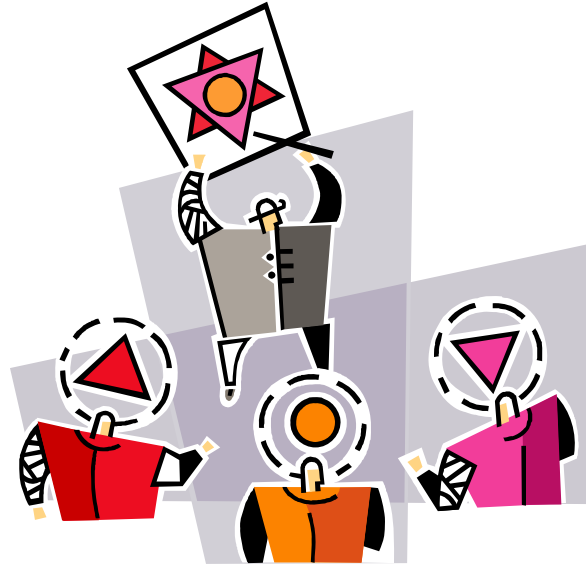
- Exclusive rights granted to authors
 - The right to reproduce
 - The right to prepare derivative works
 - The right to distribute by sale, rental, lease, or lending
 - The right to perform publicly
 - The right to display publicly
 - The right to perform by means of a digital audio transmission (for sound recordings only)



Copyright Basics ©

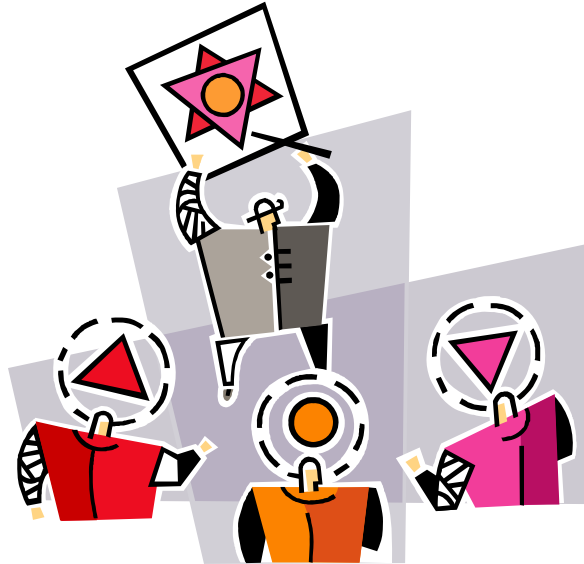
- Copyright Term
 - Life of the author plus 70 years. If joint work then life of the last surviving author plus 70 years.
 - For “works made for hire,” 95 years from year of first publication or 120 years from year of creation, whichever expires first.

Joint Authorship



- A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. 17 U.S.C. § 101.

Joint Authorship



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Joint Authorship

- *Childress v. Taylor*, 945 F.2d 500 (2nd Cir. 1991).
 - Taylor portrayed “Moms” Mabley in off-off-Broadway skit. Decided to produce a play based on life of Mabley.
 - Taylor hired Childress to write the play.





Joint Authorship

- *Childress v. Taylor*, 945 F.2d 500 (2nd Cir. 1991).
 - Taylor performed research, interviewed people associated with Mabley, suggested characters, and suggested scenes.
 - Taylor contributed facts and details about Mabley. Childress was responsible for the actual structure of the play and the dialogue.



Joint Authorship

- *Childress v. Taylor*, 945 F.2d 500 (2nd Cir. 1991).
 - Court ruled that Childress was the sole author of the play.
 - Two main points the court pointed out:
 - Each author must contribute copyrightable material
 - Each author must intend for their contributions to be merged into one





Ownership Basics

- Ownership initially vests in the author or authors of a work. 17 U.S.C. § 201(a)
- For a work made for hire, the employer is the author. 17 U.S.C. § 201(b)
 - A work made for hire is a work prepared by an employee within the scope of employment. 17 U.S.C. § 101.



Splitting Up Rights

- In a joint work, each author automatically acquires an undivided ownership of the entire work. 1 M. Nimmer, *Nimmer on Copyright* § 6.03 at 6-6 (1988).
- “Joint authorship entitles the coauthors to equal undivided interests in the whole work—in other words, each joint author has the right to use or to license the work as he or she wishes, subject only to the obligation to account to the other joint owner for any profits that are made.” *Thomas v. Larson*, 147 F.3d 195, 199 (2nd Cir. 1998).



Splitting Up Rights

- The Copyright Act rejects the doctrine of indivisibility.
- Instead, copyright is a bundle of discrete exclusive rights each of which may be transferred and owned separately. *New York Times Co., Inc. v. Tasini*, 533 U.S. 483, 495-496 (2001).



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Fair Use- 17 U.S.C. 107

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching..., 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.



Fair Use- 17 U.S.C. 107

- *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994)
 - 2 Live Crew sought license from Roy Orbison for parody of “Oh, Pretty Woman.” Owner refuses and they make parody anyway. 2 Live Crew sells 250K copies. Owner sues.
 - the inquiry focuses on whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is "transformative," *altering the original with new expression, meaning, or message*. The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.

Two sides

- Works owned and used by the church.
- Works outside of the church that the church wants to use.



Works Owned and Used by the Church.

- The church owns works that are assigned to it.
- The church owns works created by its employees under the work made for hire doctrine.





Works Owned and Used by the Church.

- What can the church do with works that it owns?
 - Use the work as a revenue source to support religious causes.
 - Disseminate the work for free in an attempt to reach the most people.



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Using a Work as a Revenue Source

- A work of art can be a source of revenue in different ways-
 - Assignment of copyright
 - Exclusive license
 - Non-exclusive license



Using a Work as a Revenue Source

- Peter Pan

- Peter Pan published as a novel and a play
- James M. Barrie donated the copyrights to Peter Pan to the Great Ormond Street Hospital for Children in 1929
- Copyright originally expired in 1987 in UK. UK gov't granted hospital the right to perpetually collect royalties. U.S. rights under dispute.





Steps For Monetizing a Work

- Church acquires ownership of the work by either having the work assigned to it by the author or automatic ownership under work made for hire because employee is author.
- Church registers the copyright/assignment with the copyright office.
- Church undertakes monetization strategy (assignment/exclusive license/non-exclusive license).

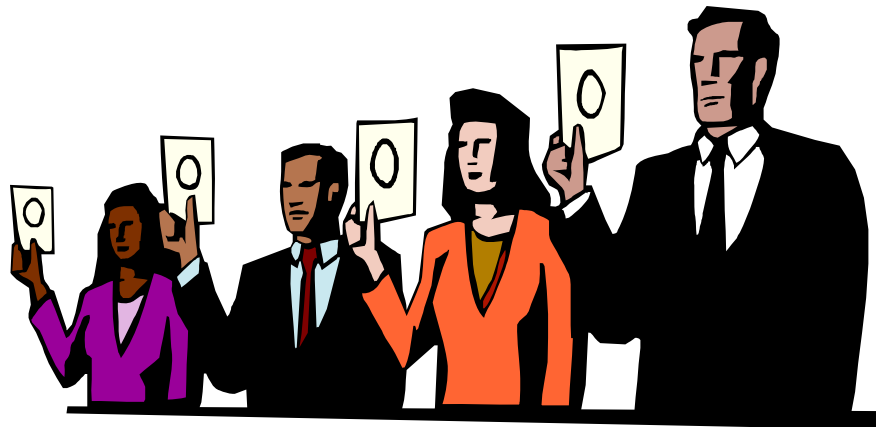


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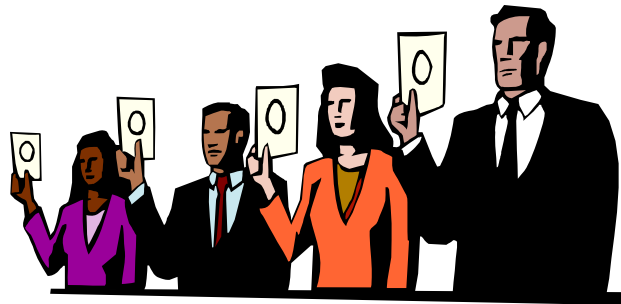
Free Dissemination

- Best strategy- those who receive the work may freely distribute the work to others.
- www.feautor.org



Free Dissemination

- The problem with redistribution?
Notification- If others are afraid of being sued then they won't redistribute.
- www.creativecommons.org



Creative Commons

- **Attribution**
by
- You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.



Creative Commons

- **Share Alike**

sa

- You allow others to distribute derivative works only under a license identical to the license that governs your work.



Creative Commons

- **Non-Commercial**

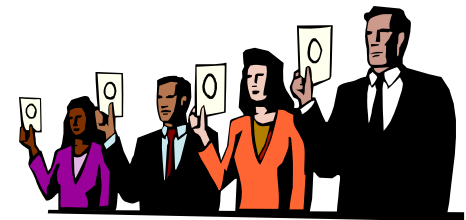
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- You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for non-commercial purposes only.



Creative Commons

- **No Derivative Works**
nd
- You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.



Steps for Free Dissemination

- Church owns the work.
- Church may or may not register the copyrights.
- Church notifies others of free dissemination.
 - Creative commons license
 - “No rights reserved”



Two sides

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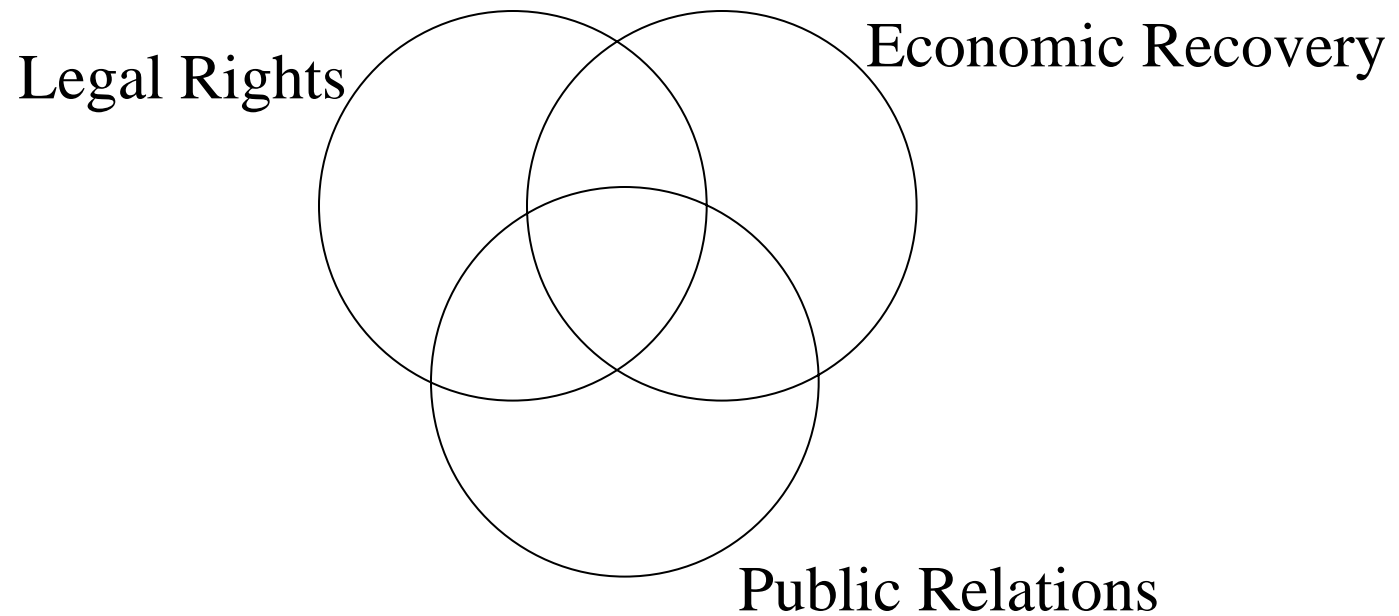
Works Created Outside the Church

- Steps to take when wanting to use the work
 - Confirm ownership of the work by searching the database at www.copyright.gov.
 - Obtain license for use.

or

- Determine if use would constitute fair use.

Global View of Infringement



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