



A TimeWarner Company

Navigating Common Copyright Issues for Non-Profits

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October 16, 2013



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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
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- Host free monthly webinars on legal topics for nonprofits
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This workshop presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Copyright

EXPRESSION OF AN IDEA FIXED IN A TANGIBLE MEDIUM

Artwork



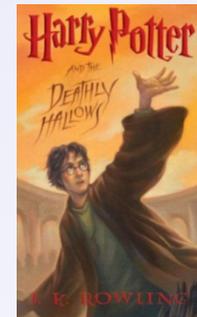
Photograph



Music



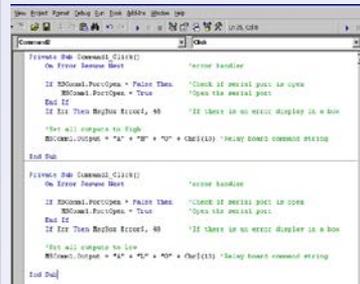
Book



Film



Software Code



Sculpture



Written Materials



Copyright

- Secured automatically when a work is fixed in a tangible medium
- Registration is not required, but is advisable in many cases

Rights Covered by Copyright

- Exclusive right to:
 - Reproduce the work
 - Prepare derivative works
 - Distribute the work
 - Perform the work
 - Display the work

Cost of registration & length of protection

- \$65 per application (\$35 if filed online)
- Depending of the type of work, the work is protected:
 - For the life of the author, plus 70 years after death; or
 - The shorter of 95 years after first publication or 120 years after creation
- Fees and information can be found at:
 - www.copyright.gov

Benefits of registration

- Owning a registration is a prerequisite to bringing a lawsuit
- Allows copyright owner to potentially recover statutory damages and attorney's fees in an infringement action
- Prima facie evidence of (1) validity of copyright and (2) the facts stated in the registration certificate

Copyrightable Materials

- Examples of materials for which Non-Profits may claim copyright protection
 - Promotional materials (e.g., brochures)
 - Educational materials (e.g., seminar hand-outs)
 - Training manuals/materials
 - Event photos
 - Website
 - Seminar presentation videos
 - Commercials

Ownership of a copyrighted work

- The copyright in a “work made for hire” vests automatically in the employer
- What is a “work made for hire”?
 - A work prepared by an employee within the scope of his or her employment

Ownership of a copyrighted work

- Examples of works made for hire
 - A software program created by a staff programmer within the scope of his or her employment at a software firm
 - A newspaper article written by a staff journalist for publication in the newspaper that employs the journalist (i.e., journalist is an employee of the newspaper, not a freelancer)

Ownership of a copyrighted work

- What if a work is not a “work made for hire”?
 - By default, ownership of the copyright in the work vests in the author (and not in the organization that requested the author to create the work). *This is true for independent contractors, consultants and volunteers.*
- For ex., a Non-profit organization asks a photographer to take pictures at the organization’s annual gala
 - By default, ownership of the copyright in the photographs vests in the photographer

Ownership of a copyrighted work

- Question: If, by default, the author owns the copyright in works the author creates, how can a Non-profit ensure that it owns the copyright in materials created by staff, volunteers and contractors?
- Answer: A copyright assignment agreement.

Traits of a good assignment agreement

- Contains a clearly defined scope of work
- Designates the work created as a “work made for hire”
- Includes an assignment “catch-all” provision
- Provides compensation for the work
- Includes important representations and warranties:
 - Work created is original
 - Work created will not violate the rights of others

Legal Lines

Put the Public on Notice of Your Rights

- The use of a copyright notice is no longer required, although it is often beneficial.
- The notice for visually perceptible copies should contain three elements:
 - The symbol © (the letter C in a circle), or the word “Copyright,” or the abbreviation “Copr.”; and
 - The year of first publication of the work; and
 - The name of the owner of copyright.
- Example: © 2006 John Doe

Copyright Licensing

- Licensing issues arise in two ways:
 - Needing Permission to use copyrighted works owned by others; and
 - Granting others permission to use your works, as a way to generate revenue.

Copyright Infringement

- Copyright Act is a strict liability statute
- There is no such thing as an “innocent infringement”

Rights of Publicity

- Different from copyright
- This is the right of an individual to control the commercial use of his or her name, image and likeness
- So, one work may involve two different sets of rights
 - Photographer owns copyright in photograph
 - Individual appearing in photograph owns rights of publicity in her image

Rights of Publicity

- Question: Where do Non-profits encounter right of publicity issues?
- Answer: Any time you use the name or likeness of an individual for business purposes. For example:
 - Use of a name in an endorsement on your website
 - Use of a person's image in a promotional brochure
 - Use of person's image on a poster or display
 - Use of person's name or image in a promotional video

Rights of Publicity

- How can a Non-profit address rights of publicity issues?
 - Get permission to use by way of name and likeness release agreements

Traits of a good name and likeness release

- Provides Non-profit with right to photograph, video or record person
- Provides ownership of all recordings to non-profit, and gives non-profit unlimited rights to modify, edit or otherwise alter the recordings
- Grants broad permission to use and exploit the recordings
- Includes release of all claims for use of name/likeness

Hypothetical : Cleaning House

Non-Profit employee Sam is cleaning out an old file drawer, as Non-Profit prepares to move to a new office building. He runs across a set of fantastic photos taken at a charity event Non-Profit hosted several years ago. He thinks to himself, “these photographs would be fantastic to include in the brochure we are putting together for our annual fundraising gala.” Sam sets the photographs aside, intending to begin incorporating them into Non-Profit’s gala marketing campaign.

Hypothetical : Cleaning House

- Should Sam use the photographs?
- What steps should be taken before the photographs are used?

Hypothetical: Cleaning House

Having attended a high-quality webinar hosted by Pro Bono Partnership of Atlanta, Sam realizes several days later that he needs permission to use the photographs he found in Non-Profit's upcoming marketing campaign. Worried that he may not be able to use the photographs, he quickly returns to the file cabinet drawer he was cleaning, and he locates a photographer agreement which assigns all rights in and to the photographs from the photographer to Non-Profit. "Shew," thinks Sam, "am I glad to see this." Reassured that the rights in the photographs are cleared, Sam sends them to Non-Profit's printer for scanning and inclusion in posters and brochures.

Hypothetical: Cleaning House

- Because Sam found the copyright assignment agreement from the photographer, is he now free to use the photographs?

Hypothetical: Cleaning House

Lillian Dogooder is opening her mail, and realizes she has received the fundraising packet from her favorite charitable organization, Non-Profit. She opens the envelope, excited to learn of what great things the group has done this year, and to see what Non-Profit plans to tackle in the coming year. The annual fundraising gala is always the highlight of her year. To her great surprise, her photograph is featured on the cover of the brochure, with the bold caption “Support Divorced Single Parents: Join Us for the 2013 Non-Profit Gala.” Featured prominently on the inside of the brochure is a glowing endorsement of Non-Profit which Lillian submitted via their website after last year’s gala. Lillian is distraught – will her friends and co-workers who also support this organization believe she has gotten a divorce?

Hypothetical: Cleaning House

- What are Lillian's rights with respect to the use of her name and likeness in the marketing campaign?
- What steps should Non-Profit have taken before using the photograph?
- What can Non-Profit do better next time?

Take away points

- If an individual is going to create materials for your organization, have that person sign an assignment agreement to transfer the copyright in the materials to your organization
- If an individual's name or likeness appears in materials used by your organization, have that person sign a release granting your organization rights to use the individual's name and likeness

Questions?

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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