

Copyright Guidelines for Churches

Disclaimer: The information provided in these guidelines is for information purposes only. It does not constitute legal advice. In the development of the guidelines, certain assumptions have been made about underlying practices and uses of intellectual property. Any change in those assumptions could affect the application of a particular guideline or recommended best practice. Therefore, while the information provided may assist a local church, it is not a substitute either for legal advice by an attorney with knowledge of copyright law or the written approval of specific copyright holders. If there is any doubt as to whether a specific use or practice violates copyright laws, the local church should seek the written advice of a lawyer or specific written approval of the particular use by the copyright holder or licensing agent. Further, the local church should maintain a copyright file that contains all written advice obtained from an attorney(s), all licenses/permissions for use of works, and records of any payments made to licensors or owners of copyrighted works.

Overview of United States Copyright Law:

Copyright protection extends to “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 102(a). A copyright does not require registration. A copyright in a work arises from the moment an original work of authorship is fixed in the tangible medium (e.g., when pencil touches paper). Section 102 further provides that “[w]orks of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.”

Copyright protection may extend to compilations and derivative works that are lawfully created. 17 U.S.C. § 106. The owner of a copyright “has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or

other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

Infringement occurs when you violate one or more of the exclusive rights of a copyright owner. Infringement is a serious matter that may result in a claim of copyright infringement against the person who violates the exclusive rights, as well as against the local church. Remedies for infringement include actual damages, profits of the infringer, or, alternatively, statutory damages. 17 U.S.C. § 504. With certain caveats or exceptions, a copyright owner may elect statutory damages instead of actual damages or profits of the infringer (which is especially applicable in cases where there is no actual damage or profit from the infringement) in a range of not less than \$750 to no more than \$30,000 per work “as the court considers just.” 17 U.S.C. § 504(c)(1). Statutory damages may be increased to no more than \$150,000 per work if the infringer’s conduct was willful. 17 U.S.C. § 504(c)(2).

When in doubt about whether a work is copyrighted or whether a particular use would constitute infringement, the church should always seek appropriate advice.

Licenses:

One means to comply with federal law and avoid a claim for copyright infringement is to obtain a license from the owner, or from a representative of the owner, of the work you want to use. This is the best practice and is strongly recommended. Although there are a variety of representatives of copyright owners, well-known licensing companies include, but are not limited to, CCLI (Christian Copyright Licensing, Inc.), CVLI (Christian Video Licensing International), ASCAP, BMI, SESAC, WorshipCast, OneLicense, Christian Copyright Solutions, and LicenSing. There are basic licenses that fit most churches' use of copyrighted materials, and there are a number of supplemental licenses for particular uses such as rehearsal licensing, live streaming, podcasts, videos, and use of video clips. For musical works, it is important to remember that you will need a license to both the musical composition (the notes on page) and the lyrics. You also should confirm that the songs or videos are within the catalog of works covered by each license. If they are not, then the church should obtain written permission from the copyright holder. Churches should consult with licensing companies concerning the scope of use covered by various licenses and concerning particular practices and uses of copyrighted materials to avoid inadvertent copyright infringement.

Pricing for licenses varies by work. For example, the cost of a license from OneLicense is based upon average weekly attendance of the church. One-time use, weekly use, and annual licenses are available. Reporting usage of a song to the licensing company is required in accordance with the requirements of the license. It is important to keep good records of the use of the works in order to be accurate in your licensing payments and minimize any claims by the

copyright holder or its representatives that you have not paid sufficient amounts.

Written Permission:

Written permission from a copyright holder gives a local church protection. This is particularly helpful when the intended use of copyrighted material is not clearly within the scope of a license. As indicated above, any written permission obtained from a copyright holder should be maintained in a copyright folder by the church.

Public Domain:

Intellectual property that is in the public domain is not subject to copyright infringement. Public domain status is usually indicated on the face of sheet music or on a CD jacket. A church should not assume that intellectual property is in the public domain simply because copyright information is not on the face of the work. In addition, the fact that one version of a work is in the public domain does not mean that a new copyrighted arrangement of the work can be used without a license or written permission from the copyright holder.

Fair Use:

Although rarely available in a church setting, the fair use exception found in 17 U.S.C. § 107 may be available when a church, including a Sunday school class, uses a copyrighted work or a part thereof for teaching or comment, including in a documentary. The teaching exception in 17 U.S.C. § 110(2) may also be helpful to Sunday school classes. In the educational context, the U.S. Copyright Office has published an advisory circular containing guidelines for fair uses of copyrighted works in educational settings. It is available at <http://www.copyright.gov/circs/circ21.pdf>. A group cannot use the fair use doctrine to edit or redact copyrighted materials to remove portions to which it objects even if it sells the edited version with the original version. Fair use is a factual determination that includes, but is not limited to, the following factors:

- (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.

It is important to recognize that a work is not freely available for copying simply because it is out of print. The same factors for fair use apply to determine whether such work may be copied and the amount of the portion copied.

Religious Worship Service Exemption:

17 U.S.C. § 110(3) provides a limited exemption for the “performance of a nondramatic 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.” This exception

does not extend to broadcasting (by radio or television), webcasting, live-streaming, podcasting, or recording of the parts of worship services that include copyrighted works, all of which require a license or the written permission of the copyright holder. For this reason, some churches limit their broadcasts of worship services to those parts of the service that do not contain copyrighted works.

Hymnals:

Hymnals are also copyrighted, and there are limitations on how the copyrighted information may be used, even if your church has purchased the hymnals. Hymns that are listed in the hymnal as being in the public domain may be reproduced without permission. Lyrics from copyrighted hymns may be reproduced in the worship bulletin as long as the church has published hymnals for the congregation and as long as the reprinting is done in accordance with the requirements of the copyright in the hymnal. One typical requirement is to properly note the copyright information in the bulletin. Consult the hymnal and any related license for proper use of the copyrighted songs in a hymnal.

Worship:

A. Music performed by choir

A choir may only use legal copies of copyrighted music. The music may not be copied to make additional copies for practice or teaching by staff or members of the choir. One exception is that musicians are allowed to make copies of pages of music to avoid page turning.

If a publisher lists a copyrighted work as "out of print," the publisher should be contacted for permission to make copies and to possibly negotiate a reduced fee.

If a choir director or musician desires to create a different arrangement of copyrighted music, written permission should be obtained from the copyright holder.

B. Music performed by organist

The requirements in Part A of this section apply. One possible exception is that an organist or other musician may make copies of a legally purchased work to avoid having to turn pages during a performance.

C. Music performed by guest performers or musicians

The requirements in Parts A and B of this section apply.

D. Lyrics projected on screen during worship

Section 110(3) of the Copyright Act permits the display of a literary or musical work in the course of services at a place of worship or other religious assembly. This display does not include the right to record (via cell phone, video, or otherwise) the projection of the literary or musical work.

Best Practice: Obtain a license that permits such use or obtain written permission from the copyright holder.

E. Lyrics printed in bulletin

See the discussion above regarding the use of songs that appear in hymnals purchased by the church. Lyrics that appear in hymnals or other works legally purchased may be used in accordance with the requirements and conditions set out in the works. Typically, a specified copyright reference is required. If other lyrics are used in a bulletin, they may only be printed with written permission of the copyright holder or a license.

F. Live streaming of worship music

Either written permission from the copyright holder or a license is required. The same is true for podcasting. Otherwise, these uses constitute copyright infringement. Christian Copyright Solutions offers a WORSHIPcase license that applies to every song that is licensed by ASCAP, BMI or SESAC. CCLI also offers a streaming/podcasting license.

G. Recording of music in worship for later video broadcast

Either written permission from the copyright holder or a license is required. Otherwise, this practice constitutes copyright infringement.

H. Recording of performances in worship on CDs or DVDs

Either written permission from the copyright holder or a license is required. Otherwise, this practice constitutes copyright infringement. There may be additional restrictions if the CDs or DVDs are sold to raise funds, unless the proceeds are used solely for the church's ministry. The church should contact its license provider for guidance.

I. Recording children's choir performances and uploading the recordings to Facebook, You Tube, or similar social media

Either written permission from the copyright holder or a license is required. Otherwise, this practice constitutes copyright infringement. If the person making this recording is not an employee or staff member of the church, then any infringement is arguably the individual liability of the person making the recording and not the church, although there may be an argument that the person was acting on behalf of the church. To avoid any liability, the church should not make use of unauthorized recordings and should communicate to the church membership that the church is not authorizing the recordings.

J. Use of copyrighted art, graphics, or written works in bulletin

Either written permission from the copyright holder or a license is required. Otherwise, this practice constitutes copyright infringement.

K. Use of video clips

Either written permission from the copyright holder or a license is required. Otherwise, the use constitutes copyright infringement. CCLI has a specific license known as ScreenVue for this use.

L. Pastor's use of copyrighted material in sermon

Reading a copyrighted poem, an excerpt from a copyrighted book, or a copyrighted quotation as a part of a sermon in a worship space for a worshiping congregation *may be* permitted under the religious service exemption. However, it appears to be clear that printing or recording a sermon that contains such copyrighted materials is a violation of the copyright laws unless the use meets the fair use exception discussed above.

Best Practice: Obtain a license that permits such use or obtain written permission from the copyright holder.

Sunday School:

A. Use of music

Either written permission from the copyright holder or a license is required. Otherwise, this practice constitutes copyright infringement. Simply playing legally purchased CDs or other recordings in a Sunday school class is likely authorized by the copyright permissions provided in the CD case, but the church should comply with any limitations or conditions set forth in the case.

B. Use of videos

The requirements of Part A of this section apply. However, if a video is labeled "For In-Home Viewing" or some similar warning, public showing of the video, even in Sunday school classes, is not permitted. Carefully read the copyright information on the video case or at the beginning of the video to ascertain the permitted uses.

C. Use of articles or pictures as teaching aids

There should be no copyright infringement if the articles or pictures used are legally purchased and are not reproduced.

Youth Activities:

A. Use of music

Either written permission from the copyright holder or a license is required. Otherwise, this practice constitutes copyright infringement. Simply playing legally purchased CDs or other recordings in a Youth Activity is likely authorized by the copyright permissions provided in the CD case, but the church should comply with any limitations or conditions set forth in the case.

B. Use of videos

The requirements of Part A of this section apply. However, if a video is labeled "For In-Home Viewing" or some similar warning, public showing of the video, even at a youth activity, is not permitted. Carefully read the copyright information on the video case or at the beginning of the video to ascertain the permitted uses.

C. Syncing songs to youth videos

Either written permission from the copyright holder or a license is required. Permission to synchronize copyrighted music is difficult to secure. Copyrighted music may have already been licensed for this use or may be available for license on the internet, and that option should be explored. Open Sound Resource and Magna Tune may be helpful resources for this purpose. Syncing of songs to videos is common on You Tube and Vimeo (*see, e.g., <http://ultimateclassicrock.com/peanuts-classic-rock/>*), but youth groups should exercise caution and seek permission before using a copyrighted work.

D. Use of copyrighted works in social media

Either written permission from the copyright holder or a license is required.

Choir:

A. Photocopying of copyrighted work

This is prohibited without written permission by the copyright holder. As noted above in Worship, Part A, however, there is a procedure for obtaining permission for reproducing copies of copyrighted works that are "out of print."

B. Performing music outside of worship services, including recitals and concerts

Either a license or written permission from the copyright holder is required. However, limited permission may already be granted in the copyright information on the face of legally purchased copies of the music. In such cases, the terms of the pre-approval should be followed, which will likely include printing or displaying the appropriate copyright information concerning the work.

C. Recording choir performances

Either a license or written permission from the copyright holder is required. Otherwise, the recording constitutes copyright infringement.

D. Making CDs or DVDs of performances

Either a license or written permission from the copyright holder is required. Otherwise, this practice constitutes copyright infringement.

E. Making rehearsal tape

Either a license or written permission from the copyright holder is required. Otherwise, this practice constitutes copyright infringement. However, some choral works come with optional rehearsal recordings that can be used as provided in the copyright provisions. However, additional copies cannot be made.

Other Issues:

A. Movie Nights

Either written permission from the copyright holder or a license is required, regardless of whether there is a charge for viewing the movie. In addition to the licensing companies noted above in the section on *Licenses*, a license to show a motion picture can be obtained from the Motion Picture Licensing Corporation (www.mplc.com).

B. Dinner Theaters

Either written permission from the copyright holder or a license is required, regardless of whether there is a charge for the dinner theater.

C. Church websites

Any use of copyrighted material on a church website requires either written permission from the copyright holder or a license.

D. Conferences/Seminars/Retreats

Either written permission from the copyright holder or a license is required. The copyright provisions of legally purchased works may provide a limited performance right.

E. Funerals

Either written permission from the copyright holder or a license is required. The copyright provisions of legally purchased works may provide a limited performance right.

F. Weddings

Either written permission from the copyright holder or a license is required. The copyright provisions of legally purchased works may provide a limited performance right.

G. Newsletters

Any use of copyrighted material in a newsletter requires either written permission from the copyright holder or a license.

H. Church signs containing copyrighted statements, quotations, or photos

Any use of copyrighted material on church signage requires either written permission from the copyright holder or a license.

I. Artwork

A copyrighted image should not be used without permission from the copyright holder or a license.

J. Telephone recordings

Pre-programmed telephone recordings that include copyrighted work but which are part of the telephone voice-mail system are assumed to be authorized for use by the purchaser. However, it is prudent to read the information provided by the seller of the voice-mail system to confirm that authorization and to ensure that the agreement with the seller includes an indemnification clause to cover any infringement that may occur via the telephone system.

Copying a song to create a ringtone does constitute copyright infringement. However, playing a ring tone in public - i.e. its normal function - has been found to be excepted from copyright infringement and no public performance license is required.

K. Zumba, Exercise Classes, Etc.

A performance license is required, usually from ASCAP, BMI, SESAC, or from an agent for those companies (such as CCS's PERFORMmusic). However, a license may not be required for Zumba original music if the church or an authorized staff person is a part of the Zumba Instructor Network.

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