

Churches and Copyright: How to be a Weekend Publisher or Broadcaster Without Going to Prison

I can be reached several ways but the easiest is by email to copyright@1517.media. Include a phone number because copyrights and copyright law are both complicated and arcane. I have discovered over time that conversations rather than emails allow for questions and answers to flow better than email. I can also be reached by phone directly at 612-330-3530.

What is a copyright?

1. A copyright is used to protect original works of authorship. These include, but are not limited to, works of art, musical compositions, sermons, collections, banners, paraments, vestments.
 - a. It is the EXPRESSION of an idea that can be protected.
 - b. An idea CANNOT be protected. (There are lots of ways to say the same thing).
2. The protections granted by a copyright are so that the owner of the original work of authorship can gain the exclusive benefit of that ownership.
 - a. The most important protection anyone has for copyrighted material is the right to say "no."
 - b. If an original work of authorship is to be used by someone other than the rights holder, permission must be obtained IN ADVANCE OF USE.
 - c. Just making the copies without permission is an infringement of the copyright. It doesn't matter if the copies are ever used.
3. Works no longer protected by a copyright are said to have lapsed into the public domain.
 - a. These works are considered the property of the public and may be used or altered in any way without permission.

How long does a copyright last?

1. There is a provision for copyrights in the US Constitution.
 - a. It was for seven years.
 - b. It was for books only.
 - c. Over time there were a few changes to the law.
2. It depends on when the original work of authorship was created or put under copyright.
 - a. Works created or published BEFORE 1926 are NO LONGER under copyright in the USA.
 - b. Works created or published from 1926 to 1978 are under copyright for 95 years from the date of publication, provided:
 - i. They were registered with the Register of Copyrights at the Library of Congress.
 - ii. They were published with a copyright notice that has the word copyright (or the © symbol and the year they were copyrighted).
 - iii. The copyright was duly renewed in the year the original copyright was due to expire.
 - iv. If any of i, ii, or iii is missing the work is in the public domain.
 - c. Works created from 1979 forward are under copyright for the life of the longest surviving author plus 70 years.
 - i. These works DO NOT need to be registered.
 - ii. The copyright lasts for the full term and does not need to be renewed.
 - iii. Copyright happens as soon as the work is complete.

- iv. A notice of copyright is no longer required for a work to be protected.
 - v. The work must be registered before the owner can sue anyone for infringement of the copyright.
3. Wow that seems like a long time.
- a. Yes. It is absurd. Blame the Disney Corporation (guess which iconic figure was about to run out of time on his copyright).
 - b. Blame the Sonny Bono Copyright Extension Act of 1998, yes that Sonny Bono, the one who was married to Cher and recorded "I've got you Babe!" which added 25 years to the term of copyright.

Church Performance License

Churches are granted a broad performance license for use of literary, dramatic, and musical works **In the context of a worship service**. There are some limits and those limits are important.

- 1) Live performances only! No filming or recording is covered by this license
- 2) Site-specific performances only!
 - a. This is where the people are gathered, not necessarily the church building
- 3) Livestream and podcast are NOT covered by this license
- 4) The use of third-party recordings (a CD by your favorite choir or praise band) are not covered by this license
- 5) No charging admission! A free-will offering is fine.
- 6) Video is **specifically exempt from this performance exemption**. This means no using videos in your worship service without permission. If your church subscribes to the worship videos on sundaysandseasons.com then you have permission to use the videos in live, in-person worship. No streaming or podcast allowed!

The Church Bulletin

- 1. When a church bulletin is printed, the church becomes the publisher of all of the content of the bulletin! This is what I mean when I say churches are weekend publishers.
- 2. Anything in the church bulletin that is under copyright to someone must have permission granted for its use **BEFORE IT CAN BE USED**.
 - a. This cannot be emphasized enough. The worst thing that can be said regarding copyright is "I would rather ask forgiveness than permission." That attitude can get very expensive.
 - b. This can include some unexpected things, especially when it comes to music.
 - i. Hymns have elements to them.
 - 1. Text: Cannot have a hymn without words to sing.
 - 2. Tune: Have to have a melody to sing the words.
 - 3. Arrangement: The pretty chords the accompanist plays or the choir sings. The harmony parts.
 - 4. Translation: Think of the English text to Children of the Heavenly Father. The original is Swedish.
 - ii. Each of these elements may have a different rights holder so there may be more than one person to contact for permission.
 - iii. Only worry about the elements that are to be printed.
 - c. **DO NOT** worry about page numbers or titles.
 - i. These are not elements that can be under copyright.

Podcast and Streaming

When churches move their services online, the move from being a publisher for their bulletin to being a broadcaster. This increases the amount of content that must be licensed. Examples include clearing rights for hymn tunes and arrangements that are heard on the streamed service but not included in the bulletin, the anthem, the prelude, and the postlude. Everything that is audible on the streamed or podcast service that is under copyright needs to have rights cleared AHEAD OF TIME!

Licenses

1. There are two third-party licenses that may also be useful. Which one to use depends on the worship habits of the church using the license.
 - a. One License (formerly OneLicense.net)
 - i. As of January 1, 2017, OneLicense and LicenSing have merged to form One License.
 - ii. This license has a rather traditional focus and now includes some of the more famous acoustic church artists as well.
 - iii. With this license and including hymns in the public domain about 85% of ELW is covered for reproduction.
 - iv. Most, if not all, mainline protestant publishers are members of One License.
 - v. For questions on cost and options go to www.onelicense.net.
 - vi. For podcast and streaming a church will need the additional podcast/streaming module.
 - b. CCLI (Christian Copyright Licensing International)
 - i. Ideal, nearly required for churches with band-lead worship.
 - ii. Augsburg Fortress IS NOT a participating publisher in CCLI.
 - iii. To stream CCLI content a podcast/streaming license is required
2. It is possible for there to be content published by a member publisher of One License or CCLI that is NOT covered by the license!
 - a. Example 1) The original text to Lift High the Cross has been updated by Hope Publishing Company so that it is no longer covered. The text has been updated in later hymnals and that newer version IS covered.
 - b. Example 2) Augsburg Fortress Liturgies are not part of One License but anthems, hymns, and instrumental music are

Curriculum

Use of curriculum online is governed by the terms and conditions of the sale of the curriculum to the church. Check carefully to see if the contents of workbooks and other curriculum resources are reproducible or can be shared on screens at Zoom meetings. If in doubt, contact the publisher of whatever curriculum you are using. Do not assume that the purchase of a number of copies of a book allows you to make up to that number of copies of any of the contents of that book.

Churches and Disabilities

Churches are exempt from the Americans with Disabilities Act! While this is superficially due to the separation of Church and State, it has at least as much to do with building codes and the need to allow access to the entire building. It is really difficult to set aside partial exemptions. This means that it is not legal for churches to simply make enlargements the way schools can make enlargements or other accommodations for those with documented disabilities.

Who holds the rights to my sermon?

Recent court decisions have held that the intellectual property rights for a sermon written by a church pastor as a condition of employment (your weekly sermon or homily for your congregation) is a work made for hire. This means it was done as an expected job duty by you as an employee of the church. I do not say this to get anyone to worry, just to inform that if a pastor wants to make commercial use of that sermon (say as part of a book of collected sermons for sale) the rights to that content may not reside with the pastor that created the content but rather with the church that employed them.

Silly things related to copyright

The King James Version of the Bible is perpetually under copyright in the United Kingdom by act of Parliament. Other more recent translations may be under copyright. The NRSV used in most ELCA churches is under copyright to the Division of Education of the National Council of Churches.

The Book of Common Prayer (Church of England, latest authorized version from 1662) is in the public domain, also by act of Parliament.

Making 300 copies of something because you have 300 copies of the book it is in is a violation of copyright.

The minimum fine for an infringement is \$200.00 per incident. 200 bulletins with a single violation is 200 incidents.

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