
20TH ANNUAL CHURCH AND CHARITY LAW SEMINAR

Mississauga – November 14, 2013

Copyright Issues for Charities: What You Need to Know and Do

By Colin J. Thurston, B.A., J.D., Trade-mark Agent
cthurston@carters.ca
1-877-942-0001

© 2013 Carters Professional Corporation

CARTERS

Carters Professional Corporation / Société professionnelle Carters
Barristers · Solicitors · Trade-mark Agents / Avocats et agents de marques de commerce
www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca

Toronto · Ottawa
Mississauga · Orangeville
Toll Free: 1-877-942-0001

CARTERS
BARRISTERS
SOLICITORS
TRADEMARK AGENTS

**THE 20TH ANNUAL
CHURCH & CHARITY LAW™ SEMINAR**
Mississauga – November 14, 2013

**Copyright Issues for Charities:
What You Need To Know and Do**

By Colin Thurston, B.A., J.D., Trade-mark Agent
cthurston@carters.ca
1-877-942-0001

© 2013 Carters Professional Corporation

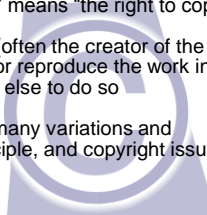
CARTERS PROFESSIONAL CORPORATION
TOLL FREE: 1-877-942-0001

Ottawa Toronto Mississauga Orangeville
www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca

2

A. WHAT IS COPYRIGHT?

- In simplest terms, “copyright” means “the right to copy”
- Only the owner of copyright (often the creator of the work) is allowed to produce or reproduce the work in question or to permit anyone else to do so
- The *Copyright Act* contains many variations and exceptions to this basic principle, and copyright issues are often complex



www.carters.ca www.charitylaw.ca

3


B. WHY DOES COPYRIGHT MATTER?

- Churches, charities and non-profits may be particularly likely to come into contact with issues involving copyright law, as one of the goals of such organizations is often the dissemination of information in furtherance of a religious, charitable or non-profit purpose
- This usually involves heavy reliance upon literature, art, music and other media, both in print and online
- Almost invariably some form of copyright ownership exists in the literature, music, pictures and other forms of media used by churches and charities,

www.carters.ca www.charitylaw.ca

4


- Establishing a legal right to use these types of works therefore becomes of vital importance
- Reproducing or performing a copyright protected work without the permission of the copyright owner can violate a copyright owner's rights to control reproduction of their work
- This type of violation is referred to as infringement, and copyright owners have legal remedies under the *Copyright Act* against those who have infringed their work



www.carters.ca www.charitylaw.ca

5

- Copyright law should be considered from at least two perspectives by churches and charities:
 - Churches and charities will use or produce many types of "works" created by others that are subject to copyright law
 - Graphics for newsletters, posters
 - Media on website
 - Sometimes the church or charity is the copyright owner, and will want to protect the work that it or its employees have created
 - Educational materials
 - Website content, articles



www.carters.ca www.charitylaw.ca

6

- The effective management of copyrights belonging to a church or charity can help to protect and grow the assets of the organization, including its brand
- Lack of awareness of copyright issues can result in:
 - The mismanagement of potentially valuable intellectual property assets
 - Increased risk of liability to third-party copyright owners for unintentional infringement of their works
- Therefore, an awareness of copyright law and how it affects the day-to-day operations of a church or charity is of significant importance

www.carters.ca www.charitylaw.ca

7

C. THE PURPOSE AND FUNCTION OF COPYRIGHT

- Copyright grants rights to creators to prevent the unconsented reproduction and exploitation of their original work to which they own the copyright
- One purpose of copyright is to protect an author's right to benefit economically from a work, as well as to permit others to do the same
- The *Copyright Act* also recognizes creators' "moral rights", which protect the integrity of an author's work, including the right to have the work properly credited

www.carters.ca www.charitylaw.ca

8

D. WHAT COPYRIGHT PROTECTS
Copyright Protects Original Works



- The word "original" is key in defining a work that qualifies for copyright protection
 - The work does not need to be new, but must originate from the author, not be copied, and involve some intellectual effort
- Originality can be tricky to determine and many court cases revolve around the question of whether a work has been copied, even in part, from somebody else's work

www.carters.ca www.charitylaw.ca

9

- Copyright protects original literary, dramatic, musical and artistic works - Each of these general categories covers a wide range of creations, e.g.:

- a) Literary works: books, pamphlets, poems and other works consisting of text and computer programs
- b) Dramatic works: films, videos, plays, screenplays and scripts





www.carters.ca www.charitylaw.ca

10

c) Musical works: compositions that consist of both words and music or music only (note that lyrics without music fall into the literary works category)

d) Artistic works: paintings, drawings, maps, photographs, sculptures and architectural works



www.carters.ca www.charitylaw.ca

11

E. WHAT COPYRIGHT DOES NOT PROTECT

- Titles, names and short word combinations are usually not protected by copyright
 - A “work” or other “subject matter” for copyright purposes must be something more substantial
- As copyright is restricted to the expression in a fixed manner (e.g. text, recording, drawing) of an idea, it does not extend to the idea itself
- Facts, ideas and news are all considered part of the public domain, that is, they are everyone’s property

www.carters.ca www.charitylaw.ca

12

F. METHODS OF COPYRIGHT PROTECTION

1. Automatic Copyright Protection

- Under the *Copyright Act*, there is automatic copyright protection for an author if, at the time of creating an original creative work, he or she is a Canadian citizen or person ordinarily resident in Canada;
- Copyright protected in Canada will usually be protected in other countries under international conventions, but the laws may vary

www.carters.ca www.charitylaw.ca

13

2. Registering Copyright

- Registration of copyright is evidence of ownership. For this reason, registration may be advisable in some circumstances so an official record is established showing that the author created the work
- If a copyright is registered, the party seeking to dispute the copyright bears the onus of leading evidence to the contrary



www.carters.ca www.charitylaw.ca

14

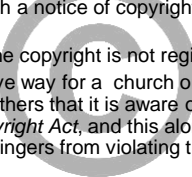
- Presumption of valid copyright is a huge advantage of registration, particularly for charities and non-profits which experience a high rate of turnover of personnel, and which might therefore find it difficult to lead other evidence of creation of a work at a later date
- To register a copyright, an application for registration must be completed online or sent to the Canadian Intellectual Property Office ("CIPO")
- While registration creates a presumption in the organization's favour, registration is never a guarantee against infringement.

www.carters.ca www.charitylaw.ca

15

3. Using Copyright Notices

- Another way of protecting a copyrighted work is for an owner to mark the work with a notice of copyright ownership
- This can be done even if the copyright is not registered
- Marking works is a proactive way for a church or charity to demonstrate to others that it is aware of its rights pursuant to the *Copyright Act*, and this alone may serve to deter potential infringers from violating the copyright



www.carters.ca www.charitylaw.ca

16

- While the *Copyright Act* does not deem it necessary that copyrighted works be marked to receive protection, the Universal Copyright Convention provides for marking with the symbol ©, the name of the copyright owner and the year of first publication
 - E.g., © **Colin J. Thurston, 2013.**
- Some organizations will include contact information for users to obtain authorization to reproduce the work
- It is also possible to include limited permissions for the public to use the work as part of a copyright notice, but this is not always recommended

www.carters.ca www.charitylaw.ca

17

G. COPYRIGHT PROTECTION AND EXCEPTIONS

- When deciding which copyrights to protect, consider the duration of the copyright, as well as various exceptions to copyright infringement
- Exceptions will help churches and charities know when they may use copyrighted content without a license

1. Duration of Copyright

- The general rule is that copyright lasts for the life of the author, the remainder of the calendar year in which the author dies, and for 50 years following the end of the calendar year
- After that, the work becomes part of the public domain

www.carters.ca www.charitylaw.ca

18

2. Infringement Generally



- Since a copyright gives you the sole right to produce or reproduce your work, through publication, performances, etc., or to authorize such activities, anyone who does such things without your permission is infringing (i.e. violating) your rights
- Naturally, if you publish, perform or copy anyone else's work without their permission, you are infringing their rights
- It is an infringement to copy an entire work or a "substantial part" of someone else's work

www.carters.ca www.charitylaw.ca

19

3. Exception – Fair Dealing

- The *Copyright Act* provides a fair dealing exception where copying is for one of the following purposes:
 - Research, private study
 - News reporting
 - Criticism or review
 - Education
 - Parody or satire
- If “dealing” in a work was for one of these purposes, then there may be no infringement if the dealing was also “fair”. The exceptions are not absolute.



www.carters.ca www.charitylaw.ca

20

4. Other Exceptions

- Private Purposes
 - The *Copyright Act* provides an exception for certain private uses or purposes including non-commercial user-generated content, reproduction for private purposes, fixing signals and recording programs for later listening or viewing, and backup copies
- Educational Institutions, Libraries, Archives and Museums
 - These institutions are given certain exceptions as long as their use of the copyrighted materials is undertaken without motive of gain

www.carters.ca www.charitylaw.ca

21

- Religious, Educational, Charitable or Fraternal Organizations
 - This exception permits specific organizations to use copyrighted works for musical performances
 - The use must be in furtherance of a religious, educational, or charitable object – this generally would not include use at a fundraising event
- User-Generated Content (AKA the “YouTube Exception”)
 - Individuals may use sections of copyrighted material in new works without a license, as long as they meet the requirements specified in the *Copyright Act*

www.carters.ca www.charitylaw.ca

22

H. MORAL RIGHTS

- In addition to copyright ownership in a work, the *Copyright Act* also recognizes and protects the “moral rights” of the author, which exist independently of copyright
- These rights include the rights to:
 - Attribution: being named as the author or the right to remain anonymous
 - Integrity: protecting the work from being modified if this would prejudice the author’s honour or reputation
 - Association: control over the use of the work in association with a product, service, cause or institution that is prejudicial to reputation

www.carters.ca www.charitylaw.ca

23

I. COPYRIGHT ISSUES FOR CHARITIES

1. General Issues

- Copyrights can be a significant asset if effectively managed, but can also result in liability to an infringing organization
- Important questions for churches and charities to ask are:
 - Whether the organization has the rights necessary to carry out its activities without infringing on the rights of others?
 - Whether the organization possesses good title to the copyright that it considers its owns?

www.carters.ca www.charitylaw.ca

24

- Charitable organizations may need to consider their copyright practices in relation to:
 - Use of licensed software
 - Their website content - creating the content and acquiring rights to other’s content
 - Fundraisers/special events - these may involve development of graphics and other printed material and use of music or other entertainment
 - Promotional merchandise, e.g., t-shirts, coffee mugs, posters, video or digital recordings
 - Charitable fundraising and activities on the internet

www.carters.ca www.charitylaw.ca

25

J. EMPLOYEES AND VOLUNTEERS

1. Using Third-Party Material


- Generally, employees and volunteers of a church or charity will not know the ins and outs of copyright law
- Employees and volunteers may not consider whether copyright applies to a work, or may assume that an exception applies or that they will somehow be personally exempted from responsibility
- If an employee or volunteer infringes copyright in the performance of their duties for the organization, then it is ultimately the organization that will be held responsible in most cases

www.carters.ca www.charitylaw.ca

26

2. Copyright Policies

- A church or charity can help to reduce the risk of copyright infringement by creating a Copyright Policy for employees and volunteers to follow
- A Copyright Policy should be accessible and visible in areas where copying is likely to take place, such as near photocopiers and printers and on the desktop of computers that are used by the organization's employees



www.carters.ca www.charitylaw.ca

27

3. If in Doubt, Obtain Written Permission

- The question of whether copyright applies, or whether or not an act is an infringement, is often complex and answers will not always be certain
- Even if you believe there is an exception that applies, the owner may not agree
- Look for works that contain express permissions that allow others to use or reproduce the work
- Where the work does not contain a license or permission, it is usually best to seek express permission before copying or reproducing someone else's work

www.carters.ca www.charitylaw.ca

28


K. WORKS AUTHORED BY EMPLOYEES

1. Generally

- The author of the work first owns the copyright. There are some exceptions:
 - The author must be human
 - Employers of authors working under employment usually own those copyrights

2. Authorship

- The author is whoever writes, produces, or otherwise creates a creative work
- Corporations cannot be authors
- There can be multiple authors for one work



www.carters.ca www.charitylaw.ca

29

3. Employees

- If the author is employed under a contract of service or apprenticeship, the employer usually automatically owns the copyright to the work
 - The author retains moral rights to the work
- There are two requirements for this to happen
 - The employee must be employed under a contract of service or apprenticeship
 - The work must have been made in the course of that employment or apprenticeship

www.carters.ca www.charitylaw.ca

30


4. Employees vs. Independent Contractors

- Independent contractors and quasi-employees are not treated the same as “employees”
- Volunteers are not usually considered to be “employees”
- Therefore, the church or charity will not automatically own the rights to works its volunteers or independent contractors create
- Disputes can arise over ownership of copyright works
- Often, churches or charities will be surprised to learn what they do not own the copyright for

www.carters.ca www.charitylaw.ca

31

- With anyone who is not an employee, the church or charity will need to obtain an assignment of rights if it wants to own the copyright in works authored by that person
- Moral rights cannot be assigned, but can be waived by the author and such a waiver should also be obtained
- Even with the general rule regarding employees, it is recommended to clarify in writing, often by including appropriate terms in the employment contract
- Assignments must be made in writing



www.carters.ca www.charitylaw.ca

32

L. LICENSES AND PERMISSIONS TO USE COPYRIGHT PROTECTED WORKS

1. License should be in Writing

- While work by an employee or other “work for hire” can often be assigned to an organization, using work created by a third party usually requires a license
- Other organizations that want to use a work created by the church or charity may request a license to use the work
- Sometimes a license to use a work can be implied from the circumstances under which a work is created or provided, but it is best practice to always obtain evidence of a license in writing

www.carters.ca www.charitylaw.ca

33

2. When to Obtain a License

- Before a church or charity licenses a work to a third party, it is essential to confirm that the church or charity has obtained ownership of the work permitting it to do so. Otherwise, the church or charity may be held liable for infringement by the licensee
- A license to use an individual work can be granted by the owner of the work
- A license sets the terms and conditions for acceptable use, some factors to consider include geographic region, duration, purpose, medium, language or translation

www.carters.ca www.charitylaw.ca

34

3. When to Grant a License

- Licensing can be used to protect and promote a church or charity, its purposes and its brand and reputation
- Work itself may be of great value
- Control and protect an association or affiliation of churches or charities internationally, by controlling the use of materials used under license from church or charity in Canada
- Control and protect trade-marks
 - Especially a unique version of a common symbol

www.carters.ca www.charitylaw.ca

35

4. Collective Licensing

- If the only way to obtain a license was to contact each owner in every case, copyright issues would lead to impractical and inefficient use of resources in non-profit and for-profit sectors
- The *Copyright Act* provides for collective administration of owners' rights by collective societies
- Collective Societies represent a common interest group or type of copyright owner and sell licenses and collect royalty payments on their behalf
- Purpose is to allow "one-stop shop"

www.carters.ca www.charitylaw.ca

36


- Some relevant examples include:
 - Society of Composers, Authors and Music Publishers of Canada (SOCAN)
 - Access Copyright, The Canadian Copyright Licensing Agency
 - Christian Video Licensing International (CVLI)
 - Christian Copyright Licensing Inc. (CCLI)
- Other listed on the Copyright Board of Canada website at: <http://www.cb-cda.gc.ca/societies-societes/index-e.html>

www.carters.ca www.charitylaw.ca

37

M. RECOURSE FOR INFRINGED COPYRIGHTS

- It is usually not advisable to begin legal action right away
- It is possible that the infringer simply did not know that the work was protected, or knew that it was protected but believed that what was being done with the work was completely legal



1. Cease and Desist Letter

- Send a cease and desist letter to the infringer, informing them that the organization owns the copyright to a particular work, and outlining why and how the copyright is being infringed

www.carters.ca www.charitylaw.ca

38

- The letter should also ask that the infringer stop violating the copyright
- If the copyright owner is willing to license the copyright or assign it for a period of time, it may be beneficial to note that in the letter as well so this possibility can be left open for discussion

2. Formal Legal Action

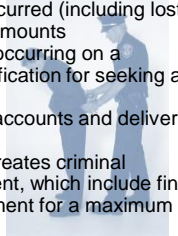
- If the infringer continues to violate the copyright, then it may be appropriate to commence formal legal action
- Remedies for copyright infringement can include damages awards or injunctions to prohibit the infringing conduct

www.carters.ca www.charitylaw.ca

39

3. Remedies

- Damages: copyright owners may receiving damages based on the actual damages incurred (including lost profits), or prescribed statutory amounts
- Injunction: if the infringement is occurring on a continuing basis, there may justification for seeking an injunction
- Civil remedies can also include accounts and delivery up
- Additionally, the *Copyright Act* creates criminal offences for copyright infringement, which include fines of up to \$1 million and imprisonment for a maximum term of five years



www.carters.ca www.charitylaw.ca
