



Integrated Practice, Proactive Advice

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Copyrights and Trademarks in a Virtual Universe: What Charities and NFPs Need to Know

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Overview of Presentation

- A Overview of IP Rights
- B What is Copyright?
- C What is a Trademark?
- D Infringement
- E Tips for Protecting IP in the Virtual Universe
- F IP Traps in the Virtual Universe
- G Key Takeaways + Panel Discussion

B. What is Copyright?

- Copyright protects original literary, artistic, dramatic or musical 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 someone else’s work



C. What is a Trademark?

- Trademarks are likely the most important part of an organization’s brand and one of the most powerful forms of intellectual property because they protect an organization’s image
- A trademark is any mark used for the purpose of distinguishing products and services from others in the public
- In particular, names, logos, or slogans are parts of an organization’s brand known as “trademarks”
- Trademarks legally protect a brand and grant an organization exclusive rights to their use in the public



D. Infringement

Since copyright and trademark rights give the exclusive right to use that particular work or trademark, anyone that breaches or violates those rights (*i.e.*, uses your work or trademarks) without permission is infringing the rights of the organization



If you copy work or trademarks from a third party without permission, you may be infringing their rights

E. Tips for Protecting IP in the Digital World

1. Automatic Protection

- There is automatic **copyright** protection for an author if the author is a Canadian citizen or person ordinarily resident in Canada, or is a citizen of various other international convention countries



- There is also automatic **trademark** protection as soon as a trademark owner commences use of its trademark - but proceed with caution as discussed in the coming slides



2. Registration

- Registering copyright with Canadian Intellectual Property Office (“CIPO”) entitles the owner to a registration certificate that constitutes official proof of ownership
- Creates a rebuttable presumption that copyright exists in the work and that the copyright registrant is the owner of said work
 - This can be useful when asserting rights
- Registering a trademark with CIPO offers numerous advantages:
 - A presumption of ownership and validity
 - Registration of a corporate name or business name does not itself give trademark protection
 - Exclusive rights to use the trademark in association with the registered goods and services



With an unregistered trademark

- The owner must show extensive use, reputation, and goodwill in the mark, to rely on these rights
- Rights are limited to a specific geographic area where the mark has acquired reputation and goodwill
- There is no legal presumption of ownership or validity
- The burden of proof is entirely on the owner to substantiate the existence, scope, and enforceability of the unregistered rights

With a registered trademark

- The registration is effective throughout Canada
- Suing for trademark infringement which can be done only on the basis of a registered trademark and is generally easier (and less costly) than suing for passing off of unregistered trademark rights
- Failure to register can result in a costly and lengthy court battle
- Can act as a defense to a trademark infringement claim
- A registered trademark has equity - it becomes an asset of the trademark owner and can be sold or licensed

3. Policies and Contracts

- A charity or NFP can help to reduce the risk of infringing IP that is owned by a third party by creating an IP Policy for employees and volunteers to follow
- A Social Media Policy should also be implemented that addresses the organization's policies regarding the use of IP on social media outlets
- A charity or NFP should also have policies in place that protect its own IP including a Terms and Conditions of Use on its website that address the use of the organization's IP
- Implement contracts with employees, volunteers and independent contractors that clearly state that the organization is the owner of all IP and that moral rights are waived, further discussed in later slides



F. IP Traps in the Virtual Universe

- As discussed, IP can be a significant asset if effectively managed, but can also result in liability - especially in the fast-moving digital environment where content is easily copied, shared, or misused
- Important questions for charities and NFPs to ask are:
 - Does the organization have the rights necessary to carry out its activities without infringing on the rights of others?
 - Does the organization possess good title to the IP that it believes it owns?
 - Are these rights clearly documented and understood in the context of digital use, such as websites, social media, or online publications?

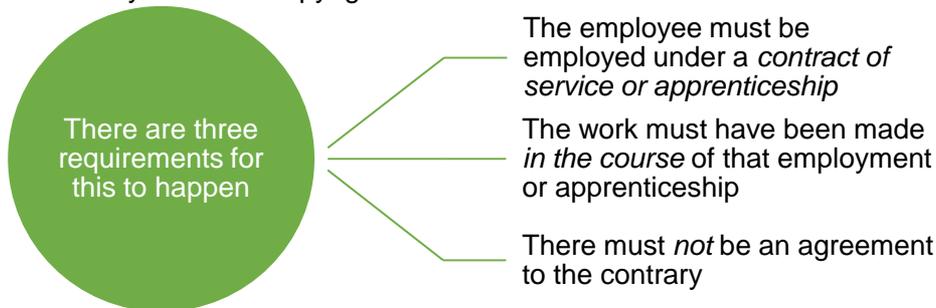
1. Copyright Ownership Generally

- Generally, the *author* of the work is the first *owner* of the copyright, unless an exception exists
- There can be multiple authors for one work
- The author is whoever writes, produces or otherwise creates a creative work
- Only humans can be authors - not corporations (raises interesting questions in the context of AI – discussed later)
- The *Copyright Act* also recognizes and protects the creator’s “moral rights”, which include the right to attribution, integrity, and association
 - Moral rights can be waived but cannot be assigned
- In the digital world, identifying the author and understanding the chain of ownership becomes even more critical, as online content can be quickly reposted, remixed, or misattributed



2. Copyright Works Created by Employees

- One exception to the author being the first owner of copyright is where the author is employed under a contract of service or apprenticeship; in such cases, the employer automatically owns the copyright in the work



- The author retains moral rights to the work (unless waived through contract)
- Digital content, such as social media graphics, blog posts, and online videos, may qualify as copyright-protected works
Charities and NFPs should ensure they have proper employment agreements in place covering digital outputs

3. Copyright Works Created by Independent Contractors and Volunteers

- One difficult question that frequently emerges is whether a person is under a “contract of service” or a “contract for services”
- Independent contractors, volunteers, and quasi-employees are not usually considered to be under a “contract of service”
- Therefore, a charity or NFP will not automatically own the rights to works its volunteers or independent contractors create (e.g., web designers, logo developers)
- Disputes can arise over ownership of copyright works
- Often charities and NFPs will be surprised to learn what they do not own the copyright of content they paid for, especially in the digital context, such as websites, e-learning tools, or videos created by external providers
- Written agreements should explicitly address copyright ownership of all online and electronic materials



4. Trademark Ownership Generally

- When you use a mark in the marketplace you accrue common law or unregistered trademark rights



Registration is the confirmation of common law rights acquired through use



The first user of a trademark is the party entitled to use and own the trademark, regardless of if (or when) an application to register the trademark was filed



The first user is technically entitled, but the first party to file gains a significant procedural advantage in securing rights



The scope of protection for common marks is restricted to the geographic area and to the actual use of the mark, whereas the registration is effective throughout Canada



Digital use of trademarks – such as in domain names, social media handles, and app branding – raises unique risks and organizations should monitor how marks appear and are used online

5. Failure to Search, Register, and Control Trademarks

- To avoid lengthy legal battles, charities and NFPs should ensure they:



Search

Conducting a trademark search prior to using a trademark allows you to avoid encroaching on others' rights and can help determine who is potentially encroaching on your pre-existing rights



Register

Registering trademarks allows you to enforce against later users of confusingly similar trademarks and registration can act as a defense if a third party is trying to sue you for trademark infringement or passing off



Control

Trademark use must be controlled to avoid weakening or losing trademark rights through misuse or unauthorized use

- Misuse of trademarks online, for example, by third parties on e-commerce sites or social media, can erode value and should be addressed quickly

6. Using Third-Party Material

- Content that is not created by the charity or NFP does not belong to the organization and therefore cannot be used without permission, this includes images, text, videos, and music found online
- Employees and volunteers may not have considered whether IP rights apply to a work, or may assume that an exception applies or that they will somehow be exempted from responsibility
- If an employee or volunteer infringes IP in the performance of their duties for the organization, then it is ultimately the organization that will be held responsible in most cases
- Use of collective licensing (e.g. CCLI) - several important considerations on what you can or cannot do with the content online (e.g. what is the license for, can you use the content online, etc.)
- In the digital world, it is easy to copy content, but permissions and licenses still apply
- Always confirm usage rights before publishing material online



7. Social Media

- Examples of Social Media: LinkedIn, Facebook, X (Twitter), Instagram, Pinterest, YouTube, Google+, *etc.*
- Ensure IP of others (and your own) is not infringed
- Social media can expose your organization to liability for infringing the IP rights of others
- Monitor social media sites for postings by employees and third parties that may infringe IP of others
- Review posted content and consider who is the owner
- If the organization does not own the work, any reproduction of that work on social media can constitute IP infringement
- Most platforms provide tools to report posts or pages that infringe IP rights, which can lead to takedown or removal



8. Use of Generative Artificial Intelligence (AI) Systems

- These systems can generate novel creative content in a wide variety of forms and even of quality comparable to works created by talented human artists (*e.g.*, ChatGPT)
- This includes the generation of text, logos, images, and music often prompted by short instructions from users
- Generative AI systems operate using models trained on vast datasets of text, images, or other data
- These models build a representation of patterns identified in the training data using various machine-learning techniques
- In the wake of the widespread use of generative AI tools, an increasing number of stakeholders in the creative industries have expressed concerns about the impact of this technology on the IP framework



AI-Created Content: Who Owns It?	AI and Trademark Challenges	Ethical and Reputational Issues
<ul style="list-style-type: none"> • AI-generated artwork, music, writing, and avatars are not automatically copyright-protected • Charities and NFPs using AI tools must understand ownership rights - the AI platform's terms may grant rights to the platform, not to the user 	<ul style="list-style-type: none"> • AI tools can create logos, slogans, or brand elements that are similar to existing trademarks • This poses infringement risks • Charities and NFPs must be mindful of these risks 	<ul style="list-style-type: none"> • AI may source from biased or unauthorized materials • Charities must vet AI tools carefully to avoid unintentional infringement which can also lead to reputational harm

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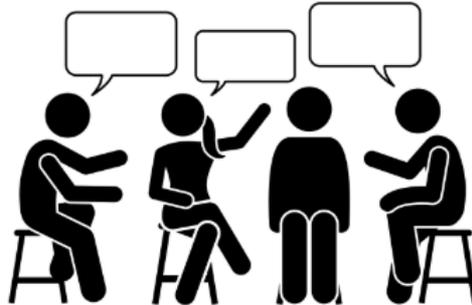
G. Key Takeaways

-  IP is a very valuable asset to charities and NFPs
-  It is beneficial for charities and NFPs to familiarize themselves with the laws surrounding copyright and trademarks
-  Implement policies and procedures in order to protect IP and to avoid any unintended consequences
-  Regularly monitor the use of IP online; misuse in the digital world can spread quickly and damage reputation
-  Respond promptly and strategically to IP misuse, especially online, in order to minimize harm and preserve public trust

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Panel Discussion



Notes From Panel Discussion

Question 1: What are some things to be mindful of as organizations are thinking about revitalizing their brand or adopting a new brand?

- Full comprehensive clearance searches
- File trademark applications early
- Consider international reach
- Secure digital assets such as social media handles and domain names
- Be very mindful of first use – “use it or lose it”
- Plan timelines and rollout
- Protect your legacy brand

Question 2: How should organizations respond when intellectual property is misused by entities in jurisdictions where enforcing IP rights can be challenging?

- Cease and desist letter
- Enforcement through internet service provider (ISP)
- Social media enforcement

Question 3: What are some risks with respect to the use of AI as it relates to IP and some risk mitigation techniques?

- Unclear ownership of AI-generated content
- AI deep fakes and brand misuse
- Automated IP infringement
- Infringement through AI training or output
- Licensing and terms-of-use risks
- Need for human oversight
- Mitigating risk:
 - Do not use AI to create IP!
 - Have an AI policy
 - Employee/volunteer/contractor disclosure of AI use
 - Search all logos/trademarks

Question 4: Carters Foundation, a small new charity, used a free AI design tool to create a new logo for their virtual fundraiser. Six months later, they received a cease-and-desist letter from a major retailer. The AI-created logo resembled a registered trademark for similar services. Can you please let us know what the outcome of this could be and how to avoid this issue in the problem?

- Liability falls on the user (the charity or NFP) not the AI
- Carters Foundation would have to:
 - Stop using the logo immediately
 - Rebrand their event (at significant cost)
 - Set back their virtual fundraising goals by 9 months
- Take away: Do not to rely on AI for logo creation and always conduct proper clearance searches even if the creation is "from scratch" by AI

Question 5: What policies should charities/NFPs consider putting in place before using AI-generated content in fundraising or public-facing campaigns?

- Organization should have a general policy on AI usage
- Have a content review and approval process
- Do IP ownership and licensing checks
- Discuss ethical and brand considerations

Question 6: If someone misuses a charity or NFP brand in a virtual world (like Meta) what can the charity/NFP do?

- File a take-down request under platform rules
- Send a cease and desist letter (where appropriate)
- If necessary, enforce trademarks through legal action
- Having your trademarks registered makes this much easier

Question 7: Copyright and trademark protection can arise automatically – but when should an organization consider formal registration?

- If an organization relies on a name, logo, slogan, or program title to distinguish itself from others
- If an organization wants exclusive nationwide ownership of a trademark
- If an organization wants to deter misuse or copycats

Question 8: Are there IP-related steps that small or newer organizations can take even if they don't have the resources to register everything right away?

- Prioritize what to register
- Keep clear records of creation dates for content, designs, logos, and materials
- Use consistent branding
- Apply the TM symbol
- Secure key digital assets early
- Use contracts wisely

Question 9: How can an organization distribute its copyright-protected material while retaining control of the material?

- Written license agreements
- Allows the organization to define usage rights, attribution, and limitations
- Creative Commons can be used, but the license type must align with the level of control desired
- Charity law treats IP as an asset
 - Be mindful of gifting to non-qualified donees which can lead to non-compliance issues

Resources

- [Branding and Copyright for Charities and Non-Profit Organizations Third Edition](#) (2019), by Terrance S. Carter and U. Shen Goh, Toronto: LexisNexis Canada
- [IP Update – Use it or Lose It: New Government Pilot Project Could Result in Loss of Registered Trademarks](#), by Sepal Bonni and Cameron A. Axford
- [IP Update - Major Changes Coming to Official Marks Which Will Impact Many Registered Charities](#), by Sepal Bonni and Cameron A. Axford
- Carters [Legal Risk Management Checklist - IP & Online Content Issues](#)
- Carters [Knowledge Centre](#)
- We would like to invite you to attend our next webinar title, “**Key Legal and Operational Issues for Donor Advised Funds**” presented by Terrance Carter, Jacqueline Demczur, and special guests Malcolm Burrows, Head of Philanthropic Advisory Services at Scotia Wealth Management and Nicola Elkins, President of Cause Strategies, on Tuesday, June 3, 2025 from 12:00 to 1:30 pm ET. For additional information or to register for the event, please visit our [website](#).



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