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**The Annual 2020
Church & Charity Law™ Webinar
Goes *Virtual* - November 5, 2020**

**COPYRIGHT ISSUES IN A
VIRTUAL REALITY:
TIPS AND TRAPS**

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 <p>BARRISTERS SOLICITORS TRADEMARK AGENTS</p>	<h2>The Annual Church & Charity Law™ Webinar Goes <i>Virtual</i> – November 5, 2020</h2>
<h3>Copyright Issues in a Virtual Reality: Tips and Traps</h3> <p>By Sepal Bonni, B.Sc., M.Sc., J.D., Trademark Agent</p> <p>sbonni@carters.ca 1-866-388-9596</p> <p>© 2020 Carters Professional Corporation</p>	
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<h3>A. THE PURPOSE AND FUNCTION OF COPYRIGHT</h3> <ul style="list-style-type: none">→ Copyright is one form of intellectual property→ It is the exclusive legal right to produce, reproduce, publish or perform an original literary, artistic, dramatic or musical work→ The use of digital platforms, such as social media sites, allows individuals to reproduce copyright protected work in an instant→ As a result, organizations must ensure that their copyright protected work is not infringed, and also that they are not infringing another organization's copyright protected work that exists online <p>www.charitylaw.ca www.carters.ca</p>

- Establishing a legal right to use these types of works therefore becomes of vital importance
- If left unchecked, reproducing copyright protected work can violate the copyright owner's rights
- 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
- The effective management of copyrights belonging to a church or charity can help to protect and grow the assets of the organization
- Therefore, an awareness of copyright law and how it affects the day-to-day operations of a church or charity is of significant importance

B. WHAT COPYRIGHT PROTECTS

- 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 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

D. INFRINGEMENT

- Since 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 (e.g., violating) your rights
- If you publish, perform or copy anyone else’s work without their permission, you are infringing their rights
- One form of infringement is plagiarism — e.g., copying someone else’s work and claiming it as your own
- Using a substantial part of someone else’s work — e.g., copying a novel, and simply changing the title and names of the characters

E. TIPS FOR PROTECTING COPYRIGHT IN THE VIRTUAL WORLD

1. Automatic Copyright Protection

- Under the *Copyright Act*, there is automatic copyright protection for an author if he or she is a Canadian citizen or person ordinarily resident in Canada, or is a citizen of various other international convention countries

2. Copyright Registration

- Registering copyright with Canadian Intellectual Property Office 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

3. Notice of Copyright Ownership

- Another way of protecting a work is with a notice of copyright ownership which includes the © symbol, owner's name, and date the work was created, e.g., © Sepal Bonni, 2020
- 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 its rights pursuant to the *Copyright Act*, and this alone may serve to deter potential infringers from violating the copyright

4. 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 - it should be accessible and visible in areas where copying is likely to take place, such as near photocopiers and on the organization's computers
- A Social Media Policy should also be implemented that addresses the organization's policies regarding copyright protected works
- A church or charity should also have policies in place that protect its own copyright protected material and have public notices in place regarding its ownership of copyright on printed material and on its website

5. Terms and Conditions of Use Section on Website

- It is advisable to include a "Terms and Conditions of Use" section on websites outlining how the work shared on the website can or cannot be used by third parties
- For example, a church or charity may want a third party to distribute some content provided it is not used for commercial purposes, the content is not altered, and the owner of the work is referenced

6. Contracts

- Implement contracts with employees, volunteers and independent contractors that clearly state that the organization is the owner of all work and that moral rights are waived - further discussed in later slides

F. COPYRIGHT TRAPS IN THE VIRTUAL WORLD

- As already discussed, 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 believes it owns?

1. Copyright Ownership Generally

- Generally, the *author* of the work is the first *owner* of the copyright unless an exception exists
- The author is whoever writes, produces or otherwise creates a creative work
- Corporations cannot be authors - author must be human
- There can be multiple authors for one work
- The *Copyright Act* also recognizes and protects the creator's "moral rights" which includes the right to attribution, integrity, and association
 - moral rights can be waived but cannot be assigned

2. Works Created by Employees

- One exception to the author being the first owner of copyright is if the author is employed under a contract of service or apprenticeship, the employer automatically owns the copyright to the work
- There are three 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
 - There must not be an agreement to the contrary
- The author retains moral rights to the work

3. 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 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 and charities will be surprised to learn what they do not own the copyright for

- Situations to watch for:
 - Volunteers
 - Independent contractors
 - Web designers
 - Logo designers
- For anyone who is not an employee, the organization will need to obtain an assignment of rights if it wants to own the copyright in works authored by that person
 - Include waiver of moral rights
- Even with the general rule regarding employees, it is recommended to clarify in writing, often by including appropriate terms in the employment contract to avoid future issues with employees

4. Using Third-Party Material

- Content that is not created by the organization does not belong to the organization and therefore cannot be used without permission
- 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
- 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.)

5. Internet Photo Copyright Infringement

- Employees of churches and charities may have at one time or another copied and pasted images from online sources such as Google.ca for use in publications, websites, etc.
- Although the infringement may not have been intentional, without obtaining express authorization from the copyright holder or licensee of the copyright, churches and charities may be liable for copyright infringement
- As a result, the copyright owner may send a letter requesting the church or charity to pay a large sum of money or threaten legal action

6. Social Media and Copyright

- Examples of Social Media: LinkedIn, Facebook, Twitter, Instagram, Pinterest, YouTube, Google+, etc.
- Ensure copyright of others (and your own) are not infringed
- Social media can expose your organization to liability for infringing the copyright rights of others
- Monitor social media sites for postings by employees and third parties that may infringe copyrights of others
- Review posted content and consider who is the owner of the work
- If the organization does not own the work, any reproduction of that work on social media can constitute copyright infringement

G. CONCLUSION

→ Copyright is a very valuable asset to churches and charities

→ It is beneficial for churches and charities to familiarize themselves with the laws surrounding copyright and to implement policies and procedures in order to protect its copyright and to avoid any unintended consequences

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