



Intellectual Property Considerations for Catholic Communications Professionals

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Trademark v. Copyright

- © - copyright
- ® - registered trademark
- TM – unregistered trademark
- Copyrights and trademarks automatically attach to a work – you do not need to register with the federal government for your work to be protected



Copyright Basics

The U.S. Copyright Act – 17 U.S.C. § § 101-810

- Copyright protection covers fixed works only
 - Literary works
 - Musical works, including any accompanying words
 - Dramatic works, including any accompanying music
 - Pantomimes and choreographic works
 - Pictorial, graphic, and sculptural works
 - Motion pictures and other audiovisual works
 - Sound recordings
 - Architectural works
- Copyright attaches automatically to a work. There is no requirement that the copyright be registered.



Copyright Basics

Duration of Copyright

- **Works created on or after January 1, 1978**
 - In general, the life of the author(s) plus 70 years
 - For anonymous works, pseudonymous works, and works made for hire, 95 years from first publication, or 120 years from creation, whichever expires first
- **Works created but not published or copyrighted before January 1, 1978**
 - Same as above, but in no event will the copyright expire before December 31, 2002
 - Same as above, but if the work is published by December 31, 2002, the copyright will not expire before December 31, 2047



Use of Photographs

Photographs are all protected by copyright

- **Make sure you have permission before using a photograph publically**
 - General rule: If you don't know who or where the photograph came from, don't use it
 - Secure all rights from the copyright holder before use of a copyrighted photograph
- **Always have a contract when hiring a photographer**
 - Among other things, the contract should state that all pictures are a "work for hire" and that your organization owns all right, title, and interest in and to the photographs
 - If the photographer is a volunteer, you will still need a written agreement allowing your organization to use the photographs



Use of Photographs

How do I know if I can use a photograph?

- Contact the copyright holder and request permission
- Perform a reverse image search on Google
 - Go to images.google.com
 - Upload the photograph, review other uses of the photograph (this is not the most reliable to way to determine ownership of the photograph)



Use of Photographs

How do I know if I can use a photograph?

- Photographs that are subject to Creative Commons licenses
 - Read the license carefully
 - Consult this website to understand the types of licenses:
 - <https://www.flickr.com/creativecommons/>
- Photographs that are subject to Wikimedia Commons
 - Read the license carefully
 - Consult this website to understand the types of licenses:
 - https://commons.wikimedia.org/wiki/Commons:Reusing_content_outside_Wikimedia



Copyrights v. Privacy and Publicity Rights

- **Violation of Copyright**
 - Using an image without the consent of the copyright holder
- **Violation of Right to Privacy**
 - Using a person's image without consent
 - Privacy rights vary by state
 - General rule: taking someone's picture in a public place is typically not a violation of privacy since the person would not likely have a reasonable expectation of privacy
- **Violation of Right of Publicity**
 - Using a person's image for commercial purposes without consent
 - Rights to publicity vary by state
 - General rule: Make sure to secure a release when using someone's picture for commercial purposes



Sample Release



Santa Clara University

PHOTOGRAPH, VIDEO & VOICE RECORDING RELEASE

I grant to Santa Clara University permission to copyright, use, reuse, publish and republish any photograph and/or video and/or voice recording taken of me by the University or those commissioned by the University. This right applies to any reproductions in any form (including, and without limitation, electronic form) used alone, in a composite or with any printed matter or advertising copy, for any purpose of trade, advertising, publicity, promotion, or education, without restrictions or limitations.

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Name (Print)

Signature

Date

For individuals under the age of 18:

Name of Parent/Guardian

Signature of Parent/Guardian

Date

OGC Rev. 3/16



Copyright Basics

Fair Use Doctrine

- Allows use of a copyrighted work without the permission of the copyright holder
- The fair use doctrine applies to works used for:
 - Criticism
 - Comment
 - News reporting
 - Teaching
 - Scholarship
 - Research



Factors to determine if use of a copyrighted work qualifies as fair use

- 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



Use of Copyrighted Music

- The music industry is particularly litigious and aggressive in enforcing copyrights
- Always secure permission from the copyright holder before using a song in mass media (commercials, websites, radio)
- Use of copyrighted music may be permitted under the fair use doctrine, but use only as much of the song as is necessary (not the entire song)



Proprietary Marks

- Never use a company's proprietary marks without express, written permission
- Do not allow others to use your proprietary marks without permission
 - Protect your organization's reputation
 - Protect your organization's brand



Questions



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