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Copyright

1. Copyright - General

A copyright is a property right under federal law protecting **original** works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. Examples of works of authorship include: 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; and computer programs.

(See also www.loc.gov/copyright and www.mpa.org/copyright/church.html)

Federal copyright law does not protect an idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work.

The owner of a copyright has the exclusive right to do the following:

1. reproduce the work in copies or recordings;
2. prepare derivative works based on the copyrighted work (a derivative work is one based upon one or more pre-existing works; for example, the update to an existing book would be a derivative work);
3. distribute copies or recordings of the work to the public by sale or other transfer of ownership, or by rental lease or lending;
4. perform the copyrighted work publicly;
5. display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

2. Religious Services Exemption

For churches, the majority of questions involve copying music from hymnals, sheet music and videotapes and taping worship services for shut-ins. The Religious Services Exemption contained in the U.S. copyright law exempts from copyright infringement **public performance** of nondramatic literary or musical works of dramatico-musical works **of a religious nature, in the course of services at a place of worship or other religious assembly**. This exemption does not extend to copying the music or to audio or video taping of the performance.

Under the Copyright Act of 1976 the copyright owner has the exclusive right to copy or reproduce a musical work. If a church purchases sheet music or hymnals, that purchase alone does not authorize the church to make copies or transparencies of the sheet music or songs from the hymnals. This applies to the lyrics as well as the music. The only exceptions are 1) music that is in public domain (no longer copyrighted) may be copied; and 2) music may be copied in an emergency situation to replace purchased copies which are not available for an imminent performance provided the church replaces the copies with purchased copies. Public domain music is that which has either lost its copyright protection or was never protected by copyright. It is important to note that the absence of a copyright notice does not mean a work is in the public domain. *The United Methodist Hymnal* states:

United Methodist congregations may reproduce for worship and educational purposes any single item from *The United Methodist Hymnal* for one-time use, as in a bulletin, special program, or lesson resource, provided the item bears a United Methodist Publishing House or Abingdon Press copyright notice; that the copyright notice as shown on the page is included on the reproduction; and that *The United Methodist Hymnal* is acknowledged as the source. Permission requests for use of more than one United Methodist Publishing House or Abingdon Press item should be addressed to Permission Office, Abingdon Press; 201 8th Avenue, South; Nashville, Tennessee 37202. (Page 906)

For further information about the use and copyright ownership, please contact Copyright Company at 615.244.5588 or 800.779.1177. For non-music items in the hymnal, please contact the United Methodist Publishing House Rights and Permissions at 615.749.6422.

3. Audio and Videotapes of Religious Services

As noted above, under federal copyright law, a copyright owner has the exclusive right to: reproduce, prepare derivative works (make changes), distribute copies, publicly perform, and publicly display the copyrighted work.

The religious services exemption in the copyright law permits the **performance** by the congregation and choir of these hymns in the course of the worship services, but the exemption **does not extend to taping** the performance. Taping or transmitting a live

performance without permission or license is copyright infringement because it constitutes making a copy and distributing it without the owner's prior consent.

If the church wants to tape copyrighted music for shut-in's, the options are: obtain permission from copyright owners; avoid the use of copyrighted music; turn off the recording device when copyrighted music is being performed; "splice in" prerecorded public domain musical works that were previously sung by the church choir; obtain a compulsory license; or enter into a "blanket license agreement."

The compulsory individual license process is cumbersome and not recommended. For information about blanket licenses, contact Christian Copyright Licensing, Inc. of Portland, Oregon 503.257.2230, and EMI Christian Music Publishing (formerly Sparrow Corporation) of Brentwood, Tennessee 615.371.6800. These and other licensing companies can provide information about blanket licenses, fees and the list of songs in their repertoires. Make clear that your church wants the right to tape and make copies of these tapes for a variety of purposes. Please make certain you carefully consider all the uses of the music you want to make and communicate that to the licensing firm so the license will cover all your intended uses.

Also, for hymns projected or broadcast onto screens in the course of a service, the right to make copies for the purpose of preparing overhead transparencies ordinarily is not given to the church when it buys music. The copyright owner retains the right to make these types of copies. If the church wants to make these kind of copies, it must obtain written permission from the copyright owner or obtain a license that permits such use. (See, however, the language the *Hymnal* which permits the limited use of UMPH copyrighted items)

Copyright infringement is serious. It can result in significant civil damages, injunction and/or criminal penalties. As an example, willful infringement can result in statutory damages of up to \$100,000. The infringer may also be liable for attorney's fees and costs. There are companies that act as agents for the copyright owners. These companies have employees that spend their time traveling the country to discover unauthorized use and collect license fees, so proceeding without permission or license is both unwise and illegal.

4. Video Viewing

As noted earlier, a copyright owner is given the right by federal copyright law to regulate public performances or showings or copyrighted videotapes.

Renting a video tape for in-home viewing (the typical video store tape) is not a license for public viewing such as viewing in Sunday worship services, youth group or small church group meetings or retreats. Certain distributors or religious video may include a license for public viewing. If the video is labeled “For In-Home Viewing,” public viewing is not permitted.

5. Internet and Web Pages

The Internet presents the unique opportunity to make materials almost immediately accessible to anyone in the world with Internet access. This communication medium continues to evolve as does the law related to it. In general, communication on the Internet is subject to the same rules as communication in print or broadcast.

If a web page owner places copyrighted material on his web page without prior permission or allows a third party to do so, the web page owner will be liable to the copyright owner for copyright infringement.

A web page owner who permits third parties to upload information to the web page should place a notice on the web page stating the owner is not responsible for content or information uploaded by third parties and that third parties shall not upload copyrighted information to the web site. Such a disclaimer may limit or eliminate liability by the web page owner.

6. Computer Software

Computer software is generally copyrighted. A copyrighted software program cannot be copied without a license or permission from the copyright owner. Installation of software results in “copying.” **Generally, purchase of software from a retailer gives permission to install on one computer only.** It does not give the purchaser the right to install the software on multiple computers. The license must be read carefully to ascertain whether the software can be installed on more than one computer and, if so, under what conditions. Unless the license permits, copyrighted computer software should not be loaned for two reasons: 1) lending is a form of distribution reserved to the copyright owner, and 2) installation by an unlicensed borrower will result in an infringing copy

Generally, revising computer software will not result in a copyrighted program. Revision results in the creation of a derivative work and may constitute infringement if done without the copyright owner's permission. The copyright owner enjoys the exclusive right to create derivative works.

Transferring a copyrighted work from some other medium to CD ROM without the copyright owner's consent is also prohibited. Any reproductions of such a CD ROM would violate the copyright laws as well.

7. Uploading and Downloading from the Internet

Downloading copyrighted materials (including photographs) from or uploading to the Internet without permission of the copyright owner results in unauthorized copying. The same is true with regard to transferring copyrighted material to a third party via e-mail.

Insurance

Trustees are also responsible for securing adequate property and casualty insurance for the local church (§ 2532). Coverages should be adjusted upward as property replacement cost values increase. In an inflationary environment, local churches often find themselves underinsured because coverages have been held static while inflation has increased property values. Periodic replacement cost appraisals of the property can enable the trustees to update the coverage to reflect current values. Coverage that increases automatically by a set inflation factor is also available. Casualty (liability) coverage should be reviewed periodically as well. Should a change in use be implemented, such as opening a day care center, school, or other new program, be sure to review potential liability insurance needs with the church's insurance agent and to adjust coverages accordingly.

See the Insurance and Risk Management Section for more information.

Visit www.gcfa.org for memos on "Rental of Church Steeples to Cellular Phone Companies – Legal and Tax Considerations..."