

**THOU SHALT NOT STEAL:
WHAT CHURCHES NEED TO KNOW ABOUT COPYRIGHTS**

By Timothy Atkins

I. COPYRIGHT INFRINGEMENT IS STEALING

Does your church or annual conference steal? Most of us would say “we certainly hope not.” However, in reality many of our local churches and annual conferences may actually be engaged in systematic acts of theft of property. Copyright infringement is a common occurrence, and copyright infringement is theft. An infringement upon a copyright owned by another is an appropriation of property that belongs to someone else. Copyright infringement is an act of theft which differs only in degree from theft by embezzlement or misappropriation of funds. It matters not whether local churches and annual conferences intend to commit theft. The fact is whenever there is an act that infringes upon a copyright owned by another, an act of theft occurs.

Unfortunately, misguided understanding and/or apathy as to copyright law results in a large number of our local churches and annual conferences committing theft of property. Apart from the potential legal consequences to actions that infringe upon a copyright owned by another, there is a moral or ethical dimension to consider. Most of us would consider it morally wrong to steal regardless of whether one steals a piece of bubble gum or embezzles a million dollars from a company. We ought to also consider it wrong to take another’s property by infringing upon an owned copyright. When our local churches and annual conference violate the law of copyrights we set a poor example of what it means to be the body of Christ.

II. THE BASICS OF COPYRIGHT LAW

There are therefore, some things you need to know about copyright law that will help you to insure that our local churches and annual conference are within the boundary of the law. A copyright is a legal device that is intended to protect the property rights of the owner. Moreover, this right of copyright arises automatically relative to any “original work of authorship” that is in a tangible or fixed form. Original works made after 1978 need not either be published or have a registered copyright in order to be covered by terms of the law.

Any original work of authorship including text/literary works, musical works, pictures/pictorials, sculptures, audio-visual works and architectural drawings are protected by copyright.

A copyright vests certain exclusive rights in the owner of the copyright. Those exclusive rights are as follows:

1. The right to reproduce the work,
2. The right to prepare derivative works,
3. The right to distribute copies, and
4. The right to perform publicly.

The exclusive rights vested in the owner of a copyright are as firm as any right that is granted by law. That being the case, there are, notwithstanding, certain exceptions to the fullest application of those rights. The exceptions are categorized in three types, to wit, an education exception, a fair use exception and a limited use license granted by the owner of the copyright.

Of these three types of exceptions only two would have any relevance to a local church or annual conference. The two types relevant for local churches and annual conference would be fair use and limited use license.

A fair use exception is not automatic. Rather, whether a particular use would be deemed fair use is a fact question that would ultimately only be determined in the course of litigation. On the other hand, a limited use license is a limited right granted by the owner to other persons to use copyrighted material in certain ways.

III. COMMON EXAMPLES IN WHICH COPYRIGHT INFRINGEMENT OCCURS

Before discussing the way in which the two exceptions might apply to a local congregation or annual conference, it might be helpful to consider a few very real everyday types of scenarios wherein a local church or annual conference might engage in some activity that is in fact an infringement on a copyright owned by another,

Case One: A pastor copies a quote from a recent book he or she has read, into a sermon manuscript. Additionally, the pastor orally reads the quote during the delivery of the sermon. Unless an argument can be made on the basis of the fair use exception, then two distinct instances of copyright infringement have occurred. The first instance was in

copying the quote into the manuscript, and the second was in reading the quote during the sermon delivery.

Case Two: A local congregation frequently includes quotes, such as notable passages of prose and poetry in the worship bulletin or newsletter. If these quotes are of material not considered in the public domain, then each and every copy could be considered a separate infringement upon a copyright.

Case Three: A local congregation and/or annual conference uses a projection system to project the words of hymns or songs onto a screen. Again, if these hymns or songs are not considered to be in the public domain, then both the copying of and projection of the words could be considered separable instances of copyright infringement.

Case Four: A local congregation records its worship services onto cassette tape or compact disc. Part of that recording might include a choral anthem that is the performance of a piece of contemporary worship music. The recording of the anthem may be an infringement of the copyright of the song.

Each of these examples is similar to situations that play themselves out everyday in many local churches and annual conferences. And each instance of similar scenarios that are played out week by week may in fact be individual acts of theft by copyright infringement.

IV. FAIR USE AND LICENSING EXEPTIONS

Now it is true that in some situations parts of a copyrighted work may be used if that use could be considered fair use. Unfortunately, there is no hard and fast way to determine whether a particular use is a fair use. Instead, there are general principles that are guide to determine whether a particular use is a fair use. Those guiding principles are: the purpose and character of the use, the nature of the copyrighted work and the amount and substance of the portion of the copyrighted work used.

It is important to note that those guiding principles are used to assess particular factual situations. Thus, the guiding principle behind the “fair use” exception lend themselves to a very broad range of interpretations in regard to their applicability in any particular case. And, indeed, this has been the case in the court decisions. If one appropriates copyrighted material, and wished to claim a fair use exception, one should also be aware that a court might find otherwise.

The second possible exception that might apply in the hypothetical cases is the exception that might be given by a limited license to use the copyrighted material. Generally, a license will accompany a copyrighted work which is purchased in a bona-fide transaction. A license allows one to appropriate material from a copyrighted work for very specific and limited uses.

Herewith, are a few examples of license that a local congregation or annual conference might encounter.

1. Sheet music that is purchased for a church choir will generally be accompanied by a limited performance license which authorizes the work to be performed in the context of a worship service. Notably, this type of license will not include a license to copy or record the music piece.
2. Denominational resources also are copyrighted. For example, the *United Methodist Hymnal* is copyrighted by The United Methodist Publishing House. The United Methodist Hymnal provides a license for local congregations to appropriate for one time use any single item in the hymnal. However, in order to take advantage of the limited use license, one must comply with the provisions thereby. Those provisions require that the reproduced item contain the copyright information of the United Methodist Hymnal and the underlying information from the item, for example, a hymn that is being used.
3. Some works, especially printed media, contain a limited use license. For example, a contemporary translation of the Bible might contain a license to use up to five hundred words, in a reproduced form, so long as the copyright is acknowledged. This means that any appropriation of material beyond five hundred words would require that one get permission from the owner of the copyright.

V. FOUR SIMPLE RULES TO REMEMBER

When there is any question regarding whether a proposed use of material from a copyrighted work would constitute an infringement upon that copyright, the following general principles might serve to guide the decision making process.

- I. Always assume a work is copyrighted unless it is obviously within the public domain (that is published in the U.S. prior to 1923).
- II. Obtain a licensing agreement from a licensing company such as C.C.L.I. (which will with catalogued companies cover what might otherwise be a multitude of copyright sins).
- III. Be willing to accept the risks associated with the appropriation of copyrighted material if there is a legitimate argument for a fair use exception.
- IV. When In Doubt – Seek permission from the owner of the copyright to use the material.