



Protecting Your Copyright and Avoiding Infringement of Others – Live Q&A

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Session Agenda

- Copyright defined and what is protectable
- What is not copyrightable
- Legal basis for protection
- Public policy behind law and how it informs protections
- Copyrightable IP nonprofits are likely to create, should they protect it if they do, how, and what to do if it is infringed
 - ▶ Copyrightable works – most nonprofits create them but it may or may not be worth registering based on value
- Copyrightable IP nonprofits are likely to infringe, how to avoid that, and what to do if you have infringed



NIA Member:
Arlington Philharmonic
Association
Arlington, VA

NIA Member:
Urbanists Collective
Seattle, WA

Poll

How many of you have been threatened with or included in a trademark/copyright infringement case?



Intellectual Property (IP) and Protectable IP

IP - A work of intellectual creativity or invention that has economic value

Protectable IP - A work of intellectual creativity or invention that enjoys a legal basis for the owner to restrict use by others

→ Not a right to do something, instead a right to stop others from doing something ←

Intellectual Property Categories


Copyright – right under law to prevent others from copying, transmitting, presenting or making derivatives of anything fixed by the author in a permanent medium

Patent Right – right granted once a patent has issued to prevent others from making, using, or selling



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Sustainable Seas
Technology
Ocala, FL

Intellectual Property Categories

- **Trademark, service mark – right to stop others from associating the mark with goods or services**
 - AMS (acronym), Alliance Member Services (full words)
 - the image → 
 - ay'emes, niak (the sounds)
 - Colors combined with sounds and words
- **Trade Secret – secret used to gain economic advantage and a right to stop others from using it without permission**



NIA Member:
Amazon Watch
Oakland, CA

Copyright



NIA Member:
Big Friend Little Friend
of the Mitchell Area
Mitchell, SD

- Must be a modicum of creativity; you cannot copyright something too short. Use trademark for that.
- Must be fixed in a permanent media
- Pure data cannot be copyrighted so use trade secret for that (e.g. customer lists, tables of numbers)

Copyright

- US Constitution Copyright Clause is the basis for protection for creator/author and subsequent owners

[the United States Congress shall have power] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

- POLICY – encourage creative works; deal – exclusive use in exchange for creative work that can inspire others



NIA Member:

La Peña Cultural Center
Berkeley, CA

Copyright

- Methods of doing something cannot be copyrighted so use patents for that (method to calculate a premium)
- If it is a derivative work, a license is needed
- Derivative works are based on, derive from, or incorporate an already copyrighted work



NIA Member:
Nextstep Orlando
Altamonte Springs, FL

Copyright

- Registration not required
- Some rights arise when the creative work is fixed in a permanent medium and it is considered protected by copyright law as soon as it is fixed



NIA Member:
Bold Hope
Doyelstown, PA

Copyright

Registration provides:

- Presumption of ownership in legal proceedings
- Remedies if you win: Equitable (court order to stop) and Legal (\$)
- Can help to mention in a cease and desist letter prior to legal action

Registration requires:

- Fee
- Deposit the work
- Work be copyrightable subject matter



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Oaklash
Emeryville, CA

Infringement Defined

- Unlicensed use of the intellectual property of another
- Copyright looks for similarity and if you had access to the item
- Defenses
 - Independent creation
 - Fair use



NIA Member:
Community Health
Improvement Associates
Marietta, OH

Protecting Copyrighted Works of Your Organization

- General rule is register it if unauthorized use, copying, and/or distribution would undermine your business model
- Even more so if it cost a lot of time and money to create
- Still some protection for things that you don't register



NIA Member:
North County Dance and
Performing Arts Foundation
Paso Robles, CA

Protecting Copyrighted Works of Your Organization

If you see unauthorized use, the general first response is to send a cease and desist letter regardless of damages (economic or non-economic)

Bringing a lawsuit can be expensive, is best done by a specialized attorney, and will likely only make sense if there is significant damages (economic or non-economic)



NIA Member:
Citizen Robotics
Grosse Pointe Park, MI

Copyright Infringement

- **Unlicensed use of the copyrighted work(s) of another**
 - Copied, published something without knowing the source
 - Copied, published something where the source is known but no permission or improper permission
 - Used without knowing what a copyright is
- **Legal test**
 - Similarity
 - Access to the copyrighted work



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HomeFront
Lawrenceville, NJ

Avoiding Infringement Risks



Website



Email



Brochures



Events

- collateral and communication during event



Social Media posts

If You Discover You Are Infringing

**Stop
immediately!**



NIA Member:
Uncommon Good
Claremont, CA

If You get a Cease and Desist Letter or are Otherwise Accused of Infringing

- **Unlicensed use of the copyrighted work(s) of another**
 - Copied, published something without knowing the source
 - Copied, published something where the source is known but no permission or improper permission
 - Used without knowing what a copyright is
- **Legal test**
 - Similarity
 - Access to the copyrighted work



NIA Member:
Crossroads Ranch of
Harney County Equine
Activity Center
Burns, OR

Primary Points



NIA Member:
Wildlife Rescue Center
of Napa County
Napa, CA

- IP Rights are rights to stop others from doing something
- Protect your IP if the cost of protection is small compared to the cost of creation and the risk of infringement
- Avoid infringing the copyrighted works of others
- Seek specialized legal advice because specialized knowledge is nearly always required to protect your IP and to address infringement of the IP of others.

Seeking Sound Legal Advice

- Find the legal clinic at your local law school
- You are a nonprofit
 - Seek out pro-bono help from top law firms who have leaders in IP law
 - They are looking for pro-bono work like this
- Hire attorneys that are specialists in IP



NIA Member:
Morongo Basin
Unity Home
Yucca Valley, CA

Additional Questions

AI:

- How does the use of AI impact copyright?
- What should nonprofits be aware of when using AI tools?
- Ramifications of using AI-generated artwork?
- Risks associated with using AI?

Indemnification:

- Can you speak about indemnity agreements?
- What would be considered a balanced policy for an indemnification clause?

Further Resources

Access free to use copyrighted materials:

- <https://creativecommons.org/>
- <https://www.pexels.com/creative-commons-images/>
- <https://pixabay.com/>
- <https://unsplash.com/>

USPTO resources:

- <https://www.uspto.gov/ip-policy/copyright-policy/copyright-basics>
- <https://copyrightalliance.org/education/copyright-law-explained/>
- <https://www.uspto.gov/trademarks-getting-started/trademark-basics>

Trademark further information:

- <https://www.inta.org/TrademarkBasics/Pages/TMBasics.aspx>

	Trademark	Copyright	Patent	Trade Secret
Eligible Subject Matter	Source identifiers, the form of which is virtually unlimited, including words, designs, logos, slogans, sounds, colors, product configurations, and product packaging	Works of authorship (i.e., literary, musical, dramatic, pantomimes & choreographic, pictorial, graphic, & sculptural, audiovisual, sound recordings, architectural)	Inventions (i.e., processes, machines, manufactures, and compositions of matter; ornamental designs)	Commercially sensitive information (e.g., secret formulas, patterns, compilations, programs, devices, methods, techniques, or processes)
Requirements	Distinctiveness (i.e., ability to act as source identifier)	Originality and fixation in a tangible medium	Novelty, nonobviousness, utility, adequate written description	Actual secrecy, reasonable efforts to maintain secrecy, independent economic value
Ownership	First to use in commerce (either actual or constructive)	Author or author's assignee	Inventor or inventor's assignee	Developer or developer's assignee
Infringement/ Misappropriation	Use of a similar mark likely to cause confusion in the marketplace as to the source of a product and/or service	Reproducing, adapting, distributing, performing, or displaying a work without authorization	Make use, sell, offer to sell, or import.	Acquisition, use, or disclosure without authorization
Remedies	Injunctive relief; damages including lost profits, infringer's profits, or a reasonable royalty	Injunctive relief; damages including lost profits, infringer's profits, a reasonable royalty, or statutory damages	Injunctive relief; damages including lost profits, an established royalty or reasonable royalty, or enhanced damages	Injunctive relief; damages including lost profits, infringer's profits, or a reasonable royalty
Limitations Defenses	First sale doctrine, fair use	Merger, fair use, first sale doctrine, compulsory licensing	Exhaustion, reasonable repair	Independent development

Thank you for your participation!

Chris Reed

General Counsel and Chief Risk Officer



www.insurancefornonprofits.org

