



AMY COOK LAW LLC

Your Nonprofit's Online Presence

Legal Risks and Protections

Nonprofit Learning Lab
July 7, 2022

About Me

- **Attorney serving nonprofits, small businesses and creative professionals**
- **Former ED of the Farmer Chef Alliance**
- **Have served on the Boards of Illinois Stewardship Alliance, Lawyers for the Creative Arts, Preservation Partners of the Fox Valley, Geneva Cultural Arts Commission...**
- **Completed fellowship at Chicago Lawyers Committee for Civil Rights serving nonprofits**
- **Member of the Justice Entrepreneur Project, part of the Chicago Bar Foundation, pledging to serve middle-income clientele**

Learning Objectives

- Identify your protectable IP: Training and educational materials; Fundraisers; Blogs; Newsletters; Annual Report; Photos; Social Media Posts
- How to safely use others' work: understanding public domain, fair use, and permissions
- What to include in agreements with independent contractors and volunteers

Copyright

- “An original work of authorship set in a tangible medium of expression.”
- Your work is copyrighted as soon as you set it down--don't need to use © but is good idea.
- Who owns? Usually the creator. If employee in the scope of their employment, then the company/nonprofit. (Note: that means photos taken by volunteers or articles written for blogs/newsletters are owned by them!)
- Copyright lasts the life of the author plus 50 years. For a corporation, lasts 95 years from publication or 120 years from creation, whichever is shorter.
- Work for hire: Employee in scope of employment or specially commissioned. Must be in writing and fall into one of 9 categories. (Contribution to collected work, instructional text, translation, a compilation, test/answers...)

Registering Copyright

- Don't need to register to be protected but registering provides additional benefits in the event of copyright infringement → statutory damages not just “actual damages”
- Go to copyright.gov to register. Can file online for most things.
- Sample fees: \$45 for online, single author; \$125 for paper; \$65 for joint author, \$95 grouping
- You can combine some works: “Short online literary works” form GRTX: Between 50 and 17,500 words, and first published as part of a website or online platform, including online newspapers, social media websites, and social networking platforms.
- Examples of short online literary works include poems, short stories, articles, essays, columns, blog entries, and social media posts.

Trademarks

- Word, symbol, short phrases, designs, logo—even color and scent—meant to designate your product or service in the marketplace.
- Meant to prevent consumer confusion as to source of goods/services and prevent others from taking your goodwill.
- Can use “TM” if not registered or state registered, can use ® if you’ve federally registered.
- To register: USPTO.gov
- Sample fees:\$250--\$350 per class of goods/services for federal reg.
- For example: nonprofit name, program name, logo on t-shirts—all different classes.

Trademarks



Using others' work: Public Domain & Fair Use

- Public domain: work that has either fallen out of copyright (works prior to 1926) or work that has never been protected by copyright (e.g., federal government documents), open license (check usage permits)
 - Fair Use:
 1. Purpose and character of the use (commercial/nonprofit, criticism, comment, educational, news reporting)
 2. Nature of copyrighted work (creative vs factual)
 3. How much taken (take smallest amount necessary)
 4. Effect on market for original (did your use hurt market for original?)
- * How much did you transform it, so could be considered a new work?

Using others' work: Getting Permission

- Can be exclusive or nonexclusive (exclusive more \$\$)
- Find copyright holder: check © notice, copyright.gov, copyright clearing center. If book or magazine, contact publisher.
- Detail what you want to use, how it will be used, where it will appear, scope of rights (territories, languages, formats), expected publication date, length of time needed, what credit line they want.
- Payment? Let them raise the payment issue—might not have to pay.

Trade Secrets

- Process, methods, training materials, workbooks, customer/client/donor lists, suppliers, research, pricing, recipes, that you have spent time and money developing.
- Must be kept secret. Disclosed only to those who need to know.
- Consider confidentiality/nondisclosure agreement.



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Defamation

- False statement of fact that injures a person's reputation. The person bringing the suit must prove it is false and that their reputation has been injured.
- Public figures have higher burden of proof: "actual malice"
- Examples: You tell someone's story of surviving abuse but they are identifiable. Abuser claims it is false and files suit.
- You fire a staffer for theft. They claim it's false and now they can't get another job.

Invasion of Privacy

- Even if true, if you disclose something that was private and “highly embarrassing” that is not of “legitimate public interest.”
- Nonprofits that work with sensitive populations: children, alcohol and drug abuse, domestic abuse, sexual issues, certain mental and physical health conditions.
- Do not disclose private information or photos without explicit consent as to how the person’s story, photo or image will be used.
- Changing names or other identifiable information is not always enough if they can be identified in other ways. Be sure to truly hide identity if you do not have permission.

Rights of Publicity

- Using a well-known person's name, image, likeness, signature, voice, etc. without their permission for a commercial purpose (marketing/advertising).
- Be careful not to improperly imply endorsement. (If public figure walked by your event; if ED takes photo with public figure at one event but photo is then used in your fundraising materials.)
- Get written permission to use photos and implications of endorsement if you have well-known figures attending events/galas, etc.

Working with an Influencer

- Can reach audiences you are unable to reach; can open doors & raise awareness of your cause.
- FTC Guidelines:
 - Transparency: let audience know they have a relationship with you if you have paid or requested endorsement (#sponsored, #charitypartner, etc.)
 - Truthfulness regarding where funds go, what projects you're working on.
 - Typicality: talking about project where "results not typical."
- Monitor what they are saying/doing when they are working on your behalf.
- Don't cross over into the influencer becoming a professional fundraiser (or do proper registrations.)

Online Contests / Sweepstakes

- "Sweepstakes:" game of chance, anyone can enter, random winners; "Contest:" some skill or judgment: photo contest, illustration, short story.
 - Check each social media's site policies or terms of service page for their requirements.
 - No fee to enter; describe eligibility, describe prizes; how winners will be selected.
 - ID sponsor if relevant.
 - Winner affidavit, releases, usage rights.
 - Include "void where prohibited" language.
- ***If you have to pay to enter, it's a lottery → highly regulated by state & fed law.

Agreements with Independent Contractors & Volunteers

- Who might you be working with? Website designer, events coordinator, fundraisers, photographers, videographers, writers/editors, marketing specialists...
- Scope of the work spelled out in detail.
- Use of their work: who owns what? Are they signing over all their rights or just licensing for a particular purpose?
- Confidentiality/Nondisclosure paragraph: they won't disclose your trade secrets.
- Representations & Indemnification: not going to use 3rd parties' IP or harm you in any way.

Agreements with Independent Contractors & Volunteers

- Work for Hire agreements must be in writing and say “WFH.”
- Be clear if person is employee or independent contractor. How much control over their work? Do you they use their own equipment? Length of relationship? Do they get benefits? How are they paid?
- Employment agreement should spell out that anything created during course of employment belongs to employer.
- Use permissions to use others’ copyrighted material; use a release to use someone’s photo or interview.

Take Aways

- Protect your own IP: consider registering certain valuable copyrighted materials, registering your trademarks, protecting trade secrets.
- Use caution with others' IP: public domain, fair use, permission.
- Simple but clear agreements are highly recommended.





THE ASSOCIATION OF CONSULTANTS TO NONPROFITS

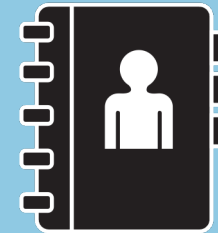
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Thank You!

Questions?

* Complimentary 30 minute
consultation available for Nonprofit
Learning Lab attendees

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