



## CEO's Blog

# Of Nonprofits and Copyrights Part I

🕒 October 28, 2010    👤 Greg McRay, EA    📁 Education

The Foundation Group works with up to 1,000 nonprofit startups each year, so we get the opportunity to deal with many complex issues. Few are as complicated and confusing as copyright and royalty questions. My goal with this post is to give you some ideas of how best to deal with your intellectual property concerns.



It is probably best to begin with a fictitious (but typical) example: Jane Doe is Executive Director of Money University, a 501(c)(3) organization that teaches lower income people the principles of money management. Jane is not only Executive Director, she is a founder, board member, and the primary instructor. Jane is also an author who has written two books about personal finance. The board believes her books, which were authored prior to the formation of the nonprofit, are a good fit to be sold by the organization to support its teaching program. There are also plans to have Jane create curriculum.

Part I of our discussion will focus on the books Jane has already written. They are her intellectual property. She owns the copyright. They are perfect supplements to the nonprofit's program, but Jane has a rather obvious conflict of interest. How can the nonprofit take advantage of these resources without it resulting in unfair benefit to Jane? Let's examine some options and their impact on the situation.

1. Jane gifts the copyrights over to the nonprofit. This is probably the easiest way to go, but not necessarily the best for Jane. The conflict of interest problem goes away, but Jane no longer has rights to her works. If she and the organization ever part ways, she cannot take back them back.
2. Jane sells the copyrights to the nonprofit. Possible, but problematic. Because of the conflict of interest, Jane can have no direct involvement in the decision of the board

to buy the works. That's kinda hard considering she is such a key person. Valuation would require an independent appraisal, which Jane would have to agree to. Plus, it isn't really plausible that Jane would not have been involved in the board discussion of the sale. This rarely works.

3. Jane keeps the copyright and donates wholesale stock to the nonprofit. Now we're getting to what can work...but even this can be a mess. Jane may not be able to afford to cover the cost.
4. Jane keeps the copyright and sells wholesale stock to the nonprofit. This scenario can work, but because of the conflict of interest, Jane cannot profit from this. That necessitates selling at cost. Even here, we may have yet another problem. If Jane self-publishes, she may have direct control over wholesale distribution. If Jane is working with a publisher, she may not.
5. Jane keeps the copyright and allows the nonprofit to buy wholesale directly from the publisher (or print-on-demand service). This is similar to scenario #4, but bypasses Jane. This is often a good way to go, but not always possible.



To confuse matters further, the issue of royalties comes into play. If Jane has a publishing and distribution contract, she may earn royalties with wholesale and/or retail sales. That 'ole conflict of interest monster rears its head again because Jane cannot profit from these transactions. Creative arrangements include contractually donating royalties back to the nonprofit or having the publisher forward royalties from organizational sales directly to the nonprofit.

As you can see, this is an enormously complicated issue...and one that we deal with almost weekly. This discussion barely scratches the surface of the possibilities. Next time, we will take a look at what happens when Jane is asked to write curriculum for the nonprofit's programs.



### Greg McRay, EA

Greg McRay is the founder and CEO of The Foundation Group. He is registered with the IRS as an Enrolled Agent and specializes in 501(c)(3) and other tax exemption issues.

**This Post Has 18 Comments**


**Ruthie Underwood Nelson, MHA, BSN, BS, RN**

December 10, 2010 at 10:19 pm

Very interesting blog site. I have recently received my EIN number from the IRS for my non-profit business. This is my first time starting my own business. What is my next step. Thank you.


**Greg McRay, EA**

December 27, 2010 at 9:13 pm

The next step is usually nonprofit incorporation, then 501c3 tax-exemption from the IRS. Read these, then give us a ring if you would like some help through this:

<https://www.501c3.org/blog/questions-for-starting-a-nonprofit/>

<https://www.501c3.org/blog/who-really-owns-a-nonprofit/>

<https://www.501c3.org/blog/how-to-start-a-nonprofit/>


**Bella**

December 1, 2010 at 1:59 pm

I would like to get a more advice. If I spend my own nights working on the books, I do not believe I need to share them with the organization without compensation. Could you explain a little more.

What is the true meaning of "commissioning" in the context of Non Profit -rights.


**Greg McRay, EA**

December 2, 2010 at 5:28 pm

I completely understand, Bella. It can seem unfair. But, as an insider, you have a conflict-of-interest. IRS rules prohibit the 501c3 from any activity that provides direct, financial benefit to any officer, director or key employee (outside of salary for services rendered). You don't have this problem in a for-profit setting.

As far as "commissioning", work produced by an employee for an employer's use usually results in the copyright defaulting to the employer. The work is deemed commissioned as an element of the job. Of course, a pre-production contract might allow for an employee to retain intellectual property rights. This is a complex issue...if you have a specific situation, I recommend you retain a copyright attorney. See our [links](#) page for a recommendation.


**Sandy Rees**

November 6, 2010 at 12:05 am

This topic is so complicated! So many nonprofit directors and Board members come to the table with noble ideas but make unwitting errors. Thanks for shining some light here.

Sandy



**Roger Carr**

November 4, 2010 at 10:26 pm

Greg,

Would this apply to nonprofit board members who are volunteers? I know as a board member I had to sign papers stating I did not have a conflict of interest.



**Greg McRay, EA**

November 5, 2010 at 10:46 am

It does apply to volunteer board members. Keep in mind that conflict of interest alone is not what gets you in trouble. It's when said conflict results in private benefit to the person in question.



**Betsy Baker**

November 4, 2010 at 9:15 pm

Wow! What a timely blog post. I just happen to be speaking at the Grant Professional Association's meeting this week and the "intellectual property" issue came up for consultants. We're paid for the work by the organization but it was suggested that if we want to provide samples of said work for potential clients that we should have that clause in our contract stating that we retain rights to use our work. What do you think?



**Greg McRay, EA**

November 5, 2010 at 10:46 am

Couldn't agree more, Betsy!



**Karen**

November 3, 2010 at 5:08 pm

Wow - terrific discussion, who knew it was so involved. I second Sherry's comment - another good reason why there should be an attorney on every board!



**Dee Hollinger**



November 3, 2010 at 2:57 pm

Excellent article to start this topic and by the specific scenario questions this one piece generated, it is evident that this area is a real and practical issue to be clearly understood and navigated. Good guidance is essential to staying out of the muck that so often besets an organization that doesn't get this right. As consultants, we answer this question at least once a week.



**Gayle L. Gifford, ACFRE**

November 2, 2010 at 5:55 pm

Greg, Your example makes me think as well of the artist who goes on to found a nonprofit to produce his or her work. What advice would you give to them?



**Greg McRay, EA**

November 3, 2010 at 2:50 pm

My advice would be not to do it...at least in most circumstances. They have no rights to their work when they do that. I'll touch on this in detail in Part II.



**Sherry Truhlar**

November 2, 2010 at 1:27 pm

Good discussion, Greg. It is also a good illustration why nearly every non-profit board looks for an attorney to serve.



**Randy Eplin**

October 30, 2010 at 3:34 am

Dear Greg,

Fantastic article! I do have a question though.

In your article, you only talk about publishing when the key person has published before starting the nonprofit.

Here is my question: What advice can you give to someone (me) who already started a non profit and wants to publish? Should that person keep the publishing separate from the non profit organization or should that person publish with the non profit corporation? In my case, Energize Inc., I am the founder and president and would like to publish one day. My wife, who is vice president, would also like to publish, and she is actually further along than I am in the entire process of writing. We plan to keep the non profit ... just wondering what advice you can give here.

Thanks,

Randy Eplin  
President  
Energize International Inc.

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**Greg McRay, EA**

November 1, 2010 at 8:44 am

Good question, Randy. Stay tuned for Part II...your question will be answered.

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**Cheryl Jackson**

October 29, 2010 at 10:54 am

Could Jane not donate x amount of dollars for each book sold to the non-profit and receive a write off for those donations?

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**Greg McRay, EA**

November 1, 2010 at 8:47 am

Absolutely she can. That doesn't address the conflict of interest involved when the nonprofit wants to sell Jane's book, but it is something Jane could do.

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*Comments are closed.*

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