



CEO's Blog

Of Nonprofits and Copyrights Part II

🕒 November 11, 2010 👤 Greg McRay, EA 📁 Education

In our last post, we examined the hypothetical example of Jane Doe, Executive Director of Money University, a 501(c)(3) organization that teaches lower income people the principles of money management. To recap, Jane is a founder, board member and primary instructor. Jane is also an author who has written a number of books that Money U. would like to sell (see [Part I](#) for a full discussion).



Part II of our discussion will focus on a different scenario. As part of Money U.'s future program plans, the board has expressed a desire for Jane to create curriculum to be used in its classes. What are some of the possibilities?

It is essential that all parties be deliberate about the arrangements. Without an agreement to the contrary, the copyright ownership defaults to Money U. The reason is that Money U. commissioned the work. This tends to be the most common situation.

But what if Jane really believes that she deserves to retain the rights to the work she creates, even if it is commissioned? It is certainly a fair stand for Jane to take. She will invest many hours into its creation. But given the obvious conflict-of-interest, how should this be handled?

Unlike last time, there are not a lot of options here. The best scenario would see Jane sign an agreement with the board that allows her to retain the copyright and give Money U. a license to use the curriculum in its classes. The license may or may not be exclusive. In any event, Jane should not be paid for creating the materials, nor should she expect to receive any royalties from Money U. Ideally, Jane should not be writing on the clock, seeing as she will be the ultimate owner of the material. It is important to mention, too, that Jane should have recused herself from board action regarding this agreement.

Another question we are often asked is whether or not the license agreement should be time-limited? There is no right answer. Practically speaking, however, it just makes sense to put a sunset date on the license. It can always be extended. Another caveat we've occasionally seen put into such a license agreement is an automatic revocation in the event Jane is involuntarily terminated by Money U.

Issues of intellectual property, copyrights and the conflict-of-interest that can come along with it are very complex. Failure to appreciate that complexity and the need for deliberate action regarding it could be very costly.



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 4 Comments



Shelly Marshall

March 14, 2011 at 11:43 am

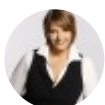
I would like to know where the copyright falls when the non-profit is funded primarily by grants and member donations to the non-profit? The grants come from taxpayers and of course the members are taxpayers too? Doesn't the work then fall into the public domain? After all, the public is paying for everything.



Greg McRay, EA

March 14, 2011 at 10:20 pm

Interesting question, Shelly. While a nonprofit can certainly allow such to be public domain, that is rarely the case. Most material created by a nonprofit is copyrighted to the corporate entity. What protects the public is that all assets of a tax exempt charity must be permanently dedicated to a charitable purpose.



Sherry Truhlar

December 7, 2010 at 12:34 pm

Greg,

I would add one additional element that adds to the complexities – best intentions . Nonprofits are full of passionate, committed volunteers and paid staff working very hard to make a difference. Unfortunately, their work can cross into legal, financial or personnel areas where the potential for negative impact is huge. Thanks for providing a resource to help nps navigate.



Betsy Baker

November 16, 2010 at 7:15 pm

As a grant writing consultant trainer, I have wrestled with how to handle giving grant writing samples that I created on behalf of a paying client to interested trainees. I appreciate this segment on your blog so much!

Comments are closed.

