

Nonprofits, Volunteers, and Copyright: Clarifying Ownership and Usage Rights

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As any nonprofit leader knows, volunteers serve vitally important functions in many nonprofit organizations. What happens when volunteers create original works for their organizations? Generally speaking, the volunteers will own the works absent any specific agreements otherwise, and whether the volunteers or the organizations realize it or not. Nonprofits therefore should take proactive steps regarding copyright issues, such as through ownership and licensing agreements. These measures may become especially important if the created works later become financially valuable, if disputes arise regarding the work, or if the nonprofit wants to transfer or alter the work.

Consider the following real life examples:

1. a nonprofit relies on a gifted volunteer to shoot and edit a fundraising or promotional video for their annual banquet;
2. a group of board members write curricula for a new educational program;
3. a founder creates an app or other software application which will be used to conduct the organization's charitable programs;
4. a volunteer youth music coordinator creates a musical or play; or
5. an artist volunteers to paint a mural on the wall of a nonprofit's inner-city building.

In each case, it may be quite helpful to affirmatively address the resulting copyright issues, to clarify the nonprofit's ownership interests, to provide for other arrangements, and to avoid later unwanted conflict.

Copyright Ownership Generally

Copyright law is one of the areas of legal compliance routinely misunderstood or simply neglected by many nonprofits. Let's start with the basics. The Copyright Act is a federal law that protects authors or creators of an original work when they fix a creative idea in a "tangible form of expression." The exclusive rights to the original work, known as the copyright, are automatically granted once the work is fixed in a tangible form of expression. No publication or registration requirement exists, although government registration provides additional statutory benefits.

The Copyright Act provides two exceptions to these ownership rules. First, an employer is granted the copyright in a work prepared by an employee in the course of employment. Second, under very limited situations, the Act will grant the copyright in a work to

someone who commissions a work to be created by an independent contractor, provided that the parties agree in writing to such arrangement.

Both of these exceptions are known as “works made for hire.” They do not apply to volunteers. Thus, any time a volunteer creates a copyrightable work for the nonprofit, the Copyright Act confers the exclusive ownership of the work to the volunteer.

Common Copyright Questions and Answers Involving Volunteers

With the above-listed examples in mind, what if the nonprofit supplied all of the resources to the volunteer to create the work? The copyright is still held by the volunteer. What if the nonprofit owns or holds possession of the physical work, such as the mural example above? Mere ownership of the created object itself, such as a painting, manuscript, video, or building wall, does not itself convey any copyright ownership in the underlying creative work. The volunteer still holds the copyright, and therefore he or she may direct how, when, and to what extent copies of the created work may be made and distributed.

Further, with respect to the visual arts, the Visual Artists Rights Act (“VARA”) confers the following additional “moral rights” to the volunteer creator or author: the right of attribution, the right of integrity, and in some cases the right to prevent destruction.

Given these considerations, nonprofits can take steps to acquire ownership or to license the rights in the works that will be used by the organization, as follows.

First, a nonprofit can identify when, and to the extent, volunteers will be creating original works for the organization. As in the above examples, volunteers serve in varying roles: a one-time artist, a board member, founder, committee member, student, intern, etc. In some instances, two or more volunteers may have worked together on a project, resulting in work jointly owned by more than one volunteer.

Second, a nonprofit can identify the work(s) and the specific rights that the organization will need to utilize such works. Remember, copyright is actually a bundle of legal rights, some of which are not intuitive. A nonprofit organization’s leaders thus may need to learn more about these principles. (For more information, see [A Nonprofit’s Guide to Derivative Works](#).)

In many cases, receiving the owner’s nonexclusive permission, or license, to use the work may be all that the nonprofit needs. For legal enforceability, such permission should be in writing. In other instances, the nonprofit may want to require an exclusive license or full ownership of the copyright to be transferred. A nonprofit’s needs will differ depending on the circumstances. The key for optimal legal protection is a proactive approach to identifying both the nonprofit’s and the volunteer’s needs and interests under the current

and long-term circumstances. Often, the volunteer is willing to transfer ownership of the copyright, provided that the volunteer receives attribution and the right to display the work for promotional purposes.

Third, and closely related to the above points, a nonprofit can enter into a written agreement with the volunteer(s), to memorialize the parties' understanding. Particularly if similar situations regularly arise within a nonprofit's operations, developing a template agreement is often a cost-effective solution. (E.g., for videographers who periodically develop fundraiser videos, and for writers who contribute articles for published materials.) If the nonprofit maintains a volunteer handbook, it is often a good idea to address copyright ownership in the policy, but remember that the policy itself must be supplemented by an agreement with the volunteer for the specific work(s). The agreement should not only address the arrangements for transferring or licensing the rights, but also require a volunteer to attest that the work created is original and does not infringe on other works. Second, remember that in certain situations, additional moral rights under VARA may also require careful attention.

Fourth, to comprehensively address these copyright matters, a nonprofit may wish to develop a system to catalog and track its copyright interests in various works, including dates the works were created. Such approach should help later leaders to quickly identify which works the nonprofit owns and has registered and which works have been licensed. This system will also enable the nonprofit to track the duration of its copyright interests, which are limited under federal law and often shortened by licensing agreements. Finally, such system will help the nonprofit monitor and guard against potential infringements of the works.

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