

# Q&A: Who Owns The Pastor's Sermons, Blogs & Books?

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By Guest Blogger: Leslie Ruitter

Leslie Ruitter is an intellectual property attorney practicing in Seattle at [www.stokeslaw.com](http://www.stokeslaw.com). This article developed out of her "Letter to the Editor" response to a recent article in *Christianity Today* and is intended to provide helpful guidance for people and organizations that produce creative works. Ms. Ruitter and Sally Wagenmaker have collaborated on many levels since law school, including challenging legal issues, musical ventures, leadership development, and an abiding friendship. Our firm is delighted to share her trustworthy expertise and insights.

*Question: Who owns material created by a clergyperson or other employee of religious institutions?*

*Answer:* A recent article in *Christianity Today* ("CT") posed this question and provided some intriguing answers. CT noted correctly that the U.S. Copyright Act of 1976 makes the clergyperson's creative work a "work for hire," which means that the copyrights in sermons are owned by the church or religious organization that employs him or her. CT also called attention to an issue that intellectual property attorneys often miss: for a non-profit organization, such copyrights are considered charitable assets and must be used for charitable purposes. If a charitable organization gives away its copyrights, then it may run up against the Internal Revenue Service's (IRS) ban on "private inurement" because of the resulting personal gain. If copyrights are handled incorrectly, the organization could lose its tax-exempt status under Section 501(c)(3), and the individuals that receive the copyrights could also face other adverse tax consequences.

Boards of nonprofits and businesses are generally expected to steward organizational assets by retaining proper ownership in the works created by their paid employees. (The exception to this rule is for colleges and universities.) This is not just an asset grab, it is good stewardship because it maintains clear title in the works, ensures that the works are licensable, avoids litigation, and supports the pastor or other creative author in their work. What would you think of a board that hired inventors and paid them to invent the next great medical device, and then said to the inventors, "you will own the invention because we are not going to pay for your patent filing, or your manufacturing or distribution agreements, or FDA approval, or prototypes, or your liability insurance, all of which are needed to launch a new invention." What would the shareholders, donors, and inventors say about that? These same legal principles apply to nonprofits that have employees creating intellectual property.

Question: *Do some religious authors retain the copyrights in their works?*

Answer: Some clergy may have been advised to make sure they have an agreement with their churches whereby they keep all the copyrights to their writings. Such counsel, however, is not consistent with the Copyright Act's work-for-hire doctrine, which makes it quite clear that employers own works of authorship created as a part of their employees' jobs. Part of a religious leader's job may be to write sermons. Pastors from John Cotton and Jonathon Edwards to the present have considered it integral to their calling to write sermons, blogs, articles and books, all of which constitute intellectual property by definition. Even the preaching of a sermon is the creation of intellectual property.

How can pastors and other religious leaders continue to have substantial usage rights in their sermons without jeopardizing their church's exempt status? A simple, free, perpetual copyright license from the church or other religious employer back to the clergyperson provides an elegant solution. Such a licensing agreement keeps the title clear and keeps the IRS at bay, all while allowing the clergyperson complete freedom to reuse his own material.

Religious organizations can always transfer the copyrights back to the author at a later date, and they often do. For example, if an employee creates a series of church education materials, and then moves to another organization, the church may want to transfer any liability associated with those materials to the departing employee rather than retain ownership and control.

Question: *Are there other issues for non-profits around copyright ownership besides the IRS Rules?*

Answer: In addition to the IRS pitfalls from private inurement, there are other difficulties when pastors or other employees own the copyrights in works created on the job. It can be costly to protect copyrights, but the religious organization can hire and manage attorneys in filing copyright registrations, or negotiating derivative works, translation or publishing agreements when it owns the copyrights. And it can be costly to defend against a claim of copyright infringement. Such claims can arise from as small an act as quoting a poem believed to be old and anonymous. It is very expensive for pastors to buy business intellectual property liability insurance on their own; but pastors and churches together can be protected from the costs of defense by the church's liability insurance. Good stewardship of an organization's copyright assets also avoids conflicts of interest, for example, the thorny questions of promotion and platform. Religious organizations can use their own platforms and resources - the pulpit, the church website, domain names, Twitter and Facebook pages, mailings, or the pastor's own time promoting the book for example - without donors questioning why their donations are being used to generate royalty income for a particular employee.

Question: *How does religious mission fit into this question?*

Answer: Many religious organizations have a mission to spread their message far and wide, and for free. Such organizations often give away free downloads of sermons and songs, free educational materials, free brochures, free videos, free books. But even where profit is not a motive, copyright protection is still extremely important, as it ensures that the materials cannot be used in an altered format that dilutes or distorts the organization's message. When an employee owns copyrights in his works of authorship, he has exclusive rights to alter the works if his ideas or theology changes. The copyright owner also controls any re-writes or second editions of materials, and gains royalties from those as well. And the copyright owner has the exclusive right to license her works to anyone for profit.

Imagine a well-known worship song recording created by church employees licensed for use in a ketchup commercial. Or what about a tasteless parody of the "I Have A Dream" speech? That would certainly not fit the mission. When religious organizations retain copyrights in the intellectual property, however, such entities can ensure that their use is consistent with the mission and purposes for which it was originally intended.

**More About the Author:** Leslie Ruiter provides legal counsel on complex copyright and trademark problems to large and small churches around the United States and other non-profits, thriving businesses, rock bands, and authors. She has a joint degree in law and theology from Emory Univ. School of Law and Emory's Candler School of Theology. Her profile can be viewed at: [www.stokeslaw.com/profile/attorneys/leslie-c-ruiter-shareholder-](http://www.stokeslaw.com/profile/attorneys/leslie-c-ruiter-shareholder-).

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