

COPYRIGHT OR COPYWRONG?

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The following document contains a summary of the key points of an address that was delivered by Sydney based copyright lawyer Karen Gettens at a copyright conference in 2006 organised by the Fellowship for Evangelism in the Visual Arts (FEVA). Some of the points about Copyright Law have been updated since that conference to reflect the changes made to the Copyright Act that came into effect on 1st January 2007. All figures and contact details have been updated and are current as of the date printed at the top of this sheet. This paper is based on a paper originally drafted by Graham Stanton (Anglican Youthworks College).

1. COPYRIGHT LAW & CHRISTIAN MINISTRY

Most forms of artistic expression are automatically covered by copyright law in Australia. Copyright protection is automatic and lasts for 70 years from the end of the year in which the creator of the material died (e.g. for music), or 50 years from the date of first publication (e.g. for films), depending on the subject matter. You don't need to have a copyright notice on something to claim copyright (but it helps if you have it to prove ownership). Owners of copyright have exclusive rights to copy, distribute and show or play material (films, DVD, Video) in public. Unauthorised public screening or copying/ distributing of copyright works will usually be an infringement of copyright. Legal action can be taken against you for a period of up to six years after the infringement. Penalties can include fines of up to \$60,500 and/or 5 years in prison (for individuals), or fines of up to \$302,500 (for corporations) per offence.

Even though it is unlikely that legal action would be taken against a church given the non-profit nature of the organisation, a knowing infringement of copyright law is illegal and carries criminal penalties. It also violates the Christian imperatives to submit to governing authorities (Romans 13:1-7) and to not steal (Exodus 20:15, Romans 13:9). The Bible calls us to submit to all authorities – as God has put them there to make laws for our benefit. Our Government has seen fit to enact copyright laws so that artists and creators can get paid for their creative endeavours, and to encourage them to continue to create new works. As Christians, we should obey earthly laws (unless they conflict with God's law). Copyright laws do not conflict with God's laws. It doesn't matter if you don't agree with copyright laws, we should still obey them. It is similar to the situation if you don't agree with certain speed limits. This paper will now consider some of the main areas that copyright law impacts on ministry.

2. PLAYING A WHOLE FILM AT CHURCH/YOUTH GROUP

Playing a video or DVD you own or have hired from a video store in public will infringe copyright, unless you get permission from the copyright owner (or more usually, from the relevant distributor).

2.1 What is "In Public"?

The general definition of 'in public' is outside a private home. The less officially organised an event is, the less likely it is to be deemed 'in public'. But please note:

- (a) Screening a film in a church or youth group is regarded to be a public performance. Permission must be sought from the copyright holders.
- (b) Owning the video or DVD does not by itself entitle you to screen it publicly – the licence terms on an ordinary commercial video or DVD usually say it is for "private home use only".



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- (c) Whether or not you charge a fee does not change whether it is a public performance or not.
- (d) Screening a pirated copy of a DVD, or a film illegally downloaded from the Internet, is an infringement of copyright and carries both monetary and criminal penalties.
- (e) Screening a film in a home bible study group as a group of friends would watch a video in a private home is unlikely to be a 'public performance' for copyright purposes.

2.2 Seeking Permission

You need to purchase, rent or borrow films from a supplier that can give you permission, on behalf of the copyright owners, to screen the DVD. Roadshow Film Distributors handles most commercially produced films. Roadshow charges a fee for public performance based on expected audience numbers, the amount of advertising, whether it is screened indoors or outdoors and the particular film being screened.

A youth group of 30 people, advertised among group members only, screened indoors would be charged around \$100 plus GST. For larger groups you will need to contact Roadshow on 02 9552 8685 or email to annisa_zainal@roadshow.com.au and provide details of what film, date, size of your group, nature of advertising and venue of performance. Roadshow will send you a copy of the film in the mail which you return after the performance. If you own a copy of the DVD you can pay the fee to Roadshow and play your own copy. You cannot show a DVD hired from a local video store. Roadshow covers permission for full length films not for extracts for illustrations in a sermon. Other films may be handled by:

- (a) The Australian Centre for the Moving Image – contact (03) 8663 2200 - www.acmi.net.au;
- (b) Sony Pictures – contact (02) 9272 2900 - www.sonypictures.com.au; or
- (c) Warner Home Video – contact (02) 9495 3132;

If you have the DVD or video, check the back cover – it will say who the relevant distributor is, to seek permission to show that DVD or video in public. For a list of film distributors in Australia go to; <http://www.michaeldvd.com.au/Addresses/Addresses.asp>.

The alternative to seeking permission directly from the distributor is to purchase a video licence from Christian Video Licensing International (CVLI). Depending on the size of your congregation a CVLI licence starts from \$110 and covers the screening of films from over 60 distributors. Unfortunately this licence does not include videos from the distributors listed above. For more information about a video licence including a list of film distributors covered by that licence go to; www.cvli.com.au.

3. PLAYING COMMERCIAL MUSIC AT CHURCH/YOUTH GROUP

In playing music at church, there are usually two copyright works involved:

- the copyright in the song (lyrics, composition etc.);
- the copyright in the recording and/or music video of the song (a particular recorded performance).

Permission is required from APRA (www.apra-amcos.com.au, 1300 852 388) to play a song in public. The APRA Church Licence allows churches to play music in public at events other than church services



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(Note that APRA permission is not required for the playing of music within a “worship service” which includes weddings, funerals or baptisms because APRA considers the use of music in these contexts exempt from public performance licensing requirements).

Church activities such as youth groups or social events which are not considered a “worship service” must be covered by the APRA Church Licence. The annual fee for the APRA Church licence \$69.63 (until 30 November 2008). For more details see the APRA website or contact the General Performance Licensing section at licence@apra.com.au

Permission is required from the Phonographic Performance Company of Australia Limited (PPCA) to play the sound recording of a song in public. However, PPCA provides a special exception for non-profit clubs and societies from seeking permission for the separate sound recording in the soundtrack to the film. So if the music is from a soundtrack of a film, no PPCA licence is required.

If the music that you want to play is Christian music, then you may want to check if your church has a licence from CCLI – Christian Copyright Licensing International. Most churches have a CCLI licence which would allow a youth group to play christian songs. Remember that this licence covers only the printing of sheet and displaying of song lyrics on overhead screens not the playing of original recorded music. For more information contact CCLI on 1800 635 474 or go to www.ccli.com.au.

4. USING EXTRACTS OF FILMS/NEWSPAPERS/PICTURES

IN SERMONS OR TALKS

Infringing copyright occurs when a “substantial part” of the work is used. A substantial part is understood as an important, essential or distinctive part of the work. For example ‘the shower scene’ in Psycho is a substantial part of that film despite being a very small proportion of the total length of the film. Recently, the Australian courts have found an 8 second excerpt of the Rugby League Grand Final (of a footballer cartwheeling) was a substantial part of the Grand Final Broadcast! Therefore, even small excerpts of films or other works can be substantial – so if you don’t have permission to use the excerpt, you need to rely on an exception under the Copyright Act.

There are four relevant exceptions under the Copyright Act for the screening of extracts:

1. Fair dealing for criticism or review;
2. Fair dealing for research or study;
3. Fair dealing for the reporting of news;
4. Fair dealing for parody or satire.

Obviously the work of a church will not be considered as news reporting but it may also not be considered as research and study - even if you call the building you are meeting in an ‘education centre’. So do not think you can automatically rely on the exception for research and study. In other words, the only two fair dealing defences most relevant to churches are fair dealing for criticism or review and parody or satire.

4.1 Criticism or Review

If you are critiquing or reviewing a movie or the ideas contained in it rather than using an extract for illustrative purposes you would be able to rely on the criticism or review exception. To come within the exception, you have to “use words of criticism” (i.e. laughing alone is not criticism), and the criticism has to be of a copyright



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work (not necessarily the work you are using). You need to be careful in the way you use an extract. To play an extract from a movie because it illustrates a point you are making in a sermon is an infringement of copyright (e.g. in a talk on the value of teamwork you need permission to screen an extract from X-Men where Wolverine decides to join the other X-Men to rescue Rogue). To give a talk that is reviewing the ideas contained in a movie you do not need permission to play extracts from the film (e.g. in a talk reviewing the movie X-Men, you would not need permission to show the scene where Wolverine decides to join the other X-Men to rescue Rogue in order to make the point that the film promotes teamwork over individualism).

4.2 Parody or Satire

The parody or satire defense will apply when you are using part of an original work in your own movie, song or image. If you are using your own original material to parody a work there is no need for a defense. But if you are using someone else's original work then you need to make sure that your use of that work is for parody and satire and is also fair. Fair use of a copyright work means that it is not defamatory and for something like a movie, the amount of the work used should be limited only to enough to get your message across. A good guide is to keep it to a few minutes only.

If you are unsure about whether your use of the work fits under a relevant fair dealing defense, then the alternative is to buy a CVLI licence for your church (contact details listed above). Unlike seeking permission directly from the film distributor, this licence covers you for using excerpts of works for sermon illustrations as well as for showing full length films. Again, please be aware that the CVLI licence includes only some and not all of the film distributors in Australia. If the excerpt of the work you want to use is not covered by the CVLI licence, then you will have to make sure that your use fits under a fair dealing defense.

4.3 Royalty Free Works

Another alternative for using extracts of works in sermons or talks is to use works that are royalty free. These kind of works do not require permission or the payment of on going licensing fees for their use. Once such a work is bought the buyer normally receives the right to freely use the content although some restrictions are usually placed on their use. Royalty free works are widely available on the internet, particularly stock images that can be used in church outlines, websites and talk presentations. Sometimes royalty free works can be obtained at no cost.

Some websites that offer royalty free images at no cost are;

- Morgue File (www.morguefile.com)
- Flickr Creative Commons Pool (www.flickr.com/creativecommons)
- Image After (www.imageafter.com)
- Stock Exchange (www.sxc.hu)
- Everystockphoto search engine www.everystockphoto.com

Other websites that offer royalty free images at varying cost are;

- iStockphoto (www.istockphoto.com)
- Dreams Time (www.dreamstime.com)
- Fotolia (www.fotolia.com)
- Shutter Stock (www.shutterstock.com)

Remember though that even while an image, sound recording or video may be free to download, that doesn't mean that it is royalty free. For instance, the videos on YouTube may be free to download from the site but many of these don't have the permission of the owner to be there. In that case we shouldn't use them (see the section on the internet below).



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There are a number of websites that contain lots of royalty free video, music and sound recordings that you can buy and download for use in your own works. Such websites include;

- Getty Images (www.gettyimages.com)
- Fotosearch (www.fotosearch.com.au)
- Revostock (www.revostock.com)
- Free Stock Footage (www.freestockfootage.com)
- Partners in Rhyme (www.partnersinrhyme.com)
- Flash Kit (www.flashkit.com)
- Royalty Free Music (www.royaltyfreemusic.com)

5. INTERNET - WEBSITE ISSUES

Some helpful hints:

- (a) Be careful what you download from the Internet – copyright works are freely available on P2P networks – but this does not mean the copyright owners have given permission for their works to be there. Copyright owners have sued users worldwide for downloading films and music from P2P networks.
- (b) Be careful using well known trade marks or logos in youth group websites. Large corporations actively search the Internet for use of their valuable trade marks by others – if you do, you might get a nasty letter of demand from a lawyer, asking you to stop using the mark or logo.
- (c) If you are using content from someone else's site, check the website terms of use. What you use may not be an infringement of copyright, but if it breaches the terms of use, the website owner can sue for breach of contract also.
- (d) Be careful when hyperlinking your website to other websites. If the other website contains infringing material, you could also be liable for any users using your hyperlink to access that copyright infringing material.

6. SOME QUESTIONS ANSWERED

- a. Is the Bible subject to copyright?
The Bible itself is not subject to copyright but some translations of the Bible are. For example the New International Version (NIV) of the Bible is owned by Zondervan so technically permission is needed to make copies of this translation. However under a fair dealing defense of research and study 10% of the words of the NIV translation can be copied without permission.
- b. Is it illegal to make copies of the songs on my CD's to put on my computer or MP3 player?
As of 1 January 2007 the Copyright Acts has been amended to allow people to copy works into different formats (e.g. from CD to MP3), if it's for their own personal use. Personal use doesn't mean making copies and give them to friends for their personal use. However, note that once the copy has been made, there is no further right to publicly perform the song copied – the principles above relating to public performance of works still apply.



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- c. Can I record my favourite TV show to watch at a later date?

Before 1st January 2007 it was technically illegal to record shows off the TV to watch at a later date because of a glitch in the Copyright Act. But since 1st January 2007 it is now legal to record TV shows on your VCR or DVD recorder to watch later at home. However, there is still one exception to this – it is not legal to record or copy TV shows downloaded from the internet.

- d. Are pieces of classical music that are a few hundreds of years old free from copyright?

Even though the author a piece of music may have died hundreds of years ago and the copyright on the original work has long since expired, copyright will still apply to the arrangement and the sound recording of a performance of that work on a CD or in an MP3 file that was created more recently. You therefore still need permission or a licence to play that work in public. If you were to arrange and record your own version of one of Beethoven's symphonies then you would automatically own the copyright of the sound recording of that work (and the song itself if it's a sufficiently original re-arrangement of Beethoven's song).

For more information about copyright, including some useful FREE Information Sheets, check out The Australian Copyright Council's website at www.copyright.org.au. You can also download a copy of the Copyright Act from http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133.txt.

