

**Justice & Diversity**  
CENTER  
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**Intellectual Property Law Basics for Nonprofits – February 1, 2011**

**Purpose**

Nonprofit organizations sometimes overlook one of their most valuable assets—their intellectual property. Many nonprofit organizations generate valuable ideas, images, marks, products, and reputations but do not take the necessary care of protecting these valuable assets. In addition to safeguarding the organization’s intellectual property, leaders of nonprofit organizations should be aware of their organization’s potential use of others’ protected property; infringing upon another organization’s rights, whether inadvertently or not, can have costly consequences.

This overview is intended to cover some of the basics behind intellectual property rights so that organizations can identify where they may have a related legal issue. Please contact CORP if you have any questions or would like a volunteer attorney to help your organization work through any intellectual property issues.

**Copyright**

Copyright protects original works; this protection covers a wide range of things including literary works, musical compositions and songs, images, movies, and computer programs. As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. Copyright protections exist for the creator of the work’s lifetime plus 70 years following the creator’s death. Generally, the creator of the work holds the copyright protection and therefore “owns” the work. However, when a work is created by an employee or volunteer it may be the property of the organization or it may be the property of the creator, depending on the specifics surrounding the work’s creation. Copyright protections come into existence at the moment the work is created— even without registering the mark with the government or affixing a © on the work. However, registering an original work with the U.S. Copyright Office is required in order to bring a suit for copyright infringement against an unauthorized user of the work and also creates a public record of your copyright claim.

Examples of materials that may be protected by copyright include: an educational handbook, training materials, staff manuals, promotional materials, and any artwork or photographs included in these materials.

Copyright protections bring up several potential key issues for nonprofit organizations:

- (1) Nonprofit organizations should consider the value of registering their key original works with the U.S. Copyright Office; registration can make it easier to protect and enforce the organization's rights to its original works.
- (2) Nonprofit organizations should have clearly-worded agreements with its employees, independent contractors, consultants, and volunteers specifying who owns the rights to any works created for the organization.
- (3) Nonprofit leaders should monitor their organizations' use of all intellectual property and be aware of the boundaries of copyright protection. Having to reprint promotional materials that include proprietary images can be a large and unexpected cost and an unforeseen infringement suit could be financially devastating to many nonprofit organizations.

For more information, see the US Copyright Office FAQ  
<http://www.copyright.gov/help/faq/>

## **Trademark**

Trademark protects words, names, and symbols that are used to identify and distinguish creators and providers of goods and services. Trademark protection essentially is a means of protecting brand names and reputations. Limited trademark protections exist once a person or organization makes use of a mark in commerce, while more extensive protections arise once the mark has been registered with the U.S. Patent and Trademark Office; protection generally lasts as long as the mark is actively used by the rights' owner and can potentially exist permanently.

Trademark protections bring up several key issues for nonprofits:

- (1) If you are thinking about starting a nonprofit, you will want to ensure that you choose a name that is not already in use by another organization; being forced to change your organization's name can cause problems with funders and recipients of your services.
- (2) Nonprofit leaders should monitor the use of their nonprofit's name or names of proprietary programs by other organizations; trademark rights can be more difficult to enforce if it appears that your organization acquiesced to others' use of its, or similar, marks.

For more information see Trademark Basics on the USPTO website  
<http://www.uspto.gov/trademarks/basics/index.jsp>

## **Patent**

Patent law protects new, unobvious, and useful inventions, such as machines, devices, chemical compositions, and manufacturing processes. A United States patent confers the right to exclude others from making, using, or selling the claimed invention in the US for a term of 20 years from the filing date of the utility patent application. A patent owner may file a civil suit for infringement against anyone who, without authority, makes, uses or sells the patented invention. Remedies for infringement include preliminary and permanent injunctions, damages, (enhanced damages when infringement is willful), attorney fees in exceptional cases, and prejudgment interest. Patents may be assigned or licensed.

Patents may bring up issues for nonprofits related to:

- (1) A patent that has been donated to a nonprofit. This could have tax and other ownership implications.
- (2) A nonprofit may develop an invention which it should protect through obtaining a patent.

For more information, see the Patents on the USPTO Website  
<http://www.uspto.gov/patents/index.jsp>

## **Internet Law**

“Internet law” refers to the rapidly changing and expanding field of law related to the use and function of the computer, specifically the use of the internet. Internet law includes legal issues related to the use of information and technology for the purposes of communication, transactions and distribution. Many areas of law are encompassed by internet law, including, but not limited to, intellectual property, privacy and freedom of expression. Examples of Internet law include issues related to computer software, control of digital information, privacy, security, access and usage, and Internet commerce.

Internet law may bring up issues for nonprofits related to:

- (1) The use of computer software and operating systems.
- (2) Privacy issues, such as settings for websites used for nonprofits or the monitoring of employee email accounts.
- (3) Social media settings and monitoring of employee usage of social media such as Facebook.

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