



churches and intellectual property

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Stewardship Briefing Paper

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introduction

Many churches (and indeed other charities) do not realise that they potentially own a valuable asset in the form of intellectual property and that they are often not free to simply give it away—it has to be used to benefit the church, fulfilling its charitable purposes. In addition, churches are often not clear on who actually owns the intellectual property: teaching materials, sermons, logos, the website etc.

In this briefing paper we are seeking to:

- explain what intellectual property is;
- consider any Biblical principles that may apply;
- look at who typically owns intellectual property;
- consider the impact on churches and their trustees.

what is intellectual property?

Intellectual property (IP) covers the things that we create through our own invention, ingenuity or individual expression. From a church perspective this might include:

- Books and training guides
- Sermons
- Logos and straplines
- Worship songs
- Website design

who owns the IP?

Who owns the IP rights for these and other creations depends upon who actually created them and their relationship to the church. In general, the starting point is that creations by people employed by the church will belong to the church; creations by people who are volunteers at the church will belong to the individual; creations made by a third party organisation and paid for by the church will belong to the third party.

The two areas of IP most likely to impact on churches are copyright and trademarks.

- Copyright is an automatic, statutory right that attaches to an original literary or artistic work or creation;
- A trademark is a sign or symbol (e.g. a logo) that sets your church apart and makes it recognisable. These can be registered, but even when they are not they might still be protected by common law.

what Biblical principles may apply?

The Bible does not speak specifically of IP, who owns it and who should benefit financially from it. However, there are certain principles and themes that play particularly into the financial aspects associated with IP. Although distinct, these themes overlap and intertwine creating a tension within which church trustees must operate. They include:

- Any creative skill we have comes from God; He is the one true creator able to shape and sustain heaven and earth (Genesis 1:1, Revelation 4:11 and numerous other places);
- As Christians we are part of the body of Christ, no more or less essential than any other part, no more or less talented than any other part (1 Corinth 12:12-26);
- We recognise the writings of Paul who teaches that any worker is deserving of his wages (1 Timothy 5:18);
- We remember the warnings about profiting from the Gospel (2 Corinth 2:15-17).

Of course, all of these themes apply equally to those who work within a church environment as well as those who work outside; to the business man/woman creating a 'secular' product as much as the church leader exploring an aspect of discipleship in a book, or a song writer expressing God's character in a song.

However, what does feel different for those working within a church environment is the type of 'asset' that is created. As God is the only true creator, it is right to argue that all assets created out of the ingenuity of man belong to Him, but assets which are used regularly to worship and glorify Him (songs, sermons etc.) somehow have a different feel about them.

They are created specifically and directly to glorify and expand His kingdom and there is a sense in which we as earthly creators should not unduly or disproportionately benefit from an asset primarily created for His glory.

Only a very small part of these themes can be addressed by dealing with IP ownership and broader church employee issues because, as with so much of life, it is the hearts of the people (church and individual) shaped by God that determine the most appropriate outcome. However, openly addressing the IP issues from the start of a relationship will go a long way towards protecting relationships and avoiding misunderstandings.



why does it matter who owns it?

Although it is rare for churches to think about who owns their logo, the songs written by their worship leader or the recordings of the sermons preached on a Sunday as IP, these things and more can be valuable assets of the Church. In the same way that the trustees of a church are under a duty to protect the church's property, cash etc., they are also under a duty to protect the church's intellectual property.

Failure to think about and clarify ownership of a church's IP can lead to problems for a church. Examples might be:

- A conflict between the minister/pastor and the church regarding ownership of teaching materials etc. leading to a breakdown in that relationship. Who likes telling a popular and hardworking minister/pastor that the income from his latest book belongs to the church?
- If a church was to come under scrutiny from the Charity Commission there could be criticism of the trustees for giving away potentially valuable intellectual property and so losing the church assets. Trustees of a church can be personally liable to repay to the church any income it has lost due to a failure by the trustees to fulfil their duty of care to the church. In addition any investigation of a church by the Charity Commission can lead to adverse publicity affecting the reputation of the church.
- A trustee might inadvertently be allowed to keep and benefit from intellectual property that actually belongs to the church, resulting in a payment to a trustee that is very likely not to be authorised under the church's governing document, the Charities Act 2011 or by the Charity Commission. This can result in a trustee being liable to repay to the church the benefit he has received.

IP created by church employees

The starting point is that the IP created by an employee of the church during the course of his/her employment will belong to the church. However, not every case is straightforward as the second of these two examples demonstrates.

Example 1 – The church employs a youth pastor and in the course of his work in the church he has written and refined a youth discipleship course. This discipleship course has been written during normal office hours and the youth pastor's employment contract specifically covers the issue of IP.

This should be straightforward; the IP is an asset of the church and as such comes under the ownership of the trustees.

Example 2 – The church employs a minister who, based on her experiences within the church, has written a book exploring the value and issues to churches of setting up counselling services. The book uses a number of real case scenarios (anonymised) from her years of experience and combines them with her counsellor training undertaken whilst a church employee and paid for by the church. The book has been written partly within office hours, but predominantly in the evenings from home. The minister’s contract does not specify set working hours and makes no reference to IP.

This is far less straightforward. The minister is an employee of the church, but the work that she has completed has largely not been undertaken during normal employment hours and has not made use of church resources other than personal experiences gained over time. In this case it is unclear whether the minister or the church owns the IP.

In order to avoid potential future pitfalls, it would be best for employment contracts to cover IP rights¹ and hopefully for the church to develop a good enough relationship with its minister to know what she is involved with. However, it is very difficult for an employment contract to anticipate all the scenarios that might arise and once the church becomes aware of the book project, it would be wise to discuss it with the minister making clear (amongst other things) who owns the IP, and as a separate but equally important issue, whether the church itself wants to be associated with the content (it may not).

If ownership is uncertain but both parties wish it to reside with the church, it may be wise for the minister to assign any IP rights she has to the church. In cases where ownership remains in dispute, professional legal advice may be required.

IP created by church volunteers

The starting point is that the IP rights for creations by church volunteers (created in their role as a volunteer) will usually belong to the volunteer rather than the church. However, this may not be what the church wants – see example 3 below. Trustees have a duty to act in the best interests of the church and this may mean ensuring that in the case of something created for the church by a volunteer ownership of the IP still vests with the church. Otherwise they may find that the church’s use of the creation may be limited and there may be a dispute if they use it for purposes not envisaged by the creator and owner of the IP rights.

Example 3 – A member of a church has volunteered to design a new church logo. Although the concepts have been discussed with the church leadership, the creative design work is that of the volunteer who has not entered into any form of volunteer agreement with the church. Several years later, the church has created links with a church planting network in India, and without seeking permission the church logo starts to appear on websites and publications associated with the Indian church network.

¹ See Stewardship’s [employment contract pack](#)

It is clear that the IP rights belong to the volunteer and by not seeking his permission for them to be used in this way, the church is running a risk of infringing those rights. To avoid finding themselves in this situation the church should:

- Ask volunteers to sign volunteer agreements which specifically cover IP rights ensuring that they are the property of the church and not the volunteer.
- Ask the volunteer to assign all rights in the design to the church. It will then become the property of the church.
- Where rights have not been assigned over to the church, seek agreement from the volunteer to allow its use more widely.

IP created by a third party (and paid for by the church)

Where churches have contracted with professional third parties for the creation of materials, these are most likely to remain the property of the third party unless there is agreement to the contrary. It is important for the church to ensure that the agreement with the third party is very clear about ownership of IP and, where this is not transferred to the church, the church is clear that the allowed uses of the creation or design cover everything the church needs it for (both now and in the future).

so what if the church owns the IP?

If the church does own the IP, what responsibilities are placed on the trustees? In the same way as other property, IP has a value and without realising it trustees can inadvertently give these away to another person. As church trustees have a duty to act in the best interests of the church, giving away these rights is likely to be in contradiction of this duty and may require trustees to make good any loss to the church. If the beneficiary is a trustee of the church, payment may also be in contravention of the church's governing document.



Example 4 – A worship leader employed by a church has, as part of her role in the church, written a number of worship songs. These have been recorded and are made available for sale at church events. No IP issues were ever addressed in the worship leader's contract, but the church wants to bless her for her work and so allows any financial gain from sales to go to her.

Here the trustees are acting in contravention of their duty to act in the best interest of the church by giving away the IP for these songs for no financial return. This may result in the worship leader being required to repay any financial gain or for the trustees to make good any loss. The intellectual property



belongs to the church and cannot be simply given away by the trustees. The position would be further complicated if the worship leader was also a trustee, as payment of trustees has to be specifically permitted either in the church's governing document, in the Charities Act 2011 or by the Charity Commission.

It is possible for a church to employ a person under a contract that includes a clause that accepts that the IP belongs to the employee and not the employer provided that this is part of a total remuneration package. This would need careful consideration. For example, the calculation of the value of the IP rights and an appropriate reduction in the salary being paid, bearing in mind that the church may be criticised if the financial wealth created from the IP exceeds expectations.

infringing other people's IP

Infringing other people's IP is far easier than you might think. For example, copying an image from the internet to use on your church's website or uploading to the internet the church service which includes worship songs that are subject to copyright, may be sufficient to infringe another person's IP. Images should always either be the property of the church or sourced from sites that explicitly state that no copyright applies. In the case of worship songs the church is very likely to need a licence or licences to show a recording of the church worshipping.

Amending, even slightly, a third party design may be sufficient to infringe the IP of a design created by a third party. This may include a simple change of background colour, or use of a different font.

Church trustees have a responsibility to take care that the IP rights of others are not infringed, however well-intentioned the use.

conclusion

Often it is the reluctance in UK churches to openly discuss the financial and relational aspects of employment that results in misunderstanding and difficulties further down the road. We would suggest that it is wise if these matters—including IP ownership—are brought into the light and clearly understood by both parties at the start of a relationship, thereby removing at least one potential cause of future problems.