

Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



Churches Subject to Copyright Laws for Music



Music can be an integral part of a church's ministry. Music inspires the members of the congregation with stirring lyrics and familiar melodies. For many churches, music is an essential part of the worship service experience.

Some churches find it appealing to play popular songs that are performed on the radio by recording artists. Musicians find this to be an effective way to connect with the listeners. Music may also be included in other aspects of church operations from an audio file on the web site to background music played in the lobby. However, churches should understand that there are copyright laws that should be followed when it comes to music.

A copyright is a license to exclusively control the use, performance and recording of a work of art. Copyright law furthers the creation of art by protecting the author's right to prevent others who would use the work without permission. A copyright allows an author to be rewarded for his or her work.

The general rule is an artist's song may not be broadcasted or performed by another without the expressed permission of the author. Performers, television and radio broadcasters are accustomed to paying the required royalties for performances that uses another's work. The question that often arises is what

right do churches have to sing songs of other artists, with or without permission.

Notwithstanding the general rule that copyrights prohibit the unauthorized use of another's work of art, there is an exception for churches. Churches may perform copyright protected works without infringement under certain conditions. Copyright law provides that the "performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious

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nature, or display of a work, in the course of services at a place of worship or other religious assembly is not an infringement of a copyright."

This is a technical description taken directly from the laws on United States copyrights. The most important language to focus on is the part where it says "in the course of services at a place of worship or other religious assembly." This clause tells us that a church may play other's music without fear of a copyright violation in certain situations. This exception applies to instances

where the performance is during a service at a place of worship or religious assembly. So let's examine how this rule can be violated.

If a church plays protected music in their bookstore or lobby, this could be a copyright violation. While the bookstore may be at a place of worship, the music performance is not being conducted during a service. Let's take for instance a situation where music is played over the church phone when the caller is placed on hold. This is neither a worship service nor religious assembly. There may be countless other situations where a church broadcasts copyright music that belongs to others.

Sometimes, churches perform gospel concerts as a fundraiser or community service. Both activities are permitted for protected works. A church may perform protected works outside worship or religious assemblies under two conditions. First, any proceeds from the receipts must be for religious purposes. Secondly, the performance is permitted so long as the copyright owner does not object. If the copyright owner serves notice of an objection, the church should avoid the performance.

The music department of a church can be an important part of the ministry. To keep everything legal, church leaders should ensure the copyright laws are followed for all performances and uses. ■



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Is Your Church Banker Talking Tough?

If your church has recently made an application for a bank loan, you may have noticed a different tone from your banker. Your banker may be asking for more information than the last time you applied for a loan. Some of the terms may seem a bit more burdensome. There is a good reason why your banker may be pickier this time around.

The financial turndown in the economy has left banks and other financial institutions a little shy about taking risks with nonprofit organizations. This is because the number of defaults for churches and nonprofits increased during the recession. Now that the economy is showing signs of a sustained recovery, some churches want to get back to business as usual. Your banker may be a little more hesitant.

Banks are scrutinizing church loan applications more closely than ever. The level of inspection varies. Your banker may require more detailed financial statements for new loans. The requirement for the minimum amount of cash on hand, usually called liquidity, may be higher than what you have been accustomed to keeping. Church operating expenses are studied more thoroughly. This is all done to ensure the church has adequate support to make the loan payments on time.

Churches should understand that most banks want to say yes to a loan application. It's just that the rules and regulations banks must follow have become more onerous over the past few years. Banks have to abide by federal and state regulations. Bank laws on lending and operations have become more taxing in recent years. Banks have to answer more questions to their regulators when their borrowers face hard times. This is part of the reason banks are tougher to negotiate with for new loans.

Churches can improve their success rate for getting a bank loan with a few simple tips.

First, the bank wants to have confidence that the church officials understand basic financial management. The church treasurer should be able to engage with the bank on topics such as expense control, debt service and operations

management. Having a qualified treasurer or church representative negotiate with the bank will give the bank a sense of confidence that the church is in good management hands.

Secondly, the church should have a good set of records to show how it has performed in the past. The records may include a statement of financial condition (balance sheet), statement of activities (income and expense statement), annual audits and information on the church member population. If church records are in order and efficiently stored, the church will be able to respond quickly to bank inquiries. This will help the loan application process flow smoothly.

Thirdly, a bank will pay attention to see if a church follows sound corporate governance throughout the loan process. Many churches have a set of prescribed processes for borrowing money. The process is usually defined in the bylaws and church policies. The church should be prepared to provide evidence of its policies and minutes of meetings to document that the proper authority was given to church officials to make certain decisions.

Finally, the church should develop a positive relationship with their banker. A banking relationship is preferred if times were to become challenging someday. A church could face a cash crunch if its membership giving dips because of the local economy or adverse weather. Also, a church could need extra funds for repairs and expansion.

A relationship helps bankers know the church well enough to be flexible if the time comes.

Be aware of the ways to improve your banking relations. You can minimize the stress of applying for a bank loan by being prepared. ■



Legal Counsel for Churches is a service provided by M Smith Law, PLLC for members of the religious community. This periodical is intended to help churches and their officials become better prepared to address important legal and governance issues. We hope you find *Legal Counsel for Churches* a valuable resource. For each issue, we try to raise relevant issues and offer some practical alternatives. We welcome your comments and input.

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