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Copyright Law: Is it possible to Set Up a Business Selling Copyrighted Content to Churches for Use in Sunday Worship Services?

[Kristie Prinz](#)**Q.**

I am interested in starting an internet service which would provide graphics/paintings/photos within PowerPoint presentations designed to enhance the effectiveness of a Sunday worship. I know one can use them in a church for educational purposes, but could I use copyrighted material in those presentations to sell to other churches for their use? If this is not allowed, could I set up a nonprofit organization that for a fee would provide long distance learning, that would include among various educational materials the PowerPoint materials for each Sunday's worships?

*-- Dorothy***A.**

Yes, it would be permissible to set up a business selling copyrighted material to churches. However, in all likelihood, you could only sell works owned by other authors pursuant to an agreement with those authors, which expressly granted to you the rights to sell the works in question.

Section 106 of Title 17 of the US Code states as follows:

[T]he owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual

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work, to display the copyrighted work publicly; and

6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

In the case of the copyrighted works at hand, only the owner of the copyrightable content would have the exclusive rights to reproduce those works or to authorize others to reproduce those works. Such authorization would need to be made pursuant to a written license agreement, granting you the right to use and grant sublicenses to the copyrighted works according to certain agreed upon terms and conditions.

Any use of the copyrighted works without permission would most likely constitute infringement of the copyright owner's rights in the copyrighted works, unless such use was protected by the fair use doctrine. However, the fair use doctrine will most likely not apply in this case.

The doctrine of fair use, codified in Section 107 of the Copyright Act, sets out four factors to be considered in determining whether a use is fair:

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

While a good argument can be made that using copyrighted works for religious purposes at a service should be protected by the fair use doctrine, the scope of the doctrine most likely does not extend to commercial uses of the works.

With respect to your question as to whether making such content available through a nonprofit organization and charging fees in that context would bring the use within the scope of the fair use doctrine, I question whether you could charge a fee as a nonprofit organization and maintain your status as a non-profit. Also, I think it unclear as to whether a nonprofit use that is also commercial in nature would fall within the scope of the fair use doctrine.

My advice would be to consult at your earliest convenience with an [intellectual property transactions attorney](#) in your jurisdiction in order to discuss the feasibility of entering into licenses with copyright owners. Also, you should consult an [attorney specializing in nonprofit law](#) regarding any questions you may have about setting up a nonprofit organization. These consultations should put you in the position to make a decision on how best to move forward with your plans.

-- Kristie Prinz

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