

# Copyright and Trademark Basics





# What is a Copyright

- ▶ A set of rights granted to creators of “original works of authorship” that are fixed in “a tangible form of expression”
- ▶ Works that Can be Copyrighted:
  - ▶ Literary works (books) – all texts including computer software;
  - ▶ Musical works
  - ▶ Dramatic works (skits, screenplays, etc.)
  - ▶ Pantomimes and choreographic works
  - ▶ Pictorial, graphic and sculptural works
  - ▶ Motion pictures and other audiovisual works
  - ▶ Sound recordings
  - ▶ Architectural works
- ▶ For more information visit [www.copyright.gov](http://www.copyright.gov)



# Ownership Rights

- ▶ Copy
- ▶ Distribute
- ▶ Publicly Perform
- ▶ Display
- ▶ Derivative works (including modifications, adaptations or other new uses of work, or translating the work)

# Copyright Ownership

- ▶ Copyright is obtained automatically without the need for registration or other formalities.
- ▶ Who owns these rights?
  - ▶ Authors of the works
    - ▶ Or under a work for hire agreement, the employer or one who commissioned the work

# Length of Copyright Protection

- ▶ A copyright lasts for a fixed period of time. While the length of a work's copyright will depend, among other things, on when the work was created and/or published, all copyrights eventually expire.
- ▶ Once a copyright lapses or expires, the work falls into the public domain and can be used without permission of the owner.
- ▶ Depending on the circumstances of a work's creation, the copyright in works created on or after January 1, 1978 generally lasts until one of the following:
  - ▶ 70 years from the end of the calendar year in which the author of the work dies.
  - ▶ 95 years from the first publication of the work.
  - ▶ 120 years from creation of the work, if the work is unpublished.
- ▶ Different duration provisions apply to works created before 1978

# Copyright Registration

- ▶ Copyright and related rights protection is obtained automatically without the need for registration or other formalities.
- ▶ While not required, registration does grant the following benefits:
  - ▶ Registration establishes a public record of the copyright claim.
  - ▶ Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin.
  - ▶ If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
  - ▶ If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner.
  - ▶ Registration allows the owner of the copyright to record the registration with the U.S. Customs Service for protection against the importation of infringing copies.

(<http://www.copyright.gov/circs/circ01.pdf>)




# What is Copyright Infringement?

- ▶ Use of whole or part of copyrighted material without permission
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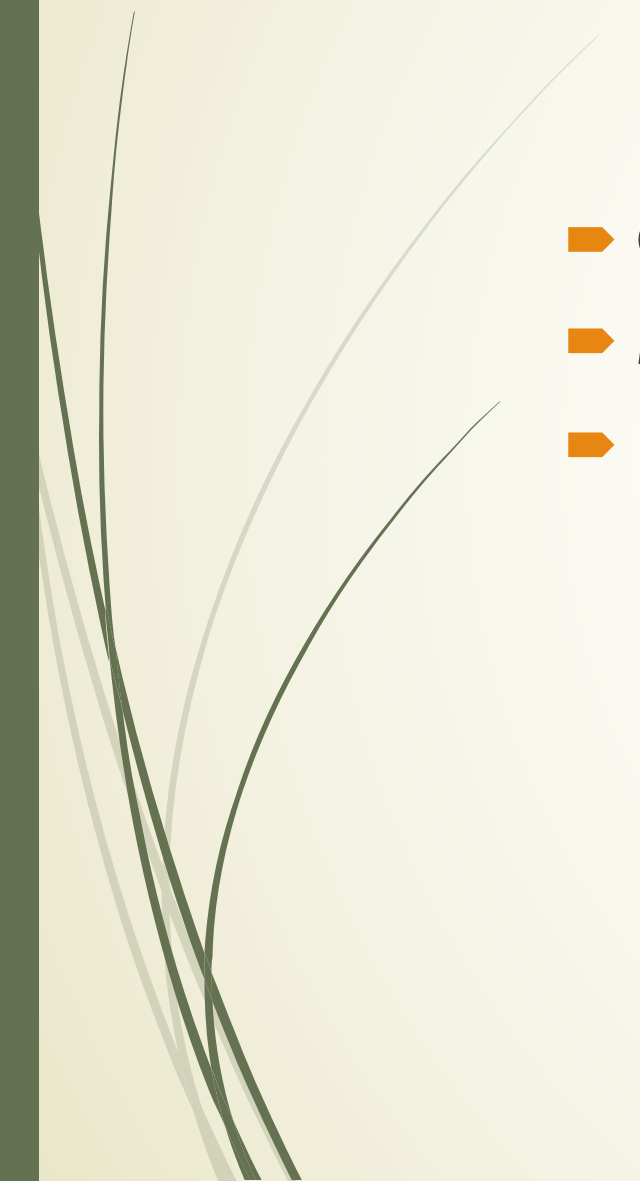
# Penalties of Infringement

- ▶ U.S. Copyright law provides remedies for the owner of an infringed work.
  - ▶ Penalties include:
    - ▶ a) actual damages and any profits of the infringer or
    - ▶ b) statutory damages.
    - ▶ Statutory damages range from not less than \$750 to no more than \$30,000 for each work. Willful infringement – up to \$150,000
  - ▶ Prison terms can be given for willful violations.
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# Works that Do Not Require Permission

- ▶ Original material (work that you create)
  - ▶ Material in the Public Domain
  - ▶ Use that qualifies under the Fair Use\*
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# Fair Use

- ▶ Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports.
- ▶ There are no clear rules defining specified number of words, a certain number of musical notes, or percentage of a work that can be used and considered fair use.
- ▶ Whether a particular use qualifies as fair use depends on all the circumstances




# Section 107 of USC Title 17

- ▶ § 107 . Limitations on exclusive rights: Fair use
- ▶ Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
  - ▶ (1) the purpose and character of the use, including whether such use is of a 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. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.



# How to Avoid Copyright Infringement

- ▶ Determine whether the work you want to use is copyright protected
  - ▶ Get Permission!
  - ▶ Use a Creative Commons License
  - ▶ Contact your legal counsel - if you have questions
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# Copyright and Social Media



- ▶ Be sure that you are not posting, or reposting, copyrighted material
- ▶ Be sure to read the terms and conditions before posting material to social media sites:
  - ▶ You may be giving up some of your ownership rights when you post to these sites.



# Trademarks

# What is a Trademark?

- ▶ A trademark is a distinctive word, phrase, logo or sign that identifies certain goods or services produced or provided by an individual or a company.
  - ▶ 15 USC 1127 “a word, name, symbol or device, or a combination thereof, that is adopted and used by a person or other entity to identify his or her goods and distinguish them from the goods manufactured or sold by others, and to indicate the source of the goods...”
- ▶ The system helps consumers to identify and purchase a product or service
- ▶ Must be:
  - ▶ Distinctive
  - ▶ Used in Commerce
- ▶ Distinction between ® and ™



# Benefits of Registration

- ▶ Nation-wide right to use the mark
- ▶ Nation-wide constructive notice to others of trademark ownership
- ▶ Potential to recover treble damages, attorneys fees, and other remedies.
- ▶ Potential incontestability after five years.
- ▶ Basis for obtaining registrations in foreign countries
- ▶ Ability to register mark with Customs to prevent importation of infringing products
- ▶ Right to use the ® symbol



# Protected Marks

- ▶ The General Conference owns and has registered a number of trademarks in many countries including:
  - ▶ SEVENTH-DAY ADVENTIST
  - ▶ ADVENTIST
  - ▶ CHURCH LOGO





# Categories of Marks (to determine distinctiveness)

- ▶ **Arbitrary or Fanciful**
  - ▶ Exxon, Kodak, Apple
- ▶ **Suggestive**
  - ▶ Copperstone
- ▶ **Descriptive (requires secondary meaning)**
  - ▶ Holiday Inn, All Bran
- ▶ **Generic (not entitled to protection)**
  - ▶ Corn Flakes, Escalator, Aspirin



# USPTO Refusals to Register

- ▶ Applications for registration are subject to approval by the USPTO. The USPTO may reject a registration on any number of grounds including:
  - ▶ Generic marks
  - ▶ Descriptive marks that have not attained secondary meaning
  - ▶ Immoral or scandalous marks
  - ▶ Geographic marks
  - ▶ Marks that are primarily surnames
  - ▶ Marks that are likely to cause confusion

# Main Causes of Action: Infringement

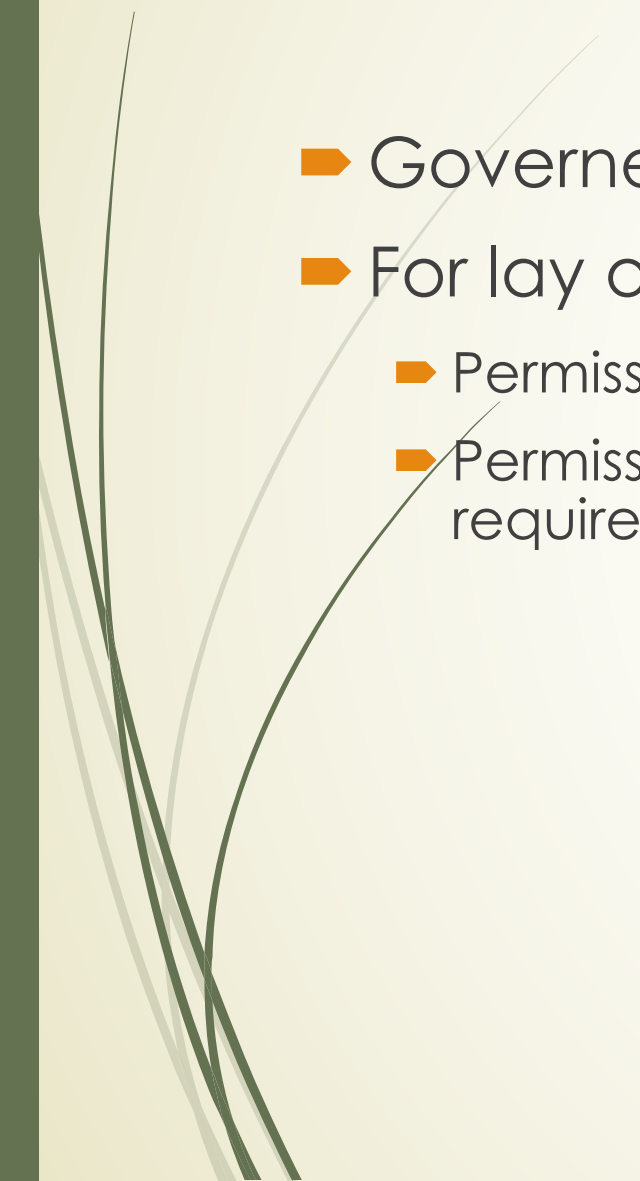
- ▶ Trademark owners can sue subsequent parties for trademark infringement.
- ▶ The standard is "likelihood of confusion" meaning: use of the mark is likely to cause consumer confusion as to the source of goods or the sponsorship or approval of goods.
- ▶ Likelihood of Confusion factors:
  - ▶ Strength of the mark
  - ▶ Proximity of the goods
  - ▶ Similarity of the marks
  - ▶ Evidence of actual confusion
  - ▶ Similarity of the marketing channels
  - ▶ Degree of caution exercised by the typical purchaser
  - ▶ Defendant's intent
  - ▶ (*Polaroid Corp. v. Polarad Elect. Corp.*, 287 F.2d 492 (1961 2<sup>nd</sup> Cir))

# Main Causes of Action: Dilution

- ▶ Only applies to “famous” marks based on the following factors:
  - ▶ the degree of inherent or acquired distinctiveness;
  - ▶ the duration and extent of use;
  - ▶ the amount of advertising and publicity;
  - ▶ the geographic extent of the market;
  - ▶ the channels of trade;
  - ▶ the degree of recognition in trading areas;
  - ▶ any use of similar marks by third parties;
  - ▶ whether the mark is registered. (15 USC 1125)
- ▶ the owner of a mark can bring an action against any use of that mark that dilutes the distinctive quality of the mark, either through:
  - ▶ "blurring" or "tarnishment" of the mark
  - ▶ Likelihood of confusion is not necessary



# Trademark Use by the Church

- ▶ Governed by General Conference Working Policy
  - ▶ For lay organizations and individuals:
    - ▶ Permission must be given by the GC prior to use
    - ▶ Permission is at the GC's discretion and there are a number of requirements in policy that must be met.
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# Logo style guide

- ▶ <https://www.adventist.org/fileadmin/adventist.org/files/articles/information/GSMENG.PDF>
  - ▶ In order to maintain the integrity of the signature, it is important to avoid any treatment that would tend to weaken or distort the visual strength of the signature.
  - ▶ Some creative latitude is allowed for decorative applications of the symbol, such as a background pattern, as long as the following parameters are observed:
    - ▶ The decorative application should always appear in conjunction with a standard configuration of the signature as dictated in this manual.
    - ▶ The basic form of the symbol must not be modified or distorted.
    - ▶ Elements must not be added to, or subtracted from, the symbol.
    - ▶ The symbol must not be altered in any way that would alter the symbolism of the design.



# Questions?

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