

Intellectual Property and Content

The UUA has provided guidelines for posting copyrighted content in social media. In [a May 2011 statement](#), it acknowledges that copyright laws are vague. It also describes how many congregations are addressing the issue:

“At this point, many congregations are opting to avoid the copyright issues by editing out readings, hymns, projected images, etc. from their videos and podcasts, choosing to post only such content over which they have copyright control – sermons, prayers, original readings and music etc.”

The UUA statement later concludes with conservative advice: When in doubt, don't. Guess what? The publishers of music, more often than not, follow the same advice. They won't go after the majority of churches, according to publishers and composers interviewed for REACH work.

YouTube statistics prove the point. There are more than 300,000 videos that return in a search for “religious music.” How about the 2.9 million results that return for keyword “Jesus.” How about the 100,000 results for keyword Buddhism? Or 56,000 for “Islamic Music.” Last but not least: 7,400 for Unitarian Universalist Hymns. You get the picture.

Copyright owners are more likely to consider action against huge churches with thousands of members that perform and video record renditions of Michael Jackson songs or other mega-worldwide “brand-name” artists.

Why? They know it's not worth the effort and also, they know that free marketing online leads to more sales. When it comes to choral music, in particular, the more exposure the better. UU composer Nick Page, can't say with certainty if performance videos of his music have generated more sales for Hal Leonard Inc., the publisher and owner of copyrights to several of his compositions.

Nick knows, though, that his work is seen by and heard by more people than in pre-Internet days. Radio and TV don't broadcast choral compositions as much as other forms of music. The Internet is a boon to composers of religious music.

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Meanwhile, securing digital rights for music you wish to perform isn't difficult. Your music staff can ask to have a fee – typically minor – added to the purchase price. It just takes a tiny bit more effort to ask for the rights – and it will likely take place quickly through email and not back and forth phone calls over a period of time.

REACH prefers to play within the ambiguities of copyright laws and not accept the worst-case scenario of “when in doubt, don't.” REACH strives to live in the gray while maintaining right relationships with artists, composers, and other creators of original works of art. Ask yourself this: Is it right for us to decide for copyright owners and creators when by their own actions the publishers and creators decide to not enforce their rights? We are often well-intentioned need to ask ourselves if our desire to be ethical may be misguided.

So, let's discuss the copyright first from what the law says and then from a faith perspective. The 1976 Copyright Act is the basis for copyright law in the USA and has been amended since then with several provisions. The law includes a framework of procedural steps, or tests, known as the Fair Use Doctrine. Herein lies the origin of several misinformed assumptions that can lead well-meaning congregants down an obstructed path. We'll come back to this doctrine in a moment.

Meanwhile, with the advent of the Internet, issues pertaining to digital rights – a topic not foreseen by the 1976 law – resulted in the 1996 Digital Millennium Copyright Act (DMCA). The DMCA extended the reach of copyright, while *limiting the liability of the providers of on-line services for copyright infringement by their users*. It also added provisions to *facilitate distant learning* through technology by those who are unable to attend a learning institution in person.

Of note: REACH assumes that a digital church is an “online service.” It also assumes that online churches “facilitate distant learning.” After all, we provide religious learning for those who cannot attend in person.

The combination of the DMCA and the earlier law reflect tectonic shifts in the media and entertainment arts industries. The reality is that consumers share content, mostly to enjoy and discuss their mutual interests, and not to re-sell it or re-engineer it into a new commercial

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“product.” To be sure there is plenty of pirating that occurs that results in billions of dollars of lost revenue. Many might argue the lost revenue from pirating affects the jobs of all workers in those industries.

In the last few years, however, technology has improved so that YouTube can “sniff” a track of commercial music that is in a posted video. The service then alerts the poster that a copyright infringement may have occurred. It advises that the content be considered for removal. So, YouTube is actively policing its content even though, as the law states, it can’t be held liable, as an online service. It removes copyrighted content when its owners request it.

The UU of Arlington, VA received notices for two of its 650+ videos embedded or uploaded in [its online library](#). The digital ministers there removed the two. One was for a clip of Michael Jackson music that floated above narrative and photos of individuals saying goodbye to a retiring church administrator. The other was for a track of Latin music playing in a video of a Guatemalan dance. Both instances were simple mistakes that were immediately corrected.

If UU congregations are asked by the owners of copyrights to remove content, then obviously they should. UUs should also seek permission first from artists who perform their original works for the church before its recorded and posted. The owners may wish to define limits for how long the content may be online. However, many performers appreciate the recording because it offers free, valuable marketing that they could probably otherwise couldn’t afford to buy or produce.

Now, let’s take a look at the tests in the Fair Use Doctrine of the Copyright Act. The four tests stated are to be considered. No stipulation as to whether all of them or a combination of them have to be met. From sections 17 U.S.C. & 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:

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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 a finding is made upon consideration of all the above factors.”

There are other considerations that courts take into account as well. Without going into more detail, the bottom line is that too many areas of copyright use remain in the gray.

Now, let’s return to the religious significance of this issue. From a faith perspective, REACH questions what the real issue actually is. Should we as religious people censor our gifts and devotional practices of sharing online church life - especially with those who cannot physically attend in person? Self-censorship can squelch our spiritual growth.

Our faith calls us to be bold, to take risks, to be radically hospitable, to share our talent and treasure, to meet our members where they are at. The context and arena for practicing our faith is our congregation. It is different than the contexts in which the UUA conducts events it runs and sponsors.

For example, the UUA’s handling of copyrights for works of art performed or read at its annual General Assembly is not seen as germane to REACH. Ministry occurs during General Assembly but it isn’t a church. The teams that work on GA work exhaustively to obtain the rights for music performed there. It ends up paying considerable amounts of money for it.

The role of digital media ministry is not to interpret ambiguous laws meant to be tested in courts -- especially laws that put the onus on the owners of works of art to claim their rights. Ultimately, only specialized

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legal counsel in music digital rights can speak with the kind of authority that represents the rights of a congregation as a client. REACH assumes it's not necessary to engage such counsel. The worst-case scenario that could arise would be a request to remove content. That's easily done and without punitive consequences, and no lawyers are needed. Lessons are learned that can be applied forward.

But again, what about ethics? Our religious practice online assumes that rights owners are not harmed by our actions for we do not transact commercially (one of the 4 tests in the Fair Use doctrine.) Moreover, the practice of faith in our congregations is part of our continuing religious education. Educational use is another test in the Fair Use Doctrine.

For these reasons: REACH concludes that digital ministry does not take advantage of the rights of others. Its intent is to do no harm.

The UU Musicians Association was to discuss this issue at its July 2012 annual meeting. Its findings and recommendations should be taken seriously and considered along with REACH recommendations.

Regarding sermons and text written by ministers of a congregation: Congregations should contractually require that they be available online through the church's digital ministry outlets during the tenure of their call. It's preferable that the congregation also require that the content remain on its church website after a minister's departure.

There are several reasons for this:

1. Faith Journeys: Minister created content is the closest thing to ongoing adult RE lessons that most of our churches have. Depending on the time of year a person attends or joins a church, adult classes may be over. Some years, few if any programs may be offered. Meanwhile, a minister's legacy shouldn't be lost when he or she leaves. His or her sermons and teachings have become a part of the institution. Seekers who have no clue to what UUism is get a far better sense of the religion and a congregation, if they can get a sense of what ongoing conversations between the pulpit and the pews have been over the years.
2. UU Identity: It seems illogical for the faith, to remove the thinking and teachings of ministers from the Internet. The more UU content that is searchable and found in search engines, the more

- our currently obscure religion will become visible and understandable.
3. Ministers: It's understandable that the thousands of hours you spend writing sermons produce a body of work to which you can't always spend more time growing. Just because you've presented a sermon once or several times in various offline locations, doesn't mean that congregants will assume you are too lazy to create anew, or that you aren't addressing what is unique to them. Aren't your sermons more like poems or songs? Each delivery is different. You might alter your interpretation by updating some of the text. You shouldn't have to defend re-use of your sermons as you see fit. Other professionals face similar issues. They find having a version of a text online allows clients to gain more benefit from it. Meanwhile, if writing is not a strong suit, video tape your sermons, or create audio files of them. If you're concerned you'll be judged by peers, think of peer review and support as a good thing; as a way for you to grow. Consider the following too: Congregations increasingly expect that a robust, representative body of your work is available online. The hiring process will soon, if it doesn't already, include scrutiny of whether you've blogged; whether sermons are available by video; whether you're on Facebook. Another consideration: if Unitarian Universalism wants its voice to be heard, why would clergy censure itself by requiring sermons to be removed upon departure? You can retain ownership of your work, just stipulate a license for perpetual use. Such a license doesn't preclude you from publishing your work in print or in other forms later.