



## **WHO OWNS A MINISTER'S SERMONS?** *Copyright Law and Ecclesiastical Works*

*By Andrew R. Bunn & Kekoa Keiley*

### What is a copyright?

A copyright is a form of legal protection for "Works" that have been reduced to a tangible form such as writing, electronic data, audio and visual recordings and other permanent or semi-permanent forms. Copyright law does not protect thoughts or ideas which have not been put into tangible form.

### What types of "Works" are Protected by Copyright Law?

- Literary works: Written sermons, prayers, liturgies, articles, books, stories, etc. whether written physically or saved in an electronic format on a computer.
- Musical works: Songs, musical compositions and accompanying lyrics;
- Pictures and Graphical Works: Paintings, photographs, etc.;
- Audiovisual works: Video recordings of a sermon, prayer, liturgy, talk, lecture, etc.
- Sound recordings: Audio recordings of a sermon, prayer, liturgy, talk, lecture, etc.

### Who Owns a Copyright?

A copyright is owned by the Author of the Work. An author is the person or person(s) who created the work. However, many people may be surprised to learn that when an employee creates a Work in the scope of his or her employment, the copyright is owned by the employee's employer. Therefore, the copyright of any Works made by a minister as an employee of a church are therefore owned by that church.

When a minister creates a Work outside the minister's scope of employment, however, the minister owns the copyright to that Work. Determining whether a Work is made within the scope of employment can be challenging and requires consideration of many factors including, among other things:

- Whether the Work was created at the employer's direct instruction;
- Whether the employer has the right to control the manner in which the Work is created;
- Whether the Work was created using tools or instruments supplied by the employer;
- Whether the Work was created at the employer's place of business;
- Whether the Work was created during normal business hours; and
- Whether the employer is in the business of creating or providing such Works;

<b>Examples of Works Created Within the Scope of Employment</b>	<b>Examples of Works Created Outside the Scope of Employment</b>
Sermons and liturgies prepared by the minister at church facilities to be used in relation to the minister's position with the church	Non-ecclesiastical works created by a minister outside of the church using non-church resources
Articles prepared by a minister for the church's congregation as an assignment from the church	Personal stories written outside of the church without church resources for non-church purposes
Songs prepared or created by a minister or other church employee to be performed by the church choir	Songs prepared for personal use outside of the church and outside of normal church hours using non-church resources

### Why is Copyright Law Important to You?

Use of copyrighted Works that are owned by a church without the church's permission is a violation of copyright law. Use of sermons, prayers, or other copyrighted Works created for use at the church cannot be used at any other church or setting unless the church which owns the copyright authorizes such use. Furthermore, as the owner of the copyright, the church has the exclusive right to reproduce and distribute these Works. Some exceptions, however, include the following:

Fair use – A copyrighted Work may be used for various purposes considered to be "Fair Use" including criticism, comment, news reporting, teaching, scholarship and research. However, the distinction between what is fair use and what is infringement is not always clear.

Consent – A person may use copyrighted work owned by another with the consent of the owner of the copyright.

### Copyright Licensing

Realizing that a minister's sermons, prayers and other ecclesiastical creations are deeply personal in nature, a church may consider granting ministers permission (a license) to share their Works outside of the church. Such permission should be in writing and should be clear about the terms of use. It is up to the church and the minister to decide on what such terms might be.

*\*The information contained in this document has been prepared at the request of the Hawaii Conference of the United Church of Christ and is not intended to be relied upon by any member or other person without prior consultation with an attorney.*