

Conference Dial-in Number: 605-313-4304

Pin/Access Code: 370477

November 21, 2019

Intellectual Property

Attendees: Michael Williams, ED, ESC Triangle; Paige Pait, Data Base/Administrative Coordinator; ESC Triangle; Joel Greenbaum, CEO/President NESC South Florida; Wendi Wilson, ESC Oklahoma; Janet McIntyre, ESC Southern California; Michael Towers, NESC; Jim Ratner, ESC Houston; Julie Crockford, Empower Success Corp., Jody Yetzer, One Source; Darlyne Koretos, Board Chair; Craig Kowalski, member at large

(Before we began the discussion Darlyne introduced and welcomed Joel Greenbaum, the new CEO/President of NESC Florida. He replaces Melonie Hillenbrand.)

How does your affiliate handle ownership of intellectual property created by volunteer consultants: (a) in connection with a client project and (b) in his/her individual capacity prior to project commencement that the consultant would like to use in connection with a client project?

Jody: The way we handle IP is through a volunteer consultant code of ethics that covers Conflict of Interest, IP. The volunteer assigns their right to One Source when they engaged with us. When our consultants put together a Power Point that is delivered to the client, the material is owned by One Source, not the consultant. I know of one other case where this was challenged. How have others handled?

Michael Williams: As part of the consultant agreement, all property is owned by the Triangle. We have a document that's being revamped so others can use online. I've never had a challenge with this.

Jim: Everyone is concerned about the volunteer as a risk. We are concerned with someone taking our client base which begs the question -- are these materials copy righted? Is your material copy righted?

Jody: Our Code of Ethics does address this a little. The consultants promise not to lift the clients from One Source. Also, we ask them not to use the material outside of One Source.

Michael Williams: I don't bring in consultants that are doing consulting with nonprofits. We don't want to have the issue we're talking about.

Jody: If I were looking around on your website is that stated up front or do you let it play itself out?

Michael: We let it play itself out during the interview process. It uncomplicates the process. We run into challenges when the consultant has a nonprofit business. We had a scenario where the consultant left us and then started a consulting business. She engaged the client she worked with at ESC of the Triangle in her new private business. I had a sidebar with her but she went ahead with the private contract. That's why we don't use consultants with nonprofit businesses.

Jody: that's why you need something in writing that says you do not own the material.

Michael Williams: I have to go back and look at the language. We have a non-compete agreement. It speaks to not competing with ESC outside the walls of ESC and the materials they produce belongs to ESC.

Jody: Jim, have you thought about steps you want to put into place to prevent volunteers taking your clients?

Jim: We just started using Sales Force so that should take care of who sees it.

Julie: We have in our consulting agreement that if the consultant brings their template to ESC it extends to ESC to use it and that the volunteer who developed it can continue using it in their side business.

Jody: Our wording is designed to exclude pre-existing established material.

We have a leadership program that features outside speakers. One of our consultants developed material to be delivered at the leadership program and they want to use it after for their business. He works with for profit clients and wants to be treated as any other outside speaker. We're discussing this now and have not reached a final decision.

Do you review volunteer consultant-created materials for potential copyright infringement issues and, if so, how?

Jody: Pro Bono Partnership in Ohio is one of the partners we work with. One of their lawyers who was formerly with Lexus/Nexus is developing guidelines for best practices. Even the guidelines have to be generic. In working with the attorneys, we learned there are some trolls that have gone into the nonprofit area to peruse materials used by the nonprofits to see if there's copyright infringement going on. We are happy to share our guideline and if anyone else has policies or procedures, we would love to see them. (Julie and Michael Williams would love to see it.) There is a risk if you're using material used by others year after year. We thought about creating a repository for things that are already in the public domain. Does anyone else do this?

Julie: I add articles and have to add a page to it citing where it comes from. I want to provide the articles to others for an education not for their use in their private businesses. They are to be used as education only.

What intellectual property-related challenges have you faced?

Julie: We added language to our material for engagements. We want to use photos. It says we will work with them to use appropriate photos.

Darlyne: I used to use volunteer photographers and set up client photo shoots. I always brought a photo release with me to be signed by the individuals being photographed. If the individual was a child, we wrote for permission to the parents. Sometimes, if we could not get permission, we would use the backs of the children so they were not identifiable.

Jody: We developed an image release that our consultants sign by way of a link. We just had our annual gala and made sure the registration process used a built in release.

Jody: Have you come across anything interesting or challenging? I had all these burning questions but now that Pro Bono Partners developed guidelines I'm a lot less stressed.

Jody: We have a person who was being coached in our leadership development program. She was let go by employer and her employer wanted to see the coaching notes. Now we have wording that says our coaching is confidential and will not be disclosed outside the program.

Julie: when I added this language that says clients give us the right to use their name in the annual report, sometimes they want to see a draft of the annual report before it's published. They want to see what it looks like. It became a tug of war.

Darlyne: I always approve feature stories with clients. If they don't want to be named you can identify them as a "leading nonprofit in the health care industry" or whatever the field.

Jody: How do you handle anything that comes up during a client evaluation?

Darlyne: When I did client evaluations sometimes the client would say something unusual that we might use as a testimonial. I would ask at the time if I might use whatever was said as a testimonial. They always agreed. I confirmed by following up with an email

Joel: I am still too new in my position at ESC of South Florida to contribute to the subject matter but want to thank you for this important information.



VOLUNTEER CODE OF ETHICS

To ensure that OneSource is fully deserving of public trust and respect in our community, all volunteers are required to agree to adhere to the Volunteer Code of Ethics (the “Code”) as set forth below as a condition of performing any actual or prospective OneSource consulting work, and to sign this Code annually testifying to that agreement.

1. Remuneration

While engaged in a OneSource project, a volunteer shall not take any action that would result in the volunteer’s financial benefit from the client or the project. Volunteers shall not ask for, or accept directly or indirectly, any monies, fees, or non-nominal gifts from clients, either for themselves or any member of their household, without the express permission of the OneSource CEO. In addition, while engaged in a volunteer project with a client, volunteers shall not promote any future business in which they have financial interest to the client.

Outside of a OneSource project or assignment, volunteers are asked to consider the impact on OneSource of soliciting their own consulting services with clients in competition with services that OneSource provides. Furthermore, OneSource volunteers shall refrain from using OneSource materials (or materials developed while on a OneSource volunteering project) for their own volunteering or consulting practices outside of OneSource without express permission of the OneSource CEO (see also Clause 2: Intellectual Property below).

2. Intellectual Property/Guidelines for Copyright Best Practices

Volunteers assign to OneSource their rights, titles and interests in documents, presentations and all other materials, whether in digital or printed form and all intellectual property rights in and to the foregoing developed by a volunteer for OneSource or for a OneSource client in connection with the volunteer’s engagement on a OneSource project (“Developed Materials”), excluding volunteer’s pre-existing proprietary Materials (“Volunteer Proprietary Materials”) with respect to which volunteer shall retain ownership. Volunteer grants to OneSource, its clients and all persons and entities acting for, with or on behalf of OneSource, a perpetual, non-exclusive, royalty free, worldwide license to use, modify, distribute, display and perform Volunteer Proprietary Materials and otherwise exercise the rights of an owner of such materials in connection with OneSource carrying out any activities related to its mission. Prior to commencement of a project, volunteers shall disclose in writing to OneSource the Volunteer Proprietary Materials to be used in a project. OneSource volunteers shall not use Developed Materials other than Volunteer Proprietary Materials for the benefit of any other person or entity, without the express permission of the OneSource CEO. Volunteers shall be provided with a copy of OneSource’s Guidelines for Copyright Best Practices and shall review and comply with them.

3. Conflicts of Interest Disclosure

Volunteers shall notify the OneSource CEO when their involvement in a project could result in a conflict of interest due to their potential personal, business, or financial interest in the outcome. OneSource may remove a volunteer from a OneSource project to avoid an actual or potential conflict of interest at any time.

4. Confidentiality

In general, volunteers shall treat information gathered for OneSource and/or client purposes as confidential and shall protect such information from disclosure to third parties. OneSource will use client confidential information solely in connection with OneSource’s performance of services; and will not disclose client confidential information to any third parties.

5. Conduct

While representing OneSource, volunteers shall conduct themselves in a manner consistent with OneSource’s values and mission.

I have read and understand the above and will act accordingly:

Printed Name: _____

Date: _____

Signature _____



Image release

www.OneSourceCenter.org/photo-release

I grant to OneSource Center for Nonprofit Excellence (“OneSource Center”) and its affiliates, volunteers, co-sponsors and contractors, the royalty free right to (i) create, reproduce and modify (*E.g. photo retouching for composition or using photo in photo collage*) images of me in any medium or format including without limitation, photographs and/or videos (“Images”); and (ii) use, distribute and publish Images, my name, biography and likeness in all materials created by or for OneSource Center including without limitation, print, electronic, video, online or any method now existing or hereafter created (collectively, “Materials”) for OneSource Center purposes. I release OneSource Center, and its agents and employees from and against all claims or liability related to the use, publication or distribution of the Materials or Images, including but not limited to any claims of libel, right of publicity or invasion of privacy.

Printed Name: _____

Signature: _____

Email: _____

Address: _____

City, State, Zip: _____

Telephone: _____

Date: _____



OneSource Center for Nonprofit Excellence
Guidelines for Copyright Best Practices
July 2019

OneSource Center for Nonprofit Excellence (“OneSource Center”), through its employees, volunteers, collaborators and contractors, creates, presents, distributes and acquires materials used in carrying out its mission, all of which implicate Copyright Law. Copyright Law is an extremely complicated subject. This document provides high-level information and guidelines for use and creation of online, electronic and printed material in compliance with Copyright Law. This is important to manage (minimize or avoid) OneSource Center liability risk and to model best practice. Please review this document carefully. If you have any questions or need advice, please contact the OneSource Center Communications Manager.

Copyright – What is it?

- Copyright is federal law that gives the author or creator of creative works (e.g. music, movies and literary works, artistic works (photographs, images, sculpture, paintings)) a bundle of **exclusive rights** that **protect** the author’s **expression** of an idea, **not the underlying idea**.
- Copyright exists as soon as a work is created by a person (author) in a fixed tangible medium.
- No copyright notice is required to protect a work by Copyright Law. If there is no copyright notice you **cannot** assume that a work may be freely copied or used.
- **It is a best practice not to copy materials found on the internet, books or other sources without express permission.**
- It is a best practice that materials created by or for OneSource that OneSource will own contain a copyright notice: Copyright © 201_ OneSource Center. All rights reserved.

What are the Exclusive Rights of an Owner of a Copyrighted Work?

- Right to prevent copying, performing or display of the copyrighted work. “Copying” is a reproducing all or a portion of a work and includes printing, photocopying, scanning, posting on a Website or other internet space, downloading/saving a copy to a personal computer or device or cloud space and saving a copy in a digital format.
- Right to prevent the creation of other works that incorporate elements of a copyrighted work but are not 100% copies (“Derivative Work”).
- Right to prevent unauthorized distribution of a copyrighted work or a Derivative Work.

What Copyright Does Not Protect?

- Copyright does not prevent the creation of a work similar or even identical to a copyrighted work when it is independently created without reference to or having had access to the copyrighted work.
 - If you create a PowerPoint by sitting at your computer and create it out of your head without reference to anything else, and if it is substantially similar to another copyrighted PowerPoint there is no legal issue.
 - If you create the same PowerPoint after reviewing other PowerPoint presentations, there is likely to be a copyright legal issue, unless you comply with the next bullet point.
- Copyright does not protect ideas or facts; it only protects expression of those facts or ideas.
 - You can copy an underlying idea if you take the concept and put it in your own words.



- For example, a newspaper can describe a scene of a fiery motorcycle crash in vivid detail. The newspaper can prevent others from copying the report, but it can't prevent another newspaper from looking at the article and reporting in its own words the fact that a crash occurred, where it occurred, when it occurred and whether there were casualties.
- Another example from Jim Collins, "First Who...Then What?":

Copyrighted work

Those who build great organizations make sure they have the right people on the bus and the right people in the key seats before they figure out where to drive the bus. They always think first about who and then about

what. <https://www.jimcollins.com/concepts/first-who-then-what.html>

Extracting the idea

Great organizations are built by selecting the right people for important positions before determining where the organization is going.

A Few Words About Fair Use -- Fair Use is a complicated legal doctrine that excuses the violation of a copyright owners exclusive rights in **limited circumstances** by nonprofit organizations, educational institutions and by certain commercial and non-commercial uses.

- Fair Use is a defense in a lawsuit. That means that you don't know if your use qualifies for the defense unless and until a court tells you the defense is good and you have spent tens of thousands of dollars in legal fees defending the copyright infringement action.
- It is a best practice not to rely on Fair Use and always ask permission to use a copyrighted work. If you have no other choice and must rely on Fair Use, it is best practice to let a lawyer advise whether a proposed use is or is not a Fair Use.
- Practical Rule – If your use interferes with or lessens the copyright owner's ability to make money from the copyrighted work, your use is almost never a Fair Use!

Best Practices for Use of Specific Materials

- **Internet Materials** - All online written materials, images, music, software and related content found on the internet should be presumed to be copyrighted and you should assume you need permission to use, unless the site from which you obtain the content has usage rules clearly permitting your use.
 - Some images/materials that you find on the Internet are explicitly free to use (may say "This work is dedicated to the Public" or something similar); some websites provide upfront use restrictions; some require a specific ask; some sites show both (that those are free to use and that they require permission).
 - Open Source and Creative Commons Licenses - some material is available on the Internet for use under specific contractual rules known as Open Source or Creative Commons Licenses. Those rules must be strictly followed and will generally be located by clicking a button or a hot link.
 - Linking to other Websites - A hyperlink is highlighted text or an image on a Website that, when clicked on by the user, takes the user another place on the same webpage; a webpage on the same website; or a webpage on another website. Hyperlinking to a copyrighted work on another Website, is not considered copying.
 - When in doubt ask the OneSource Center Communications Manager.



OneSource

CENTER FOR NONPROFIT EXCELLENCE

3610 Park 42 Drive, Cincinnati, OH 45241

513.554.4944 • OneSourceCenter.org

- **Ted Talks** - Ted Talks use the Creative Commons license. Nonprofits may play Ted Talks but with specific rules found at <https://www.ted.com/about/our-organization/our-policies-terms/ted-talks-usage-policy> which need to be reviewed and followed (e.g., play the talk in its entirety and display visible link to the Ted Talk). You may NOT play part of a Ted talk.
- **Clip Art, Pictures and Graphics** – Assume that you can't copy any of these visual works unless there is express permission granted. Clip Art, Pictures and Graphics are available from commercial sources with usage restrictions to be sure to understand those restrictions and follow them. There are also free clipart sites such as pixabay.com and unsplash.com.
- **Printed Materials** - Do not photocopy, scan or print out materials published by others. Some books contain testing instruments. Don't assume a testing instrument can be copied and used. Often a book is published that only permits copying and using a testing instrument if the book is purchased and then only one copy may be used.