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# Using Intellectual Property With Social Media

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## **Mission of Pro Bono Partnership of Atlanta:**

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

## Client Criteria & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
  - ✓ Be a 501(c)(3) nonprofit.
  - ✓ Be located in or serve the greater Atlanta area.
  - ✓ Serve low-income or disadvantaged individuals.
  - ✓ Be unable to afford legal services.
- *Visit us on the web at [www.pbpatl.org](http://www.pbpatl.org)*
- We host free monthly webinars on legal topics for nonprofits
  - To view upcoming webinars or workshops, visit our [Event listings](#)
  - Join our mailing list by emailing [rla@pbpatl.org](mailto:rla@pbpatl.org)

## Legal Information

- ✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
  
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## What are the issues?

- Identify Your Intellectual Property (IP)
- Avoid Infringing Others' Content and *What is "fair use"?*
- Avoid Violating Someone's Right of Publicity

## What are the issues?

We'll look at social media content in two ways:

1. Posting *types of content* based on ownership rights and permission.
2. Posting the names or likenesses of people shown *in the content*.



## Identify Your IP

- You own your **trademarks** (names and logos)



## Avoid Infringing Others' Content

For **trademarks**, you should always get permission before using another's trademark in a way that suggests the trademark owner endorses you or is affiliated with you.

- ✓ *With corporate donors, it's best to confirm their approval to use their name and logo to avoid an awkward conversation later...*



## **Avoid Infringing Others' Content**

*Publix supports our mission to help children!*

⊗ **NOT OK:** Suggests endorsement.

*Our event will be across from the Publix.*

✓ **OK:** Merely a factual reference.

## Identify Your Content: Copyright

You own **copyrighted** content you make

- Writings: guides, curriculum, books, email, etc.
- Images: photos, artwork, designs, etc.
- Audio/video: event videos, composed music, etc.

... and this includes social media posts. 😊

## **Avoid Infringing Others' Content**

Before posting content online, make sure either

1. You own it ***OR***
2. You have the owner's permission (a license) to post it

## Identify Your Content

You most likely own (and can post) content if:

1. Your organization staff created it.
2. The creator “assigned” it to you in a written agreement.

## Identify Your Content

You most likely have permission to post content if:

1. The creator gave you explicit permission in writing or verbally.
2. The circumstances implied that the creator gave you permission to post it online.

✓ *If you can, it's always best to confirm in writing...*

## **Avoid Infringing Others' Content**

- If you use someone else's content without permission, you have "infringed" their content.
- Trademark and copyright infringement can lead to money damages and sometimes costly or embarrassing removal of the content.



## **Avoid Infringing Others' Content**

- Money damages can range from a few hundred dollars to millions of dollars.
  
- Some example situations:
  - Unauthorized use of a stock photography image.
  - Unauthorized use of another organization's brand.

## **Avoid Infringing Others' Content**

Today's key rules to remember and teach your staff:

**You need permission to copy or republish content found online.**

**Internet content is not free for the taking, unless it explicitly says it is.**

## **Avoid Infringing Others' Content**

Ways to avoid infringement in social media:

1. Get permission to copy and republish content.
2. If already posted, simply point or link to it, instead of copying and re-posting it.

## **Avoid Infringing Others' Content**

Q: What is “fair use”?

A: Fair use describes a defense where an alleged infringer can claim they had the right to use protected content. Basically, it can apply if the use did not harm the commercial interests of the owner.

## **Avoid Infringing Others' Content**

“Fair use” requires a multi-factor legal test. As commercial entities, nonprofits should not rely on it without legal counsel.

If you ever receive a copyright or trademark infringement claim, seek legal counsel. PBPA can connect you with qualified legal counsel.

## **Avoid Infringing Others' Content**

Generally fair use is difficult to rely upon in the commercial world.

- ✓ A use may be “fair” in your personal life, where you are not generating income. But it probably won't be “fair” in the nonprofit world where your organization is raising money.



## **Avoid Violating a Right of Publicity**

Georgia (and other states) have a **right of publicity** that protects living and deceased people.

Both “normal” people and celebrities can protect their **name** and **likeness** from being used for **commercial gain without their consent**.

## **Avoid Violating a Right of Publicity**

A couple of scenarios...

## **Avoid Violating a Right of Publicity**

Posting someone's image online who attended your gala with the caption:

*“Sally joined us last night and loves our organization!”*

**MAYBE NOT OK. DID YOU GET PERMISSION?**

## **Avoid Violating a Right of Publicity**

### **OK:**

Obtain permission from event attendees to use their name and likeness in marketing the organization.

Permission can come in a written agreement or upon notice that everyone sees before entering (e.g. at the point of registration).

## **Avoid Violating a Right of Publicity**

Posting Martin Luther King Jr.'s image with the caption:

*“If alive today, MLK would support our organization’s cause of equality and justice. Donate today!”*

**NOT OK.**

## **Avoid Violating a Right of Publicity**

### **OK:**

Seek written permission from a celebrity or their estate first. Some social media posts can imply endorsement, even if not intended.

Celebrities are paid a lot for their endorsement, and even nonprofit organizations cannot take this value from them without asking.



## “Take Aways”

- Train staff about IP issues in social media. Only trained staff should post online.
- If you did not create the content, you probably need permission to post it in social media.

## **“Take Aways”**

- **You need permission to copy or republish content found online.**
- **Internet content is not free for the taking, unless it explicitly says it is.**

## “Take Aways”

- Instead of copying and re-posting online content, point to it.
- If you must re-publish another’s content, first seek permission.

## “Take Aways”

- Fair use rarely applies to nonprofits.
- If you have a question about intellectual property ownership rights or receive a complaint of infringement, seek legal counsel.

## “Take Aways”

- Always get permission from individuals before posting their name or likeness for financial gain.
- Celebrities (and their estates) hold value in their endorsements. Social media posts can sometimes come across as endorsement, even if not intended.

Questions?





## For More Information

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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