

**PBPA Podcast Transcript**  
**Can I Copyright My Nonprofit's Website?**  
**(31:56 minutes)**



Sireesha ([00:00](#)):

A nonprofit's website is often the first impression donors, participants, and the community may get of the organization. So you wanna make sure it's informative, engaging, and makes a positive impression. But in this era of copy, paste, culture and easy sharing, how can you protect your nonprofit's website, content, design, and code from unauthorized use? That's where copyright law may come into play. Copywriting a website is a crucial step to safeguard your intellectual property, but it can be a complex and often misunderstood process. In this episode of the PBPA podcast, Mike Hobbs will unravel the intricacies of website copyright and will guide you through the essential steps to protect your nonprofits website.

Sireesha ([00:58](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at [pbpatl.org](http://pbpatl.org). Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([02:08](#)):

Mike Hobbs is an intellectual property partner with Troutman Pepper, where he represents and advises clients on a variety of trademark and copyright matters. He's a frequent speaker at industry events, and his commentary has been featured in such leading publications as the Wall Street Journal, the Atlanta Journal - Constitution, NBC, and Bloomberg. And to top that all off, Mike has been advising nonprofit organizations as a fantastic PBPA volunteer for over 10 years. Thank you for being here to speak with us today. Mike,

Mike ([02:45](#)):

Thank you so much. It's really an honor. I appreciate it and appreciate all the wonderful work that your organization does.

Sireesha ([02:51](#)):

So, to start us off today, Mike, can you give us a broad overview of what is intellectual property and how does that relate to a website?

Mike ([03:03](#)):

Sure, absolutely. So, intellectual property is gonna be, uh, various rights that have been decided, either literally dating back to the Constitution of the United States, or that have been passed by, uh, Congress and approved and passed into law that provide protection for various, elements, uh, and creativity that are created by organizations or individuals.

Mike (03:26):

So to give you a couple examples of them, uh, one of the best known as patents. So patents are gonna protect an invention. So if you think about, uh, the light bulb or the phonograph, um, those are gonna be examples of something that would be protected by a patent. The next of the items would be, uh, trademarks. So trademarks are gonna protect essentially brands. And it may take the form of, a mark, uh, or the name of a company such as Coca-Cola or Nike. It might take the, uh, form of a symbol such as the Nike Swoosh. It may take the form of a slogan such as Just Do it. It's really anything that when you see it, it uniquely identifies the company. And some even extreme examples are if you have pink for fiberglass insulation, you think of Owens-Corning or the Pink Panther. Uh, those would be brands that even the color pink can be protected. Or if you go to movie and you hear a lion roar, that would be a trademark owned by MGM. So those are gonna be trademarks.

Mike (04:22):

And last but not least, to get into an area that we're really gonna cover today is it's gonna be copyright. And so copyright, the official term, uh, terminology and definition is it protects original works of authorship that are in a fixed medium. What does that mean? That sounds pretty complex. Well, it really protects. If you've created something and it's permanent, it's not in your head, but it's something that could be on a computer hard drive, it could be in a cloud, it could be on a piece of paper. Any place where it's been created, um, in a permanent, uh, format, that's gonna be protectable. So what are some examples of copyright? So for example, a painting that if you go to, um, and see a painting on a wall that would be protected, uh, via copyright, and it protects the image and the way that's been, um, presented. It also protects songs. So if you're a big Bruce Springsteen fan or if you, um, have various musicians that you enjoy, uh, listening to that music is gonna be protected by copyright software is protected by copyright. So Microsoft, for example, protects its work, um, sometimes with patents, but very often with copyright. And that protects literal copying of that particular code that they have created and drafted. And for the purposes of today, it also is gonna be websites. So websites, um, can be protected via copyright as well.

Mike (05:41):

And so, and if you think about and get into, and this may get a little ahead, but if you think why, why bother? We're a nonprofit, what does it really matter? Who caress, we're really doing this for great reasons. We are out there to, uh, provide for the common good and our website, we don't really care what happens to it. But the question I'd ask is really, don't you care about what happens with it? Because if you think about for most nonprofits, the two most valuable, uh, assets that you have as an organization are very often intellectual property. What's your name? Uh, what logo do you use? Because if you think about it, when you tell anyone who you are, that's gonna be critically important. And for fundraising, for development, for providing your mission, your name is an incredibly valuable asset. But also what you create that if you think about all the time and the energy that goes into creating content for a nonprofit, that's probably a lot of what your, uh, folks are creating.

Mike (06:35):

So the question is, are you really fine? In this day and age of cut and paste, as you said earlier, with anyone taking, using that, if you see, uh, for example, on a blog post, that's something that you put up, is then on another site that they're taking credit for that. And if you think about the amount of time, energy, talent, investment in terms of, uh, that, that could be a significant investment for your organization, for have someone to literally just copy and using it can be frustrating. It also can be that if

you have the look, the feel content on your websites taken by another site, it can confuse people. And then you have, the biggest question is, well, well, who are you? And I guess as, as I say, the biggest asset of an organization is your fundraising list that's gonna be in your donor base is gonna be super valuable. But if your donor base is confused about who you are and what you're creating, that's gonna lead to issues as well. So this is an important topic for a nonprofit organization to really think about what are we protecting, how do we protect it? And for a lot of organizations, when you go for a meeting before the meeting, what's the donor or anticipated donor gonna be checking your website? So it's really your entryway and the face of your organization.

Sireesha ([07:50](#)):

Yeah, you bring up a great point there, Mike, in that a reputation of a nonprofit is, is invaluable. And these elements of intellectual property and protecting them protects the organization. I do want to make a quick mention because Mike's gonna be focusing on copyright today, but we sometimes have organizations that are interested in learning about trademark as well, when we have another resource, um, on that trademark, a nonprofits brand protection options. I'll drop a link to that on, on this episode page. But to speak about copyright, since we're talking about websites today, Mike, can you tell us how does an organization go about copywriting, um, its content and its website?

Mike ([08:36](#)):

Absolutely. Great question. So with copyright, um, one of the beauties of copyright, and we talked a little bit about the source of it, the copyright is protecting the US Constitution, literally dating back. The framers of the Constitution envisioned that copyright, uh, was gonna be one of the fundamental founding rights, uh, of the, uh, United States in terms of its protection and what it was gonna forward protection to. So it literally dates back to the Constitution. And what it provides, uh, protection for is immediately upon creation. You own a copyright in that. So it's what's known as a common law copyright. So if you've created, and let's say that you have, um, a drawing or a graphic diagram that you have that has elements of creativity as to that, or you create, a white paper on a particular topic, the moment that's created, you own what's known as a common law copyright in that, and you have protectable rights as to that.

Mike ([09:33](#)):

But, um, there's significant advantages in getting a registration with the US Copyright Office, uh, in addition to owning the common law copyrights. So what I tell people is a little bit is that it's a little like, like getting an insurance policy. That what you wanna say and think about is that, for example, it used to be, and I guess you can still purchase them, um, that it used to be you could buy life insurance if you took a flight. Um, it's a little bit of a dark subject, but you could buy that. I didn't buy it. I figured, look, the pilot, the plane, everything's in good shape. If you look statistically, it was very unlikely that you're gonna have an issue with that. And so that was not something I purchased. Uh, do I purchase insurance for my car? Absolutely. I mean, it's very valuable and if something happens to that, you wanna have recourse. So what I would say is you as an organization, you want to assess the, uh, value of the respective copyrights that you have. And going back to what we said earlier, I mean, the website that you have is very often the initial face of your organization, and it is a very valuable asset. So it's certainly something that you ought to consider about getting a registration for.

Sireesha ([10:39](#)):

Okay. So what are the advantages of registration in terms of what do you get when you take that additional step of registration versus what do you not get?

Mike ([10:49](#)):

Absolutely. It's a great question. There are a couple, um, you know, people sometimes say, oh, well, I have a copyright. You just told me that we have a common law copyright. Or, um, you get sometimes that people talk about a, uh, poor man or a copyright where you mail materials to you and it's stamped all of that. Well, the United States, um, government through the copyright office provides some significant advantages if you've obtained a registration before an infringing event. So first of all, you're entitled to various presumptions that you're entitled to, that the work is protectable. You're entitled to a presumption that it's yours. Uh, you're entitled to a presumption that was created as of the date that set forth in the registration certificate for the work.

Mike ([11:32](#)):

And then you get some real, like I said, it's a little bit of the life insurance, uh, that what's the value in terms of it? So, couple things. One is that if you have an infringement, uh, infringing event in order to bring a copyright infringement lawsuit as a requirement, you cannot get into a court in the United States unless you have a registered copyright. So that definitely has a value in terms of having secured that early on. But he's even more incentives in terms of that, that if you've registered the work, uh, before the infringing event, you can recover what's known as statutory damages and your attorney's fees. So what does that mean? Well, if you have not registered, you still, as we said prior to the, uh, being able to recover and bring a lawsuit, to get someone to stop using your work, you have to have registered it. And in that case, you can recover whatever your lost profits are or whatever the profits of someone else is. If you think about, it's a little tough to run that to ground, you know, and provide any sort of, uh, substantive, tangible, uh, proof of what the damage is.

Mike ([12:36](#)):

So let's take about that white paper that your organization wrote that you put up on the internet and then you found in another place, and it's been copied verbatim. Well, how do you show how much income you lost because of that? I mean, it'd be virtually impossible to do that. And then how do you show how much income another organization has gained by doing that? So those are very difficult, but with statutory damages, a court and the trier, and ultimate decider on damages is either gonna be the judge or a jury would, if they find copyright infringement and you've registered before the infringing event, you can recover statutory damages, which are set out in the Copyright Act, and they run anywhere from \$500 per infringement to a hundred thousand dollars per infringement. And if they are willful, they can be tripled. So potentially up to \$300,000 for that act and what the court and a jury is gonna look at and say, what happened here? And if you have posted on your website a copyright notice, you have it posted clearly there that it's yours, and they took it and copied it verbatim, boy, that looks pretty bad. That's clearly willfulness that they took your work and tried to credit it as their own. So those are examples where you really may see a willfulness in a tripling of damages.

Mike ([13:55](#)):

Now, the other thing is, um, if you're going to PBPA, you're fortunate that you're able to get, uh, legal services on a pro bono, um, basis. Well, with lawyers, uh, the <laugh>, the way we pay for our, uh, our cars and our gas and our groceries and all that is we typically charge on an hourly basis. So, and that adds up, um, as to that. And so you have to make a cost benefit analysis in a lot of cases. Am I gonna file

this lawsuit and then I have to pay for an attorney's fees and my attorney's fees in addition to that? But again, going back to the Copyright Act, if you've registered the copyright for the infringement as a matter of law, the court can award your attorney's fees, uh, to you the cost of whatever your attorney had to pay in, uh, or charge you in terms of getting and filing a lawsuit. You can get that back from the other side. It also can be so that that can be huge, you know, in changing the calculus of whether, uh, you file a lawsuit and what actions you take. But over and above that, uh, the people who have infringed that, uh, your rights, you can tell them, I've registered this before the event, you are going to be paying my attorney's fees. And that's a huge incentive, uh, for the other side to settle and not engage in protracted litigation. So it's this whole basket of additional rights that you're given if you've registered your copyright before the infringement that you don't get if you just rely on common law copyright. And I'm not gonna get into all of the issues and problems associated with the self copyright of mailing your work to you and getting a postmark on it in a sealed envelope. It just, there are a lot of flaws and a lot of issues associated with it. Just easier if it's valuable to you. And I would submit to you that your website is valuable, well worth it to get a registration for that.

Sireesha ([15:48](#)):

Okay. You've outlined some really clear advantages there to registration. Um, but tell me what, what are the steps to registration if the nonprofit has decided that this is the route they want to take?

Mike ([16:01](#)):

Absolutely. So your starting place for this, uh, is typically gonna be the copyright office. And so if you go to [copyright.gov](http://copyright.gov), there's a whole, uh, raft of different bits of information, um, that will help you on your way to getting a copy re registration. It's also, you need that as well, because that's where you're gonna file that the, it's still is possible to register a paper form, um, with the, with your copyright application. But there are some significant disadvantage. It's twice as expensive to do that. The average time it takes to get a decision back on a copyright application, if you file it by paper, is gonna be between nine months and a year. Um, whereas if you file it online, it's gonna be about three or four months. Um, so you're really gonna file it electronically. And the site for doing that is the, um, [copyright.gov](http://copyright.gov) website.

Mike ([16:55](#)):

Now, in addition to that, they also have what's known are circulars. And so these various circulars provide information to people who are exactly like you, that have interest in terms of, in saying, Hey, I wanna protect my intellectual property rights through copyright. How do I do that? And if you go to what's, uh, what is at circular 66, again, circular 66, that is a whole, um, circular. And it's about a six page document that provides, uh, guidelines for websites and website content. So if I'm listening to this, um, there are bits of information that you're fuzzy on or don't remember exactly, if you remember, nothing else, [copyright.gov](http://copyright.gov) and circular 66 for website, that is gonna lead you down the pathway to getting your registration.

Sireesha ([17:41](#)):

Let's talk about how a nonprofit should decide what content to submit for registration. I'm thinking, uh, it's a little bit along the lines of the insurance, uh, comparison you made earlier about for one flight, you're not gonna get insurance, but for your car that you're using on a regular basis, um, you do get insurance. So let's apply that analysis for nonprofits that that's trying to decide what to copyright.

Mike ([18:08](#)):

It's actually, it's a great question. So what, what I would say, um, for the, the copyright is what you're want gonna wanna do. The first time you do this, you are really gonna wanna protect pretty much everything that's on your site. Um, so now how do you, you know, with a copyright, you have the, um, collection of those intellectual property rights, and then you have, okay, why do we protect it?

Mike ([18:31](#)):

So just taking one quick step backwards so that, um, if, if there's materials on there, there's a white paper, there are photographs that are on your, um, website, there's some video of an event that you had or held, or a, um, a gala or a fundraising event that you have. All of those things, if those base works were created by an employee within the scope of his or her employment, the organization owns that under what's known as a work for hire. You own that as an organization automatically, um, that's owned by you. Now, let's say, and go to the, uh, the gala, let's say that you had, um, and you had a photographer who took photos at the, uh, event and their freelance, they were doing it for free and they were taking the photos. Well, in that particular case, if the work is independently created by someone not within their employment, they own that. He or she, the photographer owns that. If you have a freelance writer who creates a white paper for you, he or she's gonna own that. The copyright in that white paper, absent a written assignment, it has to be in writing you. They can't say, oh, yeah, yeah, it's yours. Yeah, we've always been friends for years here, it's yours. That doesn't do it. It has to always be in writing, and it can be literally as simple. And courts have said that if you have a check that you, and on the back of a check if people ever use checks these days, suppose, and I'm not seeing a case law about a Venmo memo on it, but it needs to be, I, I prob I wouldn't rely on that, but, um, as long as it is simple and it says, I assign my rights in this copyright to organization, ABC, you own that as an organization.

Mike ([20:11](#)):

So what I would say is think about what's on there, who created it, and did we get, if it wasn't by an employee, did we get rights to it? And are we entitled to rights to it? Because it may be that you say, the photographs for the gala, you know, are, are are wonderful and we really appreciate, you know, the work that was done. It's important to us, and we have it posted on our website, but it's really not something that we need to own as to that. So look through all of the pages of your, um, website and think what's on there and how did you create that? And you may even want to document it, go through and say, what was the source? Where did it come from? When was it created? And do we care if we own that or not?

Mike ([20:49](#)):

So at the end of that, you're gonna have a bundle of content that some of which, um, you're, you're going to claim rights in, some of which you are not, but what then you're gonna do is you're gonna claim a collective copyright in everything that's there that you own. That's yours, and it's protectable that you, it was either created by an employee or you got a written assignment to, and what I would say is it's hard to know exactly, um, as to, to the, those materials. If it's, if it's very clearly, if it's a third party that, for example, you're using, um, a, uh, a photograph of Barack Obama, um, on your website that was from, um, the US archives. Well, that's a, the government cannot claim copyright in works. You can have that and you can use that, but you're not, that's not part of what you're filing for, again, is this bundle of content that you're claiming, uh, rights to and you're claiming it is what's known as a collective work. It's all unified together and offer the purpose of, um, being together and forming your website. And based on that, you can file a collective copyright for that content on your website.

Sireesha ([21:58](#)):

Okay. Um, one question I have is the collective copyright. Is that something that organizations need to re-register for it, um, regularly if they're changing the content that's on their website pretty often?

Mike ([22:14](#)):

It's a, it's a great question. Where I would say is that I would have a regular process for this and set up a regular process for doing this because, um, it, it just becomes, and it can become difficult that you're probably, as with an organization on a weekly, if not monthly basis, you're gonna have new content all the time. And the question is, you know, at a certain point it becomes, oh, we just added a white paper. Oh, we just added some pictures. And if you have to do it each time, um, the standard copyright fee is \$65. So it is a relatively low cost to do it. The form, once you've done, um, one of the forms, you just repeat the information that's on it as a typical matter. Um, and so you can entrust and you can have someone who's you say, look, this is your job. Part of your job description is once a year, or, um, bi-annually, twice each year. What we wanna do is we wanna say, okay, we're gonna file this all once, and then what we're gonna do is on the copyright form, it says, what are you claiming on this? And you can claim literally, broadly all new material, or you can, if you wanna be a little more specific, you can say all new text, photos, video, and graphics. If you wanna be more specific, I, there's no points necessarily for more specificity, but some people have a comfort level with that. And so if you think what you're doing is the very first time you're claiming a registration, the very first time you file in everything, and then what you're filing is a year later you're filing in new content. So you'd still file, um, everything on the website, but the only thing you're claiming is whatever is new since the previous year or the previous time that you filed it.

Mike ([23:54](#)):

And then you keep doing that each year because what you never know is what's gonna be infringed. And if you think very often what may be the most valuable work is whatever you've had as newest, you know, if you've got a white paper on a topic that was a big issue eight years ago, it probably is less likely to be infringed and copied rather than something you've just put up two months ago. So it's a great question, uh, about it, that engaging in a regular course of doing this, and as I said, it really to fill out and complete the form. You can do it in 45 minutes to an hour, um, collect the materials, put it into APDF, uh, submit the application, pay the \$65 fee, and then you have your registration and you, when you get your registration certificate back, you put it together, um, and you can scan all of it. And so that you have one, uh, file with this. Or if you are old school and you want a paper file with it, put it in a folder and then put a little tickler on your Google calendar or your Outlook and a year from now, do the same thing and a year after that, do the same thing. And just that regular course of maintenance, uh, and is good housekeeping for any nonprofit organization.

Sireesha ([25:04](#)):

Yeah, definitely. And my last question, Mike, is related to a term that you used a copy couple of times, um, earlier, and that's copyright notice. Can you tell me, um, what is copyright notice and does it differ if you have a common law copyright versus a registered copyright?

Mike ([25:23](#)):

Fantastic question. That's a great question. So, um, the copyright notice that all of us, uh, all of you once I say it, or you may already be familiar with it, is gonna be a "C" in a circle. It's gonna be the year the work was gonna create was created, and then it's gonna be the name of your organization. And that's a

copyright notice. So you may hear people say, oh, you have to use a copyright notice or you lose the work. Well, there, there were some laws in the United States, um, until the seventies that that was required. And so there were some case law, for example, about Martin Luther King's "I Have a Dream" speech, and did, was there a notice on that and was it protected from when he gave that speech back in the 1960s? That has all changed. So giving you a little historical content context, because you may hear something about it. Today, 2023, you do not need to use a, uh, copyright notice.

Mike ([26:14](#)):

But my point about a copyright notice is if you think if you have at your house or you have some property that's in the woods, if you post a no trespassing sign, it gives you various statutory rules and laws. Does it keep someone off your property? No, it doesn't, but it lets 'em know what they're doing is wrong. And if they do that, it gives you avenues of redress if they did that. And it's the same thing with the notice that, so if you have, uh, the copyright notice, we, you don't have to have a pending copyright application on file or an existing registration in order to post a notice. And so I would always say on every site, um, you ought to include a copyright notice again with a particular C in the circle the year, and then the name of your organization. Sometimes people put all rights reserved. It's really not required except in certain instances that really are not, don't apply here, but you'll see that occasionally.

Mike ([27:08](#)):

But just put that notice on there and that's going to be your posted no trespassing sign because what what will happen in certain instances, okay, you have your white paper on there and then someone copies it and then they remove your copyright notice on it, and then boy, the facts on that are really bad because if you're looking to show willfulness the fact that you had a copyright notice on there, they removed it and then posted your white paper, I mean, they knew what they were doing was wrong. It was no accidental infringement on that. So, um, so yes, we definitely recommend in posting a copyright notice. It's a very good idea.

Mike ([27:47](#)):

Um, one just minor, um, trick of the trade is, so you filed your original copyright. You wanna make sure when you're submitting the pages that you're gonna be submitting, uh, with that as your sample of that you're claiming the protectable rights in and the example that you're showing the copyright office, you wanna make sure the notice on that, um, copyright notice if you, you have it on your site matches the year in which you're filing, otherwise the copyright office will reject it. They give you an initial rejection and say, Hey, this doesn't match up. You're claiming this work and protectable rights in 2023 and the website, it says 2021. And so you'll get an initial refusal. Same thing with if you file an update so that if your website doesn't still says 2022 and you're filing a 2023 copyright, you just wanna update that. Part of your good housekeeping is just to update that year every year. Sometimes what you'll see, and you used to see this when, um, software actually loaded back in the old school days, you would see, for example, that Microsoft would say Microsoft Word or Microsoft Word, um, copyright 1995 to 2023 on that, and they would have the span of the years in which they were creating the work.

Mike ([29:07](#)):

It's not incorrect to do it that way. It's not over. Correct. It's just you're trying to provide a notice that puts the public on notice what the work is. So, great question and, and we always recommend, uh, on behalf of clients and to people who are viewing this or listening to this, it's a good idea. Use the

copyright notice. You don't have to have the registration for the website. But as we've said here today, there are definitely some advantages in getting that done.

Sireesha ([29:32](#)):

Thank you so much, Mike. This has all been such great information. You gave us historical context, you gave us practical guidance here. We really appreciate you sharing your time and expertise with us today.

Mike ([29:46](#)):

No, it's really been a pleasure. I really appreciate all of the wonderful work that, uh, the organizations that look to you, uh, for legal services and all the work that they're giving back and contributing back. And then I also appreciate very much with PBPA in terms of the great work that you all do in terms of providing services to so many great organizations. So thank you for that.

Sireesha ([30:06](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.