

THE LAW OFFICES OF

ESTD **GKH** 1977

**GIBBEL KRAYBILL & HESS** <sup>LLP</sup>

ATTORNEYS & COUNSELORS AT LAW

© Gibbel Kraybill & Hess LLP 2015

Everence  
Stewardship University  
Session A3  
J. Doe v. Church

Presented by GKH Attorney **Peter J. Kraybill**  
March 7, 2015



© Gibbel Kraybill & Hess LLP 2015

WWW.GKH.COM

# J. Doe v. Church

Churches are not as “special” to outsiders, whether those outsiders are

- cyber squatters
- copyright holders
- banks or
- slip-and-fall victims

Churches often will be treated as equal to businesses or other “legal entities” for purposes of

- contract law
- trademarks
- copyrights and
- negligence, among others.

How can churches be protective and proactive when engaging with the world?

# Legal Threats

State action versus Private action  
(government enforcement compared to civil  
litigation)

# State Action

What about the government going after a church?

US Constitution - Bill of Rights - First Amendment - Freedom of Religion - "Free exercise" clause:

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...*

[http://www.law.cornell.edu/wex/free\\_exercise\\_clause](http://www.law.cornell.edu/wex/free_exercise_clause)

# Free Exercise Clause

The Free Exercise Clause reserves the right of American citizens to accept any religious belief and engage in religious rituals. The clause protects not just those beliefs but actions taken for those beliefs. Specifically, this allows religious exemption from at least some generally applicable laws, i.e. violation of laws is permitted, as long as that violation was for religious reasons. In 1940, the Supreme Court held in *Cantwell v. Connecticut* that, due to the Fourteenth Amendment, the Free Exercise Clause is enforceable against state and local governments.

[http://www.law.cornell.edu/wex/free\\_exercise\\_clause](http://www.law.cornell.edu/wex/free_exercise_clause)

**Extra credit:** Famous example of the Amish using the Free Exercise Clause?

# Wisconsin v. Yoder

[http://en.wikipedia.org/wiki/Wisconsin\\_v.\\_Yoder](http://en.wikipedia.org/wiki/Wisconsin_v._Yoder)

**Wisconsin v. Yoder**, 406 U.S. 205 (1972), is the case in which the United States Supreme Court found that Amish children could not be placed under compulsory education past 8th grade. The parents' **fundamental right to freedom of religion outweighed the state's interest in educating its children**. The case is often cited as a basis for parents' right to educate their children outside of traditional private or public schools.

# Who is the “Church”?

How does a church appear to the public or to potential plaintiff attorneys or the state?

Pennsylvania nonprofit organization?

Unincorporated Association?

Recognized by the IRS as exempt from tax?

Board-based or Members-based governance?

A plaintiff’s attorney, when going after a Church, is asking “who do I sue?”

# Private Plaintiffs suing Churches (civil litigation)

Legal claim basis // example of prospective plaintiff (J. Doe)

- contract law // e.g. banks, service providers such as photocopier leasing companies
- trademarks // e.g. trademark holders and online claimants [cyber squatters]
- copyrights // e.g. copyright holders online sending C&D notices and
- negligence // e.g. slip-and-fall victims, child abuse victims, among others.

# Contracts

Contract law // e.g. banks, service providers such as photocopier leasing companies

Contracts most typically are written agreements with duties and an exchange of value.

# Contracts

## Charting a contract breach action

- notice of breach
- small claims court (Township) or Common Pleas Court (County)
- typically a hassle, usually not an entity threat
- if church loses and must pay sizable claim to the point this is an entity's existence threat — bankruptcy possible?

# Trademarks

Trademarks // e.g. trademark holders and online claimants [cyber squatters]

A trademark holder has an exclusive right to use a designation of origin of goods or services in a given niche of commerce. That "designation of origin" is a trademark.

Trademarks protect consumers, by allowing them to know the origin of the goods or services they purchase.

The measure of trademark infringement is whether a consumer would be confused, and mistake one trademark for that of another.

The internet has substantially increased the incidence of trademark infringement and resulting liability.

# Trademarks

**Cybersquatting - The improper use of a trade mark as a domain name without the trademark owner's consent.**

Occupying a web domain for financial gain NOT for a bonafide business conducted or advertised at that domain, but rather to extort the otherwise valid holder of that domain name.

A USPTO registered trademark holder can defeat a cybersquatter using a simplified arbitration process set up by the World Trade Organization. The Uniform Domain Name Dispute Resolution Policy established by the Internet Corporation for Assigned Names and Numbers.

So if a Church has a USPTO trademark, the Church can also get the domain name for that trademark name by taking it back from a cybersquatter.

# Trademarks

Charting a trademark infringement action:

- notice of trademark infringement, usually an e-mail or letter to “Cease & Desist”
- federal court if USPTO registered trademark
- possibly a major hassle, e.g. church must change name
- unlikely insurance coverage
- usually capable of settlement
- risk of \$150,000 statutory damages and attorneys fees of plaintiff if infringement was “willful”

# Copyrights

Copyrights // e.g. copyright holders online sending C&D notices

Copyrights are rights to creative works. The US Copyright office federally registers creative works, in a notice filing system (allows others to get notice of who owns what works).

Copyright infringement is using/copying/selling/modifying someone's copyrighted work without written permission in advance.

The internet has substantially increased the incidence of copyright infringement and resulting liability.

# Copyrights

Charting a copyright infringement action:

- notice of copyright infringement, usually an e-mail or letter requiring payment of a “License Fee” or threatening dollar damages
- possible insurance coverage
- federal court if federally-registered copyright
- possibly a major hassle, e.g. “License Fee” may be a considerable sum. Typical license fee for an infringed image/photo is several hundred to several thousand dollars.
- usually capable of settlement
- risk of \$150,000 statutory damages and attorneys fees

# Torts - Negligence

Negligence // e.g. slip-and-fall victims, child abuse victims, among others.

# Torts - Negligence

Charting a negligence action:

- demand letter from plaintiff's attorney
- Church's insurer reviews potential claim, and insurer may take over defense or settle
- state or federal court litigation
- if uninsured claim, possibly a threat to continued existence as a legal entity → bankruptcy/dissolution

# How to reduce or eliminate harm from potential claims?

- Change practices to reduce liability (e.g. register a trademark, train newsletter staff on copyrights, use diligence and care in property maintenance)
- Impose policies to eliminate blind spots (e.g. whistleblower policies, conflict of interest policies, child protective policies)
- Pray! (focus attention and show significance)

# How to further reduce claim harms?

Lessons learned from businesses and wealthy individuals:

1. legal entity creation and appropriate use (e.g. multi-tier companies, abiding by governing documents of Articles & Bylaws)
2. contracts (e.g. provisions to shift liability away)
3. insurance (insurer become primary payor)

# Does your church need a trademark?

- Identity issue —> exclusive right to use a trademark (e.g. the Church name) in the given services niche in the US
  - if using a name/phrase mark when engaging in “financial services” in the form of fundraising, such as for missions efforts or church programs
  - if seeking to prevent others from using the same mark, or to protectively “cover the field” staking a claim to that mark, and be able to continue using that mark

## Trademark battles of Church vs Church?

THE LAW OFFICES OF



**GIBBEL KRAYBILL & HESS** <sup>LLP</sup>

ATTORNEYS & COUNSELORS AT LAW

QUESTIONS & ANSWERS

© Gibbel Kraybill & Hess LLP 2015