

REGENT UNIVERSITY LAW REVIEW

Volume 14

2001-2002

Number 1

© COPYRIGHT GOD:

ENFORCEMENT OF COPYRIGHT IN THE BIBLE AND RELIGIOUS WORKS

*Roger Syn**

Only one thing is impossible for God: to find any sense in any copyright law on the planet.¹

I. INTRODUCTION

All major English Bible translations, except the *Authorised Version*,² are subject to copyright.³ Copyright also subsists in some standard editions⁴ of the ancient biblical manuscripts from which

* Australian Patent and Trade Mark Attorney. Bachelor of Engineering, Monash University, Australia. The author is a Fellow of the Institute of Patent & Trade Mark Attorneys of Australia.

** This article first appeared in the *European Intellectual Property Review*, [2001] E.I.P.R. 454, published by Sweet & Maxwell, Ltd., London. It has been edited to conform to conventions of the Regent University Law Review and to the format of *The Bluebook*, THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000).

¹ MARK TWAIN, MARK TWAIN'S NOTEBOOK 381 (Albert B. Paine ed., 1935).

² The term "Authorised Version" refers not only to the *King James Version* of 1611, but includes earlier translations authorized by the Church of England. ANCHOR BIBLE DICTIONARY 830-32 (David N. Freedman et al. eds., 1997).

³ "Translations . . . of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work." Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1986, art. 2(3), in 1 BASIC DOC. INT'L. ECON. L. 715 [hereinafter *Berne Convention*]. See also *id.* at art. 8.

⁴ See NOVUM TESTAMENTUM GRAECE (Erwin Nestle et al. eds., 1993); THE GREEK NEW TESTAMENT (Barbara Aland et al. eds., 4th ed. 1994); BIBLIA HEBRAICA STUTTGARTENSIA (Fortress Press, 5th ed. 2000). See also David Nimmer, *Copyright in the Dead Sea Scrolls: Authorship and Originality*, 38 HOUS. L. REV. 1, 116-22 (2001).

translations are made. These rights have led to infringement action taken against those who have reproduced the Bible for Christian ministry, albeit without permission of the copyright owners. This poses a theological question: should mortal people, who believe the Bible to be the very word of God, still enforce copyright in the Bible?

Some are aggrieved that copyright is enforced in God's Word,⁵ while others recognize that it safeguards against tampering and generates profits which pay for translation, printing, and subsidizing Bibles for Third World countries.⁶ These profits, however, come from subjecting the Bible to monopolies⁷ and royalties. Irrespective of the benefits, is there a dilemma in withholding the Bible and its free message if royalties are unpaid? Copyright involves ownership, so in view of its purported divine origin, should the Bible, or even a Bible translation, be owned as private intellectual property?

The Bible is the bestseller of all time⁸ and continues each year to be the highest selling book, although, for several reasons,⁹ it is absent from bestseller lists. The Christian publishing industry generates several billion dollars in sales annually.¹⁰ Thus the option of waiving copyright carries a significant price tag.

(specifically, ch. VIII, §§ A-B, *Evaluating the Quantum of Originality and Manuscript Reconstruction*).

⁵ "The authority of the Holy Scripture, for which it ought to be believed and obeyed, dependeth not upon the testimony of any man or Church, but wholly upon God (who is truth itself), *the Author thereof*; and therefore . . . it is the Word of God." The Westminster Confession of Faith, ch. I, para. IV (1646) (emphasis added), available at http://www.reformed.org/documents/westminster_conf_of_faith.html (last visited Nov. 22, 2001); "The Holy Bible was written by men divinely inspired and is the record of God's revelation of Himself to man *It has God for its author*" The Baptist Faith and Message (adopted by the Southern Baptist Convention) § I (May 9, 1963) (emphasis added), available at <http://www.ebicom.net/~fbc/1.txt> (last visited Nov. 22, 2001).

⁶ See *infra* note 197.

⁷ LESLIE HOWSAM, CHEAP BIBLES: NINETEENTH-CENTURY PUBLISHING AND THE BRITISH AND FOREIGN BIBLE SOCIETY 188 (1991) (referring to the "bibliopolist" and his "monopoly in the word of God").

⁸ GUINNESS WORLD RECORDS 2001 at 176 (Tim Footman ed., 2001).

⁹ We don't list the Bible [on our bestseller list] because it would top the list every week. It would take up several places, in fact, if we listed (as we would have to) the various editions and translations What makes the list useful, in our view, is that it follows the sales of new and current titles.

E-mail from Chip McGrath, N.Y. TIMES, to Roger Syn (Dec. 29, 1999) (on file with author). The *New York Times* confirmed that religious titles sold outside religious bookstores are counted. But see David Van Biema, *A Prayer With Wings: How Did an Ancient Entreaty Become a Best Seller?*, TIME, April 23, 2001, at 76 ("[The NYT] does not count books sold in religious bookstores.") (commenting on the bestseller status of *The Prayer of Jabez*, BRUCE H. WILKINSON, THE PRAYER OF JABEZ: BREAKING THROUGH TO THE BLESSED LIFE (2000)).

¹⁰ Sales of Christian products by members of the Christian Booksellers Association, Colorado Springs, United States, in the U.S. and internationally were \$4 billion in 2000. E-

Regardless of the benefits, financial or otherwise, the church¹¹ needs to know whether copyright agrees or conflicts with its theological beliefs. The church follows the courts. And if courts are unconcerned with being consistent with theology,¹² could the church's adoption of business practices, based on those judgments, be unintentionally undermining the Bible's message?

Since few pastors are well versed in copyright law, the church has debated the issue — which requires a knowledge of copyright jurisprudence — by relying largely on its sense of natural justice. This explains some of the passionate convictions about copyright, held by some church leaders, which are actually imprecise from a legal perspective.¹³ It is essential, therefore, for the church to evaluate the validity of adopting conventional business practices if these conflict with its theology.

For copyright lawyers, parts of this article¹⁴ may seem a theoretical application of law to hypothetical spiritual issues,¹⁵ but it is of practical importance to the church that the Bible is distributed in a manner consistent with its faith as well as the law.

II. HISTORICAL CASES

An accepted notion in jurisprudence is that, for the law to remain relevant, it must adapt to changes in society. So, why begin with copyright history? Because some courts in earlier centuries had a more religious worldview than courts today. The historical cases reveal differences between handling copyright with a religious versus a secular approach. Also, Bible copyright was a pivotal issue that actually

mail from Nancy Guthrie, Christian Booksellers Association, to Roger Syn (July 6, 2001) (on file with author).

¹¹ The term "church" in this article includes Christian leaders, publishers, authors, Bible translators, songwriters, etc. which, admittedly, is a simplification in view of the breadth of opinions held in the church.

¹² See Mark B. Greenlee, *Faith on the Bench: The Role of Religious Beliefs in the Criminal Sentencing Decisions of Judges*, 26 U. DAYTON L. REV. 1 (2000); Wendell L. Griffen, *The Case for Religious Values in Judicial Decision-Making*, 81 MARQ. L. REV. 513 (1998). But see Elizabeth A. Brooks, *Thou Shalt Not Quote the Bible: Determining the Propriety of Attorney Use of Religious Philosophy and Themes in Oral Arguments*, 33 GA. L. REV. 1113 (1999).

¹³ See *infra* text accompanying notes 80, 84 and 156.

¹⁴ This article cannot consider laws of individual countries and focuses on principles particularly from common law countries.

¹⁵ See, e.g., David Nimmer, *Adams and Bits: Of Jewish Kings and Copyrights*, 71 S. CAL. L. REV. 219 (1998); Nimmer admits to being "haunted by the cross-over between religion and copyright." Nimmer, *supra* note 4, at 49 n.194.

influenced the landmark case, *Donaldson v. Beckett*,¹⁶ which shaped the course of copyright law.

A. The Bible's Role in the Development of Copyright

The first recorded copyright case in history involved the Bible. St. Columba, famous for taking the gospel to Scotland, lived from 521 to 597 when Bibles were scarce. Columba desperately wanted a copy and set out laboriously in secret to transcribe the abbot's Bible. Another monk, spying through a keyhole, warned the abbot, who claimed the copy. The ensuing dispute was decided under Brehon law — an ancient Irish legal system based on oral decisions — but King Diarmaid's judgment against Columba was recorded for posterity: "Le gach boin a boinin, le gach leabhar a leabhrum" or "to every cow its calf, to every book its little book," indicating a book's owner is entitled to its copies.¹⁷

Gutenberg introduced printing to the West in 1455, with the Bible being the first book printed. Around 1476, Caxton brought the printing press to England. With the advent of printing, and with it the possibility of mass copying, serious objections to copying of literary works began to arise. Under Henry VIII in 1529, printing of Bibles became subject to royal patents.¹⁸ In 1556, Queen Mary chartered the Stationers' Company to prevent "seditious and heretical books . . . spreading great and detestable heresies against the Catholic doctrine."¹⁹ Printing was also regulated by decrees of the Star Chamber. These state controls were dissimilar to modern copyright because the restrictions were for political and religious reasons rather than protecting authors' rights.²⁰

The first copyright legislation was the Statute of Anne of 1709, which provided that "the author . . . shall have the sole liberty of printing and reprinting such book and books for the term of fourteen

¹⁶ 1 Eng. Rep. 837 (1774); see also *Donaldson v. Beckett*, 17 PARL. HIST. ENG. 953 (1774).

¹⁷ Jeremy Phillips, *St. Columba the Copyright Infringer*, [1985] EUR. INTELL. PROP. REV. 350, 352.

¹⁸ See HAROLD G. FOX, *THE CANADIAN LAW OF COPYRIGHT AND INDUSTRIAL DESIGNS* 9 (2d ed. 1967); HUGH LADDIE ET AL., *THE MODERN LAW OF COPYRIGHT AND DESIGNS* 18-22 (2d ed. 1995).

¹⁹ James Lahore, *Copyright And Designs*, (Butterworths), at 4043 (Service 32) (quoting STATIONERS' COMPANY CHARTER (1556)); see also *Donaldson v. Beckett*, 1 Eng. Rep. 837, 841. No Bibles were printed during Mary's reign. See WYCLIFFE BIBLE ENCYCLOPEDIA (Pfeiffer et al. eds., 1975) (referring to article entitled "Bible-English Versions").

²⁰ See generally *Co. of Stationers v. Partridge*, 88 Eng. Rep. 647 (1713); *Co. of Stationers v. Parker*, 90 Eng. Rep. 107, 108 (1685); *Anonymous*, 23 Eng. Rep. 357 (1682); *Co. of Stationers*, 22 Eng. Rep. 862 (1682); *Corp. of Stationers v. Seymor*, 84 Eng. Rep. 1015 (1677); *Stationers v. Patentees*, 124 Eng. Rep. 842, 843 (1666).

years.”²¹ The London publishers were dismayed for it meant that after the statutory period, books could be copied. To overcome this perceived threat to their livelihood, the publishers contended that there was a perpetual common law copyright which continued after the expiry of the statutory rights. On this premise, publishers obtained injunctions to prevent copying,²² particularly in *Millar v. Taylor*²³ in 1769 where Lord Mansfield affirmed common law copyright. This victory, however, was short. In 1773, the writing appeared on the wall in an eleven to one decision in the Scottish Court of Session in *Hinton v. Donaldson*.²⁴ Lord Kames said: “[A] perpetual monopoly is not a branch of the common law or the law of nature. God planted that law in our hearts for the good of society”²⁵

The next year, in 1774, the issue came before the House of Lords in that famous watershed case *Donaldson v. Beckett*.²⁶ The copyright in some poems had expired, but Beckett, the publisher, obtained an injunction based on *Millar v. Taylor*.²⁷ Both sides’ compelling arguments still define the battle lines drawn to this day.

Donaldson, the copier, argued that copyright was separate from the common law because, from time immemorial, copying had never been wrong:

[A] right at common law must be founded on principles of conscience and natural justice Copies of books have existed in all ages, and they have been multiplied; and yet an exclusive privilege, or the sole right of one man to multiply copies, was never dictated by natural justice in any age or country To transcribe, or copy out a book, was the right of every individual . . . but of a perpetual right in one man to write out books, or to make copies, there is not a single trace in any author that has come down from antiquity Printing, which is only a more expeditious method of multiplying copies, could not change the principles of right and wrong Whatever encouragement may be due to authors, the common law cannot, after the silence of ages, pronounce at once upon a new species of right, which has hitherto property, not properly known. The [new copyright] statute of Anne was not declaratory of the common law, but

²¹ Lahore, *supra* note 19, at 4062 (Service 32) (quoting the Statute of Anne of 1709).

²² See *Donaldson v. Beckett*, 1 Eng. Rep. at 842, 845.

²³ 98 Eng. Rep. 201 (1769).

²⁴ *Hinton v. Donaldson*, reported in James Boswell, *The Decision of the Court of Session, Upon The Question of Literary Property; In the Cause of John Hinton Of London, Bookseller, Pursuer; Against Alexander Donaldson and John Wood, Booksellers in Edinburgh, and James Meurose Bookseller in Kilmarnock, Defenders* (1774) (on file with author, who obtained it from the National Library of Scotland in Edinburgh, Scotland).

²⁵ *Id.* at 20.

²⁶ 1 Eng. Rep. 837 (1774).

²⁷ 98 Eng. Rep. 201 (1769).

introductory of a new law, to give learned men a property which they had not before.²⁸

Beckett, the publisher, contended that copyright was indeed part of the common law, because it was fair to reward authors:

[T]he claim of authors to the sole and exclusive right of printing and publishing their own works, is founded upon principles of reason and natural justice. It is just and equitable, that those who . . . communicate their ideas in written compositions to the public, should have a recompense; and in order to obtain a suitable [recompense], authors, when they publish their works, mean to reserve to themselves the right of multiplying printed copies; and . . . there is an implied agreement, on the sale of each particular copy, that the purchaser shall not invade the beneficial right of multiplying copies, intended to be reserved by the author. From the first introduction of the art of printing into England, this peculiar species of property has been known by the expressive name of copy right . . .²⁹

The House of Lords in its judicial capacity³⁰ sought the common law judges' advice. The majority considered that common law copyright existed, but — before the London publishers could celebrate — the judges concluded, six to five, that the statute extinguished such rights when a work was published. Following that advice, the House of Lords decided, twenty-two to eleven,³¹ to allow Donaldson to copy the poems. This was the turning point in the series of landmark cases,³² which confirmed that copyright protected published books only for the statutory term, after which they entered the public domain.

B. The Bible: An Exception to the Rule

Bible copyright was an issue debated in these landmark cases because, leading up to *Donaldson*, some judges had cited Bible patents as evidence of copyright existing prior to the Statute of Anne of 1709. The king owned the copyright in the *Authorised Version* of 1611 because

²⁸ *Donaldson*, 1 Eng. Rep. at 840; see also *id.* at 843.

²⁹ *Id.* at 846; c.f. *Millar*, 98 Eng. Rep. at 252-53.

³⁰ 17 PARL. HIST. ENG. 953-1003 (1774).

³¹ Howard B. Abrams, *The Historic Foundation of American Copyright Law: Exploding the Myth of Common Law Copyright*, 29 WAYNE L. REV. 1119 (1983). The binding decision was not the advisory judges' votes but, rather, the Lords' judicial vote. The judges split 6 to 5, but the Lords voted decisively 22 to 11 against common law copyright. In *Jefferys v. Boosey*, 10 Eng. Rep. 681 (1854), the House of Lords said common law copyright in published works never existed. Abrams contends this too was their stance in *Donaldson v. Beckett*.

³² See *Millar v. Taylor*, 98 Eng. Rep. 201 (1769); *Donaldson v. Beckett*, 1 Eng. Rep. 837 (1774); *Jefferys v. Boosey*, 10 Eng. Rep. 681 (1854); *Wheaton v. Peters*, 33 U.S. 591 (1834).

he paid for the translation; so went the argument.³³ Therefore, the House of Lords had to settle the issue because it was included in the respondent's arguments.³⁴

While the majority of the judges thought that common law copyright existed, they dismissed the assertion that an example of such copyright was the Crown's prerogative³⁵ in the Bible.³⁶ To the contrary, copyright was inapplicable to the Bible:

[T]he Bible, and books of Divine Service, do not apply to the present case; they are left to the superintendence of the Crown, as the head and sovereign of the state, upon the principles of public utility. But to prescribe to the Crown a perpetual [copy]right to the Bible, upon principles of property, is to make the King turn bookseller: and if it

³³ *Hinton v. Donaldson*, reported in Boswell, *supra* note 24, at 11 (the single dissenter, Lord Monboddo, supported common law copyright by regarding the Bible as the king's property). See also *Millar v. Taylor*, 98 Eng. Rep. at 256 ("[T]he English [Bible] translation he bought: therefore it has been concluded to be [the king's] property."); *id.* at 216 ("[T]he King is the owner of the copies of all books or writings which he has sole right originally to publish . . ."); *Tonson v. Collins*, 96 Eng. Rep. 169, 170 (1760) ("These patents are most of them for Bibles . . . which are things gained at the expense of the Crown, and therefore they are the subject of copyright."); *Basket v. Univ. of Cambridge*, 96 Eng. Rep. 1222, 1226 (1758) ("[T]he Crown has a right to some copies from expense. Thus, Grafton's great Bible . . . was translated into English, and was done at the King's expense In these the Crown claims a copyright, the same as authors have to their works."); *Hills v. Univ. of Oxford*, 23 Eng. Rep. 467 (1684) ("And it was observed, that the bible was translated at the King's own charge; so that the copy was his."); *Co. of Stationers v. Lee*, 89 Eng. Rep. 927, 928 (1682) ("[P]laintiff [who] by virtue of the new letters patents, was proprietor of the copy-right of the English Bibles and psalms.").

³⁴ See *Donaldson v. Beckett*, 1 Eng. Rep. 837, 846. Bible copyright was debated in 17 PARL. HIST. ENG. 959-960, 964-966, 969, 985 and 995. The House of Lords' ruling on Bible copyright is *ratio decidendi* because it refuted one of the respondent's major arguments. Some argue this only binds the Crown. However, "these Prerogatives have become, in the evolution of the Constitution, the privileges of the people" which may suggest that modern Bible publishers have the similar privileges and responsibilities as the Crown. HERBERT VERE EVATT, CERTAIN ASPECTS OF THE ROYAL PREROGATIVE: A STUDY IN CONSTITUTIONAL LAW 10, 27 (1987) (doctoral thesis of Australian High Court Justice Evatt).

³⁵ Ann Monotti, *Nature and Basis of Crown Copyright in Official Publications*, [1992] EUR. INTELL. PROP. REV. 305.

³⁶ See Boswell, *supra* note 24, at 4. "But this right of the King is *prerogative*, not *property*." *Id.* (quoting Lord Auchinleck in *Hinton v. Donaldson*). In *Millar v. Taylor*, Yates, J. argued:

It can hardly be contended, that the produce of expenses of a public sort are the private property of the King, when purchased with public money. He cannot sell nor dispose of one of those compositions. How, then, can they be his private property, like the private property claimed by an author in his own compositions?

98 Eng. Rep. 201, 244. In *Manners v. Blair*, 4 Eng. Rep. 1379, 1384, the Court noted: "[I]t does not appear that [King James] contributed any thing towards the expense [of the translation of the *Authorised Version*]."; see also *Att'y Gen. for New South Wales v. Butterworths*, 38 N.S.W. St. R. 195, 232 (1938); *Univ. of Oxford and Cambridge v. Eyre & Spottiswoode*, 1 Ch. 736 (1966).

be true, that the King paid for the translation of the Bible, it was a purchase made for the whole body of the people, for the use of the kingdom.³⁷

For ordinary books, payment acquires property. The Bible, however, was an exception. Though the king paid for the translation, he did not own the Bible as intellectual property, presumably because here was no ordinary book.

The Crown's preference for non-property³⁸ patents, ahead of copyright property ownership, was explained by referring to an example of Psalms translated by King James himself:

King Charles I published a translation of David's Psalms,³⁹ written, as His Majesty says in the preface, by his Royal Father; but the idea of a perpetual property was not then conceived, and therefore a patent was granted, to give the sole right to the bookseller.⁴⁰

This translation of Psalms, used to illustrate the point, was published in 1631, years after the *Authorised Version*. This suggests the House of Lords ruling on the Bible being excluded from copyright was not limited⁴¹ to the *Authorised Version*, but pertained to any Bible translation in general.

Lord Camden, speaking in the House of Lords, was more emphatic:

[The publisher's argument is that the king] paid for the translation of the Bible, therefore, forsooth, he bought a right to sell bibles. Away with such trifling! Ought not the promulgation of your venerable codes of religion . . . to be entrusted to the executive power, that they may bear the highest mark of authenticity, and neither be impaired, or altered, or mutilated? Will you, then, give this honorable right to your sovereign as such? or will you degrade him into a bookseller? Indeed,

³⁷ Donaldson v. Beckett, 1 Eng. Rep. 837, 842 (1774). *C.f. id.* at 846. Note the word "may" at line 25.

³⁸ Patents today, of course, are property. The notion of patents as non-property may be understood in the context of the *Authorised Version* of 1611 being early in the development of patent law, arriving the year after the *Book of Bounty* of 1610 and before the *Statute of Monopolies* of 1624 which were landmarks in the development of patent law. The *Statute of Monopolies* was the first patent statute, which restricted patents to inventions only. See TERRELL ON THE LAW OF PATENTS 2-4 (14th ed. 1994).

³⁹ This particular publication of Psalms is identified in A.S. HERBERT, HISTORICAL CATALOGUE OF PRINTED EDITIONS OF THE ENGLISH BIBLE 1525-1961 No. 452 (1968).

⁴⁰ Donaldson v. Beckett, 1 Eng. Rep. 837, 843 (1774). Donaldson's counsel argued, "James the first . . . employed his leisure hours, whilst in Scotland, in translating the Psalms of David. His son published this work; yet so far was he from dreaming of a common law [copyright], that he granted a patent for the printing it." 17 PARL. HIST. ENG. 959-60. Beckett's counsel argued, "[T]he original grant of [K]ing James for printing some poems of his writing . . . ran in the ordinary phrase of an author's assignment of copyright to a bookseller . . ." *Id.* at 965.

⁴¹ *C.f. infra* note 59 and accompanying text.

had [the king] no other title to this distinction, that could hardly be maintained.⁴²

Lord Camden added: "They forget their Creator . . . who wish to monopolise his noblest gifts and greatest benefits."⁴³

Thus the House of Lords decided that, aside from copyright in general, the Bible was an exception, not to be owned as intellectual property. What's more, the Bible's exclusion from copyright was a factor in *Donaldson* that forged copyright law into the form it is today.

C. After *Donaldson v. Beckett*

After *Donaldson*, the lower courts followed the House of Lords, such as in *Eyre and Strahan v. Carnan*⁴⁴ in 1781, and *Grierson v. Jackson*⁴⁵ in 1794. In 1802, in *Universities of Oxford and Cambridge v. Richardson*,⁴⁶ counsel submitted:

Can [Bibles from Scottish Crown printers] be called an unauthorised, pirated edition [when sold in England for a third less than Bibles printed in England]? In *Eyre and Strahan v. Carnan*, the . . . [king's] prerogative was laid down, not as property, but duty; to take care, that these [Bibles] are correct.⁴⁷

In 1828 in *Manners v. Blair*, the Lord Chancellor said:

Some judges have been of opinion, that [the royal prerogative is due to] . . . the translation of the Bible, having been actually paid for by King James, and its having become the property of the Crown, and there it has been referred to as a species of copyright. Other judges have referred it to . . . the King of England being the supreme head of the church of England Other judges have been of opinion, and I . . . accede to that opinion, that it is [based on] . . . the character of the *duty* imposed upon the [king] to superintend the publication, of . . . those works, upon which the established doctrines of our religion are

⁴² 17 PARL. HIST. ENG. 953, 995-96 (1774). The final sentence in this quotation implies that, except for the duty of ensuring accuracy, the king had no other rights regardless of his financial investment. Bible copyright today is often justified by the enormous translation expenses, often millions of dollars.

⁴³ *Id.* at 999 (1774).

⁴⁴ 6 Bac. Abr. 509 (1781).

⁴⁵ Ridg. Ir. T.R. 304 (1794). The Irish court said:

I can conceive that the King, as head of the Church, may say, that there shall be but one man who shall print Bibles and books of common prayer for the use of the churches and other particular purposes, and that none other shall be deemed correct books for such purposes. But I cannot conceive that the King has any prerogative to grant a monopoly as to Bibles for the instruction of mankind in revealed religion The patent could not mean to give an exclusive right in the printing of Bibles.

FOX, *supra* note 18, at 266.

⁴⁶ 6 Ves. 689, 697, 31 Eng. Rep. 1260 (1802). The universities objected to cheaper Bible parallel imports from Scottish Crown printers. *Id.*

⁴⁷ *Id.* at 695.

founded, — that it is a *duty . . . carrying with it a corresponding prerogative*. This was the opinion . . . [in] *Donaldson v. Beckett*, in most direct and eloquent terms . . . [It] depends upon the King's character as guardian of the church . . . to take care that works of this description are published in a correct and authentic form.⁴⁸

The king did not own the Bible as intellectual property, but rather had a *duty* of ensuring accuracy in printed Bibles. In 1938 in *Attorney General for New South Wales v. Butterworths*,⁴⁹ an Australian court approved of the Lord Chancellor's summation that the king's Bible rights were essentially a "duty . . . carrying with it a corresponding prerogative,"⁵⁰ not vice versa.

In the era in which these cases were decided, the courts were establishing the general principles of copyright, so these cases indicate that the courts treated the Bible as an exception. In *Millar v. Taylor*, Yates J. said:

[The royal Bible prerogative] stand[s] upon principles entirely different from the claim of an author . . . [T]he Crown has certainly no right to control over the press. . . . The right is . . . founded on a distinction that cannot exist in common property . . . [it] is founded on reasons of religion or of State . . . and ha[s] no analogy to the case of private authors.⁵¹

Thus it is because of the House of Lords' landmark ruling in *Donaldson v. Beckett* that the *Authorised Version* is not subject to copyright;⁵² not simply because the copyright term expired, as is widely assumed.

III. BIBLE COPYRIGHT: TRANSITION FROM PATENTS TO COPYRIGHT

Over time, the premise of the Bible being free of copyright changed. For nearly three hundred years, the *Authorised Version* of 1611 remained the predominant translation used in churches. In 1881, English scholars produced a revision entitled the *English Revised Version*. This time, copyright was applied.⁵³ Writing to the *London Times*, the Bishop of Lincoln expressed concern that the new translation infringed the royal prerogative:

The copyright of the new *Revised Version* . . . [has] been purchased from the Revisers by the two Universities exclusively. The Queen's

⁴⁸ *Manners v. Blair*, 4 Eng. Rep. 1379, 1383-84 (1828).

⁴⁹ 38 N.S.W. St. R. 195 (1938). Only some prerogatives are property. See EVATT, *supra* note 34, at 31.

⁵⁰ 38 N.S.W. St. R. at 235 (quoting *Manners v. Blair*, 4 Eng. Rep. at 1383).

⁵¹ *Millar v. Taylor*, 98 Eng. Rep. 243, 244 (1769) (Yates J., agreed with the majority in *Donaldson*).

⁵² Patented Bibles often bear the words *Cum Privilegio*, which some laymen mistake as copyright.

⁵³ HERBERT, *supra* note 39, at 427, 428 and 445.

printer has . . . taken no part in the transaction. If, therefore, the new *Revised Version* is to supplant the *Authorised Version* . . . in our churches without any grant from the Crown, or any authorisation from the church, this might be regarded as an invasion of the prerogative and as a contravention of the Church's authority . . .⁵⁴

Nevertheless, no court action was taken against the universities by the Crown printer, nor against numerous other new copyrighted translations,⁵⁵ such as the *Moffat Translation*. It was not until 1963 that the issue was tested in court where, ironically, it was the universities that sued the Crown printer.

*Universities of Oxford and Cambridge v. Eyre & Spottiswoode, Ltd.*⁵⁶ was the first case in England to involve Bible rights not held by the Crown. The universities had published the *New English Bible* in 1961. Months later, the Crown printer reprinted John's Gospel without permission. The universities sued. The Crown printer assumed its rights extended even to translations⁵⁷ made by others, since the patent covered: "all and singular Bibles . . . whatsoever in the English Language or in any other Language whatsoever of any Translation."⁵⁸

The lower court disagreed. Although the House of Lords had ruled that the Crown did not own the Bible as property, the lower court upheld copyright in the *New English Bible* by narrowly interpreting the word "Bibles" in the patent to mean only the *Authorised Version*.⁵⁹ It reasoned that the Crown for three hundred years had never claimed rights⁶⁰ in

⁵⁴ Letter from the Bishop of Lincoln to the London Times (June 10, 1881), *quoted in* PHILIP SCHAFF, A COMPANION TO THE GREEK TEXT AND ENGLISH VERSION 355 (1883). According to Hansard of 1881, the Bishop of Lincoln was a member of the House of Lords.

⁵⁵ COPINGER AND SKONE JAMES ON COPYRIGHT 383 (13th ed. 1991) (relevant statements not found in latest 14th edition).

⁵⁶ 1 Ch. 736 (1964) (condensed versions of this case are available in 3 W.L.R. 645, 3 All E.R. 289 (1963); some of the original text does not appear in the condensed versions).

⁵⁷ *Id.* at 738-40.

⁵⁸ *Id.* at 739. The *Authorised Version* is only in English, so the phrase "in any other Language" must refer to other translations.

⁵⁹ *C.f. supra* text accompanying note 41. The lower court overlooked the reference in *Donaldson* to Psalms published after the *Authorised Version*. In *Universities of Oxford and Cambridge v. Eyre & Spottiswoode*, the court rejected this reasoning:

[T]he established doctrines of our religion are not founded upon a particular translation of the Bible but on the holy and sacred scriptures which must be translated into the vulgar tongue for the people for whom it is intended. This was the vital element in the move to translate the Bible. Any translation of the Bible must, therefore, come within this sphere.

1 Ch. 736, 745.

⁶⁰ See *Att'y Gen. for New South Wales v. Butterworths*, 38 N.S.W. St. R. 195, 227 ("[I]t is fundamental that no prerogative of the King disappears merely as a result of non-user.").

any other translation.⁶¹ Having set a precedent by recognizing copyright in a Bible, the court concluded the patent could not override that copyright.

Universities of Oxford and Cambridge v. Eyre & Spottiswoode was a turning point.⁶² It meant the prohibition in *Donaldson* — against copyright in the Bible — applied only to the Crown; others were free to do so. Consequently, only the *Authorised Version* is excluded from copyright. The Crown no longer was the custodian of the Bible, only the *Authorised Version*. The court's decision was also in keeping with the publishing industry's practice in 1963. Copyright was routinely being applied to a host of new translations, and it is now almost unheard of for publishers to follow the Crown's approach of forgoing property rights. Courts now make no distinction between Bibles and other books. This partly reflects that modern society is essentially secular, compared to 1774 when the House of Lords ruled that the Bible was not to be owned as property.

In the United States, after the War of Independence of 1776, English patents were disregarded.⁶³ This caused the *Authorised Version* — still protected by royal patents⁶⁴ — to enter the public domain outside the United Kingdom. Similarly, without English copyright protection, the *English Revised Version* was tampered⁶⁵ with several times, so subsequent translations in the United States were copyrighted. In 1901, American scholars copyrighted the *American Standard Version*, and the *Revised Standard Version* of 1946.

In 1875 in New York in *Lesser v. Sklarz*, “[The defendant contended that the Bible] had existed beyond the memory of man Such books were not the subject of a copyright law [The] District Judge, after

⁶¹ Univ. of Oxford and Cambridge v. Eyre & Spottiswoode, 1 Ch. 736, 745. The court ignored that, before the *Authorised Version* of 1611, “all translations” required the Crown’s license (for example, Henry VIII’s patents for the *Coverdale Bible*, *Taverner Bible* and *Great Bible*, Elizabeth I’s patent for the *Geneva Bible*). W.F. MOULTON, THE HISTORY OF THE ENGLISH BIBLE 99, 133, 141, 143, 166 (Charles H. Kelly ed., 5th ed. 1911).

⁶² The Queen’s Counsel regarded this as the first case in history to decide the extent of Bible prerogative.

⁶³ “Although American printers before 1776 were possibly prevented by the patents granted to certain British printers from undertaking an edition of the King James Bible there were several projects for annotated editions, as these were not so protected” HERBERT, *supra* note 39, at 273.

⁶⁴ Copyright, Designs and Patents Act, 1988, §171(1)(b) (Eng.). See also HOWSAM, *supra* note 7, at 188-93 (Oxford and Cambridge University Presses and HarperCollins still hold active patents for the *Authorised Version*). In 1860, the anti-monopolists nearly succeeded in having Bible patents abolished. See Red Letter New Testament (*Authorised Version*), 17 T.L.R. 1 (1900).

⁶⁵ For an explanation, see preface to *The Bible* (Revised Standard); see also HERBERT, *supra* note 39, at 429.

listening patiently to a long argument, granted the injunction, and gave a judgment for the plaintiff.”⁶⁶

Today, copyright subsists in all major translations including the *New International Version (NIV)*, the *New King James Version (NKJV)*, the *New Living Translation (NLT)*, the *New American Standard Bible (NASB)*, *The Message*, the *Amplified Version*, and the *New Revised Standard Version (NRSV)*, to name a few.

IV. MORAL AND ECONOMIC RIGHTS

Copyright can safeguard accuracy, and it can ensure profits. In *Donaldson*, the Crown, by choosing patents over copyright, opted more for the former, because it did not see itself owning the Bible, but rather having a duty to ensure accuracy.⁶⁷ The shift from patents to copyright — though seeming to have the same effect — altered the legal rationale of protection to one where the Bible is owned as intellectual property.

Since authors and publishers, unlike the Crown, cannot issue patents, copyright seems the only option. But modern copyright law provides similar alternatives — *economic rights* and *moral rights*. Moral rights include:⁶⁸

- (1) The right of an author of a work to be identified as the author;
- (2) The right of the author to prevent modification or object to derogatory treatment of his work;⁶⁹
- (3) The right of the author to withhold his work from publication; and
- (4) The right of a person not to be falsely attributed as being the author of another's work.⁷⁰

Economic rights ensure financial return from sale of Bibles. *Moral rights*⁷¹ are non-economic,⁷² safeguarding against tampering and

⁶⁶ *Lesser v. Sklarz*, 15 F. Cas. 396 (C.C.S.D.N.Y. 1859). See also *Flint v. Jones*, 9 F. Cas. 276 (C.C.E.D. Pa. 1875).

⁶⁷ *Donaldson v. Beckett*, 1 Eng. Rep. 837 (1774), construed in *Manners v. Blair*, 4 Eng. Rep. 1379 (1828); see also *supra* text accompanying note 48. Crown printers used patents as commercial tools.

⁶⁸ Copyright, Designs and Patents Act, 1988, §§ 77-84 (Eng.).

⁶⁹ Prevents modification and tampering.

⁷⁰ See *infra* text accompanying note 85.

⁷¹ Not all countries have moral rights legislation, and moral rights may not be assignable to publishers. Nevertheless, copyright contains moral-like rights, which stop corruption of works, as compared to enforcing royalties. “One component of a mature copyright system is its recognition that, in addition to safeguarding economic rights, copyright also functions within the realm of moral rights.” Nimmer, *supra* note 15, at 231.

⁷² Violation of moral rights may have *indirect* economic consequences caused by damage to the identity of the author or work, whereas economic rights involve the *direct* ability to require royalties.

plagiarism, such as where cults modify the Bible to support heresies or where hymns are parodied⁷³ by Satanists. Or more forthrightly:

Copyright is 90% about money, but . . . the remaining 10% [can] be as important . . . [The] other 10% is contained in the . . . *droit moral* . . .

'The author shall enjoy the right to respect for his name, his authorship, and his work. The right shall be attached to his person. It shall be perpetual, inalienable and imprescriptible.'⁷⁴

Moral rights are unlike property because, if the economic rights are transferred, the moral rights remain with the author. The Berne Convention states:

Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.⁷⁵

Moral rights are analogous to the Crown's non-property⁷⁶ use of patents, because economic rights imply property ownership. Since the options exist, Christian publishers face the same ethical question: whether to own the Bible as private property. Their decision is more awkward because patents maintain exclusivity, whereas moral rights do not. Moral rights (and even economic rights) may sometimes prove inadequate. In 1990 in *Thorsen v. Danish Film Academy*,⁷⁷ the Danish High Court doubted that Thorsen's proposed film about Jesus, which had pornographic scenes, was a copyright or moral rights infringement of the Bible, since the film was considered a new, original, and independent work of art. Moreover, moral rights alone would not prevent competing publishers from having free access to best-selling translations such as the *NIV* and *NKJV* which generate considerable revenue. Also, copyright these days comes into being automatically by default. Nevertheless, moral rights protection, however limited, may be all that some authors require.⁷⁸

⁷³ Protection against parody varies in different countries. See, e.g., *Robert Stigwood Group v. O'Reilly*, 346 F. Supp. 376, 377, 382 (D. Conn. 1972). Priests were sued for modifying the opera *Jesus Christ Superstar* because they believed it parodied the true gospel. The modified version portrayed Jesus as a strong masculine individual who rose from the dead rather than merely dying, since Christianity is empty and futile if Jesus did not rise from the dead. See also 1 *Corinthians* 15:14, 17.

⁷⁴ STEPHEN M. STEWART, *INTERNATIONAL COPYRIGHT AND NEIGHBORING RIGHTS* 58 (Butterworths 2d ed. 1989).

⁷⁵ Berne Convention, *supra* note 3, at art. 6(1).

⁷⁶ See *supra* notes 37, 38 and 42.

⁷⁷ Danish Weekly Law Report, U.f.R. 1990.856 (1990) (Ugeskrift for Retsvaesen).

⁷⁸ [In that era] authors were more concerned with their *moral rights* than with the reproductive right. Martin Luther addressed a complaint to the Council of Nuremburg that his works had been published in altered and amended form . . . The Council decreed that such a reproduction must show

But if “words are pegs to hang ideas on,”⁷⁹ a lack of legal vocabulary hampers the church debate. The public uses the word “copyright” loosely without differentiating economic and moral rights. For instance, some pastors are indignant at churches and missionaries being sued over royalties, but feel compelled to accept the good with the bad, fearing mistakenly that, if economic rights were waived, Bibles could be tampered with. These pastors, believing they favor copyright,⁸⁰ are actually, in legal terms, *for* moral rights but *against* economic rights.

V. IS IT IMMORAL TO COPY?

A. Rights and Wrongs of Copying

A question important to the church is whether copyright is morally right? The church’s position on copyright, after all, reflects what it believes is morally upright⁸¹ or permissible.

The misconception — if copyright law exists, it must be enforced — is understandable in the church because its apodictic laws are mostly *non-optional*, such as the Ten Commandments forbidding the prioritizing of anything ahead of loving God (idolatry), belittling God’s holiness, disregarding worship, dishonoring parents, murder, sex outside marriage, stealing, lying, and envy.⁸² This can lead to an assumption that copyright enforcement is the only right thing to do; whereas, it is *optional*.

One church said: “[Subscribing to the copyright license gives us] the assurance that we are honoring God’s laws as well as the government He ordained.”⁸³ This admirable sentiment is incomplete⁸⁴ since it would have been equally honoring if the copyright owner exercised the legal option of waiving economic rights. The threshold question ought to be: which honors God more — to enforce or not to enforce?

First, is it *morally right* to enforce *moral rights*, particularly against plagiarism and tampering? Though legislators do not equate moral rights with a code of morality, there is little inconsistency between the

the name of the printer and the place where the reprint was published. There was, however, no penalty imposed.

STEWART, *supra* note 74, at 17.

⁷⁹ HENRY WARD BEECHER, PROVERBS FROM PLYMOUTH PULPIT (1887), *reprinted in* RHODA THOMAS TRIPP, THE INTERNATIONAL THESAURUS OF QUOTATIONS 1057 (1976).

⁸⁰ See *supra* text accompanying note 13.

⁸¹ See, e.g., John R. Throop, *Right Those Copyright Wrongs*, YOUR CHURCH, May/June 1999, available at <http://www.christianitytoday.com/yc/9y3/9y3038.html> (last visited Nov. 21, 2001).

⁸² See Exodus 20:3-17; Deuteronomy 5:7-21. See also *infra* notes 88 and 173.

⁸³ From an early webpage of Christian Copyright Licensing International, <http://www.ccli.com> (Dec. 10, 1996) (on file with author).

⁸⁴ See *supra* text accompanying note 13.

two. Moral rights are not amoral. There is a set of rights and wrongs about authors' works which existed even before the legislation. For instance, all agree it is wrong to declare someone alive today to be the author of Shakespeare's works,⁸⁵ or that a tampered text is original.⁸⁶ Consent cannot right these untruths — consent⁸⁷ would be collusion. Clearly, some moral rights are universal moral principles.⁸⁸ If the judges in *Donaldson v. Beckett* had the vocabulary of moral rights, they might have said, "Ahah! that's the thing that has existed from time immemorial." Moral rights may, just possibly, be the long lost common law copyright in published works.⁸⁹

Second, is it *moral* to use *economic rights*⁹⁰ to limit access to religious works if royalties are unpaid? The usual justification is that stealing intellectual property is no different from stealing physical property.⁹¹ What is stolen is not the idea but, rather, its remunerative

⁸⁵ See *supra* text accompanying note 70. Applicable only to authentic Shakespearean works.

⁸⁶ See *supra* note 69 and accompanying text.

⁸⁷ See *infra* text accompanying note 92 (referring to consent).

⁸⁸ All civilizations share a common moral thread. Though some reject the existence of a universal morality by pointing to numerous variables, when all is said and done, no society *proactively hopes* for murder or theft to be the rule. So, there is at least a core of universally accepted "thou shalt nots." *Matthew* 7:12 states the golden rule: "[W]hatever you want men to do to you, do also to them, for this is the Law" The "thou shalt nots" of the Ten Commandments were an early influence on western civilization's laws. See *infra* note 132 and accompanying text. See also Steven K. Green, *The Fount of Everything Just and Right? The Ten Commandments As a Source of American Law*, 14 J.L. & RELIGION 525 (1999-2000).

⁸⁹ Moral rights have similarities to common law copyright. If so, common law moral rights might continue even after statutory moral rights have expired.

⁹⁰ See Tom G. Palmer, *Are Patents and Copyrights Morally Justified? The Philosophy of Property Rights and Ideal Objects*, 13 HARV. J.L. & PUB. POL'Y 817 (1990); STEWART, *supra* note 74, at 6-10 (contrasting copyright based on common law versus *droit d'auteur* from French civil law. In *droit d'auteur* systems, economic rights stem from a moral right).

⁹¹ See *All Nations Music v. Christian Family Network, Inc.*, 989 F. Supp. 863 (W.D. Mich. 1997). The court said:

"Thou shalt not steal" has been an admonition followed since the dawn of civilization. Unfortunately, in the modern world of business this admonition is not always followed Despite describing [the radio station] as a "small, religious station" whose "main emphasis is on paid Ministry Programs," [the radio station and president] have violated the commandment "Thou shalt not steal," as well as the copyright laws of this country. This court has no jurisdiction over the defendants' violation of the former, but does have jurisdiction over this action arising from their violation of the law.

Id. at 864-65; NEW DICTIONARY OF CHRISTIAN ETHICS AND PASTORAL THEOLOGY 262 (David J. Atkinson et. al. eds., 1995) [hereinafter NEW DICTIONARY OF CHRISTIAN ETHICS]:

[I]n the . . . sense of a return on effort expended, royalties can be regarded as a wage. To deprive authors of royalties by infringing copyright therefore in

capability. Copying *is* stealing, but only if the copyright owner refuses consent.⁹² The rightness or wrongness varies case by case depending on the copyright owners' decisions; hence, there is no universal standard of it always being right. Thus, economic rights are not synonymous with good morals. *Donaldson v. Beckett* decided that economic rights are not an age old universal right; and, moreover, the Bible should not be the subject of such property rights.

Thus, in terms of morality, moral rights involve moral choices, whereas economic rights tend to consist of commercial or business decisions.⁹³

B. Copying Religious Works

Enforcing Bible economic rights cannot always be right, simply because the Bible permits itself to be copied freely. Biblical laws placed a "copy obligation"⁹⁴ on Jewish kings to make a personal copy of the laws to ensure that God's laws were the foundation of the kingship. If Moses or the priests had enforced economic rights, the king would have infringed copyright.

The Bible's message is characteristically non-profit — "through [Jesus'] righteous act the free gift came to all men"⁹⁵ — whereas the United States Supreme Court said: "The economic philosophy behind . . . copyrights is . . . personal gain."⁹⁶ The apostle Paul preached free of charge,⁹⁷ whereas economic rights imply a reluctance to offer God's message — the Bible, sermon recording, book or gospel song — if the royalty is unpaid.

What direction would the debate on Bible copyright take if the ancient writers' intentions were added to the equation? If Paul, two thousand years ago, wished his letters distributed freely, there is a

effect amounts to theft . . . Churches and Christian organizations which profess to uphold the Ten Commandments need to be particularly sensitive to infringing copyright.

The author's response to this argument is that copyright also has a connotation of ownership, which is not inherent in ordinary wages.

⁹² See *supra* text accompanying note 87 (referring to consent).

⁹³ In moral rights issues, the choice is sometimes between moral versus *intrinsically* immoral options, see *supra* text accompanying notes 85-87, whereas deciding whether or not to enforce economic rights is neither *intrinsically* right or wrong, although *extrinsic* circumstances may present moral choices, see *infra* note 197.

⁹⁴ See *Deuteronomy* 17:18. The phrase "copy obligation" comes from Nimmer's comment on this law, *supra*, note 15, at 231. See also *Joshua* 8:32.

⁹⁵ *Romans* 5:18.

⁹⁶ *Mazer v. Stein*, 347 U.S. 201, 219 (1954).

⁹⁷ *2 Corinthians* 11:7. See also *infra* text accompanying notes 158, 159, and 177.

tension when translations of those same letters, included in the Bible, lose that free characteristic due to copyright restrictions.⁹⁸

Outrage was expressed over the Israeli Supreme Court decision in *Eisenman v. Qimron*⁹⁹ in 2000. One scholar, through copyright, gained economic and cultural control¹⁰⁰ of a crucial part of the Dead Sea Scrolls which ought to be a world heritage.

If copying were wrong, the Bible is unlikely to have survived to this day with its present degree of accuracy. When scholars compare thousands of New Testament manuscripts, the slightest deviation in one copy, compared with consistency in thousands of others, reveals an error in copying.¹⁰¹ The ability to reconstruct the original ancient text from the large body of surviving copies gives confidence that today's Bible accurately embodies the original writings. The spread of the gospel therefore relied on unimpeded copying; whereas economic rights impede copying, by force of litigation if necessary, should royalties not be forthcoming.

⁹⁸ Some Bible publishers automatically permit copying of a stipulated number of verses, provided these do not amount to a full book from the Bible. Beyond that, express permission is required.

⁹⁹ C.A. 2790, 2811/93, *Eisenman v. Qimron*, 54(3) P.D. 817 (unofficial translation in ON SCROLLS, ARTEFACTS AND INTELLECTUAL PROPERTY (Timothy H. Lim et al. eds., 2001) (relating to a non-bible manuscript)). See also Nimmer, *supra* note 4; Michael D. Birnhack, *The Dead Sea Scrolls Case: Who is an Author?*, [2001] EUR. INTEL. PROP. REV. 128; Niva Elkin-Koren, *Of Scientific Claims and Proprietary Rights: Lessons from the Dead Sea Scrolls Case*, 38 HOUS. L. REV. 445 (2001); Matthew I. Kozinets, *Copyright And Jewish Law: The Dilemma of Change*, 1 U.C. DAVIS J. INT'L L. & POL'Y 83 (1995).

¹⁰⁰ For Birnhack's conclusion, see *supra* note 99, at 132-33. The author's comment is that a translator never acquires total control of a modern work because he is subject to the copyright in the original. For ancient manuscripts, however, copyright grants absolute control to the translator. Moreover, the translation is the only means of access for the average person unfamiliar with ancient script. A translator's copyright is a tollgate through which modern readers must pass to access what they really want — the ancient author's words.

¹⁰¹ PHILIP WESLEY COMFORT, *THE COMPLETE GUIDE TO BIBLE VERSIONS* ch. 3 (1991).

[There are] more than 6,000 manuscript copies of the Greek New Testament No other work of Greek literature can boast of such numbers. Homer's Iliad . . . is extant in about 650 manuscripts . . . all the other works of Greek literature are far less. Furthermore . . . the amount of time between the original composition and the next surviving manuscript is far less for the New Testament than for any other work in Greek literature. The lapse for most classical Greek works is about eight hundred to a thousand years; whereas the lapse for many books in the New Testament is around one hundred years New Testament textual scholars have a great advantage over classical textual scholars . . . to reconstruct the original text . . . with great accuracy

Id.

The Berne Convention provides for fair use of religious articles.¹⁰² Perhaps religious works can qualify for fair use when used for non-profit ministry. In the gospel music industry, royalties for product sales of CDs, DVDs, and sheet music are fine. There is also no ground for ignoring fair remuneration for *commercial* use of songs, books, and other religious intellectual matter, such as when gospel music is played on air by for-profit radio stations.¹⁰³ But it may be fair to waive compulsory royalties when lyrics are *copied*¹⁰⁴ for worship services and home-fellowship groups. This would avoid churches fearing litigation¹⁰⁵ if the lyrics are copied for display during worship without licenses.¹⁰⁶

It is difficult to define “non-profit” and “non-commercial” in relation to religious publishing, since some profit-organizations channel revenue to non-profit activities, while there could be non-profit organizations that experience net increase from donations and earnings. Bible societies often generate profits from First World revenue to subsidize¹⁰⁷ Bibles for Third World countries. Therefore, rather than struggling to define “non-profit,” perhaps the underlying principle may be that any *net profit*

¹⁰² The Berne Convention provides for “the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or *religious topics*” Berne Convention, *supra* note 3, at art. 10(1).

¹⁰³ See *All Nations Music v. Christian Family Network, Inc.*, 989 F. Supp. 863 (W.D. Mich. 1997). See also *U.S. v. Am. Soc’y of Composers, Authors, and Publishers*, 1991 WL 24330 (S.D.N.Y. Feb. 19, 1991) (discussing whether charitable contributions made to Christian commercial radio stations should be regarded as revenue).

¹⁰⁴ “Yes, music is free for those who use it during worship in their Churches, and we adamantly agree that it always should be so.” *Hearing on H.R. Bill 789 Before the House Committee on the Judiciary*, 105th Cong. (1997) (statement of Robert Sterling, Dove Award winning Christian artist, on behalf of *The Coalition for the Protection of American’s Gospel Music Heritage*). See also U.S. Copyright Act 17 U.S.C. § 110(3) (1976), amended by 17 U.S.C. § 110(5)(A) (1999). This provision exempts non-commercial *performance* (note — worship is not performance) of religious works in worship services from infringement. Licenses are required, however, for *copying* sheet music for church musicians and copying lyrics for congregations to sing. For example, religious music can be freely sung (performed), but not freely *copied*.

¹⁰⁵ See Jed M. Silversmith & Jack A. Guggenheim, *Between Heaven and Earth: The Interrelationship Between Intellectual Property Rights and the Religious Clauses of the First Amendment*, 52 ALA. L. REV. 467, 468 (2001). “Intellectual Property rights are inherently at odds with the U.S. Constitution’s religion clauses . . . the grant of property protection may interfere with another person’s right to worship.” *Id.*

¹⁰⁶ This concern is analogous to the prohibition against patenting medical treatments in some countries. Patents might cause doctors to hesitate using a patented process to save a life for fear of litigation. Likewise, churches should not need to fear litigation when copying gospel song lyrics to facilitate worshipping God.

¹⁰⁷ See Hartberg, *supra* note 197.

*margin*¹⁰⁸ should be shared willingly with the copyright owner — if profits are made, profits are shared.

The church generally follows the modern courts. But the *Donaldson* decision of the House of Lords¹⁰⁹ — the highest court in the global British Empire as it was then — reminds one that modern copyright law continues to provide the ability to handle religious works as sacred trusts, rather than as private intellectual property. The historical copyright cases reveal that today's norm of church copyright practice is not the only legal option.

VI. COPYRIGHT V. THEOLOGY

Having explored the distinction between moral and economic rights, the focus is now on whether enforcing economic rights conflicts with tenets of Christianity and how other legal options may be more consistent with the church's theology.

A. Copyright v. Abstaining From Litigation

With Bible copyright has come litigation. In *Evangelical Alliance Mission v. Lockman Foundation*, Bible translators sued missionaries over royalties.¹¹⁰ In *Neva, Inc. v. Christian Duplications International, Inc.*, a Bible sound recording had been licensed strictly for non-profit distribution, so copyright was used to stop unauthorized commercial sales.¹¹¹

There have also been cases relating to religious music. In *F.E.L. Publications Ltd. v. Catholic Bishop of Chicago*, a publisher sued churches for making numerous copies of hymnbooks.¹¹² The church was fined \$190,400 for copyright infringement, \$2 million in compensatory damages and \$1 million in punitive damages, though the damages were

¹⁰⁸ When a non-profit organization, such as Gideons International, uses donations to produce *free* Bibles, there is no *net profit margin*. Thus the royalties it pays for using modern translations represent a net loss.

¹⁰⁹ *Donaldson v. Beckett*, 1 Eng. Rep. 837 (1774). See *supra* text accompanying note 37.

¹¹⁰ No. CIV.95-7214, 1995 WL 688958 (S.D.N.Y. Nov. 21, 1995); see also *Morris v. 7th and Beech Church of Christ*, No. CIV.H89-738, 1990 WL 484231 (D. Conn. June 6, 1990).

¹¹¹ 743 F. Supp. 1533 (M.D. Fla. 1990); see also *New Life Corp. of Am. v. Thomas Nelson, Inc.*, 932 S.W.2d 921 (Tenn. Ct. App. 1996).

¹¹² 506 F. Supp. 1127 (N.D. Ill. 1981), *aff'd in part, vacated in part*, 754 F.2d 216 (7th Cir. 1985). See also *F.E.L. Publ'n Ltd. v. Catholic Bishop of Chicago*, 466 F. Supp. 1034 (D. Ill. 1978); RICHARD R. HAMMAR, *THE CHURCH GUIDE TO COPYRIGHT LAW* 122 (2nd ed. 1990); Silversmith & Guggenheim, *supra* note 105, at 468 (2001); *Fitzpatrick v. Catholic Bishop Of Chicago*, 916 F.2d 1254 (7th Cir. 1990).

rescinded on appeal.¹¹³ *Manna Music, Inc. v. Smith*¹¹⁴ related to infringement of the famous hymn *How Great Thou Art*. Copyright in another hymn *My God and I* was enforced in *Wihtol v. Wells*,¹¹⁵ and again in *Wihtol v. Crow*¹¹⁶ where a church choir director was prosecuted for arranging the hymn for a choir. In *All Nations Music v. Christian Family Network*,¹¹⁷ several copyright holders sued a commercial radio station for playing gospel songs on air without a license or otherwise paying royalties.¹¹⁸

This possibility of court action, however remote, gives copyright strength to deter unauthorized copying. Without it, copyright would have bark but no bite. It is this inherent litigiousness that conflicts with the doctrine of Christians refraining from bringing civil suits¹¹⁹ against one another.¹²⁰ Paul, trained in the law,¹²¹ lamented: "I say this to shame you . . . one brother goes to law against another — and this in front of [the secular courts]. The very fact that you have lawsuits among you means you have been completely defeated already. Why not rather be wronged? Why not rather be cheated?"¹²²

Jesus said this about litigation: "If anyone wants to *sue* you and take away your tunic, let him have your cloak also. . . . But I say to you, love your enemies" ¹²³ To accept being wronged, rather than

¹¹³ F.E.L. Publ'n Ltd., 754 F.2d at 217.

¹¹⁴ 1978 U.S. Dist. LEXIS 17527 (M.D. Pa. May 26, 1978).

¹¹⁵ 231 F.2d 550 (7th Cir. 1956).

¹¹⁶ 199 F. Supp. 682 (S.D. Iowa 1961), *rev'd* 309 F.2d 777 (8th Cir. 1962); *see also* Jay L. Cooper, *Wihtol v. Crow: Fair Use Revisited*, 11 UCLA L. REV. 56 (1964).

¹¹⁷ 989 F. Supp. 863 (W.D. Mich. 1997). *See also* Meadowgreen Music Co. v. Voice in the Wilderness Broad., 789 F. Supp. 823 (E.D. Tex. 1992).

¹¹⁸ Licensing and collection of royalties are undertaken by performing rights societies, such as the American Society of Composers, Authors and Publishers (ASCAP). Search ASCAP's website for the words "religious" and "gospel," <http://www.ascap.com> (last visited Nov. 22, 2001). *See also* U.S. v. Am. Soc'y of Composers, Authors, and Publishers, 981 F. Supp. 199 (S.D.N.Y. 1997) (regarding determination of reasonable license fees for over three hundred commercial, religious radio stations); U.S. v. Am. Soc'y of Composers, Authors, and Publishers, 902 F. Supp. 411 (S.D.N.Y. 1995).

¹¹⁹ Scripture proscribes civil suits, but does not mention criminal suits. In some jurisdictions, copyright infringement is a criminal matter.

¹²⁰ Clifford W. Kelly, *Christians in the Courtroom*, MINISTRIES TODAY, Nov/Dec 1998, available at <http://www.ministriestoday.com/issues/articledisplay.pl?d=mt11987&MonthID=mt1198> (last visited Nov. 22, 2001).

¹²¹ Before accepting Christ, Paul was one of the Pharisees, the interpreters of Israel's law.

¹²² 1 *Corinthians* 6:5-7 (New International). All references to this version are to the International Bible Society's *Holy Bible: New International Version*, published by Zondervan in 1984 (used by permission) (all rights reserved).

¹²³ *Matthew* 5:40, 44 (New King James). All references to this version are to the *New King James Version* published by Thomas Nelson, Inc., in 1982 (used by permission) (all rights reserved).

commencing civil litigation, is where Jesus' teaching to turn the other cheek¹²⁴ can be practiced in the business world. Avoiding court, even when one is right, is consistent with the astonishing, counterintuitive decree to love¹²⁵ your enemies. The laws are fine — they aim to help authors, publishers, and songwriters — but the existence of the laws does not mean the church ought to use them against one another, even justifiably.¹²⁶ To initiate litigation, over a book which teaches against that, is a contradiction.

It is fine to sell or license religious works for reasonable profit, but not with an implied litigious threat. A threat is implied whenever the notice "© Copyright. All Rights Reserved" is unaccompanied by clarification on whether economic or moral rights are enforced. The notice is more than mere advice of ownership, because it leaves the public guessing whether the owner will take legal action if royalties are ignored. An example of clarification for religious works may read:

© Copyright 20__ by __. All rights reserved. Only moral rights or equivalent¹²⁷ enforced against non-profit and non-commercial use.¹²⁸

B. Copyright v. Divine Authorship

To analyze any copyright scenario, one starting point is to ask: who owns it? Often, there are circumstances where someone else, apart from

¹²⁴ Mary C. Szto, *Lawyers as Hired Doves: Lessons from the Sermon on the Mount*, 31 CUMB. L. REV. 27 (2000-2001).

¹²⁵ Mark B. Greenlee, *Echoes of the Love Command in the Halls of Justice*, 12 J.L. & RELIGION 255 (1995-1996).

¹²⁶ Paul said: "All things are lawful for me, but not all things are helpful." 1 *Corinthians* 6:12 (New King James); see also 1 *Corinthians* 10:23.

The extent to which charitable . . . organisations can protect their [I.P. rights] is rarely tested in the courts. Indeed it might be hoped that such organisations would only resort to litigation in extreme circumstances, for example if another entity was shamelessly trading on their reputation for commercial gain. In particular one would expect the Christian churches to bear in mind the words of St Paul on the subject and seek to resolve the matter outside the secular courts, on the basis, for example, of their own internal rules — canon law.

Simon Stokes, *Church Names and Their Protection Under English Law*, 2001 ENT. L.R. 25, 31. An interesting religious trade mark case is *Gideons Int'l, Inc. v. Gideon 300 Ministries, Inc.*, 94 F. Supp. 2d 566 (E.D. Pa. 1999).

¹²⁷ See *supra* note 71.

¹²⁸ The statement may be amplified, i.e., with requirements for prior written consent and that the non-profit use is restricted to evangelism or ministry. Although no court action is threatened against such non-profit copying, there remains an ethical responsibility to remunerate copyright owners willingly. Since the statement can result in narrower protection, the statement should not be used until legal advice is obtained.

the author, owns the copyright.¹²⁹ Such circumstances are analogous to certain theological doctrines.

One such doctrine is that God inspired the scriptures.¹³⁰ A basic principle is that copyright subsists in expression of ideas, not in the ideas. This is analogous to a first school of thought in which God inspired not only the Bible's ideas, but also the choice of words that *express* those ideas.¹³¹ For instance, the receiving of the Ten Commandments indicates divine authorship:

[T]he Lord said to Moses, "Come up to Me on the mountain and be there; and I will give you tablets of stone, and the law and commandments which *I have written*, that you may teach them Now the tablets were the work of God, and *the writing was the writing of God* engraved on the tablets."¹³²

Note the last phrase in this doctrinal statement:

We conceive the Bible to be in actuality the very Word of God. The divine Author prompted the original thought in the mind of the writers; *He then guided their choice of words to express such thoughts* Thus, both thought and language are revelatory and inspired.¹³³

This infers that Author-God¹³⁴ owns the copyright.¹³⁵ If one believes the words of the ancient biblical text are inspired, then claiming ownership of Bible copyright might be akin to staking out someone else's turf, or as producer Stanley Motss said in *Wag the Dog*, "You think this

¹²⁹ Employers own employees' copyright. Crown rights and eminent domain allow official copyright exploitation without consent. Eminent domain applies to intellectual property. See *City of Oakland v. Oakland Raiders*, 646 P.2d 835, 839 (1982).

¹³⁰ See The Westminster Confession of Faith, *supra* note 5, at ch. I, para. IV.

¹³¹ The plenary and verbal inspiration of Scripture is more than, say, the inspiration of a breathtaking sunset. It is interaction with the Divine Being where Jesus said: "[T]he Spirit will take from what is mine and make it known to you." *John* 16:15 (New International). See also *2 Peter* 1:20-21 ("[N]o prophecy of Scripture came about by the prophet's own interpretation. For prophecy never had its origin in the will of man, but men spoke from God as they were carried along by the Holy Spirit.") (New International Version).

¹³² *Exodus* 24:12, 32:16 (New King James). See also *Deuteronomy* 4:13, 5:22, 10:1-4.

¹³³ *The Inerrancy of Scripture* (Assemblies of God), http://www.ag.org/top/beliefs/position_papers/4175_inerrancy.cfm (last visited on Nov. 19, 2001).

¹³⁴ See Nimmer, *supra* note 4, at 165 n.810.

¹³⁵ Berne Convention, *supra* note 3, at art. 7. Copyright is for the *life* of the author. An eternal God retains copyright forever.

[T]he proposition of U.S. law, often advanced in my *Dead Sea Scrolls* piece, [is] that unauthorized adaptation of a work [which is] still subject to a subsisting copyright forfeits any protection for the adaptation. Applying those two propositions in tandem, the result is that any translation of the Bible without God's explicit permission renders the translation itself uncopyrightable. The conclusion would follow that churches may not lay copyright to their own translations Of course . . . [c]ould the commandment to spread the gospel be viewed as itself a type of permission? E-mail from David Nimmer to Roger Syn (June 27, 2001) (on file with author).

is trouble? I was four months into production on *The Song of Solomon*¹³⁶ and found out I didn't have the rights!"¹³⁷

Bible copyright, nevertheless, might belong to humans, if one instead accepts a second school of thought in which God merely inspired the ideas but left the human writers to choose the words. Similarly, unlike the inspired Hebrew, Greek, and Aramaic ancient biblical texts, there is no suggestion that the translators' selection of English words is inspired.¹³⁸ Hence, this reasoning may justify claiming property in a Bible translation¹³⁹ on the grounds that it is different from claiming ownership of the Bible itself.¹⁴⁰

There is a further overriding doctrine, however. The foundation church doctrine is that Jesus Christ is Lord,¹⁴¹ with Christians at least as servants.¹⁴² Employers own the copyright in employees' works. Hence, if an author confesses to being God's servant, and that Jesus is his Lord, Master, and King, under copyright law that infers God has first claim to his copyright. Moreover, if Jesus is king, then Crown rights and eminent domain apply.¹⁴³ Aside from this copyright reasoning, the doctrine of Christ's Lordship claims every aspect of an author's creativity: the ideas, expression, and translation of those ideas; the copyright; and everything else.

Nevertheless, the Christian publishing industry follows the modern courts, and the courts discount divine authorship and Christ's Lordship. When faced with claims of supernatural authorship, courts invariably conclude that humans own the intellectual property. In *Cummins v. Bond*, an English court said: "I am not prepared to make [the opinion] that the authorship and copyright rest with some one [in the spiritual realm] I can only look upon the matter as a terrestrial one, of the earth earthly . . . and I propose to deal with it on that footing."¹⁴⁴

¹³⁶ The *Song of Solomon* is a book of the Bible that uses uninhibited imagery to describe love. See, e.g., *Song of Solomon* 4:1-15.

¹³⁷ WAG THE DOG (New Line Cinema 1997), quoted in Nimmer, *supra* note 4, at 5.

¹³⁸ See Nimmer, *supra* note 4, at 168. Note Nimmer's lucid view on Bible translation in "Biblical Excursus."

¹³⁹ Berne Convention, *supra* note 3, at art. 2(3); When B translates A's work without permission, B creates a separate copyright, even though the unauthorized translation infringes A's copyright. COPINGER, *supra* note 55, at 8-128. Hence, the translator would infringe God's copyright.

¹⁴⁰ The Crown's right in a translation, the *Authorised Version*, was not seen as property. See *supra* text accompanying notes 37 and 42.

¹⁴¹ See *Philippians* 2:11; *1 Timothy* 6:15; *Revelation* 1:5, 17:14, 19:16. In *John* 8:58 and 17:5, Jesus equated himself with God. See also *Exodus* 3:14.

¹⁴² *2 Timothy* 2:24. Compare *John* 1:12 and the statement of Jesus in *John* 15:15 ("No longer do I call you servants . . . but I have called you friends.") (New King James).

¹⁴³ See *supra* note 129.

¹⁴⁴ *Cummins v. Bond*, 1 Ch. 167, 175 (1927).

In *Urantia v. Maaherra*,¹⁴⁵ the United States Court of Appeals said:

A threshold issue . . . is whether the work, because it is claimed to embody the words of celestial beings rather than human beings, is copyrightable at all

. . . .

The copyright laws, of course, do not expressly require “human” authorship, and considerable controversy has arisen in recent years over the copyrightability of computer-generated works. We agree . . . it is not creations of divine beings that the copyright laws were intended to protect, and that in this case some element of human creativity must have occurred in order for the Book to be copyrightable. At the very least, for a worldly entity to be guilty of infringing a copyright, that entity must have copied something created by another worldly entity

. . . .

The copyrightability issue is not a metaphysical one requiring the courts to determine whether or not the Book had celestial origins [A] work is copyrightable if copyrightability is claimed by the first human beings who compiled, selected, coordinated, and arranged the [work]¹⁴⁶

These cases demonstrate that courts will not ascribe copyright to divine or spirit beings.¹⁴⁷ Here lies a dichotomy. *If* God is as the Bible reveals Him to be, then copyright principles point to God owning the copyright. But courts ignore such theological reasoning and accept humans as the copyright owners. Therefore, there may be a dilemma in adopting business practices which reflect the courts’ secular assumptions about God and the Bible. The church’s adoption of conventional copyright practices is often justified by its benefits — the royalties pay for translation and printing — but the benefits may be moot if the theological doctrines, in the light of copyright law, conclude that humans do not own the copyright.¹⁴⁸

The same dichotomy exists for gospel songs, sermons and books when authors claim the very words are from God.¹⁴⁹ In *Oliver v. Saint Germain Foundation*,¹⁵⁰ the plaintiff claimed his book had been authored by a superior being and yet sought to enforce copyright. Although the

¹⁴⁵ 114 F.3d 955 (1997).

¹⁴⁶ *Id.* at 958 (citations omitted); see also *infra* note 152.

¹⁴⁷ But see *Zorach v. Claiborn*, 343 U.S. 306, 313 (1952) (“We are a religious people whose institutions presuppose a Supreme Being.”).

¹⁴⁸ For the reasons why Christians can hold copyright in trust, see *infra* text accompanying notes 174-76.

¹⁴⁹ JACK DEERE, *SURPRISED BY THE VOICE OF GOD, HOW GOD SPEAKS TODAY THROUGH PROPHECIES, DREAMS AND VISIONS* (1996).

¹⁵⁰ 41 F. Supp. 296 (S.D. Cal. 1941).

court did not subscribe to the plaintiff's spiritual beliefs, it did require him to be consistent in and out of court. The court said, effectively, he could not have it both ways:

[The plaintiff] wished to impress . . . that he, a mortal being, was not the author, and to induce those who might read to believe that it was dictated by a superior spiritual being [H]e sought to give the book an origin similar . . . to some extent the Bible The law deals with realities and does not recognize communication with and the conveyances of legal rights by the spiritual world as the basis for its judgment. Nevertheless, equity and good morals will not permit one who asserts [supernatural authorship] as a fact which he insists his readers believe as the real foundation for its appeal . . . to change that position for profit in a law suit.¹⁵¹

The above reference to the Bible suggests the court would have also disapproved of a plaintiff who believed in the verbal inspiration of the Bible, and yet enforced copyright. Modern courts must be impartial towards different religions. The onus, therefore, is on Christian litigants to avoid discrepancy between their spiritual beliefs and copyright suits, or to borrow the words from *Oliver v. Saint Germain* — "equity and good morals will not permit one . . . to change [his theological] position for profit in a [copyright] law suit."¹⁵²

C. Copyright v. the Right to Make a Living

Nevertheless, copyright is championed because it enables authors to make a living.¹⁵³ Paul's proverb, "The laborer is worthy of his wages,"¹⁵⁴ is often cited.

The assumption is that making a living and enforcing economic rights are identical. Another misconception is that non-enforcement of economic rights¹⁵⁵ means giving it away free. These are examples of copyright concepts defined loosely.¹⁵⁶ Many in the church advocate

¹⁵¹ *Id.* at 298-99 (emphasis added). Moreover, the court distinguished between "revelations" and the "expression of the revelations." *Id.* at 299. The court stated, if the claim had been that the selection and arrangement of the divine revelations had been infringed, the plaintiff's copyright infringement claim might have had merit. *Id.*

¹⁵² 41 F. Supp. 296, 299 (S.D. Cal. 1941); see also *Urantia v. Maaherra*, 895 F. Supp. 1337, 1338 (D. Ariz. 1995). The court said, "If I were to declare *The Urantia Book* to be a divine revelation dictated by divine beings, I would be trampling upon someone's religious faith. If I declared the opposite, I would be trampling upon someone else's religious faith. I shall do neither." *Id.*

¹⁵³ See *supra* text accompanying note 29.

¹⁵⁴ 1 *Timothy* 5:18 (New King James).

¹⁵⁵ The author's definition of non-enforcement of economic rights: "The sale of copyrighted matter with an explicit understanding that no court action will be taken against unauthorized but accurate copies." Cf. *supra* Part II.C (discussing the Crown's prerogative).

¹⁵⁶ See *supra* text accompanying note 13.

copyright as a *sustenance* right, while de-emphasizing that copyright only sustains because it is also a *legal enforcement* right. Sustenance rights are fine, but the ethical problem of enforcement rights — irrelevant to secular business — is their clash with the New Testament's prohibition against litigation between believers.

Under copyright law, there is a distinction. One makes a living by receiving money for the fruit of labor through sales or donations, whereas enforcement of economic rights is characterized by a real or implied threat of litigation to minimize competition.¹⁵⁷ Paul's proverb must refer to the former, rather than the latter.

Paul's proverb quoted Jesus sending the disciples to spread His message: "Go and announce to them that the Kingdom of Heaven is near Give as freely as you have received! Don't take any money with you Don't hesitate to accept hospitality, because *the worker is worthy of support*."¹⁵⁸

Jesus wanted His message given "freely."¹⁵⁹ Therefore, Jesus' command conflicts with a practice of withholding His message (in written form) for want of copyright payment. Paul reiterated Jesus' words in his letter:

*Christian workers should be paid by those they serve . . . the Lord gave orders that those who preach the Good News should be supported by those who benefit from it. Yet I have never used any of these rights In fact, I would rather die than lose my distinction of preaching without charge What then is my pay? It is the satisfaction I get from preaching the Good News without expense to anyone, never demanding my rights*¹⁶⁰

The church copyright debate is crystallized in the above scripture. A reason why there are differing passionate camps of opinion is that the scripture contains *three* alternatives, each having its supporters. *First* is that Christian workers — authors, songwriters, translators, publishers — deserve sustenance; copyright secures this right. Within the same scripture is also a *second* principle, where individuals can forego rights

¹⁵⁷ 1 J. INTER. ECON. L. 604 (1998) (citing Lord Templeman's quote: "Copyright is a grant of a restriction on trade.").

¹⁵⁸ *Matthew* 10:7-10 (New Living Translation) (emphasis added). All references to this version are to the *Holy Bible: New Living Translation* published by Tyndale House Publishers, Inc., in 1996 (used by permission) (all rights reserved).

¹⁵⁹ 33A DONALD A. HAGNER, WORD BIBLICAL COMMENTARY, MATTHEW 1-13 (1998).

There is to be no charge for the proclamation [of Jesus' message] As the disciples received "freely," so they are to give freely But while there can be no question of "selling" the gospel . . . the disciples are to receive their subsistence from those to whom they go: thus, the worker is worthy of his "food" (v. 10b) The disciples are not to profit from the gospel, but their basic needs are to be met.

Id.

¹⁶⁰ 1 *Corinthians* 9:13-15, 18 (New Living); see also *Deuteronomy* 25:4 (New Living).

when occasion calls, not by compunction but choice, exemplified by Paul's attitude and Jesus' willingness to die on the cross for us. Therefore, no one in the church ought to insist that others forego their copyright sustenance rights, since both principles are contained in scripture and particularly because rights are given up by grace not law.

The above scripture contains yet a *third* alternative which is from the context of the letter, the same letter in which Paul said: "The very fact you have lawsuits among you means you have been completely defeated already. Why not rather be cheated?"¹⁶¹ Therefore, the alternative of using litigation to demand sustenance is unacceptable theologically, otherwise Paul would have been inconsistent. Copyright is a litigious tool that enables sustenance to be *demande*d, by force or implied threat. A Christian worker's sustenance (sales, profits, salary, or donations) ought not extend to a litigious right of demanding payment (economic rights). Money was contributed to Paul voluntarily because of relationship,¹⁶² rather than law enforcement. Thus all references to remuneration in the Bible are to sustenance rights, not litigious rights.

It is said that, without copyright, authors and publishers cannot earn their livelihood (i.e. without litigious rights, there is no sustenance). Many in Christian ministry, whose spiritual gifts do not generate copyrightable material, still earn a livelihood. A minority engage in writing, music composition, or other gifts¹⁶³ which produce saleable matter. Billy Graham, from the start of his career, chose an annual salary, rather than basing his income on royalties and donations. The significant royalty on his autobiography *Just As I Am*¹⁶⁴ was donated entirely to the ministry.¹⁶⁵ Sales of Bibles and religious works can still generate revenue, even without economic rights.¹⁶⁶ Numerous products are sold without intellectual property protection; competition is fiercer, but profits are made.¹⁶⁷ Hence, it is not quite precise to say that economic

¹⁶¹ 1 *Corinthians* 6:5-7 (New International).

¹⁶² *Philippians* 4:15-17; 2 *Corinthians* 8:3.

¹⁶³ "What do you have that you did not receive? And if you did receive it, why do you boast as though you did not?" 1 *Corinthians* 4:7 (New International). In the church copyright debate, how does the sustenance right apply to Christian workers whose spiritual gifts do not produce saleable matter? See 1 *Corinthians* 12:4-31; *Romans* 12:3-8.

¹⁶⁴ BILLY GRAHAM, *JUST AS I AM: THE AUTOBIOGRAPHY OF BILLY GRAHAM* (1997).

¹⁶⁵ Information obtained from the Billy Graham Evangelistic Association (on file with author) (the interpretation is the author's). "[Martin] Luther never earned anything from his writings; he refused to accept a penny from them. Even at a very low percentage the royalties from his countless and oft-reprinted works could have freed him from his constant financial problems." HEIKO A. OBERMAN, *LUTHER: MAN BETWEEN GOD AND THE DEVIL* 280 (1992); see also 7 PHILIP SCHAFF, *HISTORY OF THE CHRISTIAN CHURCH* 562 (1890).

¹⁶⁶ See *supra* note 155 (defining non-enforcement of economic rights).

¹⁶⁷ King James Version (*Authorised Version*) sales generate considerable revenue, though it is in the public domain. The Christian Booksellers Association ranks it as the

rights are needed for livelihood. Rather, economic rights minimize competition to maximize revenue. Nevertheless, exceptions include full time writers and songwriters, not employed by churches or organizations, whose income may be reduced without a copyright deterrent.

*D. Copyright v. Biblical Real Property Laws*¹⁶⁸

Although the Bible is silent on many modern issues — copyright, mass reproduction and the internet — it contains ethical principles which apply to analogous situations today.¹⁶⁹ For instance, copyright is property,¹⁷⁰ and the Bible says much about the ethics of owning property.¹⁷¹ The Biblical real property laws shed light on intellectual property. This analogy between the promised land and religious literature, though perhaps not legally exact,¹⁷² is based on their *theological similarity*.¹⁷³

God's gift of the promised land was accompanied by laws — received together with the Ten Commandments — which presupposed privately owned land. This implies that property given by God can be privately owned. If so, perhaps it may be consistent theologically for people to claim intellectual property in religious works after all.

second highest-selling translation in this order: (1) New International Version, (2) King James Version, (3) New Living Translation, (4) King James Version, and (5) New International Readers Version. CBA Best Seller Lists, Bibles, General Versions and Translations – December 2001, at <http://www.cbaonline.org/BestSellers/bestSellerBibles.jsp> (last visited Nov. 22, 2001).

¹⁶⁸ The following section is based on the ideas stated in *Leviticus* 23:22, *Leviticus* 19:9, *Deuteronomy* 24:19, and suggested to the author by the owner of www.netbible.com.

¹⁶⁹ Christopher J.H. Wright, *The Ethical Authority of the Old Testament: A Survey of Approaches* (pts. 1 & 2), 43 *TYNDALE BULL.* 101 (1992); 43 *TYNDALE BULL.* 203 (1992).

¹⁷⁰ Is the expression of an idea a piece of property in the first place? Vaidhyathan sees copyright as policy rather than property. See SIVA VAIDHYANATHAN, *COPYRIGHTS AND COPYWRONGS: THE RISE OF INTELLECTUAL PROPERTY AND HOW IT THREATENS CREATIVITY* 12, 15 (2001).

¹⁷¹ See generally CHRISTOPHER J.H. WRIGHT, *GOD'S PEOPLE IN GOD'S LAND: FAMILY, LAND AND PROPERTY IN THE OLD TESTAMENT* (1990).

¹⁷² Intellectual property is not real property, in most cases being more akin to personal property. See Mark Anderson, *Applying Traditional Property Laws to Intellectual Property Transactions*, [1995] *EUR. INTELL. PROP. REV.* 236, 236-37; David Marchese, *Joint Ownership of Intellectual Property*, [1999] *EUR. INTELL. PROP. REV.* 364.

¹⁷³ To Israel, the land meant more than just territory, and Christian books are not mere literature. God invites people into covenant relationship. The promised land was a fulfillment of Old Covenant promises, while the substance of Christian religious works pertains to corresponding promises under the New Covenant. Christian conversion, in its purest sense, happens when a person accepts God's unmerited offer to love us intimately, akin to a marriage covenant with 100% certainty of no divorce, provided we renounce habits abhorrent to God. See *supra* text accompanying note 82. See also WRIGHT, *supra* note 171, at 110-14.

Old Testament laws, however, presented a radical philosophy of property ownership which was more akin to a trust, with God as ultimate owner.¹⁷⁴ This infers that *intellectual property* in a Christian religious work is more akin to the work held as a sacred trust, rather than as private property. So, even if copyright principles point to God as the owner,¹⁷⁵ humans can hold that property in trust. *Donaldson v. Beckett* was consistent with this biblical approach to property.¹⁷⁶

The laws also contained fair use provisions: "When you reap the harvest of your land, you shall not reap your field to its very border, nor shall you gather the gleanings after your harvest; you shall leave them for the poor and for the stranger: I am the Lord your God."¹⁷⁷ Land owners could profit, provided landless people had fair¹⁷⁸ access. Today's Third World and developing nations cannot regularly afford Western book prices, particularly at high exchange rates. Internet technology, however, could let millions access Bibles and religious works,¹⁷⁹ and even audio sermons using MP3 and Napster-like technology. E-mail could be a lightning rod for instant global Bible distribution.

In spite of these opportunities, many prime Bible translations¹⁸⁰ and books are kept off the internet or prohibited from being downloaded freely, partly due to copyright.¹⁸¹ Since the church's commission is to

¹⁷⁴ "The land shall not be sold permanently, for the land is mine" *Leviticus* 25:23 (New King James). "In the *Year of Jubilee* the field shall return to him from whom it was bought, to the one who owned the land as a possession." *Leviticus* 27:24 (New King James). Thus every fifty years, debts were waived and property returned to the original owners, to avoid endless generational cycles of poverty. *Id.*

"[A] fundamentally important aspect of Israelite land tenure [was] . . . the inalienable character of the land. . . . [T]he whole Old Testament provides not a single case of an Israelite voluntarily selling land outside his family group. . . . [M]atched by the absence as yet of any [archaeological] inscriptional evidence from Palestine of Israelite sale and purchase of land, though there is abundant evidence of such transactions from . . . surrounding societies. . . . [C]onsonant with the lack of any legal provision in the Old Testament for the sale of land [This was based] on the specific theological belief in God's prior ownership of the land"

WRIGHT, *supra* note 171, at 55, 56, 127.

¹⁷⁵ See *supra* Part VI.B.

¹⁷⁶ *Donaldson v. Beckett*, 1 Eng. Rep. 837 (1774). See *supra* text accompanying note 37.

¹⁷⁷ *Leviticus* 23:22 (Revised Standard); see also *Leviticus* 19:9; *Deuteronomy* 24:19.

¹⁷⁸ See sources cited *supra* note 102.

¹⁷⁹ See, e.g., <http://www.sharesong.org> (last visited Nov. 22, 2001).

¹⁸⁰ The *NET Bible* may be obtained free at <http://www.netbible.com> (last visited Nov. 22, 2001). See *infra* note 198. "The Unbound Bible," an online collection of Bibles, is a project of Biola University. See <http://unbound.biola.edu> (last visited Nov. 22, 2001). The *World English Bible (WEB)* is a public domain work-in-progress translation. See <http://www.ebible.org> (last visited Nov. 22, 2001).

¹⁸¹ Michael Duduit, *Fabricated E-Illustrations*, LEADERSHIP JOURNAL, Winter 2000, at 45 (cautioning about copyright in internet sermons), available at

spread God's message freely,¹⁸² are *economic rights* here adding or detracting from the paramount goal? The Biblical laws did not require everything be made public domain — just gleanings. Perhaps out-of-print books might be offered free on the internet, and even prime books too after print runs are exhausted.

Centuries ago, the printing press altered the rules of literature distribution, and the Bible's exclusion from copyright influenced the laws of that new technology. What if the tenet of *Donaldson* were to be applied in the internet era? Prime translations such as the *NIV* and *NKJV* could zap around the world overnight spreading as rapidly as rampant computer viruses. Because of profits, secular publishers might enter the Bible market, cannibalizing funds for making new translations, particularly for low volume Third World minority languages.¹⁸³ Publishers and authors may lose income and possibly livelihood; however, it remains unknown the means and extent to which the church at large would co-operatively remunerate its electronic authors and publishers in the internet era. Religious books would continue to be written and find a worldwide on-line distribution channel of over 400 million with predictions of a billion users in a few years. There might be utter turbulence;¹⁸⁴ although the gospel would spread somehow. "What then?" questioned the apostle Paul in the face of unfairness and injustice. "Only that *in every way*, whether in pretence or in truth, Christ is preached;¹⁸⁵ and in this I rejoice, yes, and will rejoice."¹⁸⁶ To exploit the internet as a superhighway requires a preference for spreading a message, even ahead of maximizing profits.¹⁸⁷

<http://www.christianitytoday.com/le/2000/001/8.45.html> (last visited Nov. 22, 2001); Keith Hinson, *No Free Cyber Ride*, CHRISTIANITY TODAY, May 19, 1997, at 60, available at <http://www.christianitytoday.com/ct/7t6/7t6060.html> (last visited Nov. 22, 2001).

¹⁸² See *supra* note 159 and accompanying text.

¹⁸³ One Bible translation organization, specializing in minority languages, told the author its *translation* funding comes mostly from church and individual donations, but *publication* costs are subsidized by organizations including Bible Societies which often receive subsidies from prime translation profits; see also *infra* note 197.

¹⁸⁴ Assertions in this paragraph summarize reviewers' comments (on file with author).

¹⁸⁵ Although Paul would not have anticipated the use of the internet to spread Biblical writings, he likely would have wanted the gospel proclaimed "in every way," using whatever technology, because of his passion for the gospel message. See, e.g., *Romans* 8:38-39; *1 Corinthians* 13:2; *1 Corinthians* 5:20-21; *Galatians* 2:20; *Ephesians* 3:14-19; *Philippians* 3:7-11.

¹⁸⁶ *Philippians* 1:18 (New King James).

¹⁸⁷ See *id.*

In the Middle Ages . . . many works were written by monasteries and were of a religious nature . . . [T]heir authors only desired the widest possible distribution. They wanted to proselytise, not to commercialise their work. However, they too were sometimes keenly aware of the moral rights of an author.

If religious works can be owned as property, the question remains: is the Bible an exception? While the *laws* allowed the land and chattels to be held privately, it is inconceivable that Moses or the priests would have asserted ownership in the written *laws* themselves, including the Ten Commandments. Does the passage of years — admittedly thousands — change that principle? Bibles sold in bookshops today, after all, contain the laws Moses received on the fiery mountain.¹⁸⁸ God's Word so personifies¹⁸⁹ God Himself that the Bible says: "In the beginning was the Word, and the Word was with God, and *the Word was God*."¹⁹⁰ Who can *copyright God*?¹⁹¹

Bible copyright, then, divides into two camps. On one hand, Bible copyright may be justified because ownership is not claimed in *the* Bible, but merely a translation. On the other hand, many regard even a translation as still the Word of God. It is possible that the judges and Lords in *Donaldson v. Beckett* decided that the Bible was not to be owned as intellectual property because of their personal faith in the God of the Bible, and the conviction that even a translation of God's Word ought not be owned as private property.

VII. CONCLUSION

If, according to theology, Bible translations ought not be owned as property, publishers are in a quandary. While the Crown patents provide pseudo-ownership exclusivity,¹⁹² moral rights do not. There might be no

STEWART, *supra* note 74, at 14. "The rapid circulation of [Martin Luther's] Reformation literature was promoted by the perfect freedom of the press. There was, as yet . . . no copyright . . . but colportors, students, and friends carried the books and tracts from house to house." SCHAFF, *supra* note 165, at 156. "As there was no copyright at that time, the works of the Reformers were multiplied by reprints Republication was considered a legitimate and honorable business." *Id.* at 562.

¹⁸⁸ *Deuteronomy* 4:11-13 (New King James).

¹⁸⁹ "Respect for integrity of the text . . . is rooted in the inalienable rights extending from the author's personality Taking God as author of the [Hebrew Bible] it is noteworthy that the same dynamic pertains." Nimmer, *supra* note 15, at 242.

¹⁹⁰ *John* 1:1 (New King James).

¹⁹¹ Hence, the dual meaning of the title of this article. However:

Some argue that certain articles, such as translations of the Bible, ought to be regarded as gifts of God on which copyright charges are immoral. The premiss on which the argument is based, however, is open to question. Water is a gift from God, yet charges are imposed for its supply to homes without any suggestion that they are immoral.

NEW DICTIONARY OF CHRISTIAN ETHICS, *supra* note 91, at 262. The author's response to this argument is that, according to the Bible, water derives from the substance of the creation, *Genesis* 1:1-2 (New King James), whereas the Bible or the Word of God derives from the substance of the *Creator*. Jesus said: "The words that I speak to you are spirit." *John* 6:63 (New King James).

¹⁹² Patents today are regarded as property, so it might be said that the Crown enjoyed a property right in practice if not in name. See *supra* text accompanying note 40.

recouping the millions of dollars invested in translations. Moreover, nowadays, copyright exists by default. Practically, it may come down to *how*, rather than *whether* copyright is administered.

To avoid an endless debate between the theological and economic issues, one is drawn to the Lord Chancellor's common sense summation in *Manners v. Blair* where, after reviewing the various opinions, he pinpointed the heart of Bible publishing: "that it is a duty . . . carrying with it a corresponding prerogative,"¹⁹³ not vice versa. Irrespective of whether Bible rights are expressed as property, the rights are ultimately a vehicle for performing the duty. As newer translations became widespread, the torch passed from the Crown to Christian publishers to carry that duty.

Duty calls for sale of Bibles to cover costs and for enforcing moral rights¹⁹⁴ against tampering. But in *Donaldson*, the king's financial investment in the Bible translation was "for the whole body of the people, for the use of the kingdom."¹⁹⁵ This implies that people should be free to use the Bible for all its intended spiritual purposes. If that freedom is curtailed for private commercial reasons, that may be a neglect of duty — for example, if economic rights are enforced against use of Bibles in ministry having no net profit margin, either by inferring or bringing lawsuits. There are compelling arguments for¹⁹⁶ and against¹⁹⁷ releasing prime translations to be free for *all* non-profit-margin ministry,¹⁹⁸ even for internet and e-mail distribution.

The church also has a *reciprocal duty* to fairly remunerate those who labor spreading the gospel. The *lawful* right to sustenance is in

¹⁹³ *Manners v. Blair*, 4 Eng. Rep. 1379 (1828). See *supra* text accompanying note 48.

¹⁹⁴ Including equivalent copyright rights. See, e.g., *supra* note 71.

¹⁹⁵ *Donaldson v. Beckett*, 1 Eng. Rep. 837 (1774). See *supra* text accompanying note 37.

¹⁹⁶ See *supra* notes 179, 180 and accompanying text.

¹⁹⁷ We consider it a moral duty to generate income through such a pricing policy to enable more subsidized Scriptures to reach those [in Third World countries] who cannot pay commercial prices. Therefore, were we to announce an intention to give free use to all forms of non-profit activity, we would effectively [lose] income from . . . markets where people are not in need of subsidy.

E-mail from Terje Hartberg, Publishing Coordinator, United Bible Societies, to Roger Syn (July 3, 2001) (on file with author). The author's comment is that the alternative to this admirable pricing policy — royalty-free Bibles for the First World — is not *intrinsically* immoral, although *extrinsic* circumstances may make it a matter of conscience for some. See *supra* text accompanying note 6. See also *supra* note 93 and accompanying text.

¹⁹⁸ The copyright notice of the *NET Bible* includes: "From our web site at www.bible.org, you may download the information and print it for yourself and others as long as you give it away and do not charge for it." Bible Studies Press, Trademark and Copyright Information, at <http://www.netbible.com/docs/about/copyrite.htm> (last visited Nov. 22, 2001).

Scripture, but so is the *grace* to forego that right for the cause. In the end, it is a choice between *law* and *grace*, which is a major doctrine that contrasts two approaches to living as a Christian.¹⁹⁹ Thus one reason why both the arguments for and against church copyright are compelling is because each is based on Biblical precepts and each is within the ambit of copyright law. Neither side should insist that their stance is the only legal or theological option.²⁰⁰

What is clear from Scripture, however, is that rights ought not be demanded by legal force.²⁰¹ This does not condone ignoring royalties — beyond doubt, translators, publishers, authors, and songwriters deserve sustenance — but it is consistent with the Bible's prohibition against lawsuits between believers, even when refraining from litigation amounts to being cheated.²⁰² The Bible's teaching is not unfair; it simply means some injustices are best left till the ultimate judgment.²⁰³

ACKNOWLEDGEMENTS

The author thanks pastors, theologians, publishers, translators, Bible-distribution missionaries, authors, songwriters, lawyers, attorneys, legal academics, and those in intellectual property organizations whose feedback improved the article. Any remaining errors are the author's. This article does not necessarily reflect the views of the author's firm or church.

Unabridged not-for-profit copying permitted provided acknowledgment of publisher is given, and both the *European Intellectual Property Review* and *Regent University Law Review* citations are stated as: [2001] E.I.P.R. 454 and 14 REGENT U. L. REV. 1 (2001).

S.D.G.²⁰⁴

¹⁹⁹ *Galatians* 2:21; *Galatians* 5:4; *Romans* 6:14.

²⁰⁰ See *supra* text accompanying notes 160 to 162.

²⁰¹ See *supra* text accompanying note 123.

²⁰² See *supra* text accompanying note 122.

²⁰³ "And they were judged, each one according to his works." *Revelations* 20:13 (New King James); see also *2 Corinthians* 5:10; *Revelations* 20:12.

²⁰⁴ "At the manuscript's end, J. S. Bach routinely initialed the letters 'S.D.G.' (*Soli Deo Gloria* — "To God alone, the glory')." PATRICK KAVANAUGH, *THE SPIRITUAL LIVES OF GREAT COMPOSERS* 13 (1992) (citing ALBERT SCHWEITZER, *J.S. BACH* 166-67 (1911)).