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NEUTRAL PRINCIPLES OR CHURCH AUTONOMY:
THE CONSTITUTIONAL STANDING OF RELIGIOUS ORGANIZATIONS IN
INTELLECTUAL PROPERTY DISPUTES

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I. Introduction

Religious Organizations in the United States use Intellectual Property Law as a tool to advance their own positions in an increasingly diverse society. Under the veil of maintaining tradition and protecting a religious message, many of these organizations seek to control their texts so that they may either receive compensation or eliminate competition. Understanding how the Constitution dictates these organizations be treated in the eyes of the law is crucial to this discussion. There are two main standards applied by courts when dealing with Intellectual Property disputes among churches: “church autonomy” and “neutral principles.” The autonomy standard is highly deferential towards churches, seeking to allow religious organizations complete autonomy in matters of internal governance. The constitutional clauses dealing with religion guarantee such organizations these rights in the eyes of some. The neutral principles standard is much less deferential towards religious groups and dictates that religious property disputes can be decided by simply applying neutral principles of law. In other words, courts can apply the same legal principles to religious property disputes as they would to disputes between two private parties under this standard. This allows courts to consider things such as document language and basic property rights with no added deference to the hierarchy of the church.

II. Constitutional Law that Applies to Intellectual Property disputes.

In *Employment Division, Department of Human Resources of Oregon vs. Smith*, 494 U.S. 872 (1990) the Court held that a state could, consistent with the free exercise clause of the U.S. Constitution, deny unemployment benefits to individuals who violated drug laws by ingesting peyote during a religious ceremony, rejecting a claim that the free exercise clause prevented a civil court from proscribing conduct otherwise in violation of a civil law, if it was based on a church's highest body's autonomous conclusion.¹ In that case, two employees of a private drug rehabilitation facility were terminated because they ingested peyote in a religious ceremony.² They were denied unemployment benefits by the State of Oregon under a state law, which called for denial if termination was for employee misconduct.³ The Oregon Supreme Court held that while the ceremonial use of peyote violates state law, the application of the unemployment law violated the free exercise clause.⁴ The United States Supreme Court reversed, applying the neutral principles standard, holding that a neutral, generally applicable law that impacts an individual's exercise of a religious act is valid because the free exercise clause does not prohibit a state from enforcing a "valid, neutral law of general applicability."⁵

The Religious Freedom Restoration Act of 1993 ("RFRA"), 107 Stat. 1488, 42 U.S.C. § 2000bb *et seq.*, reversed the application of the *Smith* decision with respect to restrictions

¹ *Employment Division, Department of Human Resources of Oregon vs. Smith*, 494 U.S. 872 (1990).

² *Id.* at 874.

³ *Id.*

⁴ *Smith vs. Oregon Employment Division*, 307 Or. 68 (1988).

⁵ *Smith*, 494 U.S. at 879 (citing *United States vs. Lee*, 455 U.S. 252, 263 (1982)).

on religious conduct absent a compelling governmental interest but its applicability is now limited to the federal government.⁶ RFRA stands against the application of the neutral principles standard in cases involving religious organizations, stating plainly: “laws “neutral” toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise.”⁷

In a recent application of RFRA, *Burwell vs. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the United States Supreme Court found that RFRA requires that a governmental action that imposes a substantial burden on religious exercise must serve a compelling governmental interest.⁸ In *Burwell*, the Court invalidated Department of Health and Human Services regulations under the Affordable Care Act that dictated substantial fines to corporations that failed to provide abortion inducing drugs and devices coverage in violation of the owners of the corporations’ religious belief that life begins at conception.⁹ There, the owners of closely held family corporations challenged the mandate in the Affordable Care Act that required them to provide health insurance coverage for the drugs and devices or face significant financial penalty.¹⁰

Thus while the neutral principles standard applies to state law, federal law is governed by RFRA, which essentially codifies the church autonomy standard.¹¹ In order to ensure broad protection for religious liberty, RFRA provides that “Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of

⁶ The Religious Freedom Restoration Act of 1993, 107 Stat. 1488, 42 U.S.C. § 2000bb *et seq.*

⁷ 42 U.S.C.A. § 2000bb, *et seq.*

⁸ *Burwell vs. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2778 (2014).

⁹ *Id.* at 2778.

¹⁰ *Id.*

¹¹ 42 U.S.C.A. § 2000bb, *et seq.*

general applicability.”¹² RFRA further prohibits the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest.¹³ Thus, RFRA supersedes any federal that law that places a substantial burden on a religious group. Accordingly, courts cannot ignore RFRA in such cases, but may conclude that the rule in question does not place a substantial burden on a church.

Despite the enactment of RFRA and subsequent federal court decisions as it pertains to the *Smith* decision, it would be a mistake to turn away from the neutral principles approach entirely. As discussed in *Smith*, many scenarios exist in which a neutral application of the principles of that law should be applied, even to religious groups and secular thought.¹⁴ Real property disputes, as well as intellectual property disputes, are two such instances where an application of neutral principles of the area of law generally will best suit the intentions of our legislative and law-making bodies.

a. The “Church Autonomy” Standard

The “church autonomy” standard comes out of a 19th century decision, *Watson v. Jones*, 80 U.S. 679 (1871) in which the United States Supreme Court held that if the highest church body to address the matter has decided a doctrinal or religious question in such a way as to resolve an issue such as who owns an individual church's property, then that

¹² *Burwell*, 134 S. Ct. at 2761 (2014) (see also 42 U.S.C.A. § 2000bb, *et seq.*)

¹³ *Burwell*, 134 S. Ct. at 2759 (2014)

¹⁴ *Smith*, 494 U.S. 872 (1990).

decision cannot be questioned or reversed by a civil court.¹⁵ Courts were required to defer to the "highest church judicatory" in such cases---which meant that this method applied to churches with a hierarchical structure, or polity, with regional or national bodies having authority over local ones.

A more recent Supreme Court decision extended the protection of church autonomy. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* 132 U.S. 694 (2012) was a case in which a member of a Lutheran Church was employed as a teacher in the church, fired, and subsequently sued for employment discrimination.¹⁶ The employee was a member of the congregation and had completed the training required to become a "called" teacher in the church.¹⁷ "Called" teachers in this congregation are regarded as having been called to their vocation by God, and once their training is complete they receive the formal title, "Minister of Religion, Commissioned."¹⁸ The teacher in this case was in fact "called" and therefore the Supreme Court considered her to be a minister for the purposes of this suit, which meant that her church was immune from a suit on her behalf claiming termination in violation of employment discrimination laws.¹⁹ In so holding, the Court recognized the importance the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission.

"When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The Church must be free to choose those who will guide on its way. The Religion Clauses guarantee religious organizations

¹⁵ *Watson v. Jones*, 80 U.S. 679 (1871).

¹⁶ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 U.S. 694 (2012).

¹⁷ *Id.* at 695.

¹⁸ *Id.*

¹⁹ *Id.* at 706

autonomy in matters of internal governance, including the selection of those who will minister the faith”²⁰

The court in *Hosanna-Tabor* acknowledged the interest of society in the enforcement of employment discrimination statutes but also maintained that the First Amendment protected the interests of the church in such cases.²¹

Out of this First Amendment protection comes the standard that grants a church the autonomy to make decisions regarding employees in a way that may not be allowed in other settings. This case perfectly demonstrated the willingness of courts in the United States to apply different standards to religious organizations, even in cases involving individual rights. The Court here upheld that constitutional protections afford a church the autonomy to make its own decisions regarding the selection of those who will teach and represent its faith, citing the longstanding ministerial exception that has been upheld by courts to allow churches the right to choose the representatives of their faith.²² The Free Exercise Clause protects a religious group’s right to shape its own faith and mission through appointments and the Establishment Clause prohibits government involvement in such ecclesiastical decisions.²³

In applying these principles to intellectual property disputes, the Supreme Court’s reasoning for following the church autonomy standard is crucial. In *Hosanna-Tabor* specifically, the Court repeatedly emphasized the ministerial exception and the requirement that religious groups be afforded the right to make their own decisions

²⁰ *Id.* at 710.

²¹ *Hosanna-Tabor*, 132 U.S. at 710 (2012)

²² *Id.* at 705.

²³ *Id.* at 706.

regarding the appointment of representatives.²⁴ This decision can be differentiated from one concerning government regulation of an outward physical act such as seen in *Smith*, because it instead “concerns government interference with an internal church dispute.”²⁵ The Court here admits that the employment discrimination law at issue in this case is a valid and neutral law of general applicability as was the prohibition on peyote use discussed by *Smith*, but still distinguishes the two scenarios because this once concerns an internal church dispute.²⁶

b. The “Neutral Principles” Standard

Jones v. Wolf, 443 U.S. 595 (1979), was the first case in which the United States Supreme Court deviated from the “church autonomy” standard for settling disputes between religious organizations. In *Jones v. Wolf* church property came under dispute when a local church split from a hierarchical church organization and representatives of that organization brought a class action in state court seeking declaratory and injunctive orders to establish exclusive possession of the church’s property for the larger organization.²⁷ The Supreme Court held that state courts alternatively could decide religious property disputes by applying “neutral principles of law.”²⁸ This means courts could apply the same legal

²⁴ *Id.* at 710.

²⁵ *Id.* at 706 (discussing *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990)).

²⁶ *Hosanna-Tabor*, 132 U.S. at 706 (2012).

²⁷ *Jones v. Wolf*, 443 U.S. 595 (1979).

²⁸ *Id.* at 602.

principles that apply to any dispute over real property between two private parties to equivalent ones between two religious groups, employing analysis “involving consideration of the deeds, state statutes governing the holding of church property, the local church's charter, and the general church's constitution.”²⁹ Under this approach, courts would not have to defer to the decision of the “highest church judicatory,” but could, so long as they did not have to entangle themselves in questions of religious doctrine, look at the deeds and other church documents bearing on questions of title and decide the case like any other.³⁰ Thus the approach was termed “neutral” because there was no special deference to the church's hierarchy and governing policies. The Court expressly held in *Jones v. Wolf* that the First Amendment did not mandate the different approach of “church autonomy” from *Watson v. Jones*.

“We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved.”³¹

Although that decision permitted the states to use the neutral principles approach, it also made clear that in applying that approach state courts must neither become entangled in religious matters nor violate the First Amendment right to free exercise of religion. It is important to note that this analysis is with respect to property disputes, and the Court again explicitly stated that deference to the church is not necessarily required in cases where religious doctrine or the tenets of the faith is not at issue. To resolve such disputes in the interest of its membership, religious organizations can simply employ “reversionary

²⁹ *Id.* at 596.

³⁰ *Jones v. Wolf*, 443 U.S. at 603 (1979).

³¹ *Id.* at 605.

clauses, trust provisions [and/or] specify what is to happen to church property [in certain scenarios].”³²

A more recent application of the neutral principles standard can be found in Episcopal Church cases from the Supreme Court of California. This decision of the court has proven to be extremely helpful in trademark and copyright cases concerning constitutional issues and religious groups because the disputes at issue were over church property. Due to doctrinal differences, a single parish of the Episcopal Church disaffiliated itself from the group and affiliated itself with another Church body, leaving the unresolved question of who owned the church building and property that was used by disaffiliated parish.³³ The court chose to follow the neutral principles approach from *Jones v. Wolf* and decide the case using the governing property law of the land and the terms and conditions regarding the property in question with no inquiry into religious doctrine and without deferring to the authoritative system of the church.³⁴ This approach is especially useful for property disputes, as it allows the court to remain objective and focus on the general concepts of law as opposed to religious questions. It is important to note for this discussion that a major problem can arise when a court must examine church documents in order to employ all of the facts and details regarding the property. In any situation that would require the court to resolve a religious controversy, the court must defer to the authoritative ecclesiastical body.³⁵ Nonetheless, the court here maintained that applying neutral principles would acceptably compensate for these issues.

³² *Id.* at 603.

³³ *In re Episcopal Church Cases*, 45 Cal. 4th 467, 476 (2009), as modified (Feb. 25, 2009).

³⁴ *Id.* at 481-482.

³⁵ *Jones v. Wolf*, 443 U.S. at 604.

III. Current Copyright and Trademark Law as applied to churches.

a. Intellectual Property Law as Applied to Religious Works

The doctrinal basis for copyright law as it applies to religious works is originality, copyrightability, the merger doctrine, substantial similarity, and fair use.³⁶ For a work to be protected under copyright law, it must be an original work of the author.³⁷ In addition, ideas and facts are not copyrightable but compilations and arrangements of facts and data are.³⁸ A work must qualify as either a literary work or an original arrangement or compilation to be granted protection.³⁹ The merger doctrine states that if there is only a limited or single number of ways to express an idea, it will not be considered copyrightable and others are free to copy and use it without restriction.⁴⁰ Furthermore, in cases where the text is not copied exactly, infringement can be shown if the works are “extrinsically”

³⁶ David A. Simon, *In Search of (Maintaining) the Truth: The Use of Copyright Law by Religious Organizations*, 16 Mich. Telecomm. Tech. L. Rev. 355 (2010).

³⁷ Simon, *In Search of the Truth*, 356.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

similar, the ideas are expressed in a substantially similar way.⁴¹ Moreover, the fair use doctrine allows others to use a work of authorship without permission and without consequences in a number of scenarios that are deemed to be appropriate by law.⁴² These five factors create obstacles for those trying to protect religious works as well as those seeking recourse for infringement.

b. Church Autonomy or Neutral Principles?

An analysis of how and why courts apply the two constitutional standards of treatment is essential to fully understanding the current issues presented by the invocation of copyright and trademark law by religious organizations. Out of numerous recent cases, the subsequent group best represents the entire body in a showing of why neutral principles should be the approach that governs the law in this area. The most important things to take away from this discussion are how and why courts in the United States come to decisions on the constitutionality of issues regarding religious organizations in intellectual property cases. The approach and discussion is significantly more noteworthy here than just the outcomes of the cases.

Religious Technology Center v. Arnaldo Pagliarina Lerma, et al., 908 F. Supp. 1353 (1995) is a copyright case concerning the publishing of the publications of the Scientology religion.⁴³ Religious Technology Center (RTC), the plaintiff in this case, argued that allowing others to publish and use the documents in question interferes with the free exercise of the

⁴¹ *Id.* at 357..

⁴² *Id.*

⁴³ *Religious Technology Center v. Arnaldo Pagliarina Lerma, et al.*, 908 F. Supp. 1353 (1995).

Scientology religion by essentially dictating how the Scientologists are to practice their religion.⁴⁴ RTC further states refusal to protect the documents by the court is tantamount to taking away the authority to decide how the Scientology religion is practiced.⁴⁵ According to the Plaintiff, “maintenance of the secrecy and confidentiality of the documents in question represents a fundamental and inviolate tenet of the Scientology religion. Withholding these documents from unprepared or uninitiated observers was of primary importance to founder L. Ron Hubbard and is a belief woven throughout his original writings.”⁴⁶

The issue for the Court to decide in this case was whether a secular organization could engage in criticism of Scientology using quotes from the religion’s fundamental documents that had been obtained lawfully and if using these quotes was an actionable violation of copyright law. The Court acknowledged that the use of the documents by the defendant constituted fair use as embodied by the copyright statute, “so the only issues in this case are constitutional ones.”⁴⁷ The court evaluated the issues presented under a neutral principles approach and accordingly rejected RTC’s arguments.⁴⁸ In the Court’s view, RTC was asking them to “permit their religious belief in the secrecy of the documents to “trump” significant conflicting constitutional rights . . . particularly equally valid First Amendment protections of freedom of the press. Furthermore, RTC asks that we allow the Free Exercise Clause to deflate the doctrine of fair use as embodied in the copyright statute.”⁴⁹ This view of the Court is a clear embodiment of the neutral principles approach to the treatment of religious organization in intellectual property disputes, as the Court has opted to allow the standard legal doctrines to apply as they would in

⁴⁴ *Id.*

⁴⁵ *Id.* at 1354.

⁴⁶ *Lerma*, 908 F. Supp. at 1356 (1995).

⁴⁷ *Id.*

⁴⁸ *Id.* at 1355.

⁴⁹ *Id.* at 1358.

any copyright case. The Court even provided an overarching rationale for their rejections of RTC's arguments, emphatically stating, "Were they arguing to a religious council placed within a theocratic government, RTC's arguments might prevail. But this Court is a secular branch of a secular democratic government. Our traditional separation of church from the state, combined with the heterogeneity of religious practices in this country compel us to reject the RTC's arguments."⁵⁰

Bridge Publications, Inc. v. Enid Vien, 827 F. Supp. 629 (1993) is a copyright and trade secret case in which the plaintiff refused to sell the defendant religious materials.⁵¹ The religion in this case is again Scientology; the defendant wanted to use and study the materials of the religion in conjunction with her own slightly different religion but the group would not acquiesce.⁵² Defendant's argument was that the materials were necessary for her to practice her religion; therefore, enforcing the copyright and trade secret protections restricts her free exercise of religion and unconstitutionally prefers the religion of Scientology to hers.⁵³

The Court in this case chose to follow the neutral principles approach, stating that preceding case law "supports the proposition that neutral application of copyright and trade secret law to religious works does not offend the constitution."⁵⁴ The Court here is simply reiterating that the religious nature of the works in this case does not prevent copyright or trade secret protection. Furthermore, enforcing these rights violates neither the establishment clause nor the free exercise clause of the constitution.

⁵⁰ *Lerma*, 908 F. Supp. at 1358 (1995).

⁵¹ *Id.* at 1359.

⁵² *Id.*

⁵³ *Bridge Publications, Inc. v. Enid Vien*, 827 F. Supp. 629 (1993)

⁵⁴ *Id.*

United Christian Scientists v. First Church of Christ, Scientist, et al., 829 F.3d 1152

(1987) is a copyright case that addressed the legality of law granting an extended copyright to the central theological text of the Christian Science faith.⁵⁵ The appellees, the plaintiffs in this case, sought an extended copyright on the all editions of the religions central text, which was published, copyrighted, and then repeated, updated or changed by the author. First Church argued that any of the text, regardless of edition or date is theirs to protect, seeking to prevent a rival faction from using and distributing the work.⁵⁶ The appellants, the defendants here, sought to disseminate an edition of the text of the faith, one they believe to be the final edition (the first full edition was copyrighted).⁵⁷ Their use of this text would be for worldwide distribution to spread their faith and teach it.⁵⁸

The Court in this case concluded that the law “offends fundamental principles of separation of church and state,” and as a result ruled that the law was unconstitutional.⁵⁹ The Lemon test was employed by the court in the challenge of the law, and it was decided that the law was passed without any “clearly secular” purposes, invalidating it under the Establishment Clause.⁶⁰ The court stated:

“Government may not place its official stamp of approval upon one particular kind of prayer or one particular form of religious services. Rather, as the Court has made plain, government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.”⁶¹

⁵⁵ *United Christian Scientists v. first Church of Christ, Scientist, et al.*, 829 F.3d 1152 (1987).

⁵⁶ *Bridge Publications*, 827 F. Supp. at 632 (1993).

⁵⁷ *Id.*

⁵⁸ *Id.* at 634.

⁵⁹ *United Christian Scientists v. first Church of Christ, Scientist, et al.*, 829 F.3d 1152 (1987).

⁶⁰ *Id.*

⁶¹ *Id.* at 1354.

While the discussion is not explicit in this case, it is apparent that the Court chose to employ a neutral principles approach rather than church autonomy. The decision was that the law granting the extended copyright was invalid, therefore leaving the protection of text to the normal laws governing such things. The copyright became subject to the ordinary legal protections of all copyrights. There is no autonomy given to the church or its leaders, no impetus placed on religious doctrine and no deference to the church hierarchy in deciding what to do with the text, the property in dispute.

Worldwide Church of God v. Philadelphia Church of God, Inc., 227 F.3d 1110 (2000). is another copyright case in which the defendant, Philadelphia Church of God, sought to defend its use of a copyrighted work by citing the fair use doctrine.⁶² Right from the start this defense led the Court to view the case through the lens of neutral principles. While the determination may not be explicitly stated, the entire first part of the discussion is full of doctrinal issues of copyright law and how they apply to the case at hand. The church autonomy standard is nowhere to be found in the opinion of the Court but rather there is a detailed examination of the fair use doctrine and its elements.⁶³ This discussion is followed by a Religious Freedom Restoration Act (RFRA) discussion concerning the substantial burden rule.⁶⁴ The constitutional issue here is essentially that RFRA requires the government “to justify any regulation imposing a substantial burden on the free exercise of religion by showing that the regulation satisfies strict scrutiny.”⁶⁵ The Court here decided that the burden to Philadelphia Church of God was not more than an inconvenience, again employing a neutral principles approach, giving deference to the relevant intellectual property laws rather than the church authorities.

⁶² *Worldwide Church of God v. Philadelphia Church of God, Inc.*, 227 F.3d 1110 (2000)

⁶³ *Id.* at 1111.

⁶⁴ *Id.* at 1114.

⁶⁵ *Id.*

“Having to ask for permission, and presumably to pay for the right to use an owner's copyrighted work may be an inconvenience, and perhaps costly, but it cannot be assumed to be as a matter of law a substantial burden on the exercise of religion. In the absence of evidence that PCG's needs could not reasonably be accommodated under the copyright laws, we decline to hold that enforcement of those laws in these circumstances constitutes an unreasonable burden.”⁶⁶

In holding that the use of the copyrighted work by the defendant constituted infringement, the Court dispelled the notion that religious groups could be entitled to any works they deemed necessary for their religious practice. This is a significant development, as it shows a willingness by the Court to more closely align the application of the law in religious cases to the law in cases not involving religious groups.

McCarthy vs. Fuller, 868 F. Supp. 2d 781, 783-84 (S.D. Ind. 2012) is a case in which the court applied the neutral principles approach, this time explicitly.⁶⁷ The Plaintiff in this case was arguing that the case involved controversies over religious doctrine or practice and therefore the Court may not decide the questions at issue without violating the First Amendment.⁶⁸ The Court maintained, however, that not affording religious organizations all of the protections that other organizations would get under current law would be a “serious problem” under the Free Exercise Clause.⁶⁹ This is an allusion to the neutral principles approach as the Court is dictating that the principles of civil law in all intellectual property cases cannot be ignored in religious ones. In rejecting the plaintiff's argument, the Court goes on to state that “there is no possibility that anything that happens in this case will interfere with the Church's religious endeavors. Indeed, this case does not implicate the property rights of the Church at all; the Church is not a party to this suit, and thus will not be bound by any decision that may be made here with regard to the

⁶⁶ *Id.*

⁶⁷ *McCarthy v. Fuller*, 868 F. Supp. 2d 781, 783-84 (S.D. Ind. 2012)

⁶⁸ *Id.* at 782.

⁶⁹ *Id.* at 783-84

ownership of the Items.”⁷⁰ The difference in this case, is that the questions at issue are not actually ecclesiastical, but are in fact “questions that may be decided by application of neutral principles of contract and property law.”⁷¹

“The application of these neutral principles of law to the issues in this case will not violate the First Amendment, as there is no indication that it will be necessary to resolve any “religious controversy” in order to determine the import of Sister Ephrem's vow of poverty on her ability to own or possess the Items. The Plaintiffs have not demonstrated that a stay in this case pending a determination by the Congregation is either constitutionally required or otherwise in the interests of justice.”⁷²

IV. Critique – Neutral Principles should apply; which rational is the primary one?

a. Why should neutral principles apply?

The “Neutral Principles” approach to dealing with intellectual property disputes involving religious organizations should be the most employed approach because it best maintains the rights and interests of all members of society without compromising constitutional rights. Neutral principles here means that courts will apply the neutral principles of intellectual property law as codified without favoring any religious organization. The main fear in these situations is that violations of the constitution will occur, either that the free exercise of religion will be inhibited or the equal protection clause will be marginalized. These fears are warranted, as religious organizations in the United States often to require a particular kind of legal protection, but the leading cases in this area show that neutral principles approach leads to justice and has proven to yield the most equitable outcomes in resounding fashion. The church autonomy standard is highly

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *McCarthy*, 868 F. Supp. 2d at 784 (2012).

deferential towards churches, allowing church authority to provide guidance when there are disputes over matters within the church. This approach is much more likely to yield an unjust outcome than the neutral principles approach, as it ultimately allows the highest levels of the church too much power in matters of governance. For intellectual property law disputes specifically, justice is best served when a higher value is placed upon the basic principles from which the law was created. A fair result is much more likely to come out of the laws of the land than the rules of the church.

b. Which rationale for using IP law is the real one?

Religious organizations outwardly use copyright and trademark law for several reasons: financial gain, to protect their identity, to keep their doctrines secret, to protect their doctrines, to censor others' use of their work, and to protect the purity of their religious doctrine as embodied in their textual works. Most of these reasons are roundabout ways of achieving the same goal: advancing the organization's position (whether financial or reputational). Using copyright and trademark law for financial benefit is one of the most honest and simple reasons there can be. This most closely follows the use of copyright and trademark law in out settings as well. Usually, money is the prevailing theme of these litigations in one way or another. The other most honest justification for the use of copyright and trademark law by religious organizations is censorship. When a religious organization censors the use of their work by others, they are predominantly trying to avoid negative publicity, quell opposition and dissent, and eliminate competition. A perfect example of such a practice can be found in the Scientology

religion. Through various litigations the religion of Scientology has repeatedly attempted to censor the use of their work by others, even in situations in which use would be allowed under the applicable intellectual property law. The religion routinely cites justifications such as the privacy and secrecy of the religion being a tenet of the faith, or that the works can only be accessed by certain individuals who are ready and worthy of the teachings. These efforts are nothing more than masked attempts to propel Scientology into greater prominence and opulence, however. Competition is their primary motivation, and they utilize copyright and trademark law much like others do in non-religious scenarios: to receive compensation for the use of their works and to advance their position amongst other religious groups in society.

V. Conclusion

Intellectual Property disputes involving religious organizations are incredibly complicated and often delicate to decide because of the constitutional protections placed on religious freedom and restrictions on government involvement with religion. Moreover, religious organizations in the United States often seek to use the protections they are afforded to further their own interests, which surely do not align with the intentions of the drafters of these clauses. For this reason, Courts have adopted the Neutral Principles approach to dealing with such cases as opposed to the church autonomy standard, which defers authority to the church itself.

One of the main reasons the neutral principles approach is so helpful in deciding intellectual property disputes involving religious organizations is because the individuals

and groups in such cases often lie or twist their explanations for why their intellectual property needs protection. There is a tendency among such parties to appeal to the sensitive nature of religion, knowing that it is very difficult for courts to reconcile what is valuable religious practice with what is not. A court cannot just ignore the tenets of a faith and say that some practices or beliefs do not hold weight. This is why these cases must be decided through the lens of well-established legal principles. The principles of property law when applied to religious disputes tend to unequivocally produce the correct results. The reason for this is because religious groups are driven by the same motivations as most others who use intellectual property law: money and their market share. The laws of intellectual property were written and the leading case law decided with these motivations in mind, therefore the basic doctrines that apply to all areas work for religious cases as well.

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Secondary

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