

## Transcript – Episode 84 – [Intellectual Property and the Piracy Police with Matthew Goings](#)

**Dolph Goldenburg:** Welcome to the Successful Nonprofits™ Podcast. I'm your host Dolph Goldenburg, and I am looking forward to our conversation with Attorney Matthew Goings about your organization's intellectual property. We will also talk about protecting your organization from the piracy police when you use someone else's intellectual property. I first met Matthew while working on a project for Georgia Lawyers for the Arts. He's an artist himself - having played in the marching band at the University of Georgia - and he is also a lawyer who graduated from my Alma Mater Georgia State University. Go Panthers. We are the bad news bears of college football.

While we were working on this project for GLA, I asked Matthew what type of law he practiced, and he shared with me that he often works with startup for-profit organizations and has a specialty in corporate and intellectual property law. Of course, when you got a podcast, you're always on the lookout for interesting guests to be on the podcast, and I had a strong sense that this charismatic young attorney would be a great guest, and I refer to him as a charismatic young attorney because this guy has some hustle.

He just graduated from law school about three years ago and is already the Director of Operations for the Georgia Lawyers for the Arts and has started his own boutique firm serving technology startups, small businesses and creative individuals. Intellectual property is such an important topic because all nonprofits have intellectual property of some sort. Perhaps, it's a curriculum they've developed. Maybe it's their logo or their tagline. Perhaps, it's the photographs and text on their website, but anything that a nonprofit creates is intellectual property that it may want to fully protect. Additionally, all nonprofits probably also use the intellectual property of others, and they're likely using people's property in the same categories we just mentioned, such as photos on a website, a curriculum, that kind of thing. In my experience, however, most nonprofits often do not fully understand how to protect their intellectual property or how to protect themselves from liability when using other people's intellectual property.

Now, whenever we talk about tax or legal matters, I always say, and I always remind listeners, of the disclaimer that we put at the end of every episode. I am not an attorney, and while Matthew is attorney, neither he nor I are providing legal advice. Today, we are instead talking about intellectual property issues from a very generic perspective. Every nonprofit situation is different, and every creator situation is different, so if this show makes you think that you need to either protect your intellectual property or change the way you're using someone else's intellectual property, I would encourage you to find an attorney that can help guide your organization in its specific situation. Now, join me in welcoming Matthew Goings to the podcast.

Hey, welcome to the podcast, Matthew.

**Matthew Goings:** Hey, it's great to be here with you.

**Dolph Goldenburg:** Let's just start with the basics. What is intellectual property?

**Matthew Goings:** I think it's really important to start very basic like that because intellectual property encompasses a number of different types of intellectual property. The best way to explain this broad concept is to start thinking about what real property is. When you're probably listening to this podcast on your phone or a tablet or maybe on your computer, all of these are examples of real property, including the clothes you're wearing, the apartment or condo or house that you're living in. These are all real property, and we call them real property because it's tangible, and you can touch it. What distinguishes intellectual property from real property is that all intellectual property is intangible, things consisting of ideas, something that's artistic or a procedure or some concept that you've come up with. You can't touch these things until you put them into a tangible form.

If you've got a new idea for a better phone, once you've created the phone, it's something real that that concept is still intangible. So, we refer to intellectual property as a creation of the mind because it's something that it comes from everyone's mind. What's interesting about intellectual property or IP is that everyone in the world owns some form of IP. The most common [inaudible] myth is that just going to be a copyright because a lot of people think that you have to register something in order to gain that protection, but in fact, as soon as you create a drawing, if you've ever taken a picture or selfies or if you've ever written a paper for a class, as soon as you've completed that work, you actually own the intellectual property for that thing. So, you own the copyright in that thing.

**Dolph Goldenburg:** Let's take this from the perspective of a nonprofit. What are some of the types of intellectual property that nonprofits may have or own?

**Matthew Goings:** There are four categories of intellectual property, and those are **copyrights** which cover creative work. **Trademarks** can cover slogans or taglines or the logo for a company or the company name. That can even extend to shapes and colors, depending on how distinctive they are. While copyrights protect something creative, a trademark, the best way to think about, is protecting the brand. So, you see the Coca Cola and Coca Cola script, or even if you see the silhouette of their bottle, you immediately think Coca Cola, and that's what a trademark is protecting: a brand. The other two types of intellectual property are **patents** and **trade secrets**, and those protect procedures or methods or some type of new manufacturer. Anytime you hear or read stories about the companies owning patents and suing each other over patent infringement, those are covering new inventions.

**Dolph Goldenburg:** Would it be safe to presume that most nonprofits probably don't have patents and probably don't have trade secrets?

**Matthew Goings:** That is very safe to presume that.

**Dolph Goldenburg:** Let's take those two off the table for our conversation, and let's have a conversation about trademarks and copyrights for nonprofits.

**Matthew Goings:** I totally agree with you on that. I can't speak for all nonprofits, but the majority of them will not be dealing with patents or trade secrets.

**Dolph Goldenburg:** Emory University here in Atlanta probably holds some patents to their med school and research and that kind of thing. But for the most part, I think it would be very unusual for your soup kitchen to have a patent or trade secrets.

**Matthew Goings:** Definitely true. Your universities... you may have patents in their education area, but they will also exploit those two for income to fund that research or to fund the academy, but the majority of the time nonprofits are not going to encounter a trade secret or a patent.

**Dolph Goldenburg:** Let's instead focus on the copyright and trademark. For nonprofits, when might a nonprofit want to actually register a copyright? They have it as soon as they produce it, but when might they want to register it?

**Matthew Goings:** Registration affords the copyright owner a few more benefits than not having it registered. Registration is required for filing a lawsuit. Registration also allows you to get statutory damages for an infringement rather than actual damages. When thinking about nonprofits, a nonprofit would want to consider registering a work if they anticipate using this maybe an advertisement or for use in such a way that they are afraid of another person picking up that. Maybe it's a picture or a blog post or even a maybe a free eBook that they put out. If they are afraid of somebody else picking that up and exploiting it as their own, in that situation, you would definitely want to register the work. Other than that, it's really going to be up to the discretion of the nonprofit. If they have an attorney on retainer, it may be good to speak with them as they produce this content and ask if it is worth registering that. If a nonprofit is putting out a weekly blog, it may not be fiscally wise or are even worth the time to register each of those blog posts in the fact that you see a lot of recycled content online. But what you don't usually see if someone copying a blog post verbatim. You might see somebody posted very similar blog post but usually, not verbatim.

**Dolph Goldenburg:** What is the actual registration cost to register a copyright?

**Matthew Goings:** There are two. The first cost is for registering singular works. We can use a photograph as an example. If you're registering one photograph or any other type of work, that is \$35 for that registration or if you registered groups of works, which there are other kinds of rules about what you can and cannot register as a group of works. Registering groups of works costs \$55. So, if you're thinking about putting out a weekly blog posts, you can see how easily that \$35 racks up to a larger number every week.

**Dolph Goldenburg:** Even if you've got like pro bono counsel, you're still spending over \$1,500 a year just to register something that probably no one's going to steal anyway.

**Matthew Goings:** Correct. Even with all of these blogs, if you're not registered, remember that you still have that copyright protection. In order to put everyone else on notice you can do, everyone's probably seen the little circles see inside of a book cover or the notice, so that acts as a notice. You can put that in, say copyright place the year and the name of the nonprofit, and that serves as a copyright notice to somebody else that it is copyrighted material and that they should not be using it without your permission.

**Dolph Goldenburg:** Registered copyright. Is that the '®'?

**Matthew Goings:** ® is something that is used for trademarks. © is used for copyrights, whether it's registered or not.

**Dolph Goldenburg:** Is there any additional marketing for a registered copyright?

**Matthew Goings:** There is not. So, everything is just that ©. If it's registered, you may put in there that it was registered as well; that registration is really just a formal process and can act as a notice in and of itself. So, if you have a work registered, even if there's no copyright notice on the work, you see [inaudible] courts will assume that they should have known it was a copyrighted work just from the fact that it's been registered.

**Dolph Goldenburg:** Let's talk a little bit about trademarks. Years ago, when I was running an organization in Philadelphia, we decided to trademark the logo for one of our programs. We call it a [inaudible]. And it was a really cool logo. We thought maybe we might want to merchandise it or whatever, so we decided to trademark it. It was an educational process for me. One of the things that I learned is that, if you get a trademark and something that's called a class, that does not mean you have the exclusive right to use it in absolutely everything. Can you talk about classes and trademarks and what that means?

**Matthew Goings:** So, you're correct there that most people probably don't know that. You think that you file a trademark and that you can just use it everywhere, and if you see somebody else using it, well they're infringing. There are actually over 40 different classes, and those can be divided into two major groups: goods and the others are services. There is a difference between trademarks and service marks, but it's really just a name, and everyone just used the term uses the term trademarks. So, each of these classes covered different things. Even within clothing apparel, there are different classes for hats and accessories versus other types of clothing said such as t-shirts and other types of shirts and pants, shoes. Then you may have another class for a paper good. You're set or you're selling a mouse pad with the logo on it.

That's going to be a separate class of goods. Software as a separate class of goods. So, they're pretty broad categories. With your services, those can be anything from providing a place to download games. If you're a company that doesn't produce video games, but you provide a platform like Steam to download video games from various producers, you're not going to register it as a class of goods for software. You will be providing a service; you're providing a platform to do those types of things. So with a nonprofit, depending on what you're using that

mark on, you may be registering for multiple classes such as providing services. For example, GLA would register as a service for providing legal services, but we also have some t-shirts so we would have to register separately for the classes of goods for those t-shirts or other types of products that may have our logos or names on it.

**Dolph Goldenburg:** The other big surprise to me is you pay for every class. It's not like you pay one fee, and you choose what classes you want. That's where the sticker shock came in, where you not the lawyers would come back and say, "Do you really want to protect it for both t-shirts and caps because that's another class. Here's what it's going to cost you."

**Matthew Goings:** Definitely. So, for the current USPTO fees for trademark registration - and these do change periodically - the minimum amount you're going to pay is \$225 per class that you register, and that's their fastest service; they call the [T-plus], and to get that lower rate you have to be able to provide all of the information for the application immediately. The other types of registrations I believe take it up to \$373/\$375 per class. Those allow you a little bit more time to get them all the information, but the process does take longer, and it costs more. Another thing to think about when you mentioned if you want it on t-shirts and ball caps, is that the mark or the name or the logo has to be used on each of those things. If you're trying to register it for t-shirts and ball caps, but you're not actually selling ball caps or using it on that, then the office is not going to let you register for that class, and you'll have wasted that money.

**Dolph Goldenburg:** Not only that, but even if you do a limited run just for that purpose in a certain number of years, they want proof that you're still using it in that manner, right?

**Matthew Goings:** Exactly. In order to get the extended protection, you have to have it in continual use, whereas we mentioned with copyrights, you get the protection as soon as it's created. You get it just because you created it in order to have trademark protection. Those rights come from you, so you can't just register all the marks that you think you're ever going to use and have protection on them. It actually has to be a nuance, and you'd have to show that use to the office, or they will not let the registration go through

**Dolph Goldenburg:** For organizations that are you going to a place like Pro Bono Partnership Atlanta or Probation Pro Bono Partnership in New York, they might get an attorney that helps them with this for free, but if an organization is also paying their attorney - and I know there's a range in different attorneys that charge different amounts - how much did it organization anticipate paying to register a trademark?

**Matthew Goings:** If they're not receiving any sort of discount from the attorneys because it's their nonprofit or through an organization like that, you can probably anticipate paying anywhere from \$750 to \$1,500 for a registration.

**Dolph Goldenburg:** Is that per class or is that kind of everything?

**Matthew Goings:** It depends on the attorney. If you're registering multiple classes, you might get a discount on some of the other additional fees, but the reason this is, it may seem a little steep, but there's a reason it is. It's a little difficult filling out those forms, but there's more to it than just filling out the forms. The attorneys are going to be doing research beforehand to make sure that that trademark is available for use. They may hire a trademark search service, or they may conduct the searches themselves looking for anyone that is possible using the same mark or something that is confusingly similar. *Confusingly similar* is the bar that we have to look at for whether you're able to use that trademark or not.

Is it similar in sight? Is it spelled almost the same? Does this sound similar? Even if it's spelled differently, attorneys are going to be looking at that, and they're going to come back with to you with an opinion. If you're hiring just some online platforms that say they'll just file the application for you, and it's a really low fee that may be tempting to you, they have the low fee for a reason, because they're likely not going to be doing that legwork of searching for similar marks, giving you that opinion. So, a lot of times, attorneys will break down those fees.

**Dolph Goldenburg:** Yes. If its \$225 per class. Let's say you've got four common to make the math simple, let's say you've got four classes that you want to protect for the same, the same mark; now, you're talking to \$900 there, and then you may be paying an attorney as well. At what point is it worth in organizations, time and money to pursue a trademark?

**Matthew Goings:** Similar to copyrights, registration is not required for protection. Registration of the trademark is not required for protection, but it does offer other benefits. I mentioned that trademark rights arise out of usage. You can be using a name without having registered it and have protection. The only drawback to that is you're limited in that protection and geographic scope only to the places where you're actually using it in the market. So, Georgia Lawyers for the Arts is only using it here in Georgia, and because we're only using it within Georgia, we're not doing business across state lines. We can't register it federally.

**Dolph Goldenburg:** I could go over to Alabama and register Georgia Lawyers for the Arts in Alabama?

**Matthew Goings:** Technically, yes.

**Dolph Goldenburg:** Hot Damn. All right. Sorry... That's really cool.

**Matthew Goings:** Let's look at another nonprofit that might serve multiple states because there is that what we call interstate commerce. They are doing business across state lines. They can register federally. So, you started up your nonprofit, and you're serving Georgia and Alabama. As long as you're using the name in both places. You have trademark protection in Georgia. If you don't see yourself expanding, it may not be worth it to you fiscally to register at federally. You could register it on the state level and have protection within Georgia and within Alabama. What registration federally with USPTO would give you is rights to that trademark carte blanche across the entire United States, whether you actually did business there or not.

**Dolph Goldenburg:** I guess maybe from a charity standpoint, that might enable them to prevent a startup charity from taking a confusingly similar name and fundraising using that name.

**Matthew Goings:** Exactly. The reason that we have trademarks is not only to protect the business and the brand, but also to protect consumers. If someone else picks up that name and starts a fundraiser in another state, maybe they're doing it for a scam, but this person recognizes that name. We know that they are a legitimate group; we see that name running this other charity event, the consumers may believe that it is an official even when it actuality is not. That's another reason to have this protection. It prevents other people from using it. It protects you and your brand, but it also protects consumers from being tricked or purchasing something that they thought was one thing, but it's actually another.

**Dolph Goldenburg:** I know every organization is different and every situation is different, but do you think that most nonprofits should consider trademarking their name to protect it?

**Matthew Goings:** I would have to give you the quintessential attorney answer there and that it depends. It's really going to be based on a case-by-case basis in my opinion. If you're a small nonprofit operating within a limited geographic area, it's probably not going to be worth it to register it at the federal level. Again, there is state registration available, and just like federal registration protects you federally across the entire United States, state registration is going to protect you across that entire state, whether you're only doing business in Atlanta and nowhere else. If you didn't have a registration, it's only going to be protected at Atlanta. If you do have that state registration, it's going to be protected across the entire state.

**Dolph Goldenburg:** If you're St. Thomas Moore Food Pantry, maybe there's not really a point to trademark that because there's probably another St. Thomas Moore food pantry somewhere else in your state.

**Matthew Goings:** There could be, and it depends if you want to be the only one in the state. If you feel like someone else using that name elsewhere in the state is, going to hurt your reputation, then definitely registered at the state level because state level registration is very cheap. In Georgia, it's \$15 to register. All that's required is you fill out a one-page form and send it to the Secretary of State saying that you have a good faith belief that you are the only one using that name and the only one entitled to use that name, and they will give you a state level trademark registration.

**Dolph Goldenburg:** Wow, that's pretty cool. Okay. It sounds like most people could probably do that pro se, fill it out on their own.

**Matthew Goings:** Definitely. I would still recommend doing a search. You may not need to hire an attorney for that, but you should at least google the name, see if anyone else comes up. As far as names, just because someone else is using the name doesn't necessarily mean you can't. It's gonna depend on what area of commerce they're using the name.

There's one that's registered federally. Everyone knows the car brand, Lexus, which is spelled L e x u s. There is less well known to the general public is something called Lexus nexus or lexis, and it is a legal search engine that attorneys used to look at case law and statutes. It is spelled L e x i s. There was actually a lawsuit over that name, but because they operate in such distinct markets, a car versus a legal search engine, they're both allowed to use that name.

**Dolph Goldenburg:** So, it sounds like one said, "This is confusingly similar, but your product areas are so dissimilar that we don't care."

**Matthew Goings:** That's basically what the decision came down to, not only that, but the fact that it's very unlikely that one is going to move into the market of the other. Those are reasons why it's good to have an attorney at least speak to them about that to get an opinion on whether you should move forward with that name or that registration or not. When you're looking at trademarks, come up with a list of three to five. You have your top choice, but have some secondary choices, and don't spend any money branding yourself or were making merchandise. You're going to waste that money if you suddenly discover you can't use that primary name that you wanted.

**Dolph Goldenburg:** Can I make a nonlegal suggestion about that as well?

**Matthew Goings:** Most definitely.

**Dolph Goldenburg:** I would absolutely suggest that when you come up with that list of three to five names, see whether or not the URL is available because you probably want the URL as well. If it's not available, even if it's being used by an entity not providing the kind of service that you know that you will be providing, you probably don't want that name.

**Matthew Goings:** Right. Then you're going to get people confused on your website because what a lot of people do nowadays is they just hear the name of your company, and they just put the name.com because that's what commonly happens. Then you run into situations where that's not available, and you get some website that you were not trying to go to.

**Dolph Goldenburg:** And it's interesting you say that. So you know, my consulting practice is Goldenburg Group, and my URL is [www.Goldenburgggroup.com](http://www.Goldenburgggroup.com), and there are two [www.Goldenberggroup.com](http://www.Goldenberggroup.com). Mine is spelled B U R G; the other one is spelled B E R G. Mine does nonprofit consulting; the other one does, big time property development including casinos. I get emails for them all the time because they'll put in, you know, [whateverBob@Goldenburgggroup.com](mailto:whateverBob@Goldenburgggroup.com). It comes to me, and I'm like, "These people live such a better life than I do." Matthew like they get picked up at the airport, and limos will then drive them to Trenton and away for three hours and then drive them JFK so they can fly to London. I'm like, what the hell? I started the wrong Goldenburg Group.

**Matthew Goings:** Exactly. But I absolutely hear you that you've also got to look out and make sure that it's not too similar to something else.

**Dolph Goldenburg:** Right? And going off of the B E R G vs. the B U R G, if both were available, pick up both because it can cost you maybe \$10 to purchase the domain name. Even if it's spelled wrong, you'd get a lot of companies that will pick up the misspellings and just have the redirect to the real site. If you can pick up that extra domain, do it, and it'll drive that traffic to you that may have been directed elsewhere, and they might've given up.

Hey Matthew, we're going to take a short break, and when we come back, we're going to discuss how organizations can protect themselves when using intellectual property of others.

The Successful Nonprofits™ Podcast is produced as part of our mission to provide board development, strategic planning, and interim leadership to help nonprofits thrive in a competitive environment.

If you have questions about intellectual property, I am not the right person to ask. In fact, you should probably set up an appointment with Matthew, and his contact information will be in our show notes, but if you have questions about board development, strategic planning, or other nonprofit issues, send them my way. It is not at all uncommon for me to get questions, and I'm happy to take 15 minutes out and respond by email. Now, fair warning. Sometimes, when I get questions, I will use that question as a fodder for a bonus break or a blog post. Don't worry. I will keep your name anonymous, so I won't say the name of your city, and I won't say your name unless you have just such an amazingly awesome, incredible name like Matthew Going, which is a great name. If he would email me an anonymous question, I would probably still use his name.

You can get my contact information at [www.successfulnonprofits.com](http://www.successfulnonprofits.com).

Hey, welcome back, Matthew. As promised, we are now going to switch gears. We're going to move away from talking about how nonprofits can protect their own intellectual property and talk about the risks of using intellectual property without authorization as well as how to mitigate the risk of using other organizations and creators' intellectual property. What are the risks of going online, Googling an image and just right clicking, saving it and then using it on your website?

**Matthew Goings:** The best-case scenario is that nothing happens, and you're Scott free. The worst-case scenario is that you're sued over the use of that image. Kind of in the middle there is the actual owner of the image or the content sending a what's called a *Digital Millennium Copyright Act* claim or DMCA claim and just having the content removed. At worst, you get sued over not having permission to use that, and just googling images and without a filter is going to get you a lot of things that are not licensed for reuse.

**Dolph Goldenburg:** Alright. If you're lucky, nothing happens to you. While we're talking about the cease and desist, I just want to point out that on your blog and your website, you had the most awesome post where you link to a post, I think from Netflix. It was a great C&D letter where essentially the lawyer said, "Don't make us call your mother."

**Matthew Goings:** Yeah. Those, those are amusing.

**Dolph Goldenburg:** It's probably a good thing. I'm not a lawyer, but had I been a lawyer, I think those are the kinds of C&D letters I would write all the time.

**Matthew Goings:** There was another great one. I wish I had shared this story, but I think a lot of people have seen the recent Budweiser commercials with what everyone's saying, "Dilly dilly," and have an old renaissance feel to it, but actually found out there was a smaller beer brewing company that used *Dilly Dilly Beer* or something similar for one of the short lines, and Budweiser took a very creative route and sent them a cease and desist letter for that trademark use. They didn't just send a regular letter. They had a guy dressed in renaissance clothing. Walk in with a scroll, open it and act as a town crier, reading out the cease and desist letter to them, very creative, and actually let them run out a limited line of that beer and just said, "Don't use it again." So, you have some players that are good sports about it and very creative.

**Dolph Goldenburg:** Trademarking something like "Dilly Dilly" would be kind of like the University of Georgia trying to trademark barking like a dog to go along with go dog's sick and woof woof. Come on, you're going to trademark wolf wolf?

**Matthew Goings:** That might be harder to trademark, but as long as it's being used as a source identifier, it's perfectly okay to register that. So, with Budweiser, you hear "Dilly Dilly," you think of Budweiser. They're going to allow that registration.

**Dolph Goldenburg:** Is that editorial use or what is that called?

**Matthew Goings:** Yeah, that would be in trademarks *nominative fair use*. If you're an amateur filmmaker, and you're shooting a scene out on the street somewhere and a street sign happens to be in the shot, you're not going to really get hit with a trademark infringement for that. As long as you're not setting up the shot to make it look like the company is sponsoring you in any way... using it just to discuss it as an example would be okay.

**Dolph Goldenburg:** They're not going to send me a C&D letter to have a town crier walk into my Home Office and do that? That's good to know.

When using Google Images, I imagine getting an image is probably not the best thing to do. Can we talk about some of the resources that are out there that essentially have that allows the digital image to be used in any commercial setting or another setting?

**Matthew Goings:** Definitely. I just did a simple google search for free image sites, and you know, one of the first things that comes up is a blog post about 20 months, 21 amazing sites with breathtaking free stock photos, and it'll bring up several direct links to other websites. When you first go to these, make sure you're looking at what those usage rights are because there are some stock photo websites where you still have to pay for that, or they'll allow you to use it in a noncommercial setting.

I think I need to clarify what *commercial use* means. A commercial use is using the image in a way that makes it appear as it is promoting a certain product. For example, Virgin Wireless or another company was sued in Australia because they used an image that a girl had posted on her social media in their ad and made it appear that she was promoting the business; she had not given that permission. That's a commercial use. Even if you're not using it commercially, you are still going to want to check those usage rights. Make sure if you're using commercially, that it's labeled for commercial use or labeled just for reuse. Some require *attributions*. Others let you just use it without attribution, but the sites will have those usage terms available for you to read.

**Dolph Goldenburg:** Tell me if this is an urban myth or not.

I've also heard there are some sites that will say you can use this image, commercial, whatever, but then they will also say however you must give attribution to the creator, and then there are these Internet trolls that apparently live under the Google bridge, and they wait for companies and nonprofits to put the image online without attribution, and then they strike. Now, is that an urban myth or is that really happened?

**Matthew Goings:** It probably is really happening. It does not surprise me. Honestly, I haven't personally seen it happen, but there are some people that live for that, and that's how they make their money.

**Dolph Goldenburg:** Do you have a favorite website? Because I know you've got your own blog and your own website, and like me, you're a small business. You don't want to spend a lot for that image. Do you have a favorite website when you want a commercial license that you do not have to pay for? What website do you like to go to?

**Matthew Goings:** There's several that I use, and most of them will allow you to download the images without an account, but require you to do the recapture stuff. If you don't want to have to do that every time you can make a free account, but I personally have used a [Pixabay](#) and I've also used [Pexels](#) and sites like this. They do have a more limited selection so you may not get the exact image you want with it, but there are many high-quality images available, and if it's not available at one, you may be able to find it on another.

**Dolph Goldenburg:** Also, I love Pixabay. I love Pexels. I do register for the account, and if I like the photo, I will download it and that way if anyone ever reaches out to me and says, "Hey, you're using my image." You know, I've got some evidence that I downloaded it from that site. Do you know what I'm saying?

**Matthew Goings:** Yeah, I do. That's good. I'm going to start doing that now.

**Dolph Goldenburg:** I don't normally like to register for things, but I'm just so worried about that kind of thing where I will need to trail somewhere that I downloaded it. It's a cc zero license or whatever. You might be able to explain that better than me.

**Matthew Goings:** CC refers to creative commons, and I haven't reviewed their terms exactly, but I'm assuming the, zero or the numbers refer to the levels of licensing, and then my assumption would be that the zero is, is just labeled for Reuse without attribution.

**Dolph Goldenburg:** That's always been my understanding. **CC zero** means like there are zero restrictions. The only restriction is if there's an individual in it, you cannot use that individual's image in a way that would be humiliating to them. You could not be this person who's a pedophile when you don't know them, and you just got there.

**Matthew Goings:** To add to that, you may not want to use those images in a commercial manner because while the image itself, the photographer/the owner of it might have labeled it for reuse, the subject of the photo may not have given permission for the image for their likeness to be used in a commercial manner.

**Dolph Goldenburg:** I did not know that, Matthew. Thank you. You just helped me protect myself. Thank you.

**Matthew Goings:** So yeah, again, remember commercial use means that it appears that they're endorsing a product. If they're identifiable in this photo, it's best to err on the side of not using it for a commercial purpose such as promoting your own product. If they're not identifiable, you have a better argument that it's okay.

**Dolph Goldenburg:** Since the CC zero commercial license also allows you to edit and modify the photo you know or replace their face with the kitten's face - this is my marketing advice today, Matthew, great marketing advice - put kittens heads on people, and your nonprofit will take off. It will soar to the sky.

There's one other website that I wanted to mention. I don't know if you've used it at all and that's [www.unsplash.com](http://www.unsplash.com).

**Matthew Goings:** I have not used it, but it's right here under PEXELS on my google search.

**Dolph Goldenburg:** Ah, so what I love about Unsplash is they have stunningly beautiful photographs, so I would just suggest that folks check that out as well.

**Matthew Goings:** Yeah, it will be checking that out right after this.

**Dolph Goldenburg:** Like if you need just amazingly beautiful photographs, Unsplash is the place to go. Now, can we also talk a little bit about ways to get cheap logos? Because my assumption is if you pay a creator for a logo, then you probably own the license on that. Is that accurate?

**Matthew Goings:** You're going to get a lawyer answer again; it depends. Before we go to that, I just want to jump back to the licensing of images. If you decide not to use one of these sites or you can't find the image that you want on that site and you insist on doing a google search, do a

google image search, you can click on the tools button underneath the search bar, and there is a something called usage rights on there, and you can restrict it for labeled for reuse with modification labeled, for reuse or for noncommercial reuse. If you insist on using Google image search, make sure you restrict those usage rights to something that you're able to use without a license.

**Dolph Goldenburg:** Right. Also, you can always just be fair.

There was a photo that I really wanted to use them in my newsletter, and I kind of stumbled across it. It was a photographer's blog. I used the 'Contact Us' link, and I said, "Hey, I'd love to use this photo on my newsletter. Here's the distribution. I would like to pay you \$25 for the license to use it. Can I do that?" First, they were happy that anyone would actually reach out to them and say, "Hey, can I take this off your website and pay you for it?" But you know, it was not a hot and heavy negotiation. They simply told me to write something up, send it to them and send them the money.

**Matthew Goings:** Right. Some even allow you to do it as long as they get attribution and a link back to photographer or wedding. Let us let one of my friends who's a musician that played our wedding; she allowed him to use her image with a link back to our website.

**Dolph Goldenburg:** Give me that Laura Lee response on the license on your logo.

**Matthew Goings:** It depends. All of these copyrighted images have different licensing usage based on the terms that they put up there. When you download that image and use it, you're actually entering into a contract with them even though you didn't sign anything; by using the image you're agreeing to those terms, you're getting a trademark or a logo or something made for you by someone else. There may be different licensing rights associated with that. They may have just given you a license to use it or they may assign the copyright to you or they may not care unless you ask. That's why it depends on certain websites may have terms or the terms may differ between whichever designer you're working with.

**Dolph Goldenburg:** Read the terms you're saying, yes?

**Matthew Goings:** Exactly, and if there are no terms, ask.

**Dolph Goldenburg:** Now for the practical.

I am looking at your website right now, [www.goingslegal.com](http://www.goingslegal.com), and you have got a logo. It's a shield with a 'G'. By the way, you know that 'G' is probably the best letter in the alphabet. I'm Goldenburg. It is without a doubt, the best letter in the alphabet. How did you get that logo?

**Matthew Goings:** I actually have a friend who is a graphic designer, and I spoke with him and he agreed to design that for me. I got a little bit of a friend discount, but I still paid a few hundred

dollars for that design. I did a lot of research before that to see if that was a good price and it seems like that that really is a good range for a quality design from somebody.

**Dolph Goldenburg:** I assume you drew up some kind of a contract or did you just accept your friends contract that said, you know, they own your soul?

**Matthew Goings:** Well, he did not have a contract. I think we just did an email exchange of what I would pay him, whatnot. We didn't sign a formal agreement, but having a written exchange where we agreed to terms was sufficient to have a contract between us. If I decided to stiff him, he could have sued me and won.

**Dolph Goldenburg:** So, that's certainly one way to go about doing it if a nonprofit wants a logo,

I use 99 designs for the Successful Nonprofits™ logo, and I used Logo My Way for the Goldenburg Group logo. I did some word mark searches I think at [www.uspto.gov](http://www.uspto.gov) when I did the Logo my Way for the Goldenberg Group, and the reason I did was there were a number of designs that were like this Double-G and where it was confusingly similar to a fashion line.

Do I really wanted to get a cease and desist letter from a fashion line because they have a lot more money to sue me than I do to defend myself? I essentially, you know, went back to all those designers and I'm like, "Yes. All right, this one makes me nervous. There's no way I wanted to design it. What else have you got?"

**Matthew Goings:** I was doing this research. I came across a blog post of somebody who decided they wanted to test out these sites and see what kind of quality they could get for that price. In running this test, they came down to three designs that were really good quality for what they did and then you know, decided this is something that I would use and actually searched around and found that they had pulled these designs directly from other companies' logos. You're going and doing that search, whether it's a word search or you can copy and paste the image into google to search that image. If you're doing the getting these designs from 99 designs or a site like that, make sure that they're not pulling it from existing designs so you're not infringing on that part.

**Dolph Goldenburg:** Do you have any other tips for how nonprofits can protect themselves when they use other people's intellectual property?

**Matthew Goings:** Make sure the images are labeled for Reuse. Make sure you're not copying directly from another's site. If you're writing a blog post, don't copy it verbatim. Put it in your own words and make sure you're not using someone's image in a commercial manner or if you're using trademarks, like we mentioned earlier, I was talking about Coca Cola or, or even all of these other companies were mentioning there, the company names there, if that's trademark, if you're writing an article, make sure you only use it to the extent necessary. It might be sufficient just to put their name in it, so don't throw their logo up all over, over everything where it looks like they're sponsoring you. And in situations of using other people's intellectual

property, the adage of it's easier to ask forgiveness than permission does not apply to intellectual property; that can come back and bite you real hard.

**Dolph Goldenburg:** That might be the motto of this episode. The old adage that it is easier to ask for forgiveness than ask permission does not apply to intellectual property. I like that. Matthew, I always ask an Off-the-Map question. I've read a good little bit about you online, and I've read your blog. One of the things I noticed is that you described yourself as a stoic. So, I have to ask you, do you recommend stoicism as a way of life and why or why not?

**Matthew Goings:** It's difficult to answer because I don't necessarily know if I'm stoic by choice, I just tend to, my wife she gets a little upset sometimes because I don't show excitement about social. It's just kind of how I am. I think it does allow me to be more laid back and not. I'm extremely stressed about things, so I'm not sure if that's necessarily by choice, but it does allow me a bit more relaxation rather than stress about it. So, if you find yourself being overly stressed about things like, you know, trying to step back from those feelings, don't lose touch entirely with your feelings, but stepping back a little bit that may help you decrease that stress, but again, it's not something that everyone can control. So, so I guess my answer is it depends.

**Dolph Goldenburg:** I was going to say I love it. I asked a lawyer Stoic a question, and I got a lawyer stoic answer back, great.

Thank you so much for joining us on the podcast today. The information that you have shared is undoubtedly going to help many nonprofits understand both how to protect their creative and intellectual work while also avoid getting in trouble for using the works of others. Matthew, I always want to make sure people know how to reach our guests online. And so first, as I mentioned earlier, you are a with Georgia Lawyers for the Arts, and their URL is [www.glarts.org](http://www.glarts.org). Then other nonprofits and entrepreneurs might also want to reach out to you at your law firm website [www.goingslegal.com](http://www.goingslegal.com). Now, you are admitted to practice law in Georgia, but I also understand that because intellectual property is governed by federal law, you can help anyone in any state with a USPTO issues, and I think that's the United States Patent and Trademark Office. We're going to link your Twitter feed, which has some great retweets on it. We'll link to your LinkedIn profile as well. Matthew, thank you so much for being on the podcast.

**Matthew Goings:** Thank you for having me.

**Dolph Goldenburg:** Were you too busy taking all of the pirated photos down from your website to write down Matthew's contact information? Then fear not, dear listener. you could always go to [www.successfulnonprofits.com](http://www.successfulnonprofits.com) and click on the show notes to get all of his contact information. As an added bonus, it is going to include his phone number. Even if after the show he tells me he does not want his phone number on there, it's going to include his phone number because I'm not editing it out. If you are anywhere in the United States and have questions about intellectual property, I would absolutely encourage you to reach out to Matthew as soon as possible, and if you want to make my day, then please share a link to this episode on Facebook,

Twitter, or your favorite social media. That's our show for this week. I hope you have gained insight to help your nonprofit thrive in a competitive environment.

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