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## Follow the Money - Transcript

[Speaker 1]

Welcome to Charity Therapy, a podcast from Birken Law about building better nonprofits. I'm your host, Jess Birken. Hello and welcome to this episode of Charity Therapy.

I am here today with my favorite wing woman, Meghan. Meghan, how are you doing?

[Speaker 2]

I am so good, Jess. How are you doing today?

[Speaker 1]

I am really good. It is colder than where Meghan and I are right now. We are up in Superior, Wisconsin.

It was minus 11 this morning when we were drinking our coffee, and I think you said it feels like minus 26.

[Speaker 2]

Yeah, that was the wind chill. And it's like, these are the days you just don't leave the home.

[Speaker 1]

Yeah, so we're hiding in a cabin up north recording for you, and it is brutally cold. So, if you're somewhere looking at a palm tree, just know that you're fortunate. Unless you love winter camping, then you're fortunate to be here.

[Speaker 2]

I mean, winter camping in negative 11 seems insane. I would, I understand it at negative, or at like positive 10, but negative 10, I feel like, I don't know, that seems questionable. You wouldn't be down for that?

No, I'm not really down for camping in a regular sense. So, the idea of your skin is literally freezing off feels questionable to me. So today, this episode, all right, it's going out to anyone whose second favorite podcast behind Charity Therapy is Scam Goddess.

Today, we're talking all about the scams that try to target non-profit organizations, and there are a ton of them out there. So, no matter the size of the non-profit, you've got to be vigilant to this kind of stuff. So, Jess, I know you've worked with lots of clients who've dealt with scammers and fraud.

What would you say is the most important thing that non-profits should be doing to protect themselves against those bad actors out there?

[Speaker 1]

The most important thing is to have your basic sort of cybersecurity lens on all the time. And that sounds kind of sad and depressing, but there are things that are too good to be true. There are things that sound scary and are false.

Just because you're in a mode of like, I'm doing good deeds, doesn't mean that your non-profit activities are exempt from scams. There's no scam exemption. That's not something I can apply for to the IRS for my clients.

You are, just like in your regular life, you get junk mail, you get shady offers, you get all that stuff. The non-profit is going to get that too. And so just kind of stay alert, just like you would in your regular life.

[Speaker 2]

Absolutely. Absolutely. All right, let's get into our first question.

I received a letter in the mail for my new non-profit telling me that my next step is to file my certificate of good standing, and it's another \$200 to do that. The attorney who helped us with our articles didn't mention anything about doing this. Are we okay to wait on doing this?

We're trying to save up for the filing fee for the IRS application.

[Speaker 1]

All right. So, first of all, I love that they actually tried to get some professional help to file their articles. Amazing.

Yes. Second of all, this is a scam. This is a total scam.

Here's the thing. The second you incorporate, your information goes into a public database that can be scraped by the robots. And now you're going to start receiving direct mail that's junk.

And a lot of the direct mail that you're going to get related to the corporation is going to be for bogus registrations. And I don't know that there's any way for the states to prevent this from happening because it does become a public record. And yeah, you can tick the box in your registration on most states where it says, exclude my information from mailing lists.

But the reality is this is all on the internet. There are bots that are programmed to go scrape the data and you're going to get some junk mail, even if you opted out. So, the biggest thing to do is not to just blindly pay bills that come in the mail, because all of the scams that are going to come mostly look like invoices for something that you need to do.

And it all sounds very like this is a required filing or somehow seems like it has some legitimacy. But one thing I would say is always check, where's the payment going to? It's usually not to the state of Kentucky or the state of Minnesota.

It's usually to some company. And that is your first indicator that this is a scam. The second thing is the government doesn't really tell you to do stuff.

In general, the government is actually really crap at telling you what to do, which is how people get their tax status revoked. People have their corporation involuntarily dissolved because unless your state offers an email reminder service, they are not going to waste the postage on mailing you a document telling you it's time to do something. They're just going to expect you to be compliant.

So that is another clue that this is a scam. And the thing is, that's a document that's like \$5 to order an uncertified copy of your Certificate of Good Standing or maybe \$15 to order a certified copy of your Certificate of Good Standing. And frankly, you do not need it.

And to be clear, you could order one of those at any time and it is not a required thing. So what you would be doing in this case, just to break down this scam for you, they want \$200. Then they're going to click a couple of buttons on the website, pay 10 bucks to get a Certificate of Good Standing for you, mail it to you, and keep the \$190 for themselves.

Yeah, this is not real.

[Speaker 2]

And it's confusing because the Certificate of Good Standing sounds like a real thing that you might need. And it is a real thing. So, if you Google it, it's like, oh, this is a thing that I might need.

And it's like, it takes a little more digging to realize that like, oh, I can get this myself. And I might need it for something specific, like applying for a grant, but I don't necessarily need to do this after I incorporate the way that this person is suggesting I should in this letter. So yeah, I've seen this come through with multiple of our clients.

And it does look official when you get a letter like this.

[Speaker 1]

Yep. The big tell is where's the payment going? If the payment is going to a company, it's junk mail and you should just shred it.

Absolutely.

[Speaker 2]

All right. Let's head on to the next one. I received a scary lawyer letter about a picture we used in a newsletter last year.

The letter is claiming copyright infringement and saying that we have to pay eighteen hundred dollars. But we got permission to use the picture from the person that we featured. So, what do we do?

I don't want to make this worse than it already is.

[Speaker 1]

Oh, my God.

[Speaker 2]

OK.

[Speaker 1]

Like, I actually have a very good idea of who this probably is. Yep. And it makes my skin crawl to get this question because there are copyright trolls and there is a copyright troll who is sort of legendary.

And I'm not going to use their name because they'd probably like file a suit against me for defamation or something. But there is a sort of very well-known national copyright troll and they have been hammering nonprofits lately. And for all I know, they've been hammering other businesses as well.

But a bunch of our clients have been hit with this. And first of all, I'm sorry that you are dealing with this. It's terrifying.

It's threatening. It's a real law firm. And it's just it's a very stressful thing that's taking you away from your mission and it's wasting your time and resources.

And I'm there's no way to know if their claim is legitimate. It may not be legitimate. You say that you've got permission from the subject of the photo to use the photo.

But the problem could be that the person doesn't own the photo of them. So if it's owned by like a press outlet and you took it from the internet thinking that it was okay. And that person didn't really understand that they were unable to grant permission to use the photo.

And they said, sure, you can use that picture of me. I look good in that photo. Which is probably what they meant.

They didn't really grasp the concept that they don't have the right to tell you can use that photo. So, you may have actually used a photo that didn't belong to them. There may or may not be a real claim.

But you should not just pay this copyright troll because that is what emboldens this troll to keep going. Because this is how they're making a living by shaking you down for \$2,000 a pop or whatever. There are a bunch of possible defenses that you might have.

I'm not a copyright attorney. I don't do copyright and trademark so much. So, it's not something that I could weigh in on certainly on this podcast.

But you can't ignore it. So, you need to do something about it. But I don't want you to just run off and pay the bill.

I would advise you to like call your insurance company and see if you have coverage for a defense in something like this. Because the last thing you want to do is be shelling out money that you've worked hard doing fundraising for. Hopefully you have insurance and hopefully your insurance would cover this.

If not, then you need to call a lawyer. Somebody that does trademark and copyright. See if they can help you.

I absolutely get torqued off about the copyright troll stuff because these are just small charities that are just trying to deliver their mission. They're not trying to use images for commercial benefit. They're making gobs of money and robbing people of their rights.

This is just like a sick marriage between this troll and these press outlets.

[Speaker 2]

Honestly, it seems crazy to me that it's not illegal or that it's not grounds for a lawyer losing their license or things like that. It's wild that they can do this. But it's important to know that they can and that you have to know how to deal with it if and when that scary letter hits your mailbox.



[Speaker 1]

This is case in point of why people hate lawyers. Totally. Because there are people that are just making their living out there, shaking other people down for money, whether it's quasi-legitimate, totally legitimate, not legitimate at all.

Most people will just pay to get it out of their hair, right? I mean, the amount that they're asking for isn't even that much in the grand scheme of things. And by the time you hire a lawyer who probably bills by the hour, unlike us, you get a few hours in and now you should have just paid the damn money that they wanted.

[Speaker 2]

Right. It's super understandable why people are just like, you know what? I don't even want to deal with this.

It sounds scary. Maybe I screwed up. I don't know.

I'm just going to pay it to make it go away and hopefully I never have to think about it again. But then that's how these law firms can do this, just entirely make their living off of this. So scammy.

[Speaker 1]

How does this dude sleep at night?

[Speaker 2]

Honestly. Okay. I have another question for you, Jess.

So, this listener writes in and says, I've got a weird situation and I'm not really sure how to handle it. We got a large donation online from a new donor. Woohoo.

But then about an hour later, they emailed and said they made a mistake and added one too many zeros to the donation and asked if we could refund a portion back to them. Weird, but okay. But then it gets worse.

They asked us to send that refund to a different bank account than the one that they transferred it from. My intern was trying to be helpful since this person is a donor. So, she sent the money.

But now the original donation bounced and didn't go through. So now we're out several thousand dollars. And when we emailed the donor again, we got an undeliverable message.

Now what?

[Speaker 1]

Oh my God. There are so many things in this. Okay.

First of all, obviously this is a complete scam.

[Speaker 2]

Yep.

[Speaker 1]

And there's nothing you're going to do about this. The money is gone. You got, you got hoodwinked and that's going to be an expensive lesson in financial internal controls.

Not a whole lot you can probably do here. Maybe you can call your bank. I mean, you sent the money willingly.

So, I don't, um, that's not my area. I'm not sure what your rights might be. Obviously, you can report this as a crime.

You can alert the attorney general's office. You can tell the police this person probably isn't even in the same country as you. You don't know who they are, who has jurisdiction.

It's, there's probably nothing that's going to come out of this other than I hope that you have learned a lesson. First of all, why do we have an intern who has the ability to, without any checks or balances, send money to a donor? Second of all, what the heck is our refund policy on donations?

Third of all, you've got to understand how banking works because the donation might have appeared on your website, but it did not clear the bank. So, you technically didn't even have that person's money because of the way ACH clearing houses work and all of that. You technically didn't even have the money.

So, if there is a return policy, you do need to make sure that those funds clear your bank before you can send them back. That would prevent this scam from working because those funds never existed, and they were never going to clear. So, this is just like a really, really expensive lesson in internal controls.

There should be a very real policy and procedure that's crystal clear on how we handle things like this. And there shouldn't be an intern who can just sort of like noodle around in the back end and then just send money out. It's a complete red flag that they would want it sent to a different bank account.

I mean, like, again, going back to the very beginning, what's the most important thing? Keep your cybersecurity hat on at all times, just like you would at home. I mean, maybe this person would fall for this at home too, but we have an obligation to train our staff and our volunteers on how to spot this stuff.

And we have an obligation to make policies and procedures that prevent people from being, you know, ignorant and doing things out of the goodness of their heart that are going to hurt our organization. So, this is just an expensive case study, unfortunately, and there's not much more to say here other than they're going to have to do better next time.

[Speaker 2]

Absolutely. And it's one of those things where when you're reading it like this, it feels so obvious, but I can also totally empathize and understand that moment of like, oh, maybe this is a big donor for us that I want to keep them happy and they're, you know, making it sound very important that they get this money back, but they want to support us at the same time. Like I can empathize with that in turn of like, oh gosh, I can just take care of this for you.

And I am helping build this relationship with this big donor.

[Speaker 1]

And that's why we have rules because then that person can say, I want to help you with this. I need to check with my supervisor and see what our process is. I will get back to you as soon as possible.

[Speaker 2]

Absolutely. And if an intern is just has nothing to go off of, you know, their instinct is, I want to make this right for this person.

[Speaker 1]

Yeah. And it's not even that this is an intern and they're somehow like naive. It could have been any staff person or board member at an all-volunteer organization.

You just, you can't have one person be the only stop gap between you and fraud. There's got to be segregation of duties. There should be like, I'm going to put this in and someone else should review it and authorize it.

There should be some sort of review of a donor refund. There's probably like a timeframe in which we no longer issue a refund because they've already taken a deduction, et cetera, et cetera. Right.

Like there's a lot that goes into this. So, I also don't want to kind of like besmirch the intern, like a more seasoned staff person would know better. I think this is a big part of like our sort of cult of philanthropy where we cater to every whim of our donors.

That's symptomatic here.

[Speaker 2]

Absolutely. Very indicative of bigger problems and not just policy problems. All right, Jess, I've got a couple of takeaways on this.

First, I want to say, remember that bad things can happen to good people and keep some healthy skepticism about what's coming in. Not that you need to be overly skeptical of everybody, but just because you're doing good work doesn't mean that people aren't going to try to take advantage of you. So that's a big one.

Second, if you're getting bills or other mailings or things like that saying that you owe money, you need to be really conscious of what you are paying, where the money is going, is this expected, all of that stuff. Just because you're busy and you don't maybe know all of the different invoices that will be coming down the pike doesn't mean that you should just send money out willy-nilly. Third, copyright trolls, they exist.

They might make your life a living hell if you don't know how to deal with them.

[Speaker 1]

They're going to burn in hell, Meghan. If there's a hell, that troll's going.

[Speaker 2]

There you go. So if you get a letter like that, don't ignore it. Get some help.

Know that these people are out there and that you don't have to immediately fork over money for this. And last but not least, internal controls and different policies are really important to help protect your organization against all kinds of scam and fraud. Don't rely on people being able to just suss out what is real and what is not.

Have some good policies to help support your organization and keep you protected from the bad actors out there. Anything else, Jess, we should sum up this episode with?

[Speaker 1]

I think you nailed it.

[Speaker 2]

Awesome.

[Speaker 1]

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It helps other people find the show.

[Speaker 2]

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[Speaker 1]

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## About the Author



**Hi, I'm Jess Birken.**

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

**Let's connect!**

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