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Fair Use: Is It Copyright Infringement When A Church Uses Clips of Copywritten Works Without Permission?

[Kristie Prinz](#)

Q. I am active in a church and have some concerns about some of our standard procedures with respect to copywritten works. In particular, I am concerned that at some church events for children people will take "sound bites" and recordings of popular catch phrases from TV shows, pop music, movies, etc. and play them during the event. Also, we use sound effects that we pull off the internet without revealing the source. I've raised the issue with another member who seems to totally ignore my concerns and then the staff seems to have a "don't want to think about it" attitude. Am I right to be concerned?

-- *Anonymous*

A.

You raise an interesting question. Like you, I have attended church services in recent years where clips of copyrighted works were used--my guess is that it is a standard practice at many churches now. However, until you raised the issue, I really had not given it much thought.

Copyright law protects original works of authorship that are fixed in a tangible form of expression. Copyrightable works include the following:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- pictorial, graphic, and sculptural works;
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works.

Clearly, TV shows, pop music, and movies are protectable by copyright law, and therefore, the use of clips from those works could potentially constitute infringement. It is a little unclear, however, from your facts as to

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whether or not the sound effects would constitute protectable sound recordings--it would depend on whether or not they had enough original expression in them to rise to the level of a protectable work.

Assuming that both the clips and the sound effects are protectable by copyright law, then the church's unauthorized use of these copyrighted works would constitute infringement, unless the use was permitted as a fair use.

Originally established by caselaw, the doctrine of fair use was codified in Section 107 of the Copyright Act, where it sets out four factors to be considered in determining whether a use is fair:

- the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Section 107 further lists various purposes for which a use may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research.

As the Copyright Office has acknowledged on its website:

"The distinction between fair use and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission."

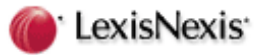
While, as you can see, the specific situation you raise is not expressly addressed, I think a good argument can be made that using clips of copyrighted works at a religious institution for religious purposes is analogous to using it for teaching or educational purposes. Certainly, both purposes are non-commercial in nature, and you are only using clips and those clips are unlikely to negatively impact the value or market for the copyrighted work.

Thus, in all likelihood, your church's use of copyrighted works is protected by the doctrine of fair use and does not constitute an infringing use of the works.

You should note, however, the Copyright Office's final words of advice on the issue: the "safest course is always to get permission from the copyright owner before using copyrighted material." Clearly, these are words of wisdom: if you have questions about whether the use is permitted, you will never go wrong by securing permission in advance.

-- *Kristie Prinz*

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