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Is it Copyright Infringement to Use an Excerpt of a Pastor's Sermon in My Song Without Permission?

[Kristie Prinz](#)**Q.**

I am an unsigned, independent musician who has completed a demo project. In one of the songs I composed, I have inserted a (pre-recorded) excerpt of a sermon our pastor delivered at church. The recorded sample I used consists of a total of 45 words, or approximately 20 seconds. Also, one of my 2 lyrical 'bridges' - in the same song- contains 19 words from another sermon, which I took from my handwritten notes. To obtain the recorded sample, I purchased a CD that the church offers for sale to its members (most local churches in our area sell such items). On the CD are imprinted the words: "All Rights Reserved" along with the title of the Message ad name of the church. My 2-part question is this: Do I need to obtain permission from my pastor/church to use the sample?

*-- Anonymous***A.**

That's a great question. The short answer is "yes, you most likely need to obtain permission."

Ownership of the copyright in a work immediately becomes the property of the author of the work when it is created in fixed form, except in the case of a "work for hire." [Section 101 of the Copyright Act](#) defines "work for hire" as follows:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. . . .

In the case of the sermons at issue, they most likely constitute "works for hire" owned by the church, since

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most pastors are employees of their church. Therefore, in all likelihood, you would need to obtain the permission of the church in order to be able to use an excerpt of the work in your music. In the event that the pastor were not an employee of the church, then he would own the copyright in his own sermons, and you would need to obtain his permission before using any excerpts of his sermons in your music.

Of course, an exception is provided by the doctrine of fair use. [Section 107 of the Copyright Act](#) sets forth a four-part test for determining whether a use falls within the fair use doctrine. That test is as follows:

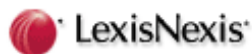
1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the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

Assuming your use of the sermon falls within the scope of the fair use doctrine, then you would be able to use it without permission. However, it is unclear based on the facts you have provided as to whether or not your use would constitute a fair use.

My advice is to consult with [copyright attorney](#) in your jurisdiction regarding the facts of your matter in more detail. Such an attorney should be able to look at those facts and advise you as how you should best proceed. This attorney can also assist you in drafting an agreement with the pastor or church to use the sermon excerpts, if such an agreement is necessary

-- Kristie Prinz

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