COPYRIGHT AND FAIR USE FOR CHURCHES

Let's say you've got a video you want to show during your teaching time. How do you go about doing it? If you didn't know, there are many rules and laws around what's legal and not concerning playing music, videos, and other media in your church environment. And if you've ever had questions about following those rules, we're here to help!

Before we go any further, this is probably the right time to say we are not lawyers, and this is not legal advice. But in our research for this post, we talked to multiple lawyers who work within the entertainment and copyright space (some representing professional recording artists and even one on the board of the Grammys).

We feel confident that the information and opinions we share below align with current US law. But of course, we recommend talking to your legal counsel if you have any further questions. Courts tend to evaluate fair use claims on a case-by-case basis, and the outcome of any given case depends on a fact-specific inquiry.

WHAT IS FAIR USE?

The question often pops up in Facebook groups or other discussions regarding playing music or videos in our church environments — "Is it ok if I use this?"

The answer to that question relates to a concept known as "fair use," which describes your ability to use copyrighted materials legally without payment or specific permission. Here is an excerpt about Fair Use from copyright.gov

"Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use."

FAIR USE FOR SERMON ILLUSTRATIONS

In the United States, commentary, criticism, research, teaching, or news reporting may be considered fair use. The most common "work" we produce as church and ministry leaders is sermons and teaching lessons. So, as we're thinking about whether or not we can use copyrighted material reasonably, we need to consider how we use it.

In the opinion of the lawyers we talked to, every single one of them agreed that sermon illustrations fall under "comment," "teaching," and even "criticism," depending on how the illustration is presented. But, beyond those qualifiers of "comment," "teaching," and "criticism," there are four more factors to consider:

1. The purpose and character of the use, including whether such use is commercial or is for non-profit educational purposes.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used with the copyrighted work.
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

So, let's start with number one. According to copyright.gov, "Courts look at how the party claiming fair use is using the copyrighted work and are more likely to find that non-profit, educational, and noncommercial uses are fair." That's excellent news for church leaders since sermon illustrations are all three. However, you must be careful about using copyrighted material to sell or stream your sermon videos or audio.

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Now, let's look at point number two. Any work can qualify for fair use, but certain items are looked at more strictly. For instance, if your work is already being sold for educational purposes.

For point three, borrowing small bits of material from an original work is more likely to be considered fair use than borrowing more significant portions. We recommend only using short clips from movies, songs, videos, or shows – just enough to make your teaching point or add to your commentary or criticism. To be clear, you shouldn't show full-length movies and episodes or complete songs.

For point four, using material in a way that harms the copyright owner's ability to profit from their original work is less likely to be fair use. So, as long as your use of the clip doesn't harm the sale of the original work, you should fall under fair use.

Once again, this is not legal advice. However, based on all of our conversations with lawyers and the extensive research we've done, we believe all church leaders in the US can follow these considerations to avoid breaking the law.

So, to recap, here are some guidelines for following the fair use policy ...

WHAT'S ALLOWED:

- Playing a short excerpt from a YouTube video, TV show, movie, or song as a sermon illustration. Be sure to keep the clip as short as possible as a teaching point, commentary, or criticism.

WHAT'S NOT ALLOWED:

- Playing an entire movie, song, or episode.
- Playing a full worship song lyric video from YouTube during your worship time without the creator's permission.
- Playing a copyrighted work as entertainment only. You need to be using it for teaching, commentary, or criticism.

PERFORMING AND BROADCASTING MUSIC

What should you do if you stream your service of have an online ministry presence?

Here are some basic things you should know. A church cannot ...

- Broadcast (online or otherwise) the performance of a copyrighted song.
- Broadcast the lyrics to a copyrighted song.
- Record the performance of copyrighted music.
- Rebroadcast music or videos created by others without a license from the owner.

The good news is that solutions are readily available to help you easily get the licenses you need to play the music you want this week!

Most churches use sources such as CCLI, CVLI, CCS, or One License to obtain the licenses needed to perform or broadcast copyrighted songs. These services will cover the legal documents to ensure your ministry can play the music you want!

STREAMING MUSIC

Streaming services like Spotify, Apple Music, and Pandora have made accessing music much more accessible for churches. You can set up a playlist for your ministry and not have to worry about scrambling to find music right before your weekly environment.

Unfortunately, these services are often solely intended for personal use, not business or public consumption. Typically, your account doesn't include a "Public Performance License," so while you may not have faced the consequences before, that doesn't mean you'll be safe from potential problems if you play music this way.

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The most common, affordable, and legal solution to this problem is to purchase a business-to-business music service. Like the licensing companies above, for a monthly fee, these services take care of all of the licensing documents you need to stream music at your church. One service is Soundtrack Your Brand, and they offer pre-made playlists or a license allowing you to play what you want, whenever you want.

Knowing how to use media for streaming and sermon illustrations correctly can be tricky, but the fair use guidelines can help make it easier. If you have more questions about how to use copyrighted material during your weekly environment, be sure to talk with your church's legal counsel.



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