

Using Music In Your Work: Copyright Tips For Companies

By Joy Butler

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Would you pay \$1 to use Taylor Swift's music in your business presentation? If you're a fan and it's in context, sure, why not? OK, how about \$10,000 or more? No, her latest album hasn't gone gold. The hypothetical costs come from the lawsuits and fines that the unlicensed use of her music might generate.

As Hans Christian Andersen said, "where words fail, music speaks." Companies use music in a variety of ways: motivating and training employees, creating presentations for customers and prospects and thousands of other small ways that are less visible.

Music has the power to elevate the mundane and help make dry business topics more exciting and engaging. But the use of music increases an organization's infringement risk if the music isn't properly licensed.

Businesses face the risk for copyright infringement and potentially thousands of dollars in lawsuits and fines when employees use music in presentations, web content, videos and other branded materials, unaware of the copyright implications.

Businesses run afoul of copyright law mostly due to a lack of awareness around music licensing. Employees focused on content creation often don't even know they need to obtain licenses to include music in their materials.

Obtaining a license to use music can be a confusing process. Here's a quick primer on what you need to know about licensing when using music in your presentations, marketing, sales and other work-related materials.

Getting the Green Light to Use Music at Work

If you want to liven up your company's website with smooth jazz instrumentals, pump up the crowd at an industry conference with Survivor's "Eye of the Tiger" or catch the attention of millennials by adding Taylor Swift's latest hit to your company's newest advertisement, you need a license to do so.

Even the act of sharing music privately within the organization might still require a music license. It's important to be aware of the various types of music licenses available, the types of organizations that



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offer those licenses and the specific uses they cover. The license your business needs is dependent on your use of the music.

Peeling Back the Music Licensing Onion

Understanding music licensing starts with recognizing the distinction between a song and a sound recording. A recorded song has two separate copyrights:

- The copyright of the song, which consists of a melody and any accompanying lyrics
- A separate copyright for the sound recording, which consists of the recorded rendition of the song

Typically, there will be different rights holders for the song and sound recording. The song copyright is traditionally owned by the songwriter or the songwriter's music publishing company, and the sound recording generally is owned by the record label that released that recording. Depending on how you acquire a song, you might need two separate licenses — a synchronization license for use of a song and a master use license for the sound recording.

It's important to point out that the same song can have multiple sound recordings, which means multiple sound recording copyrights. For example, Dolly Parton wrote "I Will Always Love You" in 1973. Since then, several different artists have recorded renditions of that song, including Dolly Parton, Whitney Houston and Kenny Rogers. While Dolly Parton and her music publishing company own and control the song copyright, the record label issuing each separate artist rendition owns the copyright for its respective sound recording.

Since popular music can come with a hefty price tag, an alternative is production company music, which is offered specifically for inclusion in audio and audiovisual productions. You can get both the sync license and the master use license from the same company and the cost can be as low as \$30 for some production music.

Businesses often get confused about the music licensing requirements for incorporating music into internal content, such as training materials or a business presentation. For example, what if your sales team wants to use a short clip of Queen's "We Are the Champions" to celebrate meeting its quarterly goals in an internal sales presentation?

This is a gray area due to the potential to rely on fair use, a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. Unfortunately, there is no bright line rule to determine which use qualifies as a fair use. Instead, fair use is very subjective, fact-specific and decided on a case-by-case basis.

The Copyright Implications

Here's the bottom line: If you use music without a required license, you're infringing on the artist's rights and putting your company at risk. If you post unlicensed music on your website or on social media, the copyright owner can send a takedown notice to your web host provider or social media network to have the infringing material removed.

The web host or social media company normally will comply and remove the content because such

compliance is required for insulation under the Digital Millennium Copyright Act, which protects them from the liability for infringing material their users might post. The removal request is called a DMCA takedown notice.

Whether you are using material online or offline, the copyright owner can send a cease-and-desist letter, which basically says: "You are using our material in an infringing way, and we want you to stop." The copyright owner might also ask for a licensing fee due to the infringing activity.

In the worst-case scenario, the copyright owner will file a lawsuit for copyright infringement against you. If you were to lose the lawsuit, you would be responsible for payment of any damages and potentially for reimbursement of the copyright owner's legal fees. There is no requirement for a copyright owner to send a DMCA takedown notice or a cease and desist letter to give the infringer a chance to remove the material and stop the infringing activity. A copyright owner's first step against infringing activity can be a lawsuit.

How to Minimize Your Risk

Here are five proactive tips your company can take to minimize copyright infringement risk while enabling employees to express their creativity:

1. Train your staff in basic copyright and music licensing principles. Even basic awareness will help reduce the risk of copyright infringement. Consider incorporating this topic into employee orientation materials, periodic refresher training courses, and regular reminder emails. You also might want to consider posting reminders in key employee areas, such as near copier machines or on your company intranet.
2. Equip your creative team with the right search technology to bridge the gap between creativity and music copyright that enables them to select from a range of pre-cleared, high-production-quality music without infringing copyright. This step can eliminate or greatly reduce the time and expense required for finding the right music and acquiring the permission to use it. This type of technology can also provide the assurance that your organization is backed by indemnification.
3. Incorporate copyright-related rules and steps into appropriate processes, policies and procedures. Including copyright considerations and guidelines in written documents helps increase the likelihood that employees will follow proper protocol when using music in any work products.
4. Consider assigning responsibility for copyright compliance to key team members, such as managers or directors who typically must approve projects and materials.
5. Make sure the people who are creating materials within your company have access to legal counsel if they have questions about using materials outside any pre-cleared materials.

These five actions could significantly lower the risk of copyright infringement while making the copyright compliance process more efficient. Taking the time to simplify music copyright compliance is worth the investment to empower your company to be a creative powerhouse.

Joy R. Butler is an attorney based in Washington, D.C. She is the author of "The Permission Seeker's Guide Through the Legal Jungle: Clearing Copyrights, Trademarks and Other Rights for Entertainment

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