

Intellectual Property and Politics

Intellectual property is an asset. It's protected under the U.S. Constitution - "Congress shall have power...to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."ⁱ Ideally, intellectual property law—generally, copyright, patent, and trademark—is supposed to embody a balanced incentive system.ⁱⁱ Creative minds are encouraged to channel their inner creative side and develop, design, and invent new subject matter protectable under copyrights, patents, and trademarks. Owners of trademarks, copyrights, and patents are encouraged to design new things by earning compensation for their work. Although the intention is to promote the progress of science and useful arts while providing exclusive rights to their work, at the same time, intellectual property laws limit rights to help make sure that intellectual property rights don't unfairly inhibit creativity.

American presidential campaigns are fast pace, particularly with the use of social media. Eager to get their message out to the voting public, candidates are moving at a fast pace to prepare their platform, organize events, and generate awareness. Common forms of outlets used to disperse their message are: Twitter, Facebook, radio, television, and in-person appearances.ⁱⁱⁱ Often, candidates will use popular songs - mostly to get the crowd excited. The trouble is that most presidential campaigns play fast and loose with intellectual property rights when it comes to the use of copyrighted music.^{iv}

Candidates and their campaigns rarely ask for permission to use these songs.^v As a result, copyright holders sometimes make formal objections to the unauthorized use of their music.^{vi} Such objections are particularly prevalent when the artist or copyright holder disagrees with the political stance of the candidate using the song.^{vii} Simply put, some artists don't want their music to be associated with a certain candidate.^{viii}

In the form of examples, the holder of the copyright for the song "Eye of the Tiger" sued Newt Gingrich for unauthorized use.^{ix} Mitt Romney got in trouble by using Al Green's "Let's Stay Together" for an attack ad against Barack Obama.^x Rock band Heart formally disagreed with Sarah Palin's use of "Barracuda."^{xi} During the 2008 presidential campaign, Jackson Browne brought a claim under the Lanham Act against John McCain for his use of "Running on Empty" in the background of a campaign commercial.^{xii} Browne's claim withstood McCain's motion to dismiss, and the court held that Lanham Act false-endorsement claims are not limited to commercial speech, but also apply to political speech.^{xiii} As in the Jackson Browne case, when an artist objects to the use of their song, the candidate risks receiving a public cease-and-desist letter.^{xiv} Michelle Bachman received such a letter from Tom Petty for her use of "American Girl" during her 2012 presidential campaign.^{xv}

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More recently, during the 2016 presidential elections, Aerosmith lead singer Steven Tyler hit Republican Donald Trump with a cease-and-desist letter for his use of Tyler's music on his campaign trail. Also, R.E.M. bassist Mike Mills voiced his displeasure at Trump's use of one of his group's songs and Neil Young asked Trump to stop using his music.

Campaigns can typically avoid infringement issues when using songs at rallies or events by either obtaining a public-performance license or ensuring that the venue has one.^{xvi} To use music in advertisements (television and internet), a campaign needs to receive legal permission from both the song's publisher and the artist's record label.^{xvii} The use of music at a live campaign event requires a "public performance" license, generally obtained from one of the United States' performing rights organizations.^{xviii} These organizations track the use of music and help distribute royalties from such events.^{xix}

Technically, campaigns do not need to receive explicit permission from the artist to use their work, but it should be noted that even if a politician has all the requisite legal permissions the artist can still sue the campaign.^{xx} The author(s) could make a claim to their "Right of Publicity," which is a legal protection many states give celebrities and artists.^{xxi} The right of publicity generally protects the use of someone's name and likeness for commercial reasons.^{xxii} On the federal level, the Lanham Act protects an artist's trademark or brand by offering protection against false endorsement in which the use of an artist's work can imply the artist's support.^{xxiii} Politicians and their campaigns also need to acquire proper licensing from the publisher, record label, and venue.^{xxiv}

Intellectual property rights are constantly growing and evolving. These rights form an economic tool, and a constructed protection of the physical form of people's ideas.^{xxv} Intellectual property laws will become increasingly more stringent to protect owners and ensure that they receive any and all pay that they possibly can.^{xxvi}

ⁱ U.S. Const. art. I, § 8.

ⁱⁱ Fair Use and Intellectual Property: Defending the Balance, <https://www.eff.org/issues/intellectual-property>.

ⁱⁱⁱ How Presidential Elections are Affected by Intellectual Property, <https://www.txpatentattorney.com/blog/intellectual-property-and-the-presidential-elections/> (Dec. 3, 2015).

^{iv} How Presidential Elections are Affected by Intellectual Property, <https://www.txpatentattorney.com/blog/intellectual-property-and-the-presidential-elections/> (Dec. 3, 2015).

^v *See id.*

^{vi} *See id.*

^{vii} *See id.*

^{viii} *See id.*

^{ix} How Presidential Elections are Affected by Intellectual Property, <https://www.txpatentattorney.com/blog/intellectual-property-and-the-presidential-elections/> (Dec. 3, 2015).

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^x *See id.*

^{xi} *See id.*

^{xii} Intellectual Property and Political Campaigns: A Song for the Season, <https://www.oconnors.com/blog/2012/08/17/intellectual-property-and-political-campaigns-a-song-for-the-season/> (August 17, 2012).

^{xiii} Intellectual Property and Political Campaigns: A Song for the Season, <https://www.oconnors.com/blog/2012/08/17/intellectual-property-and-political-campaigns-a-song-for-the-season/> (August 17, 2012).

^{xiv} Intellectual Property and Political Campaigns: A Song for the Season, <https://www.oconnors.com/blog/2012/08/17/intellectual-property-and-political-campaigns-a-song-for-the-season/> (August 17, 2012).

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^{xvi} Intellectual Property and Political Campaigns: A Song for the Season, <https://www.oconnors.com/blog/2012/08/17/intellectual-property-and-political-campaigns-a-song-for-the-season/> (August 17, 2012).

^{xvii} Samuel Whitesell, Campaign Music and Fair Use: What are the Rules?, <https://lawstreetmedia.com/issues/politics/campaign-music-fair-use/> (Oct. 26, 2015).

^{xviii} *See id.*

^{xix} *See id.*

^{xx} *See id.*

^{xxi} *See id.*

^{xxii} *See id.*

^{xxiii} *See id.*

^{xxiv} *See id.*

^{xxv} The Ethics of Intellectual Property, <https://classes.soe.ucsc.edu/cmpe080e/Spring05/projects/ip/>

^{xxvi} *See id.*