

An Explosion of 10 Urban Myths About Student Musicians and Fair Use

February, 2015

Some musicians write only music or lyrics. Some musicians compose both lyrics and music. Sometimes the same musicians also perform the work. And sometimes not. Sometimes the musician sells or licenses all or some of his or her copyright interests to a third party. Confusing? Welcome to music copyright law.

Lacking the financial resources and/or the sophistication to consult a copyright attorney, many educators and students turn to the Internet for help. Unfortunately, though, the Internet is a repository of urban legends and half-truths about copyright law, especially in the intersection of fair use and student musicians. Below are some common myths and reality checks about them.

Urban Myth #1: If there's no copyright notice on music on the Internet, I can use it without violating copyright laws.

Truth: Copyright ownership vests at the instant that an original, tangible work is created. That has been the law in America since January 1, 1978. The absence of a copyright notice proves nothing (either way) about copyright ownership.

Urban Myth #2: If I call it "educational," I can use anybody's copyrighted musical works, anywhere, anytime without getting into trouble.

Truth: Monopoly® is the only game that gives you a get-out-of-jail-free card! It's ok to perform or display lawfully acquired musical works in a curriculum-based nonprofit classroom setting, in the context of either face-to-face teaching or distance teaching (the TEACH Act). If the student musician uses copyrighted material outside of these narrow parameters, the education exemption under Section 110 of the Copyright Act does not apply.

Urban Myth #3: If I call it "fair use," I can use anybody's copyrighted musical works, anywhere, anytime without getting into trouble.

Truth: Fair use allows you to use others' copyrighted materials without asking permission, under some circumstances. It's a complicated subject that requires careful analysis each time, plus a good tolerance for risk. For example, if a musical work containing others' copyrighted material is created for school credit, it may qualify for the educational fair use exception, depending on how much of another's work you used, and several other factors. However, if you submit that same musical work to a contest, you must review the fair use exception all over again. It's possible that you won't qualify for fair use, especially if prize money is awarded.

Urban Myth #4: I can use anybody else's music if I give them credit.

Truth: Giving credit to the original musician doesn't wipe out a copyright violation.

Urban Myth #5: If I don't know anything about copyright law, I'm ok. My violation is "innocent."

Truth: Lack of knowledge of the law is not a defense to copyright violation claims.

Urban Myth #6: If the original musical composition is in the public domain, I can use a musician's performance of that composition without worry.

Truth: Beware of lurking copyright interests! Even if the original music or lyrics are in the public domain, performances are covered by their own, separate copyright. That performance may or may not be in the public domain.

Urban Myth #7: *I'm just using a little bit of a famous piece. That's ok, right?*

Truth: It depends. Courts have ruled that using even a small part of a copyrighted work is a violation, if you are taking the “heart” of the work. And you still need to do a fair use analysis.

Urban Myth #8: *I'll never get caught. Everybody else does the same thing.*

Truth: More than 35,000 music copyright violation lawsuits have been filed against students and others by the Recording Industry Association of America. While RIAA has been heavily criticized for these lawsuits, their success rate is significant.

Urban Myth #9: *I can use music from other countries without violating copyright rules.*

Truth: Each country has its own set of copyright laws. Some are more restrictive than American copyright laws and some are less restrictive.

Urban Myth #10: *My creativity is being crushed. I have no alternative but to violate copyright rules if I want to have a great musical experience.*

Truth: Not so. Your school district can acquire the right to use royalty-free music from a music library which has acquired the rights and licenses for your use.

Artist Educators and Student Copyright Problems November, 2014

Many artists also teach art skills classes, either privately or through their local art leagues or both. Recently, a nationally known, terrific artist-artist educator contacted me about a problem which had arisen with one of her best art students.

Out of respect for copyrights owned by other artists, she has always used her own work as the model for her students, assuming they would take the techniques that she showed them and apply them to their own ideas or photographs. Unfortunately, an unscrupulous student recently took his copy of her work and put it for sale on his Facebook page, Pinterest page, and website page, claiming it as his own work. He also made giclees of this work and attempted to sell them at local galleries and art-related events.

While he did paint it “himself”, the copy was unquestionably a derivative of her painting. In other words, it was a violation of her copyright. She was devastated by this student’s breach of her trust.

What is the solution for this artist-educator? She will provide future students with an information sheet when they sign up for her art classes. This sheet will not only alert them that her work carries a copyright but will also give them basic copyright information for their own use. This will be a graceful way to put future students on notice that their reproduction of her work is off-limits. It will also help fledgling artists acquire knowledge about how to protect their own work.

Artists helping artists!

P.S. She is posting a stern warning on her own website about copyright violations.

Mediating Guardianship Disputes October, 2014

Many times, when family members cannot come to an agreement regarding guardianship involving a parent, a sibling, a child, or another relative, they think the only solution is to choose up sides, hire an attorney, and go to court. That's not true. Mediation is a good vehicle for resolving guardianship issues.

Sometimes the problem is deciding who will be the guardian of the incompetent or underage person. Sometimes the issue is who will handle financial issues for the ward or who will make the day-to-day decisions about living arrangements, health care, or similar matters. Sometimes there is a small corporation, partnership or other business entity whose interests have to be considered. The ward may have competency issues on a short-term basis but may be able to recover and resume normal life skills.

Mediation *before* litigation is filed regarding **any** of these issues can help sort out **all** these issues. Equally importantly, mediation can empower every family member, no matter what their perspective, without causing permanent injury to those relationships which are so critical to the well-being of the ward. It is also cost-effective.

Any agreement reached at mediation can be kept confidential among the family members, or can be filed with the court immediately (if there is a pending case), or can be held as confidential unless court action is required.