



USING MUSIC IN POLITICAL CAMPAIGNS: What you should know

GUIDELINES PREPARED BY ASCAP

Music use requires planning and securing the appropriate permissions. ASCAP has put together this list of Q & As to help you navigate your way to campaign success through the proper use of music.

WHAT IS THE VALUE OF MUSIC IN A POLITICAL CAMPAIGN?

Music possesses a unique power to inspire, motivate and energize a campaign. And music has been used in campaigns since the founding of our country. George Washington effectively used “God Save Great Washington” (a parody of “God Save the King”), Franklin Roosevelt used “Happy Days Are Here Again” (written by ASCAP members Milton Ager and Jack Yellen), Dwight Eisenhower used “They Like Ike” (written by ASCAP founding member Irving Berlin) and President Barack Obama used “Signed, Sealed, Delivered I’m Yours” (written by ASCAP member Stevie Wonder) just to name a few of the Presidential campaign success stories.

WHAT IS THE ISSUE AND WHY ARE MUSIC USE GUIDELINES IMPORTANT?

It has become increasingly significant for political candidates in the public spotlight to conduct their campaigns in compliance with copyright law. Recent controversy over unauthorized music use has created unwanted negative publicity for candidates that want to do the right thing but many times require clarification on their legal obligations relating to music use. Knowing these guidelines is good for all involved.

IF A CAMPAIGN WANTS TO USE A SONG IN A CAMPAIGN COMMERCIAL, WHAT PERMISSIONS DOES IT NEED?

This kind of use may involve rights such as synchronization of music with video and the possible use of the master sound recording. The campaign will need to contact the song’s publisher and possibly the artist’s record label to negotiate the appropriate licenses with them. And remember, campaign videos containing music that are posted on the internet also require these licenses. Once the commercial has been produced, the TV and radio stations, and any websites that transmit the commercial, must have a public performance license.

WHAT IS ASCAP AND WHAT IS ITS ROLE?

ASCAP is the country’s first and largest performing rights organization, representing more than 11.5 million musical works from over 725,000 songwriters and composers and their music publishers. ASCAP represents the non-exclusive public performance right for these works, and is responsible for licensing their public performance on radio, television, cable, satellite, the internet, on mobile devices and in venues and establishments. ASCAP tracks the use of music, identifies the copyright owners and distributes the appropriate royalties. ASCAP is a membership organization operating on a not-for-profit basis that is dedicated to protecting its members’ rights and obtaining fair compensation for the public performance of their copyrighted musical works.

ASCAP provides an important income stream for its members and allows music users an efficient and effective way to obtain the necessary permission to perform music for their business or their other public communication needs.

WHAT LICENSES DOES A CAMPAIGN NEED TO PLAY MUSIC AT CAMPAIGN EVENTS?

First, while many venues have proper “public performance” licenses, as a general rule the ASCAP licenses for convention centers, arenas and hotels exclude music use during conventions, expositions and campaign events. If a campaign is holding many events at dozens of different venues, it may be easier for the campaign itself to obtain a public performance license from ASCAP (and possibly the other US performing rights organizations if the music is licensed through one of them). This license is issued to an individual candidate’s specific campaign and extends only until the candidate is sworn into office — not for the candidate’s full term in office. Having such licenses in place would guarantee that, no matter where you have a campaign stop, the performances of music at the events would be in compliance with copyright law.

CAN POLITICAL CAMPAIGNS RELY ON VENUE LICENSES?

Because licenses for venues such as convention centers and hotels generally exclude rights to perform music at events organized by a third party, political campaigns need their own ASCAP license to use the works in its repertory. This makes sense because the third party organizer is the main beneficiary of the performances, not the venue, and is in the best position to control the performances. For this reason, event organizers (in this case political campaigns) have traditionally assumed responsibility for obtaining the permission from the rights holders.

WHAT MUSIC IS COVERED BY THE ASCAP LICENSE FOR POLITICAL CAMPAIGNS?

The ASCAP Political Campaign License agreement provides a blanket license to perform any or all of the millions of compositions in the ASCAP repertory. However, ASCAP members may ask ASCAP to exclude specific songs from a particular political campaign’s license. In that event, ASCAP will notify the campaign of the excluded works.

IF THE CAMPAIGN EVENTS ARE PROPERLY LICENSED, CAN THE CAMPAIGN STILL BE CRITICIZED OR EVEN SUED BY AN ARTIST FOR PLAYING HIS OR HER SONG AT AN EVENT?

Yes. If an artist is concerned that their music has been associated with a political campaign, he or she may be able to take legal action even if the campaign has the appropriate performance licenses. The campaign could potentially be in violation of other laws. Specifically, the campaign could be subject to claims based on:

1. The artist’s **Right of Publicity**, which in many states provides image protection for famous people or artists
2. **The Lanham Act**, which covers confusion or dilution of a trademark (such as a band or artist name) through its unauthorized use
3. **False Endorsement**, where use of the artist’s identifying work implies that the artist supports a product or candidate

As a general rule, a campaign should be aware that, in most cases, the more closely a song is tied to the “image” or message of the campaign, the more likely it is that the recording artist or songwriter of the song could object to the song’s usage by the campaign.

HOW CAN THE CAMPAIGN PROTECT ITSELF AGAINST THESE OTHER CLAIMS?

If a campaign wants to eliminate any of these claims, particularly if the campaign wants to use a song as its theme, they should contact the management for the artists and/or songwriters of the songs in question and obtain their permission. In addition to permission from management, a separate negotiated license may be required by the publisher of the composition, and if the master recording is used, the record label that controls that recording.