



## **Practical Problem-Solving Advice for Publishers"**

### **Song Lyrics Copyright/Fair Use Question**

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Is there one fair use guideline for the reprinting or using song lyrics? For example, I've heard that you can legally use one stanza without asking for permission?

This question comes up frequently so I asked Dave Koehser, my legal advisor, to comment. Here is Dave's response.

First of all, there are no official or established "fair use guidelines." Fair use decisions are made on a case-by-case basis and there are only a few "standard" situations where you can clearly say that the use is a fair use. (For example, quoting a few sentences from a novel in a review of that novel will typically qualify as fair use.)

The Copyright Act lists four factors to be considered in determining whether a use is a fair use, but these factors must be reviewed in light of the facts in each particular case, and even then they usually do not yield a definitive answer. Recent fair use cases have focused on whether the use in question is "transformative." A use will be "transformative" if it "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message."

For example, reproducing reduced images of Grateful Dead concert posters in a book about the band was found to be transformative, since the poster images were used for the purpose of telling the history of the band rather than for their original purpose of promoting the band and its concerts.

Similarly, reproducing a few words from a song *might* be transformative and thus qualify as a fair use if it is done as part of a commentary on the song, or as part of a history of contemporary music. However, merely having a character in a novel sing the lyrics from a song would most likely not be seen as "transformative," and thus it would not qualify as a fair use. The song lyrics are merely being used for their original purpose – that is, as song lyrics – and thus the use is not transformative.

In other words, the only safe harbor for the use you described would be to get permission from the owner of the copyright in the song.

In addition, music copyright owners are notoriously strict in enforcing the copyrights in their song lyrics, so obtaining permission will almost always be the preferred approach.

Also of interest: R-23, *McHugh's and Koehser's Rights and Permissions Glossary*, 2017, 10 pages, <https://bit.ly/2HHCz8G>

### **About David Koehser, Attorney-at-Law**

David Koehser is a Minneapolis-based lawyer who practices in the areas of copyright and trademark law. Dave's website contains articles on the topics of: Publishing Law, Merchandise Licensing, Copyrights and Trademarks, and Theater and Performing Arts. Request a copy of Dave's informative quarterly e newsletter, *Publishing and Merchandise Licensing Law Update*. Dave has a B.A. from the University of Iowa and a J.D. *cum laude* from the University of Minnesota Law School. You can find his website at [www.dklex.com](http://www.dklex.com).

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