

*A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.*

## [Politically Entertaining](#)

Posted on October 21, 2010 by [Joy S. Newborg](#)

As Election Day, November 2<sup>nd</sup>, is fast approaching, I thought it would be timely to do a piece on politicians and how they periodically run afoul of the copyright laws.

Over the past few years, there have been several political candidates accused of using copyrighted material in their campaigns, and “fair use” tends to be the common justification offered. Fair use is an exception to a copyright holder’s right to exclusive use of their original work, and grants other parties the privilege to use the copyrighted material without the copyright holder’s permission or consent.

Singer [Jackson Browne](#) didn’t think it was “fair use” when he brought a copyright infringement [lawsuit](#) against [John McCain](#). One of McCain’s campaign web videos used a sound recording of Browne performing his famous song “Running on Empty” to comment on the energy policy of his political rival Barack Obama. Browne was also concerned that the use of his song would falsely suggest that he endorsed McCain. McCain argued that it was fair use based on his constitutional right of free speech and that its use was made in connection with a public issue or an issue of public interest. However, the two decided to settle after the court denied McCain’s motion to dismiss Browne’s publicity claim.

Senatorial candidate Chuck DeVore argued that his use was fair because it amounted to a parody. DeVore was [sued](#) for copyright infringement by signer [Don Henley](#) when DeVore rewrote portions of the lyrics to two of Henley’s songs for use in his campaign videos. “The Boys of Summer” was changed to the “Hope of November” and was claimed to be a parody on Henley and other Obama supporters who bemoaned the failure to deliver hope, and “All She Wants to Do is Dance” was changed to “All She Wants to Do is Tax”, a commentary on Barbara Boxer, DeVore’s political rival. Henley was also concerned that the use of his songs would falsely suggest that he endorsed DeVore. The court did not agree that the uses were parodies because they did not target Henley or the lyrics to the songs, but rather found them to be satires because the copyrighted works were merely a vehicle to poke fun at other political candidates. The court also found that even though DeVore changed some of the lyrics, over 65% of the lyrics in both songs were copied verbatim and that the amount of copyrighted material used was excessive for what was necessary for a parody.



WINTHROP WEINSTINE

ATTORNEYS AND COUNSELORS AT LAW

Capella Tower | Suite 3500 | 225 South Sixth Street | Minneapolis, MN 55402  
Main: (612) 604-6400 | Fax: (612) 604-6800 | [www.winthrop.com](http://www.winthrop.com) | *A Professional Association*

The newest senatorial candidate to claim fair use in connection with a campaign commercial is Robin Carnahan, who is being [sued](#) for copyright infringement, among other things, by [Fox News](#). Fox News claims she used a portion of proprietary news footage and edited it in such a way to suggest falsely that Fox News supported her candidacy. It appears that Carnahan may receive a gift if it is determined that Fox News did not properly register its copyrights prior to filing its lawsuit, which is required by law. Even though this technical error does not go toward deciding whether she infringed on Fox News's copyright or if she could rely on the fair use justification, it may effectively prevent Fox News from proceeding against Carnahan.

So what can politicians learn from these cases? Besides avoiding the use of copyrighted material without proper licenses? One lesson may be to check the political leanings of the copyright owners before using their materials. And who said politics is boring!



Capella Tower | Suite 3500 | 225 South Sixth Street | Minneapolis, MN 55402  
Main: (612) 604-6400 | Fax: (612) 604-6800 | [www.winthrop.com](http://www.winthrop.com) | *A Professional Association*