

## What are the guidelines for using a portion of a song without permission?

### QUESTION:

I am creating amateur animation on the Web. I would like to use a portion of an instrumental song on a CD for the animation I am creating. I have heard that a certain amount of a song can be used in this manner -- not for profit -- without requiring permission. Is this true? If so, what are the guidelines for using this copyrighted material?

### ANSWER:

Unfortunately, there are no fixed standards as to how much of a song you can use without infringing the song owner's copyright. There is a provision of the copyright law known as fair use that permits limited uses of music for what is loftily called transformative purposes, such as commentary or criticism.

The only problem is that you won't know whether your use qualifies as a fair use until a court has decided the issue. And as Cinderella discovered early on, it's hard to live your life waiting on others. The fact that your use is not for profit usually does not matter when determining whether an infringement has occurred.

Your choices are to ask for permission or use the music without permission.

Asking for permission would be expensive and difficult. You'd need permission from the record company that owns the recording and a second company, known as a music publisher, that owns the song. Assuming someone at one of these companies takes your phone call -- a big assumption, unless you disguise your voice as Dave Matthews or some such -- they'd probably demand several thousand dollars for the use.

Using the song without permission is risky, but the consequences are not dreadful. Although the owner of the music could sue for infringement, it's unlikely. That's because it would cost more money than the company would recover. More likely, the company would send you a letter or email requesting that you stop using the material. If you obey and take the music off at that point, the issue is usually over. Of course, there is always the possibility that the song owners will never learn of your infringement.

Most infringements are discovered on the Net when traffic increases, the infringement begins earning money, or the infringement is diverting music sales.

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