

An Argument of Fair Use

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Abstract

The author will explore 17 U.S. Code § 107 that covers limitations of exclusive rights and fair use to make both an argument for and against the use of the first 13 words of Howl, Parts I & II, a poem by Allen Ginsberg (Anonymous-b, n.d.) in the They Might Be Giants' song "I Should Be Allowed to Think." The author then will draw her own conclusion based on the facts presented of whether or not the use could be considered fair use or copyright infringement.

Background

Fair use of copyrighted work includes use of reproduction in copies or phonorecords, or by any other means specified below for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. The factors that determine fair use are the following:

- 1) the purpose and character of the use, such as was it used in a commercial nature or nonprofit educational circumstance;
- 2) the nature of the copyrighted work;
- 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- 4) and the effect upon the potential market for or value of the copyrighted work

(Anonymous-a, n.d.).

Analysis

Argument for Fair Use

The first 13 words of the poem: “I saw the best minds of my generation. Destroyed by madness, starving, hysterical.” are used as the first 13 words of the song. However, these 13 words are only repeated once in their entirety. A portion of them: “...of my generation. Destroyed by madness, starving, hysterical” is repeated three times throughout. But in its entirety, or even with just the aforementioned portion, it’s only stated once within and makes up a small proportion of the poem (Anonymous-b, n.d.). Thus one could make a case that the substantiality of use was not great and thus fair use.

Although the song was recorded and sold for commercial use, it doesn’t seem to have any negative effect on the market for the original poem. There could be a stance that it drives more attention to it as people look up the lyrics to the song on the web and find the poem instead. Thus, gaining the poem more exposure in search results and bringing more thought to the words.

Those first 13 words speak to degradation in the poem, but the inspiration for the poem came from stories and experiences of Ginsberg’s friends and contemporaries. The primary emotional drive was his sympathy for Carl Solomon, to whom he dedicated the poem, who he met in a mental institution. Ginsberg admitted later this sympathy for Solomon was connected to bottled-up guilt and sympathy for his mother's schizophrenia (she had been lobotomized), an issue he was not yet ready to address directly. The poem has a tumbling hallucinatory style and frank address of sexuality (207.237.184.226, 2018).

Now, taking the meaning of the song, Linnel sings it in such a placid, matter-of-fact manner while Ginsberg's "Howl" was generally emoted to death in coffee shows across the country who presented it as a revelation (August, n.d.). The song instead seems to poke fun at teenage rebellion such as a person complaining that he can't put up his band's power up in a public viewing place or over-dramatizing a situation in claims that he is some of silenced genius that can't be heard. Linell prefers to talk about grief and death with tone that seems like a reproach to whiny emo acts. It has also been interpreted as being about uniformity and how the narrator should be able to stand out in crowd (August, n.d.).

Some have seen the song as an ironic parody of sorts of teenage rebels who naively believe they are being persecuted when in fact, they are simply being annoying (August, n.d.). With that being said, many parodies such as Woody Guthrie's "This Land" can be seen as fair use, and thus lies the argument that this song could fall under the same ruling.

Argument Against Fair Use

The arguments against fair use would be the following:

- 1) This is not a common phrase that was copied and utilized in several songs or other creative works aside from the poem prior to the song. Even the smaller portion of the words taken was not given too much transformational value in the lyrics themselves -- but within meaning and the fact music was applied, this argument could be diminished and said that there is where the transformative value lies.

- 2) It could be said that the song puts a negative light in context of a parody on rebellion rather than highlighting important serious issues like mental health, which seems more of Ginsberg's meaning behind his poem -- wanting to speak for those who may not get a chance and shine some light on their experiences. However, other opinions of the song being more of a tribute could denounce this argument, so the lyrics have a very open interpretation to them.
- 3) Though the words used did not make up a large portion of the poem, they are the starting, lead-in words and could be said to have more importance in how they set the scene of the poem. They're used in similar placement, being the first words of the song. One might say the song may steal some search volume away from the poem as well, which could have a negative effect on lowering exposure as well.
- 4) And again, the song was for commercial use, which could stand for an argument against fair use. The poem was copyrighted in 1984 by Allen Ginsberg (Anonymous-b, n.d.), so it is protected and would be safer for the band to have asked for permission (if not done so) before use.

Conclusion

The arguments for fair use seem to outweigh those against, thus the author concludes that the song falls under fair use of the words in the poem, especially since it was transformed into a different medium -- poem to song.

References

Anonymous-a. (n.d.). 17 U.S. Code § 107 - Limitations on exclusive rights: Fair use. *Cornell Law School, Legal Information Institute*. Retrieved on February 3, 2019 from <https://www.law.cornell.edu/uscode/text/17/107>

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