

RESEARCH ARTICLE

A Sound Vote: Integrity, Music Copyright, and Politics in the Philippines

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Abstract: This research aims to determine whether the moral right of integrity may be invoked by composers or performers to prevent the use of their music for political campaigning. Protecting the integrity of a work does not only mean keeping a work unchanged but also includes preventing its use in an undesirable context. Under ordinary circumstances, a license from the music publisher or agent would be enough permission to play or perform music publicly. However, political campaigns are uniquely complicated situations because permitting the use of one's music might be perceived as support for a political candidate, party, or ideology. The risk of damaging the artist's brand and reputation is much greater. This study submits that, apart from the economic considerations, due diligence requires the licensing parties to clear the moral rights concerned before proceeding with any transaction.

While there has been no Philippine case law involving the use of copyrighted music in political campaigns, this study examines foreign case law, commentaries, and experiences to help understand how the Philippines should move forward with its own policies. This analysis suggests that authors or performers of musical works may invoke the moral right of integrity to prohibit the use of their songs in political campaigns due to the risk of harm to their work and reputation.

Keywords: Intellectual Property, Copyright, Moral Rights, Music Licensing, Integrity, Politics, Elections, Collective Management, Creative Industries

Introduction

Whenever you hear an unauthorized bastardized version of a popular song as an election jingle, pls don't vote [for] that candidate. dipa naelect nagnakaw na. [they haven't even been elected yet and they're already stealing from us]

– Raymund Marasigan on Twitter
(Marasigan, 2019)

Music is a powerful “communicator of religious, social, and political ideas” and a “vehicle for social change and law reform” (MacFarlane & Kontoleon, 2017). This is why the use of music in political campaigns has always been a common practice worldwide. Some writers report that as early as 1786, George Washington's supporters parodied the British anthem ‘God Save the Queen’ with the title ‘God Save Great Washington’ for his presidential campaign

(Suddath, 2008). The first recorded campaign jingle in the Philippines was the ‘Lacson Mambo’, which helped Manila Mayor Arsenio Lacson win his seat in 1951, 1955, and 1959 (Filipinas Heritage Library, 2022). Since then, campaign jingles have become a staple in the Philippine political diet. Used strategically, music helps promote political ideas, attracts new followers, and enhances the overall campaign experience (Behr, 2020). But this practice also ignites controversy when the artist does not wish to be identified with a certain political party or ideology (Stockdale & Harrington, 2018).

Prior to the 2019 elections, the Intellectual Property Office of the Philippines (IPOPHL) warned the public that the unlicensed use of copyrighted music for political campaigns not only violates the economic rights of the copyright holder but also the moral rights of the author, particularly the right to “object to any changes to the rights holder’s work that may affect his [or her] reputation.” IPOPHL further added that this “may be an issue when the right holder does not approve of the platform and stance of the candidate or party using his [or her] jingle” (Canivel, 2019).

During that same campaign season, the Filipino Society of Composers, Authors and Publishers, Inc. (FILSCAP) reported that only two candidates had obtained public performance licenses to use copyrighted music for their political events (Lalu, 2019). The thousands of other election candidates from dozens of political parties probably have little to no understanding of music copyright and licensing. Regardless of ideology, respect for intellectual property has never been a priority for political campaigns in the Philippines even with the heavy spending we observe during each election cycle (Malasig, 2019). Some writers suggest that copyright infringement could be monitored with the help of the Commission on Elections by requiring music licenses to be declared in the Statement of Contributions and Expenditures report of each candidate or party after each campaign period (Lacson, 2019).

While Chapter XVII of the Intellectual Property Code sets clear remedies and penalties for copyright infringement, no administrative or judicial cases have been resolved for election-related infringement of music copyright. This is likely due to the general lack of awareness of copyright law in the Philippines (Intellectual Property Office of the Philippines, 2019, p. 13, 29) as well as the lack of resources needed to

mount a copyright infringement complaint. The same situation is true in the United States where Corton (2016) observes a huge disparity in the cost and benefit of litigating the unauthorized use of music in political campaigns. Being a private property right, copyright is enforced at the initiative and cost of the rightsholders. Without a private complainant, the government would have no mandate to come in and take action against infringers. Whatever the reason for the restraint, it can only be assumed that the rightsholders have chosen to either tolerate the unlicensed use or settle the matter privately (Ching, 2010). This *status quo* leaves rightsholders with no guidance, no willpower, and no deterrent against future infringements of this nature (Eriga & Tan, 2013).

The Two Faces of Copyright: Economic and Moral Rights

*I know you don't know
What life is really worth
It's not all that glitters is gold
'Alf the story has never been told
So now you see the light, eh
Stand up for your rights*

– ‘Get Up Stand Up’ by Bob Marley (Marley, 1973)

Copyright is a set of exclusive ownership rights vested upon a person who creates original work. In the field of music, a song could have multiple owners if multiple creators were involved. The composer would own the melody, the lyricist would own the words, and the record producer would own the recorded music. Of course, all three roles could be performed by the same person and, in that scenario, that person would possess all the rights.

The set of exclusive rights under copyright is divided into two groups: economic rights and moral rights. Economic rights deal with the commercial interests of the rightsholder and they are listed under Section 177 of the IP Code:

SEC. 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- 177.1. Reproduction of the work or substantial portion of the work;
- 177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- 177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- 177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
- 177.5. Public display of the original or a copy of the work;
- 177.6. Public performance of the work; and
- 177.7. Other communication to the public of the work.

Economic rights enable copyright owners to activate revenue streams that would support their livelihood and fund future projects. These rights help create opportunities for financial security and safeguard the continuity of the creative industries. As intellectual assets, they may be freely transferred or licensed to another person, subject to the formality of a written document.

On the other hand, moral rights deal with the non-commercial interests of composers. These rights entitle them to be acknowledged as the creators of the music and provide them with a measure of control over how their songs are used and altered. The moral rights of creators are listed under Section 193 of the IP Code:

- SEC. 193. *Scope of Moral Rights.*** - The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such right, have the right:
- 193.1. To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;
 - 193.2. To make any alterations of his work prior to, or to withhold it from publication;

- 193.3. To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and
- 193.4. To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.

Apart from the composers, performers also enjoy moral rights over their live and recorded performances under Section 204 of the IP Code:

- SEC. 204. *Moral Rights of Performers.*** - 204.1. Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings or in audiovisual works or fixations, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

Moral rights are personal to the author or performer and may not be transferred or licensed to another person. Philippine law allows the authors to waive their moral rights, subject to the following limitations:

- SEC. 195. *Waiver of Moral Rights.*** - An author may waive his rights mentioned in Section 193 by a written instrument, but no such waiver shall be valid where its effects is to permit another:
- 195.1. To use the name of the author, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of another author; or
 - 195.2. To use the name of the author with respect to a work he did not create.

Under international law, moral rights are featured prominently in intellectual property treaties like the Berne Convention (1886) and key human rights instruments like the Universal Declaration of Human Rights (1948) and the International Covenant on Civil

and Political Rights (1966). Moral rights emerged from the European civil law tradition which emphasizes the role of the author in exercising property rights over literary and artistic works. In theory, *Le Droit Moral* is considered personal, perpetual, inalienable, unwaivable, and imprescriptible (Nimmer & Nimmer, 2012, p. 8D-5). Some writers assert that an author's work is an extension of their personality and, therefore, deserving of dignity and respect (Aquino, 2019, p. 91). From the perspective of the author's rights tradition of civil law, the economic considerations are merely secondary. This important connection between the creator and the creation is what moral rights protect.

While civil law countries like France, Germany, and Spain have advocated for moral rights protection since the passing of the Berne Convention in 1886, common law countries like the US, the UK, Australia, and New Zealand understood copyright primarily as a business grant from the government. While this commercial mindset adequately serves the interests of music publishers, many musical composers and performers see their work as more than just a source of income. They value their creative works as self-expression, a remembrance of a personal struggle or a joyful moment in their lives — not just a tradeable commodity.

Being an offspring of the Spanish civil law and the American common law systems, Philippine copyright law had developed into a hybrid system that combines the philosophies of European-style author's rights and American-style copyright. Today, it is a dualist system that recognizes the perpetuity of the right of attribution while allowing other moral rights to expire simultaneously with economic rights (Intellectual Property Code, s. 198).

In reality, the Berne Convention (1886) was drafted with national differences in mind. While minimum international standards have been set by the treaty, moral rights protection is localized and "governed by the legislation of the country where protection is claimed." Under this structure, individual governments are free to define their level of protection above the treaty standards.

The US case of *Shostakovich v. Twentieth Century Fox Film Corp* (1948) provides us with an example where two musical composers from the Soviet Union opposed the use of their song in a film whose theme was not consistent with their personal political beliefs. They said that such use would imply an endorsement of an offensive political ideology and the association

would cause them to be perceived as disloyal to their country. Although they lost that case in the US court for merely being "incidental use", the same composers were successful in the French case of *Société Le Chant du Monde v Société Fox Europe and Société Fox Americaine Twentieth Century* (1953), where the court was more sympathetic towards a moral rights claim (Lee, 2001, p. 795). The key difference between these cases was that US Federal Law did not recognize the moral rights of musical composers while French law expressly protected their moral rights even after the economic rights had expired. This case illustrates the vastly different outcomes one can expect from a common law copyright system and the civil law copyright system.

In any case, it is encouraging to note that common law countries have taken steps to integrate moral rights into their copyright legislation (Sterling, 2003, p. 338). The UK incorporated the moral rights of paternity and integrity into Chapter IV of their Copyright, Designs and Patents Act 1988 subject to strict conditions. The US acknowledged some moral rights for visual artists under the Visual Artists Rights Act of 1990. Australia introduced moral rights in the 2000 amendment of its Copyright Act 1968. New Zealand included moral rights into its Copyright Act 1994 with several exceptions.

But, no matter where one stands in the debate between economic and moral rights, it cannot be denied that artists and their songs rely on positive branding for their commercial success (Kanaan, 2015). Any thoughtless deviation from the artist's brand could hurt the entire business. A threat against the artist's moral rights is also a threat against economic rights. They naturally reinforce each other, and so, must be guarded simultaneously (Ritchie, 2021).

The Business of Licensing Music

*Takes more than combat gear to make a man
Takes more than a license for a gun*

—'Englishman in New York' (Sting, 1987)

Copyright owners are free to exercise their economic rights directly. But typically, they are assigned to a publisher who will manage these rights and ensure that the rightsholders get paid for the use

of their songs. The publisher's job is to find interested licensees and negotiate contracts with them on the artist's behalf. Hence, if a production company wishes to write a musical play featuring the artist's songs, it would have to secure a license covering multiple rights: the right to adapt the songs into a play, the right to reproduce the songs, the right to sell copies, the right to publicly perform the songs in live and recorded formats, and the right to communicate the songs to the public through other means (e.g. streaming). If the rights are managed properly, the artist is free to focus on songwriting and performing while the publisher handles the business of selling the music.

In the realm of politics, a campaign would typically use a song in two ways. First, the politician may want permission to play a song in its original form during rallies and events. The song would simply form part of the candidate's soundtrack which would help reinforce the campaign theme and entertain the supporters. This use requires a public performance license from either the music publisher or the collective management organization (CMO) which represents the rightsholder. Fees for this type of use are usually minimal and affordable to most users (Filipino Society of Composers, Authors, and Publishers, Inc., 2019).

Second, the politician may want to modify a song or its elements to fit the campaign message more precisely (Lopez, 2019). A tune of a popular song could be used as background music for a TV or Internet advertisement or the song lyrics might be slightly altered to create a campaign jingle or theme song (Caparas, 2004). This would require a transformation or adaptation license from the publisher and the prior approval of the artist as the holder of the moral interests to the song. Considering the targeted and customized use of content, fees for this second type of use are significantly higher, based on the popularity of the song and the artist (Lozano, 2013).

As mentioned above, some rights may be licensed through a CMO which is better equipped to monitor high-volume, low-value transactions for a large number of rightsholders. These CMOs are closely regulated in the Philippines and may only operate with IPOPHL accreditation:

SEC 183. Designation of Society. - The owners of copyright and related rights or their heirs may designate a society of artists,

writers, composers and other right-holders to collectively manage their economic or moral rights on their behalf. For the said societies to enforce the rights of their members, they shall first secure the necessary accreditation from the Intellectual Property Office.

Today, there are five accredited CMOs that collectively manage copyright and related rights in the Philippines (Intellectual Property Office of the Philippines, 2021). Out of the five, four represent the music industry. They are:

1. *The Filipino Society of Composers, Authors and Publishers, Inc. (FILSCAP)* which collectively manages the right reproduction rights, the transformation rights, the public distribution right, the public performance rights, and the communication to the public right on behalf of composers, lyricists, music publishers, and other music copyright owners;
2. *The Performers Rights Society of the Philippines, Inc. (PRSP)* which collectively manages the economic rights of performers, the right of remuneration for subsequent broadcasts, and the single equitable remuneration right on behalf of performers;
3. *The Independent Music Producers of the Philippines, Inc. (IMPRO)* which collectively manages the economic rights, and the single equitable remuneration right on behalf of sound record producers; and
4. *The Philippines Recorded Music Rights Inc. (PRM)* which is new and whose accreditation documents have not been published by IPOPHL yet.

CMOs, like FILSCAP, collectively manage the public performance rights on behalf of their members by providing blanket licenses to businesses that wish to use the songs in their catalog. For instance, if a fast-food company wishes to play music for its diners, it will have to pay a license fee to be able to play any song on FILSCAP's catalog in its restaurants. This process is called collective licensing. It helps users by giving them an easy and affordable way to comply with copyright law. It also helps rightsholders monitor the use of their songs and collect license fees without having to approach each user individually. While this

system is useful under normal circumstances, it may not be the best solution for licensing music for political campaigns.

Elections and political exercises can be tricky as they tend to ignite strong partisan sentiments from the public, particularly artists and their listeners. Collective management organisations like the American Society of Composers, Authors, and Publishers (2015) recognize this fact and allow their members to opt out of licensing to political campaigns. Broadcast Music, Inc. (2022) provides public performance licenses for political campaigns but will exclude specific songs if they receive a notice of objection from the songwriter. This option was famously exercised by Rihanna in 2018 and The Rolling Stones in 2020 to prevent the Trump campaign from using their music (Cooke, 2020). In the US, even with a music license, using music for a political campaign without the artist's consent could make the user liable for trademark dilution or false endorsement under the Lanham Act, or for violating the right of publicity under certain State laws (Willits, 2017, p. 465).

FILSCAP, PRSP, and IMPRO have not published counterpart guidelines for the Philippines, specifically dealing with political campaigns. But even with a public performance license from a CMO, failing to secure the consent of the owner of the moral rights may still be considered a cause of action for infringement of the moral right of integrity under Section 193 of the IP Code and false representation of fact under Section 169 suggesting that the artist approves of the political candidate. Copyright protection involves more than just economic rights. It helps guard the reputation of authors and performers, maintain the integrity of their works, and avoid unauthorized political endorsements (Sisario, 2020).

Lose Yourself: The New Zealand Experience

*You better lose yourself in the music, the moment,
you own it, you better never let it go*

– Lose Yourself' (Resto & Eminem, 2002)

During the 2014 election season, the New Zealand National Party used an instrumental track that sounded similar to a popular US rap song 'Lose Yourself' as background music for a series of campaign

advertisements. The original song 'Lose Yourself' was produced by Marshall Mathers III (Eminem) and his publishing company, Eight Mile Style, LLC. In 2016, Eight Mile Style filed a copyright infringement suit, *Eight Mile Style v. New Zealand National Party* (2017), against the political party, the advertising agency, and the producer of the adaptation in the Wellington High Court for using their copyrighted music in political advertising without their permission.

The party's campaign manager defended their actions by saying that they believed the track to be legal after being cleared by the advertising agency, Stan 3. The agency consulted three other parties: Sale Street Studios (another advertising agency), Beatbox Music (an Australian music library that sold them the track), and the Australasian Mechanical Copyright Owners Society (AMCOS), the relevant collective management organization which had licensed the track.

The soundalike adaptation used by the advertising agency was an obvious and deliberate imitation of 'Lose Yourself' and was even entitled 'Eminem Esque' by the producer. The High Court ruled that, as a whole, the derivative work 'Eminem Esque' was sufficiently similar to 'Lose Yourself' despite the minor differences pointed out by the defendants.

The court ordered the defendants to pay NZ\$600,000 plus interest in damages to the plaintiffs. This amount was computed based on the "user principle", which is the hypothetical license fee that Eight Mile would have charged had they been willing to license the song to the National Party. Among other factors, the court considered the following in computing for the damages:

1. Eight Mile Style had previously declined to license 'Lose Yourself' to a US presidential candidate as part of his political campaign because "political advertisements often contain divisive messages or ideological messaging that has the potential to alienate future licensees" and they carry "additional risk of a perception that the artists are endorsing the political party",
2. Eight Mile Style had refused to license the song in the past for uses that "did not tell any story that aligned with their interests" or "focused on a product which had no synergy with the ideology" even when licensing fees offered were high;

3. The messages contained in the National Party's political advertisements were "not ones with which the creators of the work would have wanted to be associated" (*Eight Mile Style v. New Zealand National Party*, 2017).

While Eminem and the co-authors of 'Lose Yourself' did not join as individual parties to the case and moral rights issues were never raised, the court did acknowledge Eight Mile Style's refusal to license the song due to the danger of derogatory treatment of the song which would damage the reputation of the songwriters. This directly points to the moral right of integrity.

The case was elevated to the Court of Appeal in *The New Zealand National Party v Eight Mile Style LLC* (2018) where the New Zealand National Party sought a reduction of the damages awarded. The court granted the prayer and decreased the award to NZ\$225,000 because the New Zealand National Party did not commit copyright infringement recklessly. In fact, they took the time to obtain industry expert advice before using the 'Eminem Esque' track.

The court explained that while "we agree that it would be reasonable to expect a higher fee would be payable for a political use", it would be unreasonable to seek even higher fees just because the "subject of the advertisement is not one which the licensor personally endorses." Besides, the National Party did not appear to use the track as a means to imply an endorsement from Eminem or Eight Mile Style. (*The New Zealand National Party v Eight Mile Style LLC*, 2018).

On appeal, the New Zealand Supreme Court ruled that the issues raised were not "matters of public importance or general commercial significance that would justify a further appeal" and dismissed the case (*Eight Mile Style, LLC v The New Zealand National Party*, 2019).

We're Not Gonna Take It: The Australian Experience

*We've got the right to choose it
There ain't no way we'll lose it
This is our life, this is our song*

– 'We're Not Gonna Take It' (Snider, 1984)

During the 2019 election campaign, Clive Palmer and the United Australia Party created and published an adaptation of the song 'We're Not Gonna Take It' by the American band, Twisted Sister. The lyrics were modified to "Australia ain't gonna cop it, no Australia's not gonna cop it, Aussies not gonna cop it any more." The derivative song was recorded and used as the theme music for their television, radio, and Internet advertisements for six months.

The entire time, the campaign team were aware that they needed a music license to legally carry out such adaptive use. They had made earlier inquiries about the licensing terms, but failing to reach a deal, they went on ahead to use the song without permission anyway. This upset the music publisher and the band who decided to take the matter to the press and the court (Whitbourn, 2019). What started as a simple licensing disagreement had now escalated into a full-blown legal and public relations war. In an interview denouncing Palmer and his party, band vocalist and songwriter, Dee Snider said: "it makes me look bad. He does not represent what I represent: I stand by freedom of choice for everybody" (Megroz, 2019).

In *Universal Music Publishing Pty Ltd v. Palmer* (No 2) (2021), the Federal Court of Australia was unconvinced of Palmer's defenses and ordered him to pay AU\$1.5 million in damages for committing acts of copyright infringement. In assessing compensatory damages, Justice Katzmann considered the following factors:

1. The song was a popular and valuable asset for the rightsholder;
2. Palmer and his party benefited from the use of the song;
3. The song had never been licensed in Australia for advertising before;
4. Palmer was a controversial public figure;
5. The derivative song was used widely for six months;
6. The derivative song used the chorus of 'We're Not Gonna Take It', which is its most significant feature; and
7. There was a high risk that the song would be associated with Palmer and his party.

However, Justice Katzmann relied on the decision of *The New Zealand National Party v Eight Mile Style LLC* (2018) to disregard the fact that the song was used

for a cause that rightsholders would not have endorsed. It was enough that the political use of the song already had an “inherent divisive quality”. In other words, the court recognized the objective derogation of the song through political use, but not the subjective opinion of the rightsholder. The court also did not consider it a factor that the rightsholder was not allowed to exercise quality control over the production of the derivative work.

Aside from the compensatory damages awarded for the unauthorized use of the music, the court awarded additional damages because of the infringer’s bad behavior. Unlike the *Eight Mile Case* where the defendant exercised steps to avoid copyright infringement, Palmer and the UAP flagrantly committed the copyright infringement. The court computed the added damages based on the following:

1. Palmer flagrantly committed the infringement after failing to secure the license;
2. Palmer threatened to counter-sue Snider for defamation after receiving the cease and desist letter;
3. Palmer posted lies on social media that Snider admitted that he did not write ‘We’re Not Gonna Take It’;
4. Snider was deeply upset with the unlicensed use of his song and the negative publicity that it caused;
5. Palmer did not show remorse for his actions;
6. Palmer submitted false evidence to the court;
7. Palmer did not comply with discovery orders;
8. Palmer could afford to get the license.

The court did not directly address the issue of moral rights infringement as it was not raised by the rightsholder. Nevertheless, it was clear from the decision that the songwriter’s opinions and sentiments regarding the infringement were relevant in determining the award, including the attacks committed by the defendant against his honor and reputation throughout the proceedings.

Section 195AJ of the Copyright Act 1968 of Australia defines the right of integrity as:

- (a) the doing, in relation to the work, of anything that results in a material distortion of, the mutilation of, or a material alteration to, the

work that is prejudicial to the author’s honour or reputation; or

- (b) an exhibition in public of the work that is prejudicial to the author’s honour or reputation because of the manner or place in which the exhibition occurs; or
- (c) the doing of anything else in relation to the work that is prejudicial to the author’s honour or reputation.

Examples of these acts include “the use of music in association with a film or advertisement that would offend the known views of the composer” and “deleting a part of the lyrics to alter the meaning of the work” (Sainsbury, 2003, p. 58). Adeney (2017) explains that Section 195AJ(c) in particular was “intended to cover contextual infringement” and that the “use of the work in an objectionable political context might cause sufficient prejudice.”

Ricketson & Creswell (2018) agreed that the phrase “doing anything else in relation to the work” under Section 195AJ(b) is broad enough to cover “contextual abuse” or “instances where nothing is actually done to the work itself, but it is presented, performed or otherwise communicated or disseminated in a derogatory fashion” which includes “reproducing or performing a musical or dramatic work in a setting or in a manner that is inappropriate.”

Adeney (2002) wrote “Prejudice to honour might be assessed either subjectively, according to the author’s sense of outrage, or, more objectively, according to a societal sense of the respect (or honour) due to the author, the work, and the author-work relationship. At this point, it is unclear how courts will choose to address such questions.” However, the *Eight Mile Case* and the *Twisted Sister Case* leaned towards objective rather than subjective derogation. This works in favor of rightsholders because the use of music in a political context is presumed to be derogatory without the need to show actual damage to one’s reputation. Otherwise, a rightsholder would not be able to prevent the use of the work but only challenge it after it is too late.

Ricketson & Creswell (2018) commented that in case there is a “sharp conflict between the author’s personal opinions and those of a more ‘objective’ character”, the court will have to make an “overall determination of reasonableness”. Absent any finding of unreasonableness, courts must give full credence to the subjective opinion of the artist regarding the

presence of derogatory treatment, especially when the music in question is being used to speak about political opinions on contentious matters. The complainant is presumably in the best position to determine the existence of reputational damage because they have the clearest access to their personal political thoughts and that of their target audience.

The Clash Between the Economic and the Moral

*You never give me your money
You only give me your funny paper
And in the middle of negotiations
You break down
I never give you my number
I only give you my situation
And in the middle of investigation
I break down*

– ‘You Never Give Me Your Money’
(Lennon & McCartney, 1971)

Circling back to the Philippines, our intellectual property law does not impose a hierarchy of rights and neither does infringement discriminate between economic and moral rights. Both sets of rights must be cleared before a song may be legally used for political campaigning. When economic and moral rights are divided among different rightsholders, there will always be a lingering potential for conflict. An agent or music publisher may be in the business of routinely issuing music licenses for commercial and political uses, but those licenses are technically incomplete without the clearance or waiver of the songwriter’s moral rights. This leaves the moral rightsholder with significant leverage as the bearer of the final vote. No songwriter or performer in their right mind would waive their moral rights or agree to a reputation-damaging contract unless faced with the proverbial “offer they can’t refuse”.

The issue is a matter of poor practice rather than poor policy. Legal conflict arises when music publishers have broken business relationships with their authors and performers who are, by law, the permanent rightsholders of their respective moral rights. A licensing contract for a political advertisement or campaign jingle may be rewarding from the

perspective of the economic rightsholder but risky to the moral rightsholder’s public image. In such a case, a meeting of minds becomes elusive. The publisher’s “yes” may be vetoed by the author’s “no”. The license is never perfected because partial consent is no consent at all. This balances the power between the songwriters and performers on one hand and music publishers on the other because it makes moral rightsholders essential parties to any licensing negotiation. If they can’t find a way to get along, the deal will never be made. This is the nature of co-owning copyright.

The Intellectual Property Office of the Philippines (2022) confirms that “(t)he right to refuse the communication of a work to the public is part of the set of economic and moral rights granted to copyright holders by the IP Code of 1997” and “even as candidates are willing to pay a handsome fee, they first and foremost have to ask copyright holders’ permission to use their works in their political ads, and respect their decision if their proposals are turned down if it’s because they refuse any association from a certain political party.” Regardless of wealth and influence, political candidates simply cannot take and use a song against the owner’s will. Section 193.3 of the Intellectual Property Code recognizes the author’s right to “object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his (or her) work which would be prejudicial to his (or her) honor or reputation.” The right to say “no” is a fundamental right of any intellectual property owner and it must be resolutely exercised during election season.

Conclusion

Politicians have been appropriating pop music for as long as anyone can remember... if artists want to lend their music to politicians, that’s fine. But it is not OK for politicians to just take their songs. This happens every single election... and it is time for musicians to come together and take a stand.

– Last Week Tonight with John Oliver
(Oliver, 2016)

The mantra of intellectual property is that “rights must be balanced”. On one corner, we have the rights of artists to be justly rewarded for their work and to

be protected from derogatory treatment. On the other, we have the right of political actors to access popular music that would help them in their campaign efforts. Examined closely, the artist has a greater stake in how their work is used, transformed, and communicated to the public.

In any modern democratic society, free speech is highly regarded – but so is artistic integrity. When weighed against each other, original speech holds greater value and, thus, requires more protection than derivative or borrowed speech. The moral right of the artist to decide who gets to use their music and how must be recognized to protect their reputation and the dignity of their body of work. It is simply not acceptable for one person to use an artist's intellectual property for political and material gain without their consent.

To the politician, a song may just be another catchy tune or lyric to help draw more attention and win an election. To the artist, it may be their life's work and story. Allowing a stranger to alter this personal narrative just to pursue their political ambition is derogatory treatment. A political party can always choose another song or even have one commissioned from scratch to suit their message, but the artist risks irreversible reputational damage if their song is used by the wrong people or in the wrong context.

Adele was well within her rights in stopping Donald Trump from playing "Rolling in the Deep" in 2016 the same way Sam Moore stopped Barack Obama from using "Hold On, I'm Comin'" for the presidential campaign in 2008. This is not about favoring certain parties or policies. This is about giving artists and performers the choice to say "No" when certain uses of their work might fracture their public image. In this age of misinformation and media trolling, the misuse of music only contributes to polluting the political discourse.

Some users may wish to invoke fair use as a justification but most political campaigns are money-driven and would not pass the minimum standards for fair use. Using a song to promote one candidate often destroys the rightsholder's opportunity to license the song to their preferred candidate. This results in irreversible damage to the potential market and value of the song, and possibly the songwriter's reputation and their entire body of work. This is not fair use.

Granting access to a song also means granting access to the artist's audience. It's a reputational risk

that only the artist can freely and intelligently decide upon. This is why artists need to push back and protest any undesirable use of their work. Any attempt by a political campaign to forcibly appropriate the artist's songs and goodwill is short-sighted and likely to harm both parties with negative publicity.

As a Member State of the Berne Convention, the moral right of authors to participate in contracts that affect the integrity of their work or their reputation, regardless of who owns the economic rights to their music, cannot be ignored. Responsible copyright licensing is an exercise in building reciprocal relationships – finding the right match. If the artist and the politician do not share the same political perspective there would be no meeting of minds -- consent would be fundamentally flawed. Any political message grounded on such division will fail. There's no way around it. In music licensing, just as in politics, integrity matters.

Recommendations

1. **Opt Out.** Political campaigns should be treated as high-risk licensing situations. Philippine CMOs would do well to mirror the best practices of ASCAP and BMI in allowing their members to opt out of licensing their music for political campaigns. This will help them exercise better control over their economic and moral rights. In the alternative, licensing music for political campaigns should be subject to the consent of the rightsholder to clear moral rights. In general, CMOs and rightsholders need to work closely together to prevent conflicts between the economic and moral interests involved.
2. **Better Representation.** Publishers should always act in the best interest of their artists. They need to clear the moral rights of their clients before closing licensing deals that may lead to derivative works that contradict the author's wishes or blemish their reputation. The value of IP can only be preserved and increased by finding the right partners who can reinforce the brand and public image of the artist.
3. **Administrative Review.** While it may not be necessary to make changes to the law at this point because it has not yet been tested in an actual case or controversy, the Intellectual Property Office

needs to provide targeted implementing rules for the use and licensing of copyrighted works in political campaigns. IPOPHL can take the lessons learned from other jurisdictions and provide clear criteria on what constitutes a violation of moral rights and how the remedies may be exercised. This author recommends a position that does not undermine moral rights but enforces them with equal weight. The guidelines can also help the parties by providing examples of what types of evidence would be acceptable to show potential harm to the author's reputation.

4. **Education.** Copyright holders and users need to be educated and constantly reminded about their economic and moral rights. They need to understand the importance of enforcing their rights through proper channels instead of leaving them at the mercy of social media and popular opinion which tend to muddle the issues. IPOPHL needs to be vigilant during campaign periods and encourage the filing of complaints involving the unlicensed use of music for political purposes. Stakeholders like music producers, publishers, CMOs, authors, political parties, and government representatives from COMELEC need to know what rights are involved and what remedies may be exercised.

Declarations

No conflicts to declare.

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