

Politicians' use of popular songs unpopular with some

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From the Beatles and Marvin Gaye to Fergie and U2, a who's who of popular music stars are providing the soundtrack to online campaign commercials for Texas candidates.

But while Gov. Rick Perry, Sen. Kay Bailey Hutchison and others would normally incur high fees to use these songs in television ads, they aren't paying a dime to use them in videos posted on YouTube. In some cases, candidates are freed from copyright law restrictions if they allow their campaign videos to be used as commercials for the songs heard in them.

"Political campaigns like ours have long considered the use of such songs in Web videos as acceptable under fair use rules," Hutchison campaign spokesman Joe Pounder said.

In statewide and local races, candidates have made YouTube a major part of their election strategy.

"It's an inexpensive way to put out a message," said Mark Miner, Perry's campaign spokesman. "The goal in the campaign is to use every outlet possible to get your message out."

Music is often key to delivering that message.

Perry and Hutchison have used songs to solicit laughs in several online attack ads. A video from Perry's camp on Hutchison's use of private planes employed Fergie's *Glamorous*. Hutchison used the O'Jays' *For the Love of Money* in an ad on Perry's fundraising practices.

Getting permission

Most Texas campaigns are not getting explicit permission from musicians or copyright holders to use the songs in these Web videos. Occasionally, that's caused some headaches.

Last summer, Perry's camp posted a video introducing its Home Headquarters program designed to rally supporters. The clip included part of the song *Such Great Heights* from the indie pop band the Postal Service. Soon after, a law firm representing the band contacted the Perry campaign.

"We were asked to take the music down, and we did so the same day," Miner said in an e-mail in August. Days later, the campaign posted the video again with different music.

In December, the Republican Party of Texas used the Platters' hit *The Great Pretender* in a video attacking former Houston Mayor Bill White.

"We have not authorized anybody to use the music for political purposes," said Frank Balboni, manager for Platters' member Herb Reed.

Balboni said he had meant to get the video taken down when he first learned about it in December but became busy with another legal matter. When he learned Thursday that the video was still up, he vowed to send a cease and desist letter immediately.

The Texas Republican Party did not reply to calls or e-mails for this story, but Communications Director Bryan Preston told the Austin Chronicle in December that the use of the song in the video was covered under "fair use and political parody."

"It is not fair use," Balboni said. "If they want to license the music, they need to apply to license it."

In the last few presidential races, various musicians have publicly cried foul after learning of a campaign using their music without permission. Often, it's an issue of the artist not supporting the candidate.

Bruce Springsteen famously complained when Ronald Reagan used *Born in the USA* on the presidential campaign trail but was fine with Barack Obama using the song in his campaign last year.

John McCain's 2008 presidential campaign received requests from John Mellencamp and others to stop using certain songs. Jackson Browne sued the McCain camp over their use of *Running On Empty* in a Web video. McCain and the Republican National Committee settled the suit for an undisclosed sum of money.

Unclear laws

The laws on the use of copyrighted music by political campaigns are far from clear, said Kimberly Isbell, a staff attorney at Harvard University's Berkman Center for Internet and Society. A case can shift on many factors, including how much of the song is used.

What doesn't matter is whether the music is used in an online video or on television, Isbell said.

"You're still distributing it," Isbell said. "Whether it's online or on TV isn't going to affect the analysis."

The issue has become cloudier since YouTube started allowing some copyright owners the chance to capitalize on others using their work without permission.

The Google-owned Web site launched Content ID in 2007. The service checks the content of new videos on the site against a library of copyrighted works. When the company finds a match, it gives the copyright owner a chance to have the work taken down. If they let it remain online, the owner has the option to post ads on the videos and collect the revenue.

That's turned some political videos into unexpected marketing vehicles for the music used in them.

Viewers of Perry's campaign video featuring Fergie's *Glamorous* will notice a pop-up ad with a link to buy the song. The same is true of videos from Hutchison's campaign featuring music by the O'Jays and Billy Joel.

By keeping the video up, the copyright owner is giving tacit approval of the use of the song, but whether that would hold up in court has not been fully tested.

Other political videos on YouTube that use popular songs do not feature advertisements, making it unclear whether the copyright holder is comfortable with its use.

Democrat Eric Johnson, a candidate for the District 100 seat held by state Rep. Terri Hodge, D-Dallas, posted a campaign video featuring Marvin Gaye's *Mercy Mercy Me (The Ecology)*. His campaign did not return a request for comment.

Republican Charles Perry, a primary opponent of state Rep. Delwin Jones of Lubbock, used The Beatles' *All Together Now* to accompany footage from a campaign event. After a call from the Star-Telegram, he took the video down from YouTube.

YouTube spokesman Aaron Zamost said it is possible that the use of the music in those videos has been approved by the copyright owners.

"To be fair, the vast majority of partners who use Content ID choose to monetize, but that doesn't mean there aren't partners who choose to leave it up without monetizing," Zamost said.

Calls to the record companies that represent the musicians whose songs are being used in various Texas campaign videos were not returned.

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