Cue 'Barracuda'

By Christopher Sprigman and Siva Vaidhyanathan
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After vice presidential nominee Sarah Palin finished her big speech at the Republican National Convention, the 1977 song "Barracuda," by the band Heart, blared out over the roar of the crowd. Convention organizers chose the music to highlight Palin's high school basketball-team nickname, "Sarah Barracuda." But Heart's songwriters, Ann and Nancy Wilson, were less than pleased.

The sisters released a statement saying that "Sarah Palin's views and values in no way represent us as American women" and insisted that the McCain-Palin campaign not play their song. Their publisher, Universal Music Publishing, and their label, Sony BMG, sent a cease-and-desist letter to the campaign.

Artists have frequently spoken out against John McCain's presidential campaign for using their songs without their permission. Last week, the rock band Foo Fighters complained about the campaign playing its 1997 hit "My Hero" at rallies. Van Halen, which complained in 2004 when George W. Bush used its 1991 hit "Right Now," has objected to McCain's use of the same song. John Mellencamp complained about the use of his 1983 song "Pink Houses." Warner Music Group demanded that McCain remove videos from YouTube that mock Barack Obama using the classic 1967 Frankie Valli song "Can't Take My Eyes Off You." Jackson Browne filed a lawsuit to stop the Ohio Republican Party from using his 1977 hit as a "celebrity" campaign song.

Often, the objection is ideological: The Wilson sisters object to their song being used to advance Palin's political views, with which they disagree. But objections aren't always motivated by artists' politics. The members of Van Halen, for instance, have stated that they do not want their song used politically by anyone.

We sympathize -- to a point -- with artists who object to the use of their songs by political candidates. Artists should speak up, loudly, when they feel the use of their songs misrepresents their views, particularly...
if such use could create the public impression of an endorsement.

But the one thing they should not do -- and should not legally be permitted to do -- is file a copyright lawsuit to prevent the political use of a song.

Why would we support limiting artists' legal powers in this way? First, there is a technical legal reason: Almost all recording artists make their songs available for use via a "blanket license" from firms such as ASCAP (the American Society of Composers, Authors and Performers) or BMI (Broadcast Music Inc.). By lowering the cost of licensing, the blanket licensing system provides artists with revenue they would not otherwise obtain; it also makes it easy for bars and restaurants to play music without hassle, fear or crippling costs. If artists start trying to pick and choose who is eligible for a blanket license, the efficiency of the system would be destroyed. The McCain campaign has continued to play "Barracuda" since the Republican convention precisely because it cleared the license for such use with ASCAP. The campaign paid for the use of "My Hero" as well.

The second reason is more fundamental. Politicians use songs as a way to tell people what they stand for -- or at least what they want us to believe they stand for. Using a song to communicate a political message is just the kind of speech the First Amendment was designed to protect.

There is an inherent tension between copyright law -- which tells us what we cannot say, sing or perform -- and the First Amendment, which protects against state censorship. In this case, the First Amendment must win. Rich and varied political speech -- no matter how distasteful to recording artists or their fans -- must prevail and stay free.

While copyrights should be respected, artists who abuse copyright to attempt to muzzle politicians' speech are sacrificing the broader interest for their own feelings and agendas. This kind of conduct is not what copyright is about; copyright law exists to help artists get paid, and politicians who pay for a blanket license to use a song in a campaign are doing exactly what the copyright law says they should.

Artists' copyrights are important, but the vibrancy of our political discourse is absolutely central. If John McCain wants to tell voters that Sarah Palin is a barracuda, and the most effective way to do so is via Heart's song, then by all means let it play. And if the Wilson sisters want to mock Republican misuse of a feminist anthem, then let them sing from the mountaintops. But let's keep courts out of it.

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