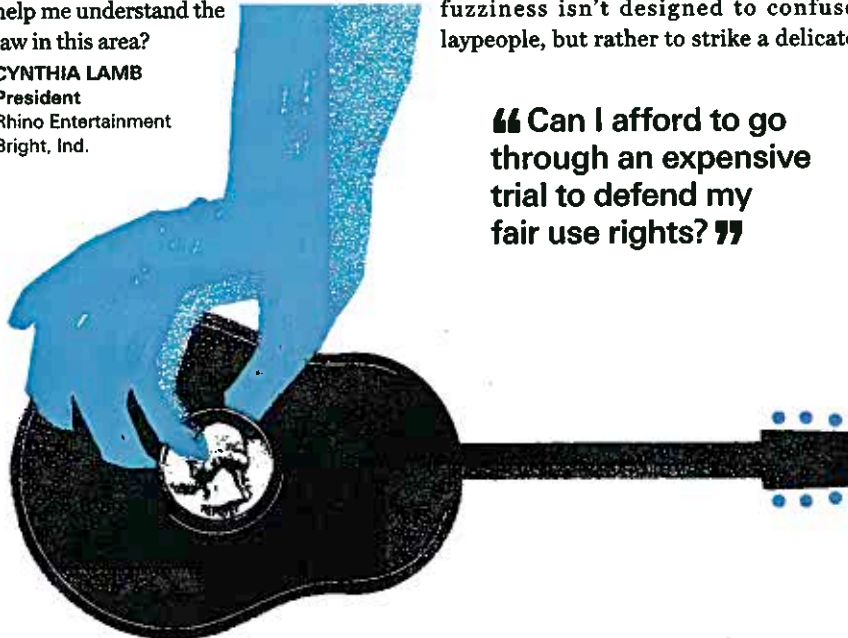


Will Fair Use Protect Me?

ILLUSTRATIONS BY THE HEADS OF STATE

Dear FSB: I own a consulting firm and plan to self-publish a book detailing lessons I've learned. In my book, I quote song lyrics. The U.S. Copyright Office says I must get permission from the songs' copyright holders before using the lyrics, and I've started to do so. But my research suggests the fair use doctrine would let me reprint a percentage of the lyrics without this hassle. Can you help me understand the law in this area?

CYNTHIA LAMB
President
Rhino Entertainment
Bright, Ind.



“Can I afford to go through an expensive trial to defend my fair use rights?”

Dear Cynthia: When it comes to fair use, which is a defense to a copyright infringement claim, there are no bright-line rules or percentage calculations that will shield you from potential liability. “The law is deliberately vague,” says Emmett McAuliffe, an entertainment lawyer with Spencer Fane Britt & Browne in St. Louis. McAuliffe explains that this fuzziness isn't designed to confuse laypeople, but rather to strike a delicate

balance that will not unfairly favor one side. It is for the courts to decide on a case-by-case basis whether the fair use doctrine protects an alleged infringer.

“In some situations, a small percentage of lifting can get you in trouble, and in others a large percentage can be okay,” says McAuliffe, who notes that the size of a quote is just one of four factors that courts weigh when ruling on fair use. The others are the purpose and character of your use, the nature of the copyrighted work and the effect of the use on the potential market. Only a lawyer who is fully familiar with the facts of your case should attempt to assess these issues.

If you are tempted to enter this gray area without professional guidance, McAuliffe suggests you ask yourself this question: “Can I afford to go through an expensive trial to defend my fair use rights?” If you're at all litigation-averse (and really, who isn't?), McAuliffe advises either hiring a law firm to do a prepublication review or dropping the lyrics altogether. Why not find a way to make your point using your own words?

If you must use the lyrics, it's important to have a qualified attorney analyze the ownership status of each song, secure permissions and ensure that all clearances are in the proper form.

—ADRIANA GARDELLA

Adriana Gardella, a lawyer and an FSB editor, helps unravel the legal issues that vex business owners.

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My Family Business Lacks Structure!

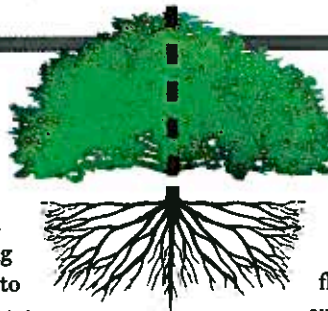
Dear FSB: My dad and I own a small drywall contracting company. We'd like to create structure but don't know how. Should we assign ourselves specific responsibilities?

NAME WITHHELD
Miami

Dear Reader: Defining roles is especially hard when your colleague is a family member. Gary

Naumann, lecturer in entrepreneurship at Arizona State University's W.P. Carey School of Business in Tempe, recommends sorting the firm's critical tasks into functional areas, such as operations and sales. Then decide which of you is best suited to oversee each division. Once you divvy up the responsibilities, try not to double-dip on minor issues. Ensuring that efforts are not duplicated will become even more essential as you add employees.

Along with the division of tasks comes the challenge of determining remuneration. Formalizing pay arrangements is key to creating an official business structure. “The



sooner the family business leader creates standards for dealing with compensation issues, the more likely the business is to survive and flourish,” says Allen Fishman, author of *9 Elements of Family Business Success*. He adds that family businesses should strive to keep compensation in line with industry standards.

In his book Fishman recommends putting your policy into writing. A clearly stated policy often prevents conflict, he writes, and is the best way to break through the emotional barriers that generally come into play when discussing compensation.

—EMILY MALTBY