

Downloading Songs and Using them for Profit: Is it Halachically Permitted?

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Question: It is quite common nowadays to use songs created by others for promotional videos and other purposes, and most people will do so without even thinking twice. What are the halachic parameters of using music in such a fashion?

Answer: The first point we should note is that there was more of a copyright issue with using songs and albums without permission or payment years ago when most people did not have easy access to them. Nowadays where most of the world has turned virtual and many songs are easily available from the internet, most Jewish singers use their songs for publicity but do not make a significant profit off of selling them. Rather, their profit is made primarily from concerts, *chasunos*, and the like. This solves the halachic problem of taking another's intellectual property, which was the halachic problem with this issue in previous decades. Since it is understood today that the song is in the public sphere and there is no way to control its use, it is essentially considered *hefker* and anyone may use it. In fact, Rav Chaim Pinchas Scheinberg once referred to this situation as *zuto shel yam*, the same expression used in the Gemara to describe a lost object swept away by the river, which becomes ownerless since there is no way for the owner to retrieve it.

The second potential halachic issue with using music is that one may be destroying someone else's livelihood by using music without paying for it. But today, the reverse may actually be true, as the manner in which the singer becomes a household name in the Jewish community is through his music, which will cause more people to want to hire him for weddings or concerts. If so, he may in fact prefer that more people listen to his songs.

Question: Who has the right to determine whether it is preferable to have many people downloading the music – the singer or the individual?

Answer: It is true that the singers usually write on their albums and music that listening to them is *assur* according to halacha and copyright law, so it seems that despite the potential benefit, they do not want people to use them however they wish. It is arguable though whether they can decide this given that the song is freely available to all on the internet, and there may be room for leniency.

There is one other point that is important to mention in this context.

According to the Ketzos HaChoshen (C.M. 248), it may be permitted to benefit from someone else's intellectual property, but if one **sells** someone else's intellectual property, then some of the profit received from that sale would seem to belong to the owner of the intellectual property (known as *mishtarshei leh*).

Thus, in our case, although it may be permitted to use the song for personal benefit or even as background music on a promotional video, if one re-records the song and then sells it for a profit, some of the royalties would seem to belong to the original musician, and it could be problematic to retain all of the profit for oneself.