

Melania Trump vs. Michelle Obama: Does copyright law cover public speeches?



In this combination of photos, Melania Trump, left, wife of Republican Presidential Candidate Donald Trump, speaks during the opening day of the Republican National Convention in Cleveland, Monday, July 18, 2016, and Michelle Obama, wife of (then) Democratic presidential candidate, Sen. Barack Obama, D-Ill., speaks at the Democratic National Convention in Denver, Monday, Aug. 25, 2008. (AP Photos)

Last week, there were reports that Melania Trump's speech was very similar to the speech previously given by Michelle Obama at the Democratic National Convention in 2008. While the Trump campaign denies that she plagiarized any portion of the First Lady's speech, it raises an interesting question: Does copyright law actually protect public speeches?

Emily Campbell, shareholder with Dunlap Codding, sat down with Inside Counsel recently to discuss intellectual property (IP) protection for public speeches.

Does [copyright law](#) actually protect public speeches? The answer according to Campbell is yes. Copyright law serves to protect various types of creative works, including speeches.

"The nuance here, though, is that copyrights protect works only when they are 'fixed in a tangible medium,'" she explained. "So what's really protected by copyright is not the act of giving the speech but the video recording, sound recording, or antecedent written text of the speech."

Copyright protection only applies to "original works of authorship" that are "fixed in a tangible medium of expression." So technically, if you attend an improvisational speech that has not been notated or recorded, you may publish the speech in your online work without fear of liability.

So, does that apply to Mrs. Obama's speech that was recorded and televised? According to Campbell, no because Mrs. Obama's speech was fixed in several tangible mediums — in written form, video recording, and sound recordings.

However, Mrs. Obama's speech is protected by copyright law. One might question whether the speech was a federal work and thus part of the public domain, but since Mrs. Obama was not a federal employee at the time the speech was created and delivered, it would not be considered a federal work falling into the public domain.

Campbell said, "Ultimately, the key questions to be answered are whether Melania Trump used enough of the speech to constitute infringement."

Today, copyright law is the arm of IP law which serves to protect the tangible expressions of public speeches — the antecedent written version, the sound recording, and the video recording of the speech.

In the past, there were many speeches obviously plagiarized in politics. For example, in 1987, Joe Biden was accused of plagiarism by New York Times columnist Maureen Dowd when she pointed out similarities between Biden's presidential campaign speech and a speech by U.K. Labour Party Leader Neil Kinnock.

So, how can this embarrassment be prevented in the future?

Campbell said, "Be inspired by the works of others, but don't copy them. Don't use the work of another — in whole or in part — without obtaining permission first."

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