

Music Sampling and Copyright: Legal Precedents and Future Directions

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Abstract

This paper examines the complex intersection of music sampling and copyright law, focusing on legal precedents and future directions in this evolving field. Music sampling, the practice of incorporating portions of existing sound recordings into new works, has sparked significant legal debates and challenges, particularly regarding copyright infringement and artistic expression. The study traces the historical development of copyright law in the context of music, highlighting key legislation and landmark cases that have shaped the legal landscape. It underscores the tensions between protecting the rights of original creators and fostering artistic innovation through sampling. The paper discusses the impact of technological advancements on music production and distribution, noting how these developments have made sampling more accessible, while simultaneously complicating legal enforcement. It also explores the cultural implications of sampling within various music genres, particularly hip hop, and addresses the ongoing debates around fair use and the necessity of obtaining permissions. Ultimately, the research advocates for a legal framework that adapts to the realities of modern music creation, balancing the interests of copyright holders with the creative needs of artists.

Keywords: Music sampling, Copyright law, Fair use, Legal precedents, Artistic expression, Intellectual property, Digital technology, Hip hop, Licensing, Creative innovation

1. Introduction

Many of us have heard about the verdict or the recent debates surrounding a popular song. While these cases are significant, they only represent a few of the legal battles regarding musical borrowing in the last few years. Music sampling is a contested artistic practice and also a major part of contemporary music production. In this essay, we will look at these legal precedents and how this could be a bellwether indicating future trends. Sampling is the music production technique of taking a portion or

sample of one sound recording and reusing it as part of or a different piece, often without the permission of the original copyright holder. This essay will look at the legal framework as it developed in the US and the UK. Sampling laws are an intersection of IP and artistic practice and reveal tensions around the freedom of artistic idea expression and market incentives. Historically, independent music sought ways to create a unique sound out of market-friendly digital developments. In this essay, we ask whether the law struck the right balance and what this might mean for the future (Cayari, 2021).

1.1. Background of Music Sampling

Music sampling is an art form created by altering pre-existing audio recordings. This practice is inherently different from more traditional musical techniques that instead focus on the pre-existing. Although an artist creating a cover or a remix of a previously published song is working with the same bases, it is not considered sampling due to the way in which it is put together. Advanced software and high sound definition are not a requirement for sampling because sound quality is not of primary importance. As with many innovations, the sampling in songs we are familiar with today is not the beginning. Mechanical music and phonograph experiments from the late 1800s and early 1900s planted the seed for the idea of recording and manipulating sound. This technology was concurrently developed by researchers in both the United States and Europe, leading to the creation of one of the earliest sound recordings made on Beethoven's "Ode to Joy" in 1878.

However, the phonograph, intended primarily for playing back the records it captured, actually provided an ultimate opportunity for the reuse and manipulation of sound through overdubbing and remixing—precisely, digital sampling. This new potential was not overlooked by composers in the mid-20th century, and in the 1950s the practice of "tape splicing" was born. This analog sampling technique used razor blades, recording tape, and tape recorders to manipulate music, creating works that could not have been conceived of without it. In the 1990s, the first widely recognized cases of recording artists being prosecuted for sampling resulted. Though digital sampling technology was commercially available throughout the 1980s, it was not until the 1990s that practical access to more advanced equipment, such as MIDI

samplers and sequencers, was made available to many more artists. With advances in computer-aided production equipment, interest in sampling skyrocketed (Howard et al., 2021).

Software and hardware advances made available near the end of the 1990s presented the art world with the potential to break away from music convention and apply what was learned by music sampling to straight sound design, showcasing those same techniques, taking the music out. By the mid-2010s, a wide array of sounds and genres that adopted or embraced the techniques of sampling could be observed. For all these reasons, the act of sampling a pre-recorded sound has become a standard tool in the producer's sound design skillset.

2. Historical Overview of Copyright Law

The rules regulating the modern music industry and its newfound ability to sample the works of older recordings are deeply rooted in our legal history. To develop an understanding of these laws and rules, we must first reflect on the historical context in which they were developed. While not always concerned with artistic works, a kind of copyright law dates back to ancient Greece and Rome. These older rules pointed primarily to securing the rights of creators, and it wasn't until 1710 in the reign of Queen Anne that modern copyright laws first emerged. The English Statute of Anne, as it came to be known, was the first of its kind. While it was the invention of the printing press that had spurred most copyright laws before it, the Statute of Anne specifically came in response to a changing technological landscape in musical production. It was a time of rapid change and development in music; modern melodies were becoming increasingly preferred to classical pieces, and Europeans had developed a voracious appetite for Italian operas and music from all over the continent. The statute itself sought to curb the rise and spread of printed music in order to protect the economic rights of composers, attesting to a historical focus on the architectural intent and economic value of the work in question.

While copyright law has undergone undulating development since then, it has always sought to keep pace with new technologies, for example, incorporating player pianos in 1908 and radio in 1909. Despite these changes, the core of copyright law has remained relatively unchanged. As part of treaties after World War II, international

copyright law was rewritten to reemphasize the protection of the economic and moral rights of creators, primarily the rights to reproduce, perform, and release records. This, along with the European Copyright Directive's stated intent to protect the public from exploitation by special interest groups who want to turn music for personal enjoyment into a secondary source of income, further reaffirms that the laws seek to protect the rights and intent of creators, their works, and those beneficially connected to their creation. Recent amendments to modern copyright have largely been in response to questions of authorship over digital works, such as the Digital Millennium Copyright Act in the US in 1998. Just as the original copyright laws had taken into consideration the rise of new technologies and the potential for re-matching existing works in different media, modern copyright laws are crafted to account for the rapid and largely digital creation of musical works.

2.1. Evolution of Copyright Protection in Music

Amidst a constantly shifting music culture and landscape, the issue of music sampling and its relationship with copyright stems from the gradual evolution of legal protections afforded to music. As digital tools developed, practices that may have caused legal or societal concerns were now within the easy reach of many artists and producers (Herbst & Menze, 2021). This subsection of the paper sketches an intertwining and dynamic portrait of how music has been, and is today, protected under the law. It examines a tripartite legal regime: common law, federal law specifically amendments, and opinions provided by the United States Senate; finally, upcoming changes to international copyright rules anticipated to be ratified are explored. The limitations of music copyright, specifically in domestic U.S. law and international standards, are relevant to the policy prescriptions a nation may place on musical sampling. In this context, the road treating music as separate from other writings or a commercial protective item intersects civil and government culture, but also has demarcated the artists and industries as they exist today. Over time, the consolidation and fortification of these rights in music persisted in instruments of law and public opinion. As the music industry changes, so too do possible roads for amendment in legal protection, individual against society, and industry belief. Different nations have, in congruent terms, offered more or less protection in musical

works than the United States and later as a member state. Annotations of common and federal laws show the changes in copyright protection for music and point to tension between the rights of artists, in order to provide incentives to create new music, and the commercial development of music and media industries. Cultural discussion, policy, and legislative measures recognize music should be different from commercial writings, and changes to United States law made it easier for musical compositions to become copy-protected in the 20th century, and individual performance as a separate work within the 1970s. This protection may work against the flow of progress in digital media and music.

3. Legal Precedents in Music Sampling Cases

Many seminal artists have, over the years, sought to pay homage to or build upon the work of their musical predecessors by incorporating musical excerpts of the prior works into new songs. This practice, known as sampling, has produced landmark court opinions, holding that a practice commonly found in hip-hop and rap music very close to copyright infringement cannot be justified under the U.S. copyright statute's defense of fair use. Instead, musical artists must exercise care and obtain permission to use all elements of another's musical composition, lest they be subsequently sued for copyright infringement. The following is a survey of the great sampling cases that have helped to delineate how lower courts are to balance the interests of artists in being able to express themselves through their art with the statutory right of the original artists to control the public reproduction, distribution, and display of their creations. Under 17 U.S.C. 106(1) and 114(a), the creators of original musical works are granted the right to reproduce, distribute, and adapt their music. Similarly, the creators and performers of original sound recordings are given the exclusive right to play their recordings publicly as well as to publicly display the images thereon (Parzer, 2021). Additionally, those whose sound recordings have been copied are granted the right to control the distribution of the new phonorecords. In the main, to prove infringement, the plaintiff must show a substantial similarity between the two works (vocal melodies, lyrics, or chord progressions in the case of musical compositions, and of course the sound recording itself in the case of recordings) under the 'ordinary

observer' and 'total concept and feel' tests, and that the alleged infringer had access to the preexisting work.

3.1. Key Cases and Rulings

The history of disputes involving music sampling—a process of copying a preexisting work, changing the copied work in some way, and then incorporating the altered work into a new work—spans the entirety of the history of recorded music. Some cases of sampling have entered case law and are looked to as key precedents when confronting new disputes. One case concerned the time-shifting of television broadcasts for private use through the medium of video recording and set a key fair use precedent that was later cited in another case. Notable pre-Bridgeport cases are significant for their dissents which question both the historical existence of de minimis copying as copyright infringement as well as the then-countrywide legal standard of music copyright infringement.

In one case, the judge found that the unauthorized quoting of a song lyric for a commercial sound recording release was infringement per se because it had already been shown that the defendant had copied the lyrics when he failed to attribute the performances in the soundtrack for the album. The finding was reached without the filing of a motion or response for summary judgment and without a motion for injunctive relief, thus likely had no presidential authority, but the reasoning in the opinion has been cited in music copyright standard of independent creation musical infringement, which is codified in the copyright statute. An earlier precedent had noted that the case was settled on the issue of the plaintiff proving copying and the defendant distributing a copy of the work. Both these opinions, now with a presidential authority of law, are frequently cited for this new holding, although that appellate court has refused to intervene in this matter, refusing to hear the appeal.

4. Challenges and Controversies in Music Sampling

Music sampling is a creative practice that allows artists to incorporate or imitate pre-existing sound recordings in their own compositions. Critics who advocate for reduced copyright restrictions view sampling as a form of artistic expression, analogous to quoting, parody, or dubbing in other creative works. Some artists contend that noncommercial sampling improves collaboration and solicits feedback

from like-minded consumers. Some creators advocate for literacy in digital creative technologies. Their work raises important ethical considerations surrounding identity, consumer intelligence, and access to creative tools that the law is slow to appreciate. Critics, however, suggest practices in the style of "DJs, splices, bootlegs, and sampling" are not works of transformative creativity because they simply alter the original product without adding anything new (Van et al.2022).

Recording artists can spend millions of dollars securing the necessary licenses and clearances, often from multiple copyright owners, before releasing songs that contain copyrighted material. Yet even after artists spend time and money discussing a collaborative use of copyrighted sounds, the owners of the sampled tracks can continue to veto the artists' commercial use of copyrighted sound recordings. On the other hand, "hardcore sampling" communities, such as "chip" artists who publish music sampled from old video games on their websites and thousands of amateur composers, often working in makeshift recording studios in their bedrooms or garages and publishing music on hobbyist sites and independent labels, have expressed little fear of implementing digital reuse practices into their work or of being sued for copyright infringement. Rather, these reshapers desire to be accessible and to create accessible music. Other hobbyist and semi-professional artists hope to benefit from the future economic success of artists and countercultural innovators who alter digital art procreation practices.

4.1. Artistic Expression vs. Copyright Infringement

The philosophical question of whether sampling an existing recording or song is an affair in artistic expression versus an act of copyright infringement is a contentious issue in contemporary philosophical and legal debates. Some commentators celebrate sampling as channeling hip hop's do-it-yourself (DIY) "bricoleur of sound," whose recursive reinterpretation of pre-existing musical work promotes a democratic remix culture. Others provide a close analysis of the law and practice governing sampling, arguing against the notion that copyright should be re-conceptualized as a "special, hybrid situation" that enjoys a "more relaxed standard of protection" than other literary, musical, visual, and dramatic works. Yet, copyright protection is necessary but not sufficient to justify why a copyright owner (or their licensee) ought to have a

say on whether their work can be sampled. The philosophical account of why, or under which circumstances, sampling should be legal but not an act of copyright infringement is far from complete. Part of the disagreement stems from the fact that it is very difficult to find a cogent argument that both explains why music sampling is a new form of artistic creation and still violates the laws of musical creativity. Thus, taking an aesthetic completion perspective, some have argued that those who treat music sampling as the cultural translation of a concept of the author are making a mistake. They emphasize that the act of sampling can be regarded as a form of artistic completion and as an uncompromising critique of both authorial and intellectual property rights. From this perspective, to say that the sampling of the first thirty seconds of another song stamped by a new beat of one's own is "original" significantly underestimates both its artistic dynamics and the economic insights concerning the contingent market value of new goods and services that are being proposed. According to this rationale, sampling is not simply a case of expression that implicitly references some past context outside of the work, but a case of "conceptual completions." Editors and DJs who sample never merely reiterate the state of a language but produce an unprecedented perspective that makes us see and understand our linguistic surroundings in a new light (D'Errico, 2021).

5. Future Directions and Implications

The popularity of sampling music continues to grow and is becoming an indispensable element of creation in the music industry. The existing systems for clearing samples, however, are struggling to keep pace. This note argues that the law should also adapt to create a legal framework better able to accommodate this multifaceted and time-consuming process. These industry practices, involving levels of hierarchical complexity, points of contact, and potential divergences, are particularly instructive. Under the surface, fundamental changes continue to take place that might lead legal reform to appear less anachronistic in time. If both the use of technology and the way it is taught are changing, we may be witnessing an accelerating, an innovative leap that could make speech intonations even more amenable to protection under copyright laws. The examined hypothesis makes sufficient sense theoretically: a new way of doing or living might turn copyright. All

that remains is a quantitative component, which cannot, however, be answered as of now. This new context prompts a twofold set of issues. First, should law reforms attend to practitioners' needs? If so, the debate would become one about the best way to implement them. Lawmakers following this policy might therefore be eager to hear further expert advice from the field. Second, would copyright also benefit from those changes? If yes, should any benefit be restricted to jazz and classical music, left to private agreement, or indeed transposed into statutory law and opened up to pop music? In conclusion, these issues are a reminder—albeit a "sweet" one—of the still vibrant nature of music. Music counts so little in the field of law—much, much less frequently than painting or cinema. What greater tribute should readers pay to it than voicing their views on these key questions (Brøvig-Hanssen & Jones, 2022)

5.1. Technological Advances and Sampling

Technological advances in recent decades have shaped new practices and understandings of music creation and distribution (Nie, 2021). For musicians and producers, technological innovation enables them to use new and diverse tools for music-making. Sampling has grown increasingly accessible due to hands-on samplers, loop-based software, and turntables. These technological advances have enabled artists across genres to experiment with sampled sounds, creating derivative or transformative compositions. This use of technology traces new patterns in the musical and legal contexts surrounding copyright. Online distribution and file sharing create international audiences, offering easy access to a large bank of potential musical recordings. This trend of digitization, file sharing, and genre blending closely aligns with the rise and dominance of hip hop and sampling as musical genres and practices.

Increased use of digital tools has highlighted concerns about potential legal disputes concerning copyright and intellectual property. Digital technology access has made musicians and artists increasingly reliant on others to create new, innovative works with built-in samples. Due to the ease of distribution and the global access it enables, the new digital music landscape provides ample opportunities for rights enforcement and damages. Technology could enable rights holders to monitor, enforce, and recoup copyright rights and remedies in a new music-making environment. However, the

same tools can be used to create derivative works harmfully and easily and thus will inevitably lead to costly new legal disputes and analysis to offer responses and precedents for legal standards and creative and financial stakes. Music law should be adaptive and creative, just as the music landscape has become. As technology offers new artistic pathways, it is crucial that the law offers some guidance; otherwise, as we are witnessing, we will continue to find ourselves in a contentious environment of new questions, precedents, and appeals already. Music law should be as sophisticated and protected as the platforms through which legal disputes can now be adjudicated.

In light of technological advances, is the law concerning music any different than other laws in the digital world? This section will explore the impact of changing practices and new technologies and will consider how music copyright limits of the past may outline possible legal directions. (Kuhn & Hein, 2021)

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