

The music business has many laws that are involved and many problems that come along with them. Music has only grown with technology and when new technologies arise new laws must be made to accommodate the effects of music these technologies create. In music the use of sampling has been growing widely with new genres and styles, inspiring artists to use other artist's music in their own works. This poses some legal questions however considering all music is protected legally thanks to copyright laws. There are loopholes to using someone's intellectual property in music, such as fair use laws, so artists can express themselves freely. This creates much tension among music businesses who want to claim what is rightfully theirs, and artists who want to fulfill their creative vision.

Sampling in music is when one artist uses a piece of another artist's song in their own work. This trend started in the late 1900's with the growth of hip-hop and introduction of new genres of music into more mainstream culture. At first not many people cared that music was being sampled, but as bigger artists brought sampling into more popular areas of music listening the labels and publishing companies who owned these musical recordings started to take legal action. The issue that arises with music sampling is it's violation of copyright laws. Title 17 of the United States Code is the overview for all law involving copyright in the United States. It states "Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the

aid of a machine or device.” (Title 17, sec. 102). This means that any time a song is created and recorded, in any way, it is automatically protected by copyright. The only legal way to use a sample in an artistic work is to pay a license fee. Fees depend on the recording and can vary drastically based on what part of a song is being used and how long that part is, according to attorney Michael McCready (2007). He states that the owner of the copyright is either the record label or publishing company, but you must also get permission from the owner of the song itself. He says this is because there are two works being compromised in sampling; one being the musical aspect of the song which is owned by the artist, and the other being the physical aspect of the recording owned by the publishing company or record label. According to McCready violating copyright laws can't result in fees of up to \$100,000 depending on the offense. Some may ask why artists would continue to use other's work if they face such daunting repercussions. The answer is fair use. Fair use allows copyrighted works to be used but is judged based on the purpose, the nature of the copyrighted work, the amount, and the effect of the offending work on the copyrighted work. (Title 17, sec. 107). Usually the argument for fair use in sampling is that the artist only used a small part of a copyrighted work and/or the piece of copyrighted work used has no effect on the original copyrighted work. Fair use will cannot be used as a defense if the work containing the sample takes away audience from the original work. In that case the work will be considered copyright infringement and the owner of that song will be fined. Some artists still use samples with no care because either they are unpopular enough where the original artist will never find out, they can't afford the fees, or their sample is covered well enough by the rest of the song that it is indistinguishable from the original. The problem arises when a major artist uses a sample as one of the main parts of their songs. This is when tensions flare.

The main reason sampling music is a problem for businesses is because someone is making money off of someone else's work. When popular artists create hits using pieces of other artists' works, the publishing companies or labels who own those recordings take action to make sure they are receiving all the benefits from what they own. Sampling was never a big issue when it was first beginning because DJ's would use samples in clubs to make dancing more fun, or artists would use simple drum breaks in their songs from artists not many people knew. There wasn't an issue until sampling starting breaking into mainstream music and artists like Public Enemy, who used samples, starting making big money off of it. (McGrath, 2011). McGrath also talks in his article about how the payment options for using samples became more complicated over time. Soon artists were paying for a sample based on how much of their music they sold. They also had to pay the owner of the musical work and the owner of the recording separately. (McGrath, 2011). Soon enough many large artists were being sued by record or publishing companies over the use of their samples. In 1990 Vanilla Ice was sued by Queen for sampling the bassline of their song "Under Pressure" in his song "Ice Ice Baby". This was settled out of court, as many are, after a threat of suing for copyright infringement. (Runtagh, 2016). In 1997 The Verve was forced to give up all royalties and publishing rights to ABKCO records who owned the recording to The Rolling Stones song that they sampled. Their artistic integrity was compromised with this case because the song credits were also reverted to Mick Jagger and Keith Richards. (Runtagh, 2016). The song was used without their permission and was even nominated for a Grammy with Richards and Jagger's name on it (Runtagh, 2016). Just recently Drake was sued for copyright a work by Jimmy Smith but ultimately won the rights to his work. This was one of the rarer cases where an artist is granted rights in favor of fair use in music.

Drake actually did pay for a license to use the composition of the song, only not the recording (Masnick, 2017). Drake took a line from Smith's recording and changed a bit of the words which Smith and his team did not like. Ultimately the ruling was that Drake changed the meaning of the line and the way he did made his work count as a transformative work. Also Drake's use of the sample did not take away any potential market from the original work which was in a Jazz album. This definitely helped Drake's case and the ruling was in favor of fair use meaning Drake was allowed to keep all rights on his track. (Masnick, 2017).

Many people think sampling should be rid of in music because it means making money off of other people's music. This can definitely be the case in some tracks where the original song is very heavily used and makes the sampled track successful. These cases are the reason copyright laws are in effect because people have the right to their own intellectual property and should not have it compromised by anyone else. Sampling issues also have a lot to do with how popular the artists in the situation are. If a very popular artist is sampling an upcoming artist's track and getting it heard, it could be argued that this is helping the smaller artist gain exposure. If a fairly unknown artist is sampling a larger artist's track some might argue it doesn't really make a difference because the smaller artist isn't gaining success off of the larger artist's work considering they are still relatively unknown. Of course things get complicated when a smaller artist demands recognition from a larger artist's samples, or a smaller artist gains popularity using parts of a larger artist's song. More involved music fans further complicate the sampling issue because they feel very connected to their music. When an artist of another genre samples one of their favorite songs it is not uncommon for outrage at that artist for "ruining" their most beloved hit.

On the other hand there are many positive arguments for music sampling. Creativity is one. Some say music has only grown and evolved by the use of inspiration and taking other's work to create something new. Sampling opens the door for new possibilities and musical combinations that may have never been thought possible before. It could also bring an old song that has gone unnoticed back to life in a new light such as Galantis' sample of Bettye Swann's "Kiss My Love Goodbye". Samples are only tiny pieces of songs meaning artists still need to create a work around that. That means it takes talent and it creates art. Hard to argue with that.

Personally I dislike sampling but I am definitely a proponent of it in certain situations. I definitely dislike hearing a song that I think an artist made, only to find out the part I really like was not created by them. I wish it was more easily known that a musical work is sampled so I know who really created what. But I also think that artists should be able to take snippets of others' songs especially if they distort them to make their own works. I think another problem is people are trying to get money by claiming their work was sampled. For example Skrillex produced a song for Justin Bieber and was accused of sampling another artist. He proved however that he unintentionally made a similar melody but did in fact create that part of the song on his own. I think people can take advantage of copyright law but in the end it's fair to claim what is rightfully yours if someone else is using it for their own gain.

Even though samples have been a source of headache for artists and legal teams throughout the last few decades I think it's been clear what is right and what is wrong. As long as artists are using it for artistic purposes and not benefitting off the work of others than it is acceptable. But record labels and publishing companies definitely have the right to claim what is theirs when artists start using their recordings to gain massive success.

## References

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