

Music and copyright essay



Music has a powerful influence on society, like mass media and television. In our society today, music has the ability to define our culture.

Many people around the world listen to music while driving, at work, doing housework, or even studying. Music may be seen as simple and unproblematic, but looking at the structure behind it is very important. One of the key features of music is music copyright and what that means to the music industry. Defining what this means in the historical context is of great significance. Music and copyright is a vital aspect of the music industry.

The question that remains, however, is what happens with motivation or intension when samples of music are not originally controlled in a larger network. Intellectual property rights such as copyright laws need to be met in the music industry in order for an artist to be protected. If, for example, an appealing sample is created, will this be then adequate enough to confer its author constitutional copyright protection if the other requirements of copyright are satisfied since copying is a crucial component of infringement?

The music industry over the years has grown to be a rather profitable industry and is “ one of the fastest growing export sectors of the global service economy” (Anderson et al 2000). Intellectual property plays a significant role in what the music industry is all about. It is defined as a law in which governs the exploitation of culture and of the private ownership of creative production, which also includes copyrights and trademarks (Hermanns 2005).

The holder of the intellectual property rights has certain exclusive rights to the creative work that they produce in which they are protected under this

right. According to Anderson et al (2000), intellectual property plays a critical role in determining its performance in the music industry. It also transforms the expression of one's intellectual efforts, for example a script or movie, or even music, into a piece of property that can be owned. Furthermore, it attaches certain rights and privileges to that ownership (Lorimer and Gasher 2004). Hal Varian of the University of California in Berkeley said that intellectual property law “ recognizes that no exclusion would create poor incentives for the creation of intellectual property.

But at the same time, permanent intellectual property rights would lead to the standard deadweight losses of monopoly. ” He also mentions that there are different forms of intellectual property which have different combinations of these characteristics. An example that he uses to explain this would be that copyright protects the expression of ideas for quite a long period of time with a low standard for originality. Music is an ideal copyright industry that is based on creative talent and has a vast amount of specific properties.

Even though the music industry has its foundation in the early twentieth century, “ when technological breakthroughs in recording meant that reproduction rather than live performance became the basis of the industry, its present shape owes much to the rising incomes and personal experimentation of the post-war golden age, and in particular the growing financial independence of young people” (Anderson et al. 2000). Anderson et al. says that the industry was still relatively small at time, during the late 1950s, and was dominated by the United States market, where sales had reached “\$500 million. By 1998, when this article was written, over “ 4 billion records were sold worldwide, generating a total revenue of nearly \$39 billion.

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A further \$5 billion was generated from pirated recordings. Moreover, music has become increasingly tied to other entertainment products, such as TV, films and videos, this generating further revenue streams” (Anderson et al. 2005 pg 7). Technology keeps continuing to shape the music industry in many ways. One of these ways is the impact of new digital technologies, especially the Internet, which makes possible direct downloading of music.

For Siva Vaidhyanathan (2001), music is more than any other form of expression or appearance; it gives way to the gap that separates idea from expression. She mentions that if a copyright law is charged with protecting a particular arrangement of notes, then maybe copyright laws should protect the riffs, melodies, harmonies, etc. , or all of them. It is of great importance to understand the meaning behind what this means by looking at copyright laws and what it means to the music industry.

One characteristic of intellectual property rights is copyright. This means that it can be bought or sold like any other form of property (McCann 1998). McCann states that the creator of an artistic piece of work is the first owner of a copyright. The owner has the exclusive rights to do or to authorize anyone else to do certain things with the whole or any extensive part of the work. The author and or the creator is at the centre of the copyright paradigm as a separate and discrete body or entity. This is because the concept of the writer or composer is a special participant in the production process which is worthy of attention.

Authorship is important within the context of copyright because as McCann points out: The ‘ authorship’ concept, although highly visible in

contemporary copyright law, usually appears as a focus of consensus rather than debate. ‘ Authorship’, as deployed in texts and in cultural understandings, has been anything but a stable, inert foundation for the structure of copyright doctrine. Rather, the ideologically charged concept has been an active shaping and destabilizing force in the erection of that structure. In an age and industry that has grown accustomed to “ property talk,” as Siva Vaidhyanathan (2001) shows that in order to resolve disputes over authorship, originality and ownership, lawsuits have become more frequent.

She said that now copyright regulates performance and that copyrights used to expire on definite dates, and as a result it is continuously inspiring the public domain with new material. Copyright laws are there to establish and to preserve the creativity and rights of the authors, and the performers of expression. They are there to protect the property rights of the creator of an original work. Within the music industry, copyright can be seen everywhere.

Many artists have been involved in copyright issues. As well, the copyright laws have become an important aspect to the music industry, legally. It is important to note the different types of copyright because there are more and more of it happening in today’s world: Traditionally, courts have identified three kinds of copyright infringers: those who are direct infringers, those who are vicarious infringers and those who are contributory infringers. Direct infringers are those who copy protected works without authorization, with or without knowledge of infringement.

Vicarious infringers have the right and ability to control the infringement, do it anyway, and receive a direct financial benefit, with or without knowledge of infringement. 54 Contributory infringers induce, cause or materially contribute to another's infringement and have knowledge of the infringement. In 1990, when the World Wide Web was developed, the music industry immediately recognized the threat and the novelty that it forced, according to Cassandra Imfeld and Victoria Smith Ekstrand (2005). Money is the main reason the government wants to supervise the development of the Internet. Digitized bits, once they are widely available, can be easily stolen and reproduced for profit, which can mean billions of dollars in lost revenue for the companies and individuals who produce media content. Writers, moviemakers, singers and other creative people who provide the content for the media industries are especially concerned about their ideas being reproduced in several different formats, with no compensation for their property.

This issue, the protection of intellectual property rights, is a crucial part of the United States government's interest in the design of the Internet as a communications network. To protect online content, the various copyright holders have used court challenges to establish their legal ownership, but some groups still are trying to avoid detection by keeping their online activities hidden from government scrutiny. The protection of content is one of the dilemmas created by digitized files that can be transmitted to anyone's storage system over an international network. The creative people who contribute this content and the people who produce and own these

programs, want laws and regulations structured to protect intellectual property rights.

The issue of who owns copyrighted material that already exists, such as recordings and movies, is particularly tricky on a medium like the Internet with few controls and global access. In 1998, Congress passed the Digital Millennium Copyright Act to try to make it illegal to share copyrighted material on the Internet (Imfeld and Smith 2005). Using this law and provisions of existing copyright law, industries with a big stake in content ownership have sued to stop people from sharing copyrighted content on the Internet. The Recording Industry Association of America and the Motion Picture Association of America have been especially aggressive in seeking to prosecute people who take copyrighted content and make it available on the Internet (Imfeld and Smith 2005). In 1999, the Recording Industry Association of America sued Napster, a company that provided a music-swapping service on the Internet.

In 2001, after several appeals, the courts found that Napster was liable for “vicarious copyright infringement” (Imfeld and Smith 2005). Napster eventually shut down and then reopened as a subscription music service that pays royalties to companies that own rights to music available on the site. The music industry declared that if online service providers, such as Napster, were granted limited liability there would be tremendous economic harm of content owners who posed work on the Internet as online users could reproduce their works without penalty. The role of rap music has had a major impact on the music industry and in the legal world as well and also “pushed the boundaries of free expression with sexually explicit lyrics and

descriptions of violence by and against law enforcers” (Vaidhyanathan 2001).

Questions about society’s power structures have been raised since rap music began. Since the use of sampling and energized digital technology, it has infringed on the American copyright law. The concept of copyright has been well-established in the Western society for centuries (Vaidhyanathan 2001), but does not have the same role in African, Caribbean or African American oral traditions. Furthermore, the confusion that rap music has created in copyright law is a more multifaceted system than a disagreement of stereotypically opposed cultures. Siva Vaidhyanathan (2001) stated in her article that “ Rap — for a moment — revealed gaping flaws in the premises of how copyright law gets applied to music and shown the law to be inadequate for emerging communication technologies, techniques, and aesthetics. There is a struggle that emerges here, and it is not between the urban lower classes and the corporate upper classes as Vaidhyanathan mentions, but between the well-known entities in the music business and those trying to get known.

As she stated, “ it is a conflict between old and new. ” With copyright laws it is designed to prevent the unauthorized copying or performance of another’s work. According to Tara Rodgers (2003) on the process of sampling in electronic music, she mentions that: The environment of a sampled ‘ performance’ is also worth interrogating; when considering the various ways that samples can be heard in a final mix – as historical recuperation, appropriation, pastiche, or sound for sound’s sake – one might also note the presence or ‘ aura’ of domestic or other space (such as the environment of

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the Dyke March discussed above) represented in the capturing of the sampled sound. Sampling has been a major factor in copyright issues. The process “ resonates,” as Rodgers mentions, with various forms of non-digital music making as Rodgers stated which makes it not very original. This often leads to artists copying different forms of music from other artists.

Hip-hop still plays this role of showing the law to be inadequate when it comes to copyright. Hip-hop relies on sampling because it is a means of generating unique structures of urban musical expression (Buckley 2002). Sampling, as was mentioned in the above discussion, involves copying fragments of preexisting music and integrating them into new compositions. This practice of sampling has raised legal concerns of whether or not it represents cultural expression or if it has basically caused copyright infringement. Moreover, Buckley (2002) discusses that urban environments of hip-hop nationwide are flourishing as they are providing “ a never-seen before backdrop for mainstream America. Graffiti art, break-dancing, and rap music signified a cultural relevance of Hip-Hop as propagated by the likes of various legendary artists.

” An example to illustrate how hip-hop music still plays this role with sampling other artists and not giving credit would be Vanilla Ice, “ Ice, Ice Baby,” and the British band Queen and David Bowie, “ Under Pressure” (Liptrot 2004). Vanilla Ice took the riff of Queen and Bowie, but did not license or even credit the song; thus no copyright was in place. Liptrot mentioned that “ the author of the hit single as Vanilla Ice, Earthquake and M. Smooth.

In addition, Ice thanked a series of artists, presumably, for their creative influence. " They did not have any mention of taking the riff from Queen and Bowie. It has been said that the copyright holders for the song " Under Pressure" has decided to resolve their dispute devoid of any lawsuit being filed. This is not the only example of this happening, but is currently happening in the music industry all over the place.

That is why copyright laws are in place to help stop this from occurring. There are many not so well known artists go without recognition for their help to the music industry. Hip-hop music as Willie Buckley (2002) noted has become very prominent in today's culture by saying that: Through its expansion Hip-Hop has become virtually synonymous with the American mainstream entertainment scene. Influencing [and perhaps dominating] the production and creativity of music, motion pictures, fashion, urban vernacular and even capitalistic advance, Hip-Hop is considerably a national phenomenon; a culture which began and developed as a response to inner city struggle and adversity.

Hip-hop has represented the cultural identity of urban people according to Buckley (2002). Sampling then is seen as a practical device and means by which identity is apparent in the music industry. Copyright laws help prevent infringement on the originals authors work so that no plagiarism occurs. With copyright protection there would be more need for artists to create more music with more provisions available. More music in this case means that more contributions towards the music industry and more importantly, the interests of the public.

Buckley (2002) also states that “ as artists and other creators began to take advantage of their new legal rights, a new form of cultural expression was also on the rise. ” Hip-hop and copyright laws have had significant influences on American creative expression. It is a culture since it provides a form of satisfaction and recognition for the urban, national and global communities. Berkley concludes his article by saying that “ sample-based rap music declares reclamation of ‘ urban space’ by appropriating a piece of mainstream pop culture, subverting it, and returning with a new message altogether unintended by the original recording artist.

” Copyright laws are there to protect people. There must be a way to acknowledge the fine line between cultural expression and legal protection that may be faced with in accusations of copyright infringement, legal conflict, copyright owners, artists, and the hip-hop community and even the whole music industry. Without copyright laws, the music industry would simply not be possible. They are designed to provide protection against prohibited use of original informational objects.

A new technology that is having a major impact on the music industry is that of digital sampling, as was mentioned in the earlier discussion. This allows any sound to be recorded and even recreated which can then be manipulated by a computer. The digital sampling would allow anyone to make their own music, but by perhaps taking part of an artists own original sample. This is important with intellectual property rights as the rights of the owner are being infringed or violated upon. This is happening all the time in today’s culture as more and more artists are being sued by other artists

taking part of their song without their given permission. Thus, copyright is very important in society to protect the original owner.

Music has become a huge phenomenon, and it will continue to do so for many years to come. There is the struggle to balance between the rights of an artist to control their own work and the other struggle of the creative circumstances that are inherent to a new technology that is forever changing. Works Cited Anderson, Birgitte, et al. Copyrights, Competition, and Development: The Case of the Music Industry. " No. 145.

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