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Song Sampling and Controversial Copyright

Song sampling is a controversial art form due to its practice of using a preexisting work to create something new.  The book *Copyright’s Highway* by Paul Goldstein analyzes court cases whose rulings would be in favor of song sampling.  Currently, song sampling is not considered a form of copyright infringement.  This is the result of the precedents that have been set by previous court cases regarding the legality of song sampling as well as by the sampling seen in other art forms, such as choreography, specifically that of Martha Graham.

The current issues that arise with song sampling result from the nature of the action itself. This is because song sampling, by definition, involves the use of other artists’ work. Essentially, it involves taking portions of already-produced songs and using them in the creation of an entirely new composition. The length of the sampled work used can vary greatly, ranging from just a few chords or groups of notes to entire verses or large sections of songs. In some cases, entire songs are used in the form of “mashups,” where two or more pre-existing pieces are combined together to create a new work. This method for creating songs has been around since the 1940s, but did not become particularly popular until the 1980s, when hip-hop emerged as a major genre. Today, song sampling is used extensively, and is seen in all types of music. (McGrath)

The practice of song sampling often requires permission from the composer of the original work. Based on this, one would assume that it would be relatively easy to identify instances of copyright infringement in music. However, history has shown that the issue of song sampling is not only difficult, but also controversial. One famous case involved the former Beatles member George Harrison, who was sued by Bright Tunes Music Corporation in 1971 for supposedly copying the song “He’s So Fine” in his hit single, “My Sweet Lord.” Harrison ended up losing the eventual court case and was forced to pay a hefty fine. While it was established that he did not intend to steal the original work, he was found guilty of “subconscious plagiarism.” The court ruled that Harrison, who admitted to hearing “He’s So Fine” before writing his own work, had gained subconscious inspiration from this song, and sampled it without permission as a result. (Self) Another famous case involved Vanilla Ice’s hit single “Ice Ice Baby.” For this work, Vanilla Ice had taken a portion of Queen and David Bowie’s “Under Pressure.” altered it, and used the alteration in his song. He believed that altering the sample would excuse him from having to get permission or give credit. This assumption proved to be incorrect, and he was forced to settle out of court for a large, undisclosed fee. ("Famous Copyright Infringement")

Perhaps the most controversial case of song sampling in recent years involved the famous British Rock Band, the Verve. In the late 90s, the group came to an agreement with Decca Records to take a sample from the Rolling Stones’ “The Last Time” and use it in their own song, “Bittersweet Symphony.” After this piece was released in 1997 and became a worldwide hit, former Rolling Stones manager Allen Klein sued the Verve for supposedly using a larger sample than the agreement allowed. The new piece sounded nothing like the one sampled, but the Verve were forced to settle out, facing a long and expensive case that the band might not win. As a result, the group not only lost 100% of the royalties for its most successful song, but the group was also stripped of credit for writing the song. (Bitter Sweet Symphony)

In the book *Copyright’s Highway*, Paul Goldstein explores many aspects of copyright laws including ones similar to the Verve’s case and song sampling in general.  His response to song sampling would be one which would point to the precedents of previous court cases. Evidence of this is suggested in the structure of his book as well as specific quotes.  The book uses examples from court cases to explain copyright law.  When describing a case he refers to about outcomes “that became U.S. law and remained so until the appellate court decided differently” (Goldstein 13).  Sincecase precedents shape Goldstein’s arguments, it makes sense that he selects court decisions that correlate with his personal opinions.

        One court case he discusses in his book parallels many aspects of song sampling.  It features a music group, 2 Live Crew, who created their own version to an already existing song.  Goldstein talks about how 2 Live Crew won their case because “[their] rendition was very different” (Goldstein 2). Because the outcome of this case favored 2 Live Crew for the reason of being “very different”it is logical to infer that Goldstein would accept song sampling as legal.  The song was different because of its intention, which was to be a parody.  He would therefore support The Verve because their song was different than the song they sampled.

        Later in the book, Goldstein revisits the example of 2 Live Crew again, discussing another reason as to why he would support song sampling.  According to Goldstein, listening to a song doesn’t diminish its value. In his own words, “Countless fans can listen to the song…without diminishing its availability to anyone else” (Goldstein 12). Goldstein would argue that regardless of how the song is used in song sampling it doesn’t harm the value of the original song and therefore should be acceptable.  Overall, Goldstein believes that song sampling should be allowed due to the precedents that have been set in prior cases that say if the song is distinct from the original it is not infringing upon copyright laws and is therefore legal.  He also makes the point that no matter how many times a song is played, the original or song samples, it doesn’t diminish the value of the song.

           This group shares Goldstein’s position that song sampling is a legitimate form of art that should be considered legal under copyright law based on legal precedent and artistic originality. The members of the Verve and 2 Live Crew demonstrate that song sampling can be used in an inventive way that can result in a creative, legitimate work, if the author intends it to. The success of the Verve’s “Bittersweet Symphony” is just one example of this. “Bittersweet Symphony” combined elements of “The Last Time,” a preexisting work, with original music to create a new work that had a life of its own, as seen through its immense popularity.

Siva Vaidhyanathan takes this position in his work, *Copyrights and Copywrongs*. In the text’s epilogue, Vaidhyanathan discusses some of the detrimental results of strict copyright laws. He focuses on the choreographer Martha Graham, whose works were forbidden to be performed in the summer of 2000 by the owner of the copyrights to her choreography. Vaidhyanathan argued against this prohibition, noting that Martha Graham’s work would not have been possible had the cultures that she was heavily influenced by, namely African and Native American, been protected by copyright. Vaidhyanathan argues for a world where creativity is able to flourish, uninhibited by possible legal ramifications. Vaidhyanathan writes, “Isn’t copyright supposed to encourage art?” (Vaidhyanathan 185). According to this logic, copyright law should not discourage song sampling; rather, copyright law should *encourage* this art form. Copyright laws should not prevent new works from being created; rather, it should encourage them to be influenced by and borrow from their predecessors.  This will serve to enhance the art world, not detract from it.

Song sampling is a type of music that should be legal under copyright laws.  Paul Goldstein and Siva Vaidhyanathan both come to this conclusion in their books using court case precedents and contemporary examples.  With the support of both these authors the group agrees that in the case of the Verve copyright overstepped its bounds.  In the future copyright laws should not limit song sampling; rather it should aid this new form of music.

This portfolio at first seemed daunting because I had never worked in collaboration to write a paper. Despite this it went smoothly for our group and we worked well and efficiently together. The process included us meeting a couple times after class and one other time to divide up what we were going to do and also formulating a theme. From there we each took a part of the essay and wrote it on Google Docs one after the other which helped keep the flow. Google Docs really helped with an assignment like this because it allowed us to see the progress on what each person was doing and it also gave us easy access to the paper. All in all, I believe writing this essay went very well.

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