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Copyright law is out of step with our current remix culture. If copyright law had evolved to embrace the fundamentals of hip hop culture, then perhaps there would be room for more creativity and inventions. What if fair use was justified when a work is more than the sum of its samples? A good example of this is music sampling, the use of a segment or multiple segments of another artist’s established recording in one’s own work. Sampling enables past creativity to be used to create new modern work through appropriation- like collage. While proponents and adversaries to music sampling argue back in forth, the current laws surrounding music sampling remain highly objective. If the creators of copyright law were in tune with hip- hop culture during the creation of fair use laws, they would have precipitated our current remix culture and how to better regulate mash- ups.

The issues involved in sampling and lawsuits have changed the way hip- hop music is created. To understand the controversy surrounding music sampling it is important to take a look at when it manifested in the Bronx, though hip- hop music. Hip- hop started as a form of musical expression and street performance in the 1970’s. The main demographic of this movement were young African- Americans and Latinos coming from poverty- stricken neighborhoods. Hip- hop can be defined as a movement because it had its own cultural identity that included slang and dress code (Kembrew, Peter, and Kenny, 19- 25). During street parties, DJs would loop together tracks from popular music to develop a rhythmic beat and add it to their own musical creations.  For example, the most sampled song, Clyde Stubblefield’s ‘Funky Drummer,” recorded with James Brown, is often used as an extended drum break (Cheng, 147). Sampling was an integral part of hip- hop music from its birth, however, as the hip- hop industry grew during the 1980’s and early 90’s, hip- hop artists began to earn money and the music industry took notice.

The end of this “golden era” of music sampling occurred with court case Grand Upright Music Ltd. v. Warner Bros. Records Inc., which set an unfortunate precedent for the legality of digital sampling. The court case Grand Upright Music Ltd. v. Warner Bros. Records Inc. occurred in 1991 when hip- hop artist Biz Markie included a ten-second digital sample of the first eight bars of Gilbert O'Sullivan's Alone Again in his track. Before Markie cleared the sample with O’Sullivan, Warner Brothers Records released the album. The judge ruled that Markie stole O’Sullivan’s property for the purpose of making money. Markie’s defense that he had aesthetically repurposed the song in the tradition of hip- hop culture, with full intention of crediting O’Sullivan, did not hold up in court. When the constitution was created, intellectual property was viewed as limited right to further production of cultural and scientific work, and not as a physical property that could be embellished upon.

If the Judge had ruled in favor of Biz Markie then perhaps there would be more opportunities for other musical artists to use the fair use doctrine to “promote the progress of science and useful art,” as the constitution intended. Furthermore, according to the Center for Social Media at American University, “Fair use is the right, in some circumstances to quote copyrighted material without paying for it. Fair use enables the creation of new culture, and keeps current copyright holders from being private censors”.  In today’s culture, technology such as iMovie and YouTube make it easy for the everyday consumer to become producers or “remixers” of media through easy creation and distribution, yet this ‘remix culture’ is at odds with the current legal culture. If hip- hop culture had the backing of the law then perhaps laws regulating all types of “remix” culture would be altered. One view on music sampling is that nothing is really ever original and that all music is built from the past. As record producer, Tom Silverman, stated, “Society moves forward… it evolves through taking old things and changing them”(Achenbach).  In other words, copyright should protect from straight-across copying of someone else’s work. However, any creative use or reuse of material that creates something new, that is something that is more than the original, should be allowed.

Sampling in hip- hop culture is a respected tradition in which artists create derivative work with reverence and originality. Gregg Gillis, the obsessive brain behind the electronic mashup project called Girl Talk, creates music that is almost wholly composed of samples of the work of other pop musicians. Gillis believes “in that idea [of Fair Use], that if you create something out of pre-existing media, that’s transformative, that’s not negatively impacting the potential sales of the artist you’re sampling, if it’s not hurting them in some way, then you should be allowed to make your art and put it out there”. Gillis works hard to create his music and along with his record label, illegal art, he proactively defends his work as fair- use (Bathel). If hip- hop culture had any influence on today’s legislature then Gillis would not have to be in a grey area in a tug of war of sorts. Gillis and his supporters fight for the “transformative use” clause and his opposers call him a criminal (Walker). As future generations of artists grow up with constantly growing media and technology, the laws surrounding all remix laws will need to catch because they have already fallen behind the times.

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