

Term Paper Proposal
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[[[Post-grading comments in brackets]]]

Abstract

Music is a form of free expression that should not be shackled to its creator. Before the last few centuries Music was created by its composer and owned by society, not individuals. It did not have to be “licensed” to be used. Furthermore, music before the last few decades was so loosely regulated that most could still be used with little limitation. However, recent updates to law have restricted the use of musical works in ways that may cause artists excessive grief and legal troubles if they try to use others’ work for performance or composition.

Modern copyright law is convoluted and severely restrictive. Fair use law is vague and largely a just guideline for court proceedings. These proceedings can be expensive and time consuming, especially for new artists. The sole reason for these laws is to increase economic profit by private entities. Music, as an artistic medium, should only have the bare minimum of restrictions placed on it – if any at all. Anything more is an unethical restriction of creativity.

[[[Needed clearer thesis statement]]]

Known Facts

Congress is aware of the need to update copyright law. [1]

If you are not sure whether your use of a work falls under “fair use,” the US Copyright office cannot help you determine that. [2]

Fair Use exceptions to U.S. copyright laws are responsible for more than \$4.5 trillion in annual revenue for the United States [5]

[[[Needed a couple more]]]

Research Question

Is it ethical to limit an artist’s use of other musical works in any way if it does not directly compete with the original musician?

[[[This was not specific enough, and was revised to “Are the current copyright restrictions on the use of audio samples in new music ethical?”]]]

Extant Arguments

Diminishing copyright and intellectual property laws for music:

- Promotes free expression and sharing of ideas [3, 4, 5, 6]
- Terms and conditions of licensing are too complex and restrictive [1]
- Fewer, clearer restrictions on the arts would facilitate economic growth [5]

Increasing copyright and intellectual property laws for music:

- We must to create an environment that supports musicians financially [9]
- Intellectual property is important to give people the right to their own property [8]

Applicable Analytic Principles

Law should support of the greater good, not just private good. [Mill]

It is wrong to limit someone without just cause. [Kant]

Creativity is a crucial beneficial cultural and economic asset. [5]

People should “act in a manner that is ... consistent with the public interest.” [Software Engineering Code of Ethics Section 2 Preface]

People should support their environment’s efforts to maintain and condone ethical behavior. [Software Engineering Code of Ethics Section 6.01]

People should ensure their judgments consistently uphold human values. [Software Engineering Code of Ethics Section 4.01]

Expected Analysis

1. Creativity is a crucial element of a society's success, both culturally and economically.
 - a. There is an inherent tradeoff between creative freedom and intellectual property rights.
 - b. There is also a tradeoff between personal prosperity and public prosperity. When an artist gets money for every use of their song, it gives them money but prevents their fans from remixing and releasing their songs for their own profit.
2. Current copyright and intellectual property laws are restrictive and potentially financially destructive to artists.
 - a. Even the lawmakers recognize the need for change.
 - b. Potentially great pieces of art are being stopped in their tracks because of laws, or artists are forced to ignore them.
3. It is ethically imperative that these laws are reformed to promote, not discourage, new kinds of creativity facilitated by the internet and other technologies.
 - a. The growth could cause a renaissance, but accelerated even more than those of the past.
 - b. All ethical professionals have some duty to the public interest [SE Code citations in Facts], and this falls under that category.

[[[Needed citations]]]

Bibliography

Primary Sources:

1. M. Peters, "Music Licensing Reform" on US Copyright Office Website. June 21 2005; [Cited April 20, 2009]. Available <http://www.copyright.gov/docs/regstat062105.html>

Representative Peters discusses the current issues with U.S. copyright laws for music works. She mentions difficulties faced by musicians in obtaining permission, as well as the antiquated aspects of the law that still exist but have fallen out of use and should be updated.

2. US Congress, "Fair Use" on US Copyright Office Website. July 2006; [Cited April 20, 2009]. Available <http://www.copyright.gov/fls/fl102.html>

This document legally defines guidelines for courts to use in determining fair use cases for exceptions to copyright law. It outlines four principle factors to be considered in any ruling about the fairness of a particular use case.

3. L. Lessig. *Free Culture: The Nature and Future of Creativity*. The Penguin Group. New York, NY: The Penguin Group. 2004.

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Sanford law professor Lawrence Lessig examines the current U.S. copyright law and argues for massive reform. He reviews the entertainment industry's recent actions as well as those of lawmakers. He also covers peer-to-peer technology and other ways the internet has drastically changed our society and may give us unbounded creativity if the laws allow it.

4. L. Lessig. *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. New York, NY: The Penguin Group. 2008.

Lessig details the current intellectual-property law and its negative effects on the coming generation. He argues that, without reform, the law will criminalize an entire generation of creative thinkers and artists. He also lays out solid methods for new intellectual-property laws that grant reform without harming the ability of musicians to live off their work.

5. Thomas Rogers & Andrew Szamoszszegi, Fair Use in the U. S.

Economy: Economic Contribution of Industries Relying on Fair Use, (CCIA: September 2007) available online at ccianet.org.

This extensive study details the economic effect of fair use copyright exceptions. It details the overall economic impact as well as jobs provided and productivity gained through such exceptions.

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Secondary Sources:

6. H. H. Perrit, Jr. "Note on proposals for reforming copyright law for music". Available online at <http://www.kentlaw.edu/perritt/courses/property/Note%20on%20proposals%20for%20reforming%20copyright%20law%20for%20music.htm>

Mr. Perrit discusses some recent opinions about the reformation of U.S. copyright law and offers his own insight into some ways we can better reflect our society with our modern laws.

7. M. McGraw. "Sound Sampling Protection and Infringement in Today's Music Industry" Available online at <http://www.law.berkeley.edu/journals/btlj/articles/vol4/McGraw/HTML/text.html>

McGraw covers the basic rights and responsibilities for those creating and sampling digital music.

8. World Intellectual Property Organization. April 2009; [Cited April 20 2009]. Available online at <http://www.wipo.int/portal/index.html.en>

The WIPO is an agency of the United Nations dedicated to creating a worldwide intellectual property system and protecting property-holders' rights.

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9. Recording Industry Association of America. April 2009; [Cited April 20 2009]. Available online at <http://www.riaa.org>

The RIAA is a U.S. organization that represents the major American record labels and their clients both economically and legally.