

Audio Sampling and Copyright Law

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Why care?

- Copyright law determines the protection we have over our “original works” [Copyright Basics]
- Profoundly affects our culture and economy [Free Culture, Remix, Stallman]
- May define how future musicians sustain themselves both economically and artistically [Remix, GTNYT]

Facts

- Last year Radiohead held two remix contests that garnered thousands of remixes each [Radiohead Remix]
- Nine Inch Nails hosts an official remix site run by Trent Reznor himself [NIN Remix]
- Greg Gillis, known as “Girl Talk,” released an album of nothing but samples without the owners’ permission [GTNYT].
- Artists have been sued for millions for using just one sample in a song [Slate]. Gillis hasn’t been sued. *Yet.*

Focus Question

Is Girl Talk's use of sampling ethical?

Arguments: Con

- Using copyrighted material without permission is theft. [MPA]
- Artists whose work is used without permission will lose crucial revenue [RIAA, MPA]
- Copyright holders should have the exclusive right to control their work. [MPA]

Arguments: Pro

- Remixing and sampling will benefit the music community [Remix, Stallman]
- New profit models that harness legalized sampling can surpass the current ones [BoldrinLevine]
- It's a natural evolution of music [Remix]
- Copyright law is designed to “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries” [Constitution A1S8]

Analysis: Responsibility

- Gillis is using software to sample and to make his music [GTNYT].
- SE Code 1.01: he should accept responsibility for his work. [SE 1.01]
- SE Code 7.03: he should fully credit the work of others and not take undue credit [SE 7.03]
- Thus, he's accountable for his work and properly citing in it.

Analysis: Permission

- Should Gillis have to obtain permission to use samples?
- Copyright law is not accessible or definitive [Length, Fair Use Advisory]
- “There is no specific number of words, lines, or notes that may safely be taken without permission.” [Fair Use Advisory]
- Copyright infringement cases are thus “guilty until proven innocent.”
- Thus, he should not be forced to obtain permission.

Analysis: Royalties

- Should Gillis owe royalties to the original artist?
- SE Code 5.07: “Offer fair and just remuneration.” [SE 5.07]
- Categorical Imperative: cannot use another or their work as a means to an end. [Kant]
- Thus, he owes the original artist for using their work.

Analysis: Summary

- Gillis is responsible for his work.
- He can use samples without permission as long as he gives due credit.
- He definitely owes the original artists something, since he used their work product to profit.

Conclusion

- It benefits the public (SE 1.03).
- It promotes the arts (Constitution A1S8).
- He *can* provide remuneration without requiring permission or a lawyer (new license law could facilitate this).
- Thus, his use of sampling is overall beneficial to society and is ethical.

The Big Picture

Sampling is an art that can facilitate huge economic growth if it's encouraged instead of restricted [BoldrinLevine, Remix, Stallman].

References

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- ❖ [Free Culture] L. Lessig. *Free Culture: The Nature and Future of Creativity*. The Penguin Group. New York, NY: The Penguin Group. 2004.
- ❖ [Remix] L. Lessig. *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. Penguin Press HC, The, 2008.
- ❖ [Stallman] R. Stallman, “Reevaluating Copyright.”
- ❖ [Radiohead Remix] Xurbia Xendless Inc., “Radiohead/ Remix.”
- ❖ [NIN Remix] Nine Inch Nails, “NIN Remix - remix.nin.com.”

References

- ❖ [MPA] Music Publisher's Association, "Music Publishers' Association | Copyright Resource Center | Copying Under Copyright: A Practical Guide."
- ❖ [RIAA] Recording Industry Association of America, "RIAA - What We Do."
- ❖ [BoldrinLevine] M. Boldrin and D.K. Levine, *Against Intellectual Monopoly*, Cambridge University Press, 2008.
- ❖ [Constitution A1S8] U.S. Congress. *Constitution of the United States of America*
- ❖ [SE References] Association for Computing Machinery, Software Engineering Code of Ethics and Professional Practice (References given numerical section of the code).
- ❖ [Kant] I. Kant, *Groundwork of the Metaphysic of Morals*, Harper Perennial Modern Classics, 2009.

References

- ❖ [Length] Law in the US Code relating specifically to copyright is over 50,000 words or 110 pages long (ref: I counted). This does not include the DMCA.
- ❖ [Fair Use Advisory] US Congress, "Fair Use."
- ❖ [Slate] T. Wu, "The shady one-man corporation that's destroying hip-hop."
- ❖ [GTNYT] R. Walker, "Mash-Up Model," The New York Times, Jul. 2008.
- ❖ [Innocent Until Proven Guilty] Coffin vs. U.S., 156 U.S. 432, 432-463 (1894).