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THE COURT CASE THAT FOREVER CHANGED HIP HOP MUSIC

Since its inception, Hip Hop music has used a technique called sampling as the foundation for creating songs. Sampling is taking parts of other songs and combining them to make a new song. It is similar to cutting pictures out of a magazine and creating a collage. However, in 1991, the court case "Grand Upright Music, Ltd. v. Warner Bros. Records Inc." called that practice into question, forever changing both Hip Hop music and the entire music industry.

Before there was even a thought of something called Hip Hop music, the wheels (pun intended) of sampling were already in motion. Hip Hop culture started with the party DJ, the first of whom was DJ Kool Herc. Herc pioneered the technique of using two turntables (aka record players) connected by a mixer to mix and extend preexisting songs, especially the portions of those songs known as the breaks or breakdowns (see earlier SCHOOL'd lesson on "Sampling"). This technique and style was an instant hit. Therefore, party DJs quickly became consumed with developing and perfecting their intricate and rapidly evolving mixing techniques. This created a need for someone other than the DJ (who was usually the host) to be on the mic hosting the party. The party hosts (called "MCs" as they acted as the Master of Ceremonies for the party) became known for their clever and improvisational rhymes which they used to speak to the crowd or announce the DJ and other guests. As the DJ's mixing techniques became more elaborate, so did the MC's rhymes. By 1979, this musical trend of rhyiming over mixed music, which had begun forming only six years earlier, became a brand new commercially distributed musical genre called Rap. The first popular Rap recording, "Rapper's Delight" by the Sugar Hill Gang, remixed the Disco song "Good Times" by Chic and featured rapping by Wonder Mike, Big Bank Hank and Master Gee. And with "a Hip, Hop, the hippie, the hippie, to the Hip, Hip, Hop and you don't stop", what we know today as Hip Hop music was born.

In the early 1980s, a new technology started becoming widely available called the Sampler. This electronic machine allowed music producers to load or record pieces of sounds (aka "samples") into them. They could then play the samples back, mix or loop them with the press of a button. The Sampler simplified the technique Hip Hop DJs had created with turntables and increased the musical possibilities radically. By using Samplers, Hip Hop music went through a boom period, producing some of its best and most famous tracks. This process ushered in what historians today call "The Golden Age of Rap". That is, until 1991, when rapper Biz Markie and his label Warner Bros. made waves in the wrong pond.

Biz Markie was a commercially successful rapper signed to Warner Bros. Records in the midst of making his third album, "I Need a Haircut". You might know Biz best from his hit "You Got What I Need", which perfectly showcases his comedic style of Rap. For this album, he wrote a song called "Alone Again". The track used a piano sample from a 1970s song by artist Gilbert O'Sullivan, also titled "Alone Again". In addition, Biz sang his chorus in the same style as O'Sullivan. Because of the Sound Recordings Act in 1971 and the Copyright Act of 1976, both of which applied to protecting music recordings, record companies knew that there was some need to acknowledge the owner of any music they wished to sample. However, at this point in time, the subject was a big gray area, at best. Still, Warner Bros. contacted O'Sullivan and asked for "consent" to use parts of his song. Here is how the rest proceeded in O'Sullivan's own words. "We said okay, and if we like it, we'll see where we go from there. They sent it over and what they had done was sampled the intro and then he rapped over it. But then we discovered that he was a comic, a comic rapper, and the one thing I am very guarded about is protecting songs and in particular I'll go to my grave in defending the song to make sure it is never used in the comic scenario ... and so therefore we refused. But being the kind of people that they were, they decided to use it anyway so we had to go to court."

The court case was tried in NY before judge Kevin Duffy. Warner Bros. tried to defend themselves by saying that O'Sullivan, and his label Grand Upright Music, did not actually own the copyright. They also argued that sampling was already widespread in Hip Hop, which made it acceptable. Judge Duffy did not agree on either count. He ruled, "The defendants in this action for copyright infringement would have this court believe that stealing is rampant in the music business and, for that reason, their conduct here should be excused. The conduct of the

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defendants herein, however, violates not only the Seventh Commandment, but also the copyright laws of this country." About whether or not O'Sullivan owned the copyright, Duffy said that the simple fact that Warner Bros. approached Grand Upright Music for permission in the first place says that they knew they were the copyright holders. As a result of this ruling, Warner Bros. had to pay \$250,000 and stop selling all albums containing the track.

This ruling immediately created a situation where Hip Hop producers had to change the way they made music. For example, Public Enemy had released three albums at that point, all of which used scores of samples to the point where it majorly defined the group's sound. From that point on, there was no way for them to afford, or even track down, all of the copyrights to produce the kind of music for which they had become known. This situation was compounded by the fact that, because record companies started realizing how much money was being made in Hip Hop music, the costs of samples began skyrocketing. From this situation, three new "workarounds" emerged. In the first scenario, DJs/producers would find obscure songs that few knew or remembered and sampled those on their tracks. The likelihood that the copyright holder would know that their song was used or come after them was low and therefore the risk was justified. In the second scenario, a popular or obscure sample was used but manipulated with equalizers and sound filters until they were nearly or even totally unrecognizable. No one could sue over something that no longer even sounded the same. In the third scenario, instead of dealing with the costs of many samples, artists would use only one or maybe two samples in a song. A variation on this scenario was to not sample the song directly but instead have a studio musician do a cover of the sample. This way, because they were simply replaying the sample themselves, they only had to pay the writer. When a song is sampled directly, you have to pay the writer and the owner of the recording, usually the record label. When you cover a sample, you only have to pay the owner of the song. Dr. Dre made this technique super popular in the 1990s and it is still widely used today.

Still, some artists, like Kanye West, use paying high prices for samples as a status symbol. Like having expensive cars, jewelry or houses, being able to afford expensive samples can give an artist bragging rights, which we all know is a big part of the Rap scene. Considering that sampling today can cost hundreds of thousands for a single sample, being able to afford an entire album full of samples is indeed impressive. What's interesting about this development though, is that an artform which started because people who didn't have much money found a way to create using the only music they had (vinyl records), now belongs only to the super rich.

Another thought to consider. You can quote another book in your own book without concern for copyright violation. However, if you write a lyric from another song in your own song, you can be sued. If you perform on stage in an Adidas track suit or mention Adidas in your song, you won't be in trouble. But if you put an Adidas logo without permission in a movie, you'll end up in court. Copyright does not currently follow any straightforward rules and is frequently contradictory. This situation inhibits creativity, as everything we make is a combination of things that already exist, be they physical materials, sounds or ideas. Even Shakespeare and Beethoven, not to mention countless other artistic heroes, borrowed from contemporaries and forerunners. Without precise definitions of what is fair use and what is not, artists will never be able to create freely within the confines of acceptable practice. This is a loss, not only for Hip Hop, but for anyone who seeks to create in any way.

HIP HOP WORD OF THE WEEK

Ain't mad: Not bothered by something, not holding a grudge, not having a problem. To support or like something.

EX: "Yeah, he took that trip without me but I ain't mad. There's was only one free spot left. I would've done the same thing."

EX: "That outfit is so fly. And did you see her shoes?! I definitely ain't mad at that!"

Song reference: "I Ain't Mad at Cha" by Tupac

EXTRA LEARNING

- 1) What Hip Hop sampling case went before the Supreme Court in 1994 and what was the judgment?
- 2) What is your opinion on how to handle copyright in a way that supports artists and encourages creativity?