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Extra Legal

Statutorily Stifling: The Legal Burden Copyright Places on the Hip-hop Community

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"With the rise of disco, hip-hop, and electronic dance music, transformative appropriation has become the most important technique of today's composers and song writers." – Joanna Demers[1]

I. Introduction

This paper will look at how the art of sampling music from one recording and using it to create a new musical work is stigmatized by statute. Artists who engage in this art form must rely on the often-situational defenses of fair use and the recent resurgence of the *de minimis* exception proffered in the Ninth Circuit's decision in *VMG Salsoul, LLC v. Ciccone* which creates a split with the Sixth Circuit's decision in *Bridgeport Music, Inc. v. Dimension Films*.[2] The technique of sampling is used in many genres, but the risk of litigation is potentially crippling to

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[1] JOANNA DEMERS, STEAL THIS MUSIC 9 (2006).

[2] VMG Salsoul, L.L.C. v. Ciccone, 824 F.3d 871 (9th Cir. 2016) (holding that the de minimis exception applies to sound recordings as it does all other copyrighted works, and that Madonna's sampling of the horn track in "Love Break" in her song "Vogue" was de minimis according to 17 U.S.C. § 114(b) and did not constitute infringement of the composition or the sound recording); Bridgeport Music, Inc. v. Dimension Films, 410 F.3d 792 (6th Cir. 2005) (holding that the literal reading of 17 U.S.C. § 114(b) in its references to § 106 grants the exclusive right to sample to the copyright holder).

many hip-hop artists and producers who may not have the resources to mount a defense, much less pay the statutory damages for infringement which range from $750–$150,000 per infringement.[3]

As a DJ, hip-hop music producer, and the Innovation Director at the Hip-hop Archive and Research Institute at Harvard University, I have felt the weight of this statutorily created burden that prejudices those who are often already marginalized, particularly youth and specifically African American and Hispanic hip-hop artists and producers—the people who created the genre. My lived and professional experiences as an African American who came of "sonic" age in the what many call the Golden Age of Hip-hop creates a research bias of looking at how African Americans and Hispanics in particular are stigmatized for their cultural music practices while simultaneously being exploited for their culture, but this paper sets forth the reasoning behind a potential remedy that applies to anyone of any ethnicity who creates sample based music.[4] A remedy to this issue gives all artists and producers the agency to grow in their artistic space(s) and help evolve genres who utilize pastiche as a means of communicating the past to the present. So, for the sake of this paper, the use of the terms "artist" and "producer" reference anyone in the hip-hop community who identifies as such and whose marginalization is reflected in the intersectionality of their total being and culture, not just one specific aspect of their being.[5]

With that said, a path to remedying this inadvertently (though some argue otherwise) culturally biased artistic demonization is to create a compulsory sampling license that mimics the compulsory use license that favors artists of many other genres that make cover songs.[6] This idea has

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[3] Copyright Act of 1976, 17 U.S.C. § 504(c)(1)–(2) (2012).

[4] KEMBREW MCLEOD & PETER DICOLA, CREATIVE LICENSE 19 (2011).

[5] But, I admit race is a driving factor.

[6] 17 U.S.C. § 115 (2010) (establishing compulsory license requirements for "nondramatic musical works").

been presented by scholars, artists and legal minds for some time, but the reason I suggest such a statutory exception is based in the equitable treatment of hip-hop artists, producers, and anyone that participates in sample based music. It is also to promote statute evolution that makes space for a cultural art form that has become a major piece of the popular culture equation. This paper will look at hip-hop culture, portions of the U.S. Copyright Act, sampling culture and how it interacts with the U.S. Copyright Act, the commodification of sampling based equipment and software, and the equity-based reasoning for a compulsory sampling exception.

II. Hip-hop Culture Primer

Hip-hop is a culture comprised of various elements. There are many schools of thought as to how many elements there are, but four are generally accepted as the main elements of the culture. Those elements are DJing, emceeing (rapping), dancing, and graffiti. (There is also the fifth element of knowledge which is also widely recognized.) Elements of hip-hop culture existed before rap and hip-hop music. They all began to coalesce in the early 1970's Bronx, forming a music that is now regarded as the "lingua franca of popular and political youth culture."[7]

III. Pertinent Copyright Law

"*Though those different plans were, perhaps, first introduced by the private interests and prejudices of particular orders of men, without any regard to, or foresight of, their consequences upon the general welfare of the society. . .*" – Adam Smith[8]

Established almost two centuries before the creation of hip-hop music, copyright law is rooted in Article I, Section 8, clause 8 of the

[7] Michael Mazzei, "Hip-Hop." *Salem Press Encyclopedia*, (2017); CRAIG S. WATKINS, HIP HOP MATTERS: POLITICS, POP CULTURE, AND THE STRUGGLE FOR THE SOUL OF A MOVEMENT 9 (2005); Marcyliena Morgan & Dionne Bennett, *Hip-Hop & the Global Imprint of a Black Cultural Form*, 140(2) DAEDALUS, Spring 2011, at 176, 179.

[8] ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 11 (R.H. Campbell et al. eds., Liberty Fund 1981).

Constitution.[9] It is codified as federal statute in Title 17 of the United States Code in its most recent form, the Copyright Act of 1976.[10] The statute is relatively comprehensive even though advancements in technology often give the Court trouble and lead to arguably surprising decisions when technology purposely circumvents or naturally evolves past copyright law.[11]

Section 102 of the Copyright Act lists eight categories of protected works that include "Musical works, including the accompanying words."[12] This encompasses the composition (written music) and the sound recording, both of which are the focus of the discussion here.[13] Section 106 lists the six exclusive rights granted to the owner of the copyright. They are the right to reproduce, prepare derivative works, to distribute, the right to public performance, and the right to perform sound recordings publicly by means of digital audio transmission.[14] There are a host of exceptions to these exclusive rights listed in sections 107–122 of the Act.[15] One of the exceptions that benefits all artists is Section 115, "[s]cope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords," which allows artists to make covers of songs without asking for permission from the copyright holder if they comply with the statute.[16] The section provides that "[a] compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work . . . ."[17] The compulsory

[9] U.S. CONST. art. I, § 8, cl. 8.

[10] Copyright Act of 1976, 17 U.S.C § 101 *et al.* (1978).

[11] *See* ABC, Inc. v. Aereo, Inc., 134 S. Ct. 2498 (2014).

[12] 17 U.S.C. § 102 (1990).

[13] *Id.*

[14] 17 U.S.C. § 106 (2002).

[15] 17 U.S.C. §§ 107–22.

[16] 17 U.S.C. § 115(a)(1) (2010).

[17] 17 U.S.C. § 115(a)(2).

license is not genre specific, but it has particularly favorable effect on artists that write and perform songs with more traditional instruments such as guitars, other stringed instruments, woodwinds, and pianos.

Without painting a naïve and incorrect picture of minority communities that do not own or have access to any traditional instruments, there are some artistic members of those communities who do not have access, or purposefully utilize digital equipment and software as their instruments. Section 115's cover song exception leaves these types of artists behind with risk of being labeled an infringer even though sampling is culturally seen as transformative use of a prior work in the hip-hop community.

IV. The Cultural Concept of Sampling

"Some people make beats. They use digital technology to take sounds from old records and organize them into new patterns, into hip-hop. They do it for fun and money and because their friends think it's cool. They do it because they find it artistically and personally fulfilling. They do it because they can't rap. They do it to show off their record collections. Sometimes they don't know why they do it; they just do." – Joseph G. Schloss[18]

Spinning the breaks of James Brown records is often cited as an early practice from when the genre of hip-hop music came to be. It is also fitting that James Brown is a frequent example because his music is some of the most sampled in hip-hop. The technology changed over time, but the base of the music was rooted in transforming music that came before it. The DJ also became the producer, and the act of "digging" through record stores for choice vinyl LPs continued with a focus shift from being ready for spin at a party to finding records to sample when producing music.[19]

Sampling is a major part of hip-hop culture. Producers look for rare albums in the hopes of finding a melody, rhythm, sound, or note that can

[18] JOSEPH G. SCHLOSS, MAKING BEATS: THE ART OF SAMPLE-BASED HIP-HOP 1 (2nd ed. 2014).

[19] *See id.* at 79.

be used in the production of a new song.[20]

There is a code, a professional set of ethics, hip-hop producers follow.[21] Easier access to sampling technology and digital audio music and equipment has shifted the adherence to this code, but some aspects still hold true. Producers do not generally share where they get their samples. It is up to others to figure it out if they can. There is a culture built on pillars, we will not discuss here, but Chuck D. of Public Enemy explains how samples are the creative materials used to make hip-hop music. "We thought sampling was just a way of arranging sounds, . . . to blend sound. Just as visual artists take yellow and blue and come up with green, we wanted to be able to do that with sound."[22]

Samples are the building blocks of the beats that drive hip-hop music, and they have become sacred through this practice. Equipment, digital instruments, and software have been created specifically to facilitate the use of samples; most of which comes with licensed samples as part of the package. But, those factory-preset samples lack the sparkle and liveliness of music sampled from a record.

V. Clearing Samples, the Creativity Conundrum, and Who Gets Sued

a. Clearance at-a-Glance

The Copyright Act is at odds with this cultural practice that has produced music listened to and commodified the world over. It's strict liability labels anyone who creates sample based music an infringer with very little credence given to the cultural significance of sampling in one of the largest genres in the world today, hip-hop. For an artist or producer to use a sample without fear of litigation, they generally need to clear the use of the sample by requesting a license for the composition and the master

[20] Grammy award winning artist 9th Wonder calls this shooting in the gym. During a conversation with 9th Wonder, DJ Premier, and Pete Rock, I saw firsthand how hip-hop producers participate in an unannounced, yet understood, game of finding records and "chopping" or "flipping" samples in a transformative manner.

[21] SCHLOSS, *supra* note 18, at 101.

[22] MCLEOD & DICOLA, *supra* note 4, at 24.

recording.[23] This usually involves contacting the owner of the musical work which is often administered by the music publisher and contacting the artist or record company depending on who owns the masters. The copyright owner(s) can decide not to grant the license, or set the terms if they do grant one. A license often involves a fee which can be prohibitive and stifling if the licensor sets one that is too expensive. There is also the issue of a licensor setting terms that do not allow the licensee to use the sample in the manner they intend.

A sampling specific exception to Section 106 would appropriately breakdown this creativity barrier since sampling is a practice so integral to popular and digital music. Seeing how Sections 107–122 are all exceptions to the rights granted in Section 106, such an exception would not be out of the scope of reasonable amendments to a statute that must evolve with the Arts if it is going to continue promoting innovation and creativity.[24] The Copyright Act's statutory inflexibility runs the risk of stifling creativity which is against the reason for its very existence.[25] Chuck D notes the frustration in the creative process when discussing how making records similar to those in the 1980's had become near impossible by 1994: "It had become so difficult to the point where it was impossible to do any of the type of records we did in the late 1980s, because every second of sound had to be cleared."[26]

b. The Creative Conundrum

The continuous risk of infringement claims is a crushing weight to bear when samples are your genre's building blocks. Every time you create you are open to risk. By the 1990s, famous albums such as De La Soul's *3 Feet High and Rising* and Public Enemy's *It Takes a Nation of Millions* would have had to sell for $159 per copy to recoup the full cost of tracking

[23] Grand Upright Music, Ltd. v. Warner Bros. Records, 780 F. Supp. 182, 184–85 (S.D.N.Y. 1991).

[24] 17 U.S.C. §§ 107-22.

[25] U.S. CONST. art. I, § 8, cl. 8 ("To promote the Progress of Science and useful Arts . . . .").

[26] MCLEOD & DICOLA, *supra* note 4, at 27.

down copyright owners and obtaining the licenses necessary to clear the hundreds of samples on those and similar hip-hop albums of the time.[27] The clearing of the Beastie Boys' *Paul's Boutique* is said to have cost over $250,000 as 95% of the sounds on the record were samples.[28] The Beastie Boys were urged by their accountant, not a creative member of the group, to find an alternative, so they had to use less samples and more traditional instruments.[29] Fair use might have come into play when evaluating the cost and risk of making some of the albums mentioned here, but proving fair use in court may come with a large price tag and opportunity costs; especially if you do not win.

c. Who Gets Sued(?) — Evolving Distribution Technology Makes More Targets

The burden placed upon sample based artists and producers may sound exaggerated when looking at the actual risk of litigation. Joanna Demers, associate professor and chair of Musicology at University of Southern California Thornton School of Music, notes in *Steal This Music* that litigation only happens when there is enough money to warrant a law suit.[30] "Most [sampling] artists escape litigation altogether because their output generates little or no profit."[31] She even details the thought process of Walt Disney attorneys assessing a potential infringement claim which supports her assertion that copyright infringement is not as harmful as cultural critics suggest.[32] Larger artists with deeper pockets are more likely to become a party in litigation, but technology has shifted making any song an upload away from becoming a lucrative, runaway hit. Creating a hit may be as elusive as hitting a hole-in-one while playing golf, but it happens. More frequently, songs can become lucrative even if they are not

[27] *Id.*

[28] *Id.* at 28.

[29] *Id.*

[30] DEMERS, *supra* note 1, at 113.

[31] *Id.*

[32] *Id.*

at the top of the charts because of independent music distribution services like Tunecore, video platforms such as YouTube, and other technologically advanced distribution channels that allow for monetization of music. This is evidenced by the fact that a young YouTube celebrity with only 94,000 subscribers to his channel won two Grammys at the 2017 award show.[33] His YouTube stardom is not an anomaly. Obscurity is less of a barrier to entry in the music industry because online sharing culture is a major part of the creative and economic landscape.

Artists can also become a well-known name in the music industry by exploiting their catalogue of music. This can take the form of an unknown artist getting a synchronization license so their song can appear synchronized with video in a commercial, film, or television show.[34] This of course happened before the existence of Tunecore and YouTube, but it has become more of a realistic possibility as film and television content producers want new music without having to pay superstar sized licensing fees. This ease of distribution means three things for unknown artists and producers. First, unknown artists and producers can become famous in an instant. Second, they may miss a big break because they are precluded from licensing works that contain uncleared samples. Third, some unknown artists and producers may produce a surprisingly lucrative or hit song that contains samples that are undetected for some time making a formerly unknown artist a "deep pocket" infringer ripe for litigation.

Even if lesser known artists and producers are less likely to be sued for infringement, there is still the issue of how well known hip-hop artists are open to this liability based on the nature of their art form. Careers have been stymied and records have been shelved (not released) because of samplings statutory prohibition.

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[33] Geoff Wise, *Jacob Collier, Pentatonix Repped YouTube At Last Night's Grammy Awards*, TUBEFILTER (Feb. 13, 2017), http://www.tubefilter.com/2017/02/13/jacob-collier-pentatonix-youtube-grammy-awards/.

[34] *See generally* Steele v. Turner Broad. Sys., 646 F. Supp. 2d 185, 193 (D. Mass. 2009) (defining and explaining synchronization licenses) (citations omitted).

In the eleven years since the publishing of *Steal This Music*, the earning potential gap between the major hip-hop artists and producers and the lesser known has started to narrow. The risk is real, and it is spreading.

d. The Sampling Litigation Flux

The Copyright Act presents regular opportunities to sue artists whose music and livelihood are inextricably linked to an aspect of hip-hop culture. These cases affect them individually, and they effect the rest of the hip-hop community with each ruling.

In *Grand Upright Music, Ltd. v. Warner Bros. Records*, a case that effectively ended what was thought to be the "Wild West" of sampling,[35] the court held that Biz Markie knowingly violated Gilbert O'Sullivan's copyright by using three words from the song and sampling the master recording.[36] The first words of the opinion admonish sampling by quoting the bible.[37]

The very beginning of this opinion displays some courts' willingness to deem creators of hip-hop music "stealers." The issue in this case was not that the songs were sampled, but that Biz Markie used the sample prior to receiving the appropriate consent from O'Sullivan.[38] Biz Markie did ask, but he released the song before he was given the go ahead.[39] This resulted in a preliminary injunction, and Biz Markie's claim that this is what everyone in the rap industry is doing was refuted by the court which looked at the argument as shallow and based in financial gain.[40] While

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[35] MCLEOD & DICOLA, *supra* note 4, at 132.

[36] Grand Upright Music, Ltd. v. Warner Bros. Records, 780 F. Supp. 182 (S.D.N.Y. 1991); MCLEOD & DICOLA, *supra* note 4, at 132.

[37] Grand Upright Music, Ltd., 780 F. Supp. at 184 ("'Thou shalt not steal.' has been an admonition followed since the dawn of civilization. Unfortunately, in the modern world of business this admonition is not always followed. Indeed, 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.").

[38] *Id.* at 185.

[39] *Id.* at 184–85.

[40] *Id.* at 183, 185.

Markie may have used the terms business or industry instead of the term culture, it is interesting how custom does not seem to have an effect on copyright law the same way it does in tort law.[41]

The judge went on to recommend criminal charges and referred the case to the US Attorney for the Southern District of New York.[42] This situation escalated quickly, but it could have been avoided if there was a compulsory sampling license which would have benefited everyone involved, especially since O'Sullivan claims the issue was not the use but the pending permission. Nevertheless, this 1991 decision made it clear that samplers need to get licenses, and this rippled through the music industry making it difficult to continue producing hip-hop music.

There are cases where the sampler prevails such as *Campbell v. Acuff-Rose Music, Inc.* and *Newton v. Diamond* that provided some hope of fair use and de minimis use as defenses.[43] As these outcomes seemed to be somewhat hopeful for samplers and the hip-hop community, *Bridgeport v. Dimension Films* (mentioned above) shifted the pendulum back making de minimis use a defense for a composition and not a sound recording.[44] This shifting back and forth between not being able to use small portions of songs to being able to sample small portions and then back to not being able to sample highlights the need for a statutory exception to create some sort of continuity. As referenced in the introduction, *VMG Salsoul, LLC v. Ciccone* has created a circuit split that now, once again, gives artists and producers a strong case when sampling small portions of a sound recording. Still, this is far from accepting the

[41] The judges use of quotations around the term rap music ("rap music") in reference to a segment of the music industry in a footnote in the opinion may have been used to subordinate the validity of that particular sector of the music business. *Id.* at 185 n.2.

[42] *Id.* at 185.

[43] Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994) (suggesting that fair use is a defense in parody cases); Newton v. Diamond, 349 F.3d 591 (9th Cir. 2003) (holding that the District Court's finding of summary judgement for defendants the Beastie Boys was proper as they were granted a license for the sound recording, and the three notes used of the composition are considered de minimis, making a composition license unnecessary).

[44] Bridgeport Music, Inc. v. Dimension Films, 410 F.3d 792 (6th Cir. 2005).

creative building blocks of hip-hop music as lawful creative tools by way of statute.

VI. Sampling Bolsters a Tech Driven Music Equipment Market

As a music producer of 15 years, I have seen music production hardware and software companies create products that sanctify sampling and make it easier. The market for sampling software and hardware has expanded greatly. Software specifically for sampling music is ubiquitous in both online and brick-and-mortar music instrument retailers. Classic Akai MPC samplers are being updated and reissued.[45] Leading digital audio workstations (DAWs) like ProTools, Ableton, Logic market their innovative sampling capabilities. Newer hardware/software combinations like Native Instruments' Maschine series and Ableton's Push series have made sampling more affordable with hardware offerings ranging from $349–$1398.[46] This is fractions of what producers paid a decade ago, and the technology has advanced so much that "old school" equipment can be modeled digitally in these newer iterations to recreate that classic 80s and 90s sound.[47] The technology has come full circle and still pushes forward with quarterly upgrades and annual new releases.

Much of this equipment comes with stock samples that you are free to use. Very often companies will create samples that sound similar to a particular producer or artist. Sometimes companies like Ableton will hire musicians to play loops and sounds that are marketed and sold as sample packs. While these are great risk-free tools, it severely limits the bounds of the sonic playground for all artists. Major music software and equipment

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[45] *See Akai Professional – MPC Series*, AKAI PROFESSIONAL, http://www.akaipro.com/products/mpc-series (last visited Jan. 12, 2018); *Akai Professional | Sweetwater*, SWEETWATER, https://www.sweetwater.com/store/manufacturer/Akai_Professional (last visited Jan. 12, 2018).

[46] *See* SCHLOSS, *supra* note 18, at 30.

[47] *Is The MPC 1000 The Tool For You?*, BEAT TALK, available at https://web.archive.org/web/20071230114755/http://www.onestopbeats.com/mpc1000review.html (last visited Jan. 12, 2018) (noting that the original MPC debuted at $5,000 in 1988).

companies like Akai, Native Instruments, Propellerhead, and Fruity Loops have carved out their markets shares by marketing directly to hip-hop artists and producers.

The Akai MPC series, a standard in the industry, features rubber pads that a producer can tap to trigger samples like most other common sampling devices on the market.[48] Sampling has created a new type of musician whose musicality can span across instruments and soundscapes without the expense of every instrument desired in a composition or sound recording. This is important because not everyone has access to acoustic instruments, and if they do, they may not be able to afford the years of lessons necessary to become proficient in even just one instrument. Music production companies see the value in these products and continue to make revenue from selling them, so why are the artists and producers who use them instantly labeled infringers when they are literally taking their cues from the industry? I am not calling for contributory or vicarious infringement as these companies are protected in most cases because the products to have significant non-infringing uses like in *Sony Corp. of Am. v. Universal City Studios, Inc.*[49] This is a look at how a particular commodification of hip-hop culture pushes risk solely to the artists and producers.

VII. A Compulsory Sample License is Culturally Equitable

"I'm tryna keep my faith/ But I'm looking for more/ Somewhere I can feel safe/ And end my holy war" — Kanye West[50]

Half way through 2016, R&B and Hip-Hop music sales made up

[48] Triggering samples has become what is known as finger drumming, and these devices are viewed as instruments. For example, sounds that comprise a drum kit may be assigned to each pad along with other notes, sounds, or loops. These samples can be played on the device live to be recorded and looped or for live real-time performance. *See, e.g.*, Mad Zach, *How To Practice Finger Drumming And Controllerism*, DJ TECHTOOLS (Sept. 3, 2012), http://djtechtools.com/2012/09/03/how-to-practice-finger-drumming-and-controllerism.

[49] *See* Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417 (1984).

[50] KANYE WEST, *Ultralight Beam*, *on* THE LIFE OF PABLO (GOOD MUSIC 2016).

almost a quarter (22.6%) of all music sales with 63,257,400 in album sales and equivalent streaming.[51] Artists like Beyoncé and Drake are drivers of this figure, but there are many other hip-hop artists that contribute to this impressive figure. Many of them are well positioned to clear samples or deal with litigation as it arises. Still, these artists may be making decisions based on finances rather than the tenants of their art form. What does that mean for artists who are not in the same sales bracket? How do they move forward with the uncertainty of sampling?

Creating a compulsory sample license would provide certainty when artists and producers sample. They would know they can use a sample if they met the requirements of the statute. There would be a fee as with the compulsory license in Section 115, but that fee might not be as

prohibitive as the possible fees negotiated with the owner of the work. There could even be an attribution provision which would be a compromise since producers do not generally disclose what they have sampled unless it is obvious.

People want to hear hip-hop music based on sales and streaming figures. Why limit the creativity of a genre when compulsory licenses have worked so well for artists in genres where cover songs are the norm? The same policy arguments that can be made for allowing covers can be made for sampling which leaves me to wonder if the law is in the business of evaluating what is considered "Art" even though, over a century ago, *Bleistein v. Donaldson Lithographing Co.* made it clear that is not the role of the court.[52] The opinion in *Grand Upright Music, Ltd.* overly chastised the defendant and conveyed a negative value judgement toward "rap music."[53] If the issue is with music, I have "sampled" quotes at the

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[51] Keith Caufield, *Nielsen's Mid-Year 2016 Charts: Drake, Beyonce & Rihanna Rule R&B/Hip-Hop*, BILLBOARD. (July 21, 2016) http://www.billboard.com/articles/columns/chart-beat/7446511/drake-beyonce-rihanna-rb-hip-hop-mid-year-2016.

[52] *See* Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903).

[53] *See* Grand Upright Music, Ltd. v. Warner Bros. Records, 780 F. Supp. 182 (S.D.N.Y. 1991).

beginning of various sections in this paper to set a tone and provide context. How is sampling in music any different?

Is the hip-hop community not being accepted even though it is being exploited by various industries? These types of questions arise when the ability to negotiate a license is not a sticking point for rock, country, and metal bands who are using copyright protected material, but it is for hip-hop artists. If artists who borrow in other genres are not labeled infringers, the hip-hop community should be extended the same treatment.

This type of change to the Copyright Act may be met with skepticism, but Congress and the music industry must stop and at least address how there is a cultural and distinctly racial undertone to the way sampling is handled. The law might not have been drafted to have that effect, but it needs to be addressed now that it does. The undertone rings out loudly for those who create hip-hop and sampled based music.