

The Ethical Aspects of Sampling Digital Music

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Definition of Sampling.

In music, **sampling** is the act of taking a portion, or sample, of one sound recording and reusing it as an instrument or a different sound recording of a song.

Sampling vs. Copying

- The practice of copying isn't something new.
 - Musicians have always copied or “covered” songs.
 - “Blues” music is generally composed of different combinations of 3 chords.
 - Copying and Sampling are *NOT* the same thing.
 - Sampling is cutting up an actual recording and inserting it into your own piece of music.
 - Copying is basically performing somebody else's work.

A Brief History

The Roots of Sampling

- Sampling gained popularity with Vinyl and Tapes.
- Earliest samples used in movies.
- During 40s and 50s, musicians created music by combining recordings.
 - They would slow them down or speed them up.
 - Using tapes.
- During 60s and 70s sampling continued into Pop/Rock and Roll.
 - *The Beatles* song “Revolution 9.”
 - “Revolution 9” contains multiple tape loops, live performance recordings, reversed recordings, and dubbed vocals.
 - Very bizarre track.

The Digital Age of sampling.


“These days, it’s not just music: Much of our culture is sampled, and digital technology is making it easier than ever to borrow from music, speech, and even a movie like Casablanca.”

- WNYC Soundcheck

🔊 Example of a Interface to Create a Sample



How to Digitally Sample Music

- Sampling nowadays is done through computer programs such as:
 - Adobe Audition  Wish it Would Rain (Temptations sample)
 - Fruity Loops
 - Garage Band
- Producers will have samples stored in a digital interface.
 - MIDI keyboards are used in which each key will produce a different pitch of a sample.
 - Drum samples are often stored in an MPC (Music Production Center).
 - Samples are then recorded to a program to create an instrumental for a musician to record over.

MPCs and Keyboards

Bottom left is an MPC.

Bottom Right is a MIDI Keyboard

Each pad can store a different sample.

Each key can store a sample.



Lawsuits Brought on by Sampling.

- Cypress Hill, 2008, “Black Sunday.”
 - \$29 million dollar lawsuit
 - 60’s blues musician, Syl Johnson, placed the lawsuit claiming that Cypress Hill had sampled music from his 1969 record, “Is it Because I’m Black?”
 - Cypress Hill looped his song and used it as an interlude on “Lockdown.”
 - Case is yet to be resolved.

Lawsuits (Continued)

- *The Beastie Boys* “Pass the Mic.”
 - Sample of a 1978 recording called “Choir” by James Newton.
 - Three-note flute progression which repeated 39 times during the song.
 - The Beastie Boys paid a record company to use the sample, but Newton felt he should get royalties as well.
 - The court threw the case out and ruled in favor of The Beastie Boys.

Lawsuits (continued pt. 2)

- Music producer, *Timbaland*
 - Known for sampling “Bollywood”
 - Hindi-language film industry is known as Bollywood
 - Recently involved in a case where he produced a track for artist “The Game” titled “Put you on the Game.”
 - Timbaland didn’t try to clear the samples.
 - Courts threw out the case because in Indian law, there could be three different copyright holders of a song. In this case, the copyright owner was actually the director of the film, and he wasn’t the one trying to sue Timbaland.

Lawsuits (continued pt. 3)

- Timbaland involved in multiple lawsuits.
 - 2005 Egyptian singer, Osama Admed Fahmy filed a lawsuit against Timbaland and Jay-Z, for a sample used on their song, “Big Pimpin.”
 - Timbaland looped a 1957 Egyptian melody from the song “Khosara, Khosara”
 - In 2007, Ahab Joseph Nafal, who owned a portion of the copyright, sued as well.
 - *“Lawyers for EMI Records argued that the 50-year old track was governed by the 1909 Copyright Act.(Allhiphop.com)”*
 - 1909 Copyright Act allows works to be copyrighted for only 28 years, therefore both cases were dismissed.

Complications with Lawsuits

- Reasons why many lawsuits get thrown out of the courts.
 - Many factors go into lawsuits regarding samples.
 - Loopholes, such as the “Indian Sampling Law” that prevented Timbaland from losing his lawsuit.
 - Types of sampling:
 - Loops
 - Individual instruments/notes
 - It is often times hard to recognize a sampled song

Things to be Considered in the Courts

“The United States Copyright Act does not precisely list the kinds of copying that are fair use. Instead, what is considered to be fair use has been determined by the judicial system (Quinn, 172).”

Fair Use

- The courts have relied upon Section 107 of the Copyright Act, which lists four factors to be considered. As shown below:
 - What is the purpose and character of the use?
 - What is the nature of the work being copied?
 - How much of the copyrighted work is being used?
 - How will this use affect the market for copyrighted work?

Lets Review Some Lawsuits using Fair Use

- Cypress Hill sample:
 - What is the purpose and character of the use?
 - Entertainment, there wasn't any lyrics behind it. (Not considered fair use)
 - What is the nature of the work being copied?
 - The original song is about the struggles endured by a black musician in an era of racism etc. However, the sample being used is just a loop of the instruments with no lyrics associated with it. (Considered fair use)
 - How much of the copyrighted work is being used?
 - Cypress Hill used a good portion of the song, looped into their interlude. (Not considered fair use)
 - How will the use affect the market for copyrighted work?
 - Not a whole lot, the music/genre is so different that it would not prevent one from buying a 1969 Syl Johnson record. (Considered fair use)
- Doubtful that the full \$29 million will be paid out.

Fair Use (continued)

- The Beastie Boys sample:
 - What is the purpose and character of the use?
 - Entertainment (Not Fair Use)
 - What is the nature of the work being copied?
 - Published piece (Maybe fair use)
 - How much of the copyrighted work is being used?
 - Only 3 notes, but replayed 39 times. (Fair Use)
 - How will the use affect the market for copyrighted work?
 - Would not be directly affected due to the portion of the sampled music:
 - It's only a few notes.
 - Would not have a direct impact regarding the sales of the original song.
- Case was thrown out due a combination of Fair Use and the fact that the Beastie Boys had paid royalties to the record company.

Fair Use (continued pt. 3)

- Timbaland “Bollywood” sample:
 - What is the purpose and character of the use?
 - Entertainment (Not fair use)
 - What is the nature of the work being copied?
 - Published piece /Soundtrack for a movie (Not fair use)
 - How much of the copyrighted work is being used?
 - Not enough used to make it a clear ruling against fair use. (fair use)
 - How will the use affect the market for copyrighted work?
 - Would not prevent somebody from seeing the movie...
 - (fair use)
- Case was thrown out, not because of fair use, but because of the Indian Sampling laws.

Ethical Aspects of Music Sampling

“The rules of conduct recognized in respect to a particular class of human actions or a particular group, culture, etc.” – Dictionary.com

Two ways of Looking at Sampling

- Stealing of somebody's work.

OR

- Paying homage to artists of the past by evolving their music into the present.

Kantianism's 2nd Formulation

“Act so that you always treat both yourself and other people as ends in themselves, and never only as a means to an end”(Quinn 73).

Credit to the Original Artist

- As long as the artist or producer creating the song out of the sample respects the music they are sampling and gives credit to the original artist, I don't believe they are using them for profits.
- On the other hand, if the artist samples a portion of a song and uses it on their album, like Cypress Hill did with the interlude, it seems like they used the sample as a filler for their album. Therefore they were using the artist as a means to an end.

The Greatest Happiness Principle

“An action is right (or wrong) to the extent that it increases (or decreases) the total happiness of the affected parties(Quinn, 76).”

Sampling and the Greatest Happiness Principle

- If the original song is lyrical, inspirational, and meaningful, but the sampled song is something cruel and disrespectful, it is doubtful that both parties would be happy.

BUT

- If the sampled version of an original piece is an evolved version paying respect to the original content, then I believe for the most part, both parties would be happy.

Harms of Sampling

- Original artist's intent could be completely different.
- If somebody is disrespected by the sampled version of a song, the original artist may be held accountable.
- Sales of the original record may decline.
 - Keep in mind that sampling doesn't have to be "oldies."

Benefits of Sampling

- Creating new styles of music.
- Keeping old music alive by recreating it into something new.

John Rawl's Principles of Justice

- Each person may claim a 'fully adequate' number of basic rights and liberties.
 - Freedom of thought and speech
 - Freedom of association
 - The right to be safe from harm
 - The right to own property
- So long as everybody else having a claim to the same rights and liberties.

Two ways of looking at this Principle of Justice

- Even though an artist may own a song that contains certain notes, or chord progressions, there is no reason that another artist shouldn't be able to replicate the same chord progressions.

OR

- A person objecting sampling may say that a composer should be able to own their work, and that the principle is saying that another artist shouldn't be able to steal it.

Conclusion

- Sampling of digital media has evolved into something huge.
- It is very difficult to determine lawsuits regarding sampling
- If you pay respect to the original artist, not necessary by paying them money, but by recognizing them as the original artist, then in my opinion, there aren't any implications that it is unethical to sample somebody's work.
- However, if you steal somebody's work for your own benefit without showing them the proper respect, I find it unethical.



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