

Music Licensing and Formalities

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Two interview-based studies of music licensing

- *Creative License: The Law and Culture of Digital Sampling* (with Kembrew McLeod, 2011)
 - Based on interviews with over 100 musicians, producers, industry executives, attorneys, and others
- Study of copyright licensing of Internet music services (with David Touve, in progress)
 - Based on interviews with 15-20 attorneys and executives at music-tech startups or VCs

Search costs in sample licensing

“Yes, there were no sample clearance agencies to help clear stuff back then. We delayed the record release by about a year (it was more or less finished before *Remain in Light* came out) to try and contact as many of the sources as possible. Lots of detective work.”

- David Byrne, discussing *My Life in the Bush of Ghosts* (with Brian Eno) (1981)

A lack of notice and registration

“The question is, who do you contact? You have to find the writers on the record. Then when you go and look and find the writers of the record, you try to find the publishing company that was associated with those writers. Well, when this thing starts getting transferred and people start signing their rights over to the next third party and the fourth party and fifth parties and things of that nature, well, we’re not privy to that information.”

- Hank Shocklee, Public Enemy
& Shocklee Entertainment

Consequences of search costs (1)

“In some cases, it’s not even the original artist. It’s three other different people that represent their publishing or had the publishing on that record thirty years ago. If we’re talking about, for instance, Ethiopian records—even if you went and found the division of Universal Records that supposedly purchased the Phillips Ethiopia catalog, the chances of Phillips Ethiopia having contracts that survived the regime changes in Ethiopia or any proof that they own the music is so far-fetched. . .”

Consequences of search costs (2)

“You might get to a person at the company who would just take the blanket stance that they own it—regardless of whether it was proven or not—because they were Phillips Ethiopia, bought by Polygram, bought by blah blah blah, bought by Universal. And they could actually stop you from putting the record out even though they don’t have proof that they actually own the material. . . . If I found that an artist of ours used a track that was released on Phillips Ethiopia in 1974, I would say there’s no way in hell we’re gonna try to clear this sample. We’re just gonna put this out.”

- Eothen Alapatt, Stones Throw Records

An authentication database

“I wouldn’t necessarily see it as an agency that would actually do the clearing but that it could sort of act like a master database of recorded music so you would know who the rights owners are and you would know where to go to get the clearance. There might also be information on there about whether it’s clearable at all. Whether it’s ever been cleared. Whether they’re interested in being sampled. And maybe you could have some information about what types of samples might be allowable. I think that’s a great idea.”

- Michael Hausman, music manager

Relating registries to PRO-style blanket licenses

“How would the one, central clearinghouse have access to all of the information on all the different songs and the artists and writers? I think there has to be competition in order for these clearinghouses to be able to put forth the effort and the resources to find this material. If there was only one central clearinghouse, there would be really no incentive to find all this stuff. . . . Let’s say I was the only clearinghouse out there. What would motivate me to work harder to get your clearances faster and at a lower rate if I had no competition?”

- Danny Rubin, sample clearance professional

The cost of reducing search costs

“Who’s going to fund that? Every record company and publisher has millions of copyrights. What are we going to have one central database where everybody reports to? We can’t even do that for public performance. It’s a pipe dream, but it would be nice.”

- Dina LaPolt, music attorney

The licensing demands for Internet music services

- Sound recording side
 - Typical service does voluntary negotiations with about 10-15 labels or collectives to launch
 - But some services have negotiated with more than 500 independent labels
- Musical work side
 - Anywhere from 500 to 30,000 voluntary negotiations or compulsory licenses

Uncertainty about what works the services have licensed

- It is uncommon for the sound recording and musical work sides to be coordinated—even when owned by the same corporation
- A sound recording or musical work may have different agents in different countries
- It can be difficult to verify exactly what works are in a catalog that a service has already paid to license