Kristin: What got each of you interested in this topic of sampling, enough that you wanted to write a book about it?

Kembrew: I grew up listening to hip-hop music, and back then I never really thought about sampling as a legal issue. It was just an aesthetic issue; I thought about it more as art. But around 1990 or so when the lawsuits started flying – first with De La Soul and a year later with Biz Markie – I started paying attention to the legal implications. This subject is actually the whole reason I went to graduate school to become a professor and a researcher. So Creative License for me, personally, is the culmination of probably 10 years of listening pleasure, and about 20 years of research.

Peter: It’s a really different story for me because I came at it from the academic side and got interested in the creative aspect later. For me what’s interesting about sampling is that it’s a certain kind of musical practice that runs afoul of copyright law. Because of this, it becomes a really interesting test case of how the expansion of copyright law has affected creativity.

Kristin: Why was it important to write Creative License, and what was your research process?

Kembrew: One of the reasons that a book like Creative License needed to be written is to correct some facts. One thing that I’ve noticed in scholarly works about sampling is that a lot of previous researchers didn’t actually talk to artists who sample, artists who have been sampled, and the stakeholders who have first-hand knowledge of how sample clearance worked. And because of this, a lot of inaccurate information made its way into a lot of early research, and a lot of misinformation got perpetuated. So I felt it was really important to talk to stakeholders, to learn what they know based on their experiences.

Peter: What’s great about using interviews in economic research in this way is that they provide a really rich source of detailed knowledge about a specific area. There’s a lot of scholarship that talks about the broad sweep of copyright law and how its expansion affects creativity. But only by focusing on one sector of the industry – and one method of making music– can you really learn about whether the law is causing problems or not. As we did the research, it became clear that there were certain ways in which copyright law – and the business practices that have evolved under the shadow of copyright law – have affected people and creativity.

Kristin: Some folks who come to this topic of sampling might have some preconceived notions about what it is, and even the “rules” around it. There’s one that I’ve heard through the years, the “seven second rule” or the “seven beat rule.” In other words, there’s a notion that a person is allowed to sample another person’s work as long as it’s less than seven seconds or seven beats. What did you find out about this assumption?

Kembrew: First of all, it’s important to say that it’s not true; there is no seven second or seven beats rule, but a lot of people believe it exists. It became obvious to us is that there are a lot of misunderstandings and a lot of urban legends surrounding rights clearance. And, I discovered is that even the people who should know better and who do have this first-hand experience ended up repeating a lot of myths.
By talking to stakeholders, we also discovered just how much information you need to navigate this system. One of the things that we realized was that when people don’t have direct exposure to sample-clearance systems, they end up just repeating what they hear from their friends and others.

Peter: I agree. I think one of the big themes that came out of the interviews is this issue of familiarity with how the rights clearance system works. Knowledge and expertise become a kind of threshold. They become a barrier to entry for new musicians, and for musicians on independent labels. As you read about the details of the rights-clearance process in the book, it becomes clear that you need a lawyer to navigate this stuff. On top of that, you learn that even with a savvy lawyer, that lawyer needs to have specific relationships with the major label system and the large publishers in order to get certain kinds of deals done. Insider social and business relationships can become really important.

“What the book details is what happens when folk wisdom hits a buzz saw.”

Kristin: As you conducted the interviews and did the research, what most surprised you about the topic, either as expressed by the folks that you interviewed or through the research around the economic and legal framework?

Kembrew: I wouldn’t necessarily use the word “surprise,” but one thing that I did notice, which I wasn’t expecting, was the number of hip-hop artists who sample who were very upfront about the fact that they understand that the original artists want to get paid or that they want to control the context in which that song got sampled, re-worked. There was a great amount of empathy on the part of the artists who sample for the people who don’t necessarily like sampling.

Peter: I think the thing that surprised me most is that when you talk to the people who were getting sampled – the samplees – they often emphasized control rather than money. Some were most upset about not getting credit. The reason they would deny permission for samples would often be more along the lines of, ‘I don’t agree with the sampler’s politics,’ or ‘I don’t like the message it sends to children in this new song,’ or just, ‘I want to have control over my work.’ It wasn’t so much, ‘This new song sampled me, someone made money, and I didn’t get paid.’ Of course part of what creators and copyright owners want is money, perhaps a large part. But it was interesting to me that it was such a complicated mindset, with aspects of artistic control being so central.

Kristin: The book concludes with well-thought-out strategies for addressing the sampling problem. What do you each hope that this book does for the discourse about sampling and creativity?

Peter: To my knowledge we’re the only source that actually looks at a really broad portfolio of reforms and talks about which ones might complement each other. So my hope is that the book will help people realize that there are multiple fronts to push along. Some of them are private and involve private businesses just offering more innovative licensing. But there are also really
important things that the courts could do, or that Congress could do, to open up some breathing room for sampling and get the gears of licensing turning more easily. In the twenty years since it became clear that sampling could be copyright infringement, there hasn’t been much progress in terms of the problems we document. So I’m hoping that advocating a set of multiple policy reforms will be a better recipe for progress than just resting things on one pet solution.

Kembrew: One of the reasons I wanted to co-write this book is because all of the information and knowledge about sampling and the legal issues that relate to it have been dispersed across a wide range of books, articles, and published interviews. One of the things that Creative License does is it gathers all of this disparate information into one place. There’s a fairly sweeping cultural history of musical appropriation in Chapter Two, covering everything from jazz and reggae to hip-hop and disco, as well as avant-garde sound collage. This is juxtaposed with chapters that cover the legal and economic underpinnings and key court cases. Then we finish the book with a review of the different policy and legal solutions, all of that knowledge and those resources are dispersed across the Web and across law journals.

Kristin: There’s one thing that I notice as a reader of the book is that we all assume that sampling is the purview of hip-hop artists in the studio, but maybe you can both reflect on how it’s becoming ingrained or embedded in our culture right now. Thanks to technology, we’re all becoming remixers, aren’t we?

Kembrew: Exactly. The issue of sampling doesn’t just simply affect hip-hop artists or just audio remix artists. One of the things that the book makes clear is that you can see sampling as kind of a microcosm of the new entertainment culture. Just think about how music is used as the basic audio building block for commercials, video games, movies, television shows, and on and on. The people who license their songs for those uses are implicated into this legal system. They themselves can end up getting sued if they license a song that contains an uncleared sample. So in other words, we’re facing this massive licensing logjam that’s only going to get worse in the coming years and decades. That’s because more and more of the culture that gets produced contains references to previous musical or visual texts. That’s why it’s an important issue for everyone.

Peter: Right, and this gets back to copyright’s expansion over recent decades. One of the ways copyright has expanded is that copyrights last longer than they used to. But a more subtle way that copyright has expanded is that smaller and smaller pieces of larger works are now protected. Neither the public nor its legislators have had when I would consider a meaningful debate about whether 1.9 seconds of a sound recording should be subject to copyright. It is only becoming more prevalent for ordinary people to use small snippets of existing copyrighted works. It should interest everyone that the law and the music business arrive at a more sensible solution.

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