The Negative Effects of Copyright
On the Music Industry

Joel C. Heslop
Shepherd University
In today’s society, we find ourselves constantly looking for new ways for a creative edge. The problem is, in today’s society creativity in some circumstances is not encouraged. Finding ways to find your creative edge, while staying within copyright laws, can be a problem. In the case of musical creativity, musicians have to constantly protect their work so that it will not be stolen, but now record labels are taking those copyrights too far. Record labels can use their power to hold back artists creativity. This essay will delve into the idea of musical copyright, seeking out what is too far in the use of samples of other artists, pointing out specific cases of musical copyright infringement. What exactly makes a creation “original?” Specifically showing cases of how record labels can use copyright to hinder creativity.

A growing problem in the music industry is the growing power of recording companies. These days there are the “Big Four” record labels that control most of the global music market. The “Big Four” record labels consist of, Vivendi/Universal, SonyBMG, AOL-Time Warner, and EMI (Bishop 1). The merging of the two recorded music divisions of Sony and BMG, finalized on 5 August 2004, reduced the ‘‘Big Five’’ record labels to the ‘‘Big Four (Bishop 1).’’ The Sony BMG Music Entertainment now controls 25.2% of the global music market. This threatens the dominant position of Vivendi Universal, which commands the world’s largest collection of record labels and holds 25.9% of the global market (Bishop 1). This now means that these two huge companies control a little more than 50% of the world’s music market.

EMI and Warner share approximately 23.9% of the market, and independent labels make up the remaining 25% (Bishop 1). These huge media moguls have concentrated their power into huge global music record labels, which Bishop refers to as
“empires of sound.” The “Big Four” now control over 75% of the world’s musical output (Bishop 1).

The problem in of the fact that these four huge labels own so much of the output is that practically every recording musical artist that wants to be successful has to associate themselves in some way with these big four labels (Bishop). The “Big Four” act as the “gatekeepers” for all of the music that gets produced through the world. The four labels then gain control over the music that is thought up, played, downloaded, bought or however it is brought to the audience (Bishop 3). The “Big Four” then have a tremendous sway on what is to be played and produced, their economic push on artists and audiences sway what is produced and what the global market then receives.

Since these huge media conglomerates have such a sway in production, they use their wealth to sway laws towards their favor. The record labels wanted ownership of creative works as long as they could have them, so they began to try to delay the terms by which they would lose their copyright of these works (Bishop). In the first 150 years of copyright, the term by which a copyright last was only increased twice, one being in 1831 (from 28 to 42 maximum years) and one being in 1909 (from 42 to 56 maximum years) (Bishop 4). This slow movement of extensions quickly changed.

“Then, beginning in 1962, Congress started a practice that has defined copyright law since” (Bishop 3). Pressure from large media conglomerates made congress give in and begin to change how copyright laws were written up. “Since 1962, there have been eleven term extensions to existing copyrights consisting mainly of short one- or two-year extensions (Bishop 12).” These got even more out of control in 1976 when Congress added 19 years to all existing copyrights and by the time 1998 hit the CTEA or the
Copyright Term Extension Act came about, and then ‘‘Congress extended the term of existing and future copyrights by twenty years’’ (Bishop 12).

The original idea of these extensions was to prolong private control and further delay the works to pass into the public sector. ‘‘This latest extension means that the public domain will have been tolled for thirty-nine out of fifty-five years, or seventy percent of the time since 1962’’ (Bishop 12). Although ‘‘life of the author plus 70 years’’ is technically a limited-term monopoly, its effects on culture are the same as perpetual control: it locks it down (Bishop 12).

The person that has the copyright has the copyright for their entire lifetime, plus 70 years after, if the person is young and healthy when they copyright a work, the copyright can last quite a long time. With these conditions that are now in effect, the majority of copyrights will now very well last over a century. The media moguls obtain the copyrights they need and push back copyright laws as far as possible to keep their control. The media moguls then have a monopoly over the output and keep it within themselves and other owners, leaving the public to fend for themselves. When they control the copyrights to all of the creative acts, they control the creative output, this in turn allows them to control culture (Bishop).

The main problem of the copyright system pertaining to the major record labels is that it is not about the money anymore, it is all about the money. Getting the copyrights extended was a way for them to obtain even more money (Bishop). When they extended the copyrights, they made it so the current owners of the copyright would gain as much as possible from it, not looking at any effects it had on hindering creativity (Bishop 26.). They could care less about public domain, and in most cases do all they can to stop it.
With so much wealth, they easily manipulate the industry and obtain power through their wealth.

In February of 2004, DJ Danger Mouse produced a unique piece of work. DJ Danger Mouse is an underground hip-artist and producer (McLeod 1). He produced a “mash up” album. He took the pop styling of the Beatles’ *White Album* and mixed it with the rapping vocal work from Jay-Z’s *Black Album*. Altogether the work of mixing and matching parts took over 100 hours (McLeod 1). He mixed parts of the instrumentals of the Beatles’ album to make unique beats to go behind Jay-Z’s a cappella rapping. DJ Danger Mouse said on his website that, “Every single kick, snare, and chord is taken from the original recording” (McLeod 1).

DJ Danger Mouse had a limited pressing of 3,000 of the album entitled the *Grey Album* (McLeod 1). This was a unique use of words because of the “mix” of black and white becoming grey. After the limited pressing the album blew up on the internet. It spread all over file-sharing networks extremely quickly. It gained coverage and good reviews from the *New York Times*, *Rolling Stone*, and the *New Yorker* (McLeod 1). But soon after the *Grey Album* started gaining attention and success, things took a turn for the worst.

When EMI caught wind of what DJ Danger Mouse had done, they were not at all too happy. EMI, having exclusive copyright to the Beatles’ songs, began sending out a cease-and-desist letter to DJ Danger Mouse to immediately stop distributing the album (McLeod 2). This was not too much of an effect because of the fact that it was already spreading through the internet through numerous sharing websites.
Whenever people heard that EMI sent a cease-and-desist to DJ Danger Mouse, many people began to protest. Organized by music activists at downhillbattle.org an online protest of EMI’s cease-and-desist was held, it was then called “Grey Tuesday” (McLeod 2). At least 170 websites risked a considerable lawsuit by hosting the Grey Album on their websites; over 100,000 copies of the album were downloaded just on that day alone (McLeod 2). Standing up to EMI in any way they could a “virtual sit in” (McLeod 2). What was EMI’s response to this? Their response was to send out plenty of more cease-and-desist letters to fans of the album that had downloaded it, or hosted a file sharing of it (McLeod 2).

Whenever the album started circulating, Jay-Z quickly and creatively allowed the use of his album by strategically releasing an a cappella version of The Black Album (McLeod 2). This tremendously creative project mixing these two artists The Beatles consider one of the greatest rock bands of all time, with Jay-Z considered one of the greatest rappers of all time. The sound of the album is both unique and smooth.

After the letters were sent out, some of the sites backed down, and others kept up the sites as long as they could (McLeod). They wanted to make a point to EMI and to the Internet, to stand up for creativity, and that is just what they did. It may not have hurt EMI economically, but it aided in the right to free thinking and show that fair use does exist, whether or not the big record labels want us to believe it or not.

If DJ Danger Mouse’s The Grey Album would have been a normal album it would have been a platinum record, it has been downloaded more than 1 million times (McLeod 3). It got banned because it did not fit into the plans of the tyrant known as EMI. Thankfully enough, charges were not pressed on DJ Danger Mouse, so in a way this was
a victory for fair use. The protesters that allowed their sites to be used as file sharing sites were successful. The protesters started the fire of the album through the Internet, now EMI can not send out cease and desist letters to everyone that has listened to it (McLeod).

An interesting fact about the Beatles that is quite ironic is that they were not unfamiliar with sampling themselves. On their *White Album*, the album DJ Danger Mouse had take the samples from, the basic rhythm that made up the song “Revolution #9” was made out of twenty different tape loops from the archives of EMI (McLeod 4). It was very unlikely that the Beatles had to pay any “sampling” royalties fees or even considered getting the permission of the original performers of the songs they took the samples from (McLeod 4).

Things can get out of hand quickly when it comes to copyright. Like when restaurants can not even sing “Happy Birthday to You” to customers dining in their establishment without paying fees for it (McLeod 12). With the Bon Act, the life of the copyright for that song, and other vintage songs like “This Land Is Your Land” were extended (McLeod 12). Both of these songs ironically were taken from folk traditions that were based on the borrowing of lyrics and melodies (McLeod 12). Each of the songs melodies had the basis of a melody that dated back to the nineteenth century (McLeod 12).

The original copyright terms pasted by Congress followed the basis written in the United States Constitution passed by Congress (McLeod). Those terms were based on the idea of rewarding creative artists, and have the terms be limited to not hinder creativity to flourish. The original term only lasted fourteen years. It stated, “Congress
shall have the power… to promote the progress of the useful arts and sciences by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries” (McLeod 12). The artists had an incentive to make new and creative things. Their work would then pass into culture 14 years later, and help new and creative changes to them.

So what good is the Copyright Term Extension Act and other extensions on copyright? These extensions are just further hampering creativity. The Copyright Term Extension Act was the act that in his dissenting opinion Supreme Court Justice Breyer argued that the Copyright Term Extension Act will have damaging consequences for culture. He writes:

“This statute will cause serious expression-related harm. It will likely restrict traditional dissemination of copyrighted works. It will likely inhibit new forms of dissemination through the use of new technology. It threatens to interfere with efforts to preserve our Nation's historical and cultural heritage and efforts to use that heritage, say, to educate our Nation's children. It is easy to understand how the statute might benefit the private financial interests of corporations or heirs who own existing copyrights. But I cannot find any constitutionally legitimate, copyright-related way in which the statute will benefit the public. Indeed, in respect to existing works, the serious public harm and the virtually nonexistent public benefit could not be more clear.” (McLeod 13)

Clearly, Supreme Court Justice was not too happy about the Copyright Term Extension Act. He talked about how much injustice it does to our society and culture.
The act corrupts future generations. The acts and copyright extensions only serve to make the private sectors gain assets while the public loses in the creativity department.

When you hear the name George Clinton, you may think of the amazing musician and producer behind the Parliament-Funkadelic bands that were big in the 1970’s or 1980’s, or you may have seen his name mentioned on an album referencing a sample being used. He is a 1997 inductee into the Rock and Roll Hall of Fame and his work is often sampled today in hip-hop artists work (Dames 1). Armen Boladian is the sole owner of Bridgeport Music. Bridgeport music is the company that owns most of the rights to George Clinton’s songs (Dames 1). This makes Armen Boladian the owner of most of what George Clinton has ever made (Dames 1).

Whenever the case of Bridgeport Music v. Dimension Films came about, Boladian was the plaintiff. N.W.A. had taken a sample of a two-second guitar chord from Funkadelic's song, lowered the pitch and looped it five times in their song (Dames 1). This was all done without Funkadelic's permission and they did not pay any compensation to Bridgeport Music. Bridgeport brought the issue before a federal judge, who ruled that the incident was not in violation of copyright law (Dames 1). The Judge of the case wrote, "The purposes of copyright law would not be served by punishing the borrower for his creative use,"(Harvard 1). Bridgeport appealed the case, and the decision was reversed.

When Bridgeport brought the case before the U.S. Court of Appeals for the Sixth Circuit, they reversed the decision and ruled that the sampling was in violation of copyright law (Harvard 1). They argued that in the case of the original sound recording, an owner of the copyright on a work had exclusive right to duplicate the work (Harvard
1). So then, this case’s interpretation of the copyright law, if anyone samples a work, regardless of how long it was, they would be in violation of the copyright if they did not get exclusive permission from the copyright owner (Harvard 2).

In the court’s decision they wrote: "Get a license or do not sample. We do not see this as stifling creativity in any significant way") (Harvard). The doctrine of de minimis and fair use did not hold up in court. De minimus is the doctrine or idea that someone copied such a small amount that they are not liable for copyright infringement (Harvard 2). The case ruled that this doctrine was not viable, and removed the idea of de minimis as a claim for recorded music samplings legitimacy (Harvard 3). The court decided that, "limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality,” (Harvard 5).

Because of this court case, sampling is effectively illegal, a creative movement that takes something and makes it completely different. In the N.W.A. song, the part that they sampled was only two seconds. They completely changed the pitch, and how it sounds. It is barely noticeable in the song but gives it an extra something, and if you did not carefully check you would have never known.

There is still hope of creative works, and ways around blatant copyright. In the case of licensing, when you want to show a movie at your K-12 school, you can gain an overarching license the will cover the showing of the movie in an educational sense in schools or libraries (Harris). But when it comes to music, there is not such an easy solution for the big problem of licensing. With the cases of copyright infringement
appearing everywhere and the looming $23,000 per song for that infringement can be quite the scary thing (Harris).

BMI and ASCAP, being the largest clearing house for record label permissions will provide licensing for K-12 schools (Harris). That is exactly why Barry Britt, the president and cofounder of Soundzabound created something different to alleviate some of those problems (Harris). Soundzabound.com is a site which allows K-12 schools to use royalty free music. His company creates new pieces, of royalty-free music for the K-12 schools to use exclusively (Harris). The library of music within the database at Soundzabound is growing, and they are trying to pursue licensing deals with major record labels to get more (Harris). The terms by which the music can be used is very open, and generous (Harris). This is a positive example of working around the restrictive copyright laws, and breaking away from the mainstream.

Soundzabound has also created a program called Soundzabound Backstage. This is a new K-12 “social network” where, "members can ask copyright questions and learn more about media permissions and ethics," says Britt. "Technology changes every day, yet copyright and fair use stay the same," he explains. "In the past, this has been a challenge. Now, we are using technology to stay ahead of the curve (Harris)." He is hoping that this approach will educate young people to effectively learn the laws and be able to create music for themselves and get past the hindrances for copyright.

Copyright issues have been plaguing the media industry for years. As big media conglomerates get bigger, and persuade Congress with pressure and bribes, the laws will only get harder to move around. Copyright laws can hinder creativity, record labels use these laws to contour to their whim, and make money in the process. The hope of
generation of artists, scientists, authors, and creators of all kinds is to band together to
create a fair-use environment that will help nurture and encourage creativity. Creative
sources such as Sounzabound and Creative Commons are steps in the right direction.


