

5-1-2014

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Recommended Citation

Sayers, Jeffrey John, "The Wrong Mix: Electronic Dance Music and its Copyright Problem" (2014). *Law School Student Scholarship*. 566.

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THE WRONG MIX:

Electronic Dance Music and its Copyright Problem

Introduction:

46 million dollars, 32 million and 30 million dollars, all made in one calendar year.¹ These 2013 salaries sound like those of a Wall Street executive. But in fact, they are last year's salaries of the top three electronic dance music disk jockeys or DJs as they are commonly referred to. While driving beats, dance parties and notorious association with the club drug Ecstasy used to be the face of this genre, new innovative artists have now become the reason that electronic dance music has become so popular. Like anything, additional popularity brings on investment and Electronic Dance Music or "EDM" is no different. Many independent promoters who are at the forefront of running EDM festivals are being bombarded with buyout offers from corporate business moguls who want a piece of the financial action. Some festival promoters have been offered anywhere in the 20 to 60 million dollar range to share their piece of this red hot music craze.²

While the rising popularity of the scene clearly benefits promoters, upper echelon DJs and producers alike, there is an inverse effect that may end up hindering the growth of the genre. That inverse effect may be brought on by an outdated copyright system. Electronic dance music is unique from most genres-with the exception of hip hop- in that remixing and sampling are as normal as strumming a guitar chord. In a recent interview with major label DJ Sam Frisch of the group Cash Cash, he stated that in a typical club set about 70 percent of the songs he plays are remixes.³ But what exactly is a sample? What is a remix? A sample is just as it sounds. It is a piece of an existing track or sound lifted and used in a new track.⁴ A remix is a new or different

version of a recorded song that is made by changing or adding to the original recording of the song.⁵ The two work in conjunction with each other as an artist who is remixing a track is generally borrowing samples from an original track to create that new remix. The end remixed product is in essence a derivative work and with this type of work the sampling or remixing artist legally needs permission to use the original. This concept is embodied the Copyright Act of 1976, specifically Section 114 which gives the original copyright holder the exclusive right to prepare a derivative work.⁶

If an artist goes through the proper legal channels when remixing or sampling and “clears” their samples, he or she should have minimal legal issues. This act is known as sample clearance.⁷ The act of clearing a sample requires an artist to negotiate with the copyright holder for the right to use the original track for an agreed upon price. However, the copyright holder, who unlike in the case of a compulsory licensed work, does not have to agree to let an artist sample or remix their song.⁸ Additional trouble for a remixing artist may arise because of the fact that a copyright holder may set whatever rate they see fit for the use of song, possibly charging exorbitant fees, depending on the songs popularity.⁹ Because of these restrictions, many artists, electronic dance and otherwise may not properly clear samples when remixing a work. The outcome of this practice is technically illegal in the eyes of the law as it is violative of copyright law and is generally considered copyright infringement.

This paper will explore the effects that remixing and sampling have on copyright in electronic dance music. Particularly, it will surmise that as the genre grows and becomes more profitable and as technologies use continues to grow in music, while revenue streams in the music industry continue to decline, the lax industry customs on remixing and sampling that were once acceptable in electronic dance music, will begin to tighten as labels realize that money can

be made. If this occurs, innovation will be hindered, potential rising artists may be shut out from participating in the genre and the financial toll for remixing and sampling may become too great for some artists to bear.

The first section of this paper will give an overview/history of electronic dance music, its roots in remix/sample as well as discuss the state and culture of the genre, and conclude with a discussion on the current state of the music business in general. The second section will explain the relevant copyright law that governs musical copyright and licensing. It will discuss the 1976 Copyright Act as it pertains to music as well as the leading cases in the remixing/sampling arena and subsequent developments stemming from those cases. Furthermore, it will discuss the "Work for Hire" Remix in the EDM community and also present defenses available to artists who do face copyright infringement claims, analyzing the Fair Use provision codified in the Copyright Act and the De Minimis Use defense. The third section will discuss multiple real world case studies detailing various legal conundrums DJs have faced based on their sampling and remixing. These case studies will be used to show how the dated copyright system, rise of EDM as big business and financial strain of many record labels are already having a negative impact on dance music. The fourth section will discuss innovations and possible solutions regarding electronic dance music's copyright problem. It will surmise that a change in law would not only help electronic dance music DJs to continue to make a living and break into the scene, but also help to have copyright holders fairly compensated for their works that are remixed and sampled. Finally, the paper will conclude by reiterating the overall theme of fixing an outdated copyright system for the benefit of the future of the genre, while also lending credence to the various other solutions to EDM's copyright problem.

Part 1: A History of Electronic Dance Music and its Remix Culture

Electronic dance music is currently worth an estimated 4.5 billion dollars according to CNN.¹⁰ It has been called the “New Rock and Roll”¹¹ by some and has been the fastest growing music scene of the last few years.¹² Despite these current accolades, the genre was not always as popular or profitable. EDM’s roots in the United States were most likely spawn from the disco era.¹³ In the 1970’s artists like Donna Summers ascended the Billboard charts with hits that were using a more bass heavy, synthesized sound that had not been used before in popular music. The freshness and innovation in the sound began to heavily influence future dance music tracks.¹⁴

As disco began its decline, musicians found ways to build off the disco, bass heavy sound and starting in the 1980s, a variety of electronic scenes began to emerge in conjunction with the rise of the American club scene.¹⁵ The Chicago House scene of the 1980s which was pioneered by a variety of Chicago dance artists, is widely considered the first ever house music scene.¹⁶ Soon after Chicago’s underground began formulating their own unique sound, another Midwest City, Detroit, followed suit with artists who began distinguishing their sound from that of their Chicago counterparts. The emergence of the Detroit scene was at the forefront of forming specific subgenres in the electronic dance community, particularly the subgenre that would come to be known as techno.¹⁷ While these scenes prospered in their day, they generally remained underground in America. In other areas of the world, such as Europe, the emergence of this underground music gave rise to an enormous rave scene.¹⁸ While the rave culture thrived and continued to grow in Europe, the inverse occurred in the United States as laws were enacted to combat the ugly associations that drugs and partying had with the electronic dance scene. One such regulation, Chicago’s “anti-rave” ordinance, subjected property owners to large fines if they were caught putting on unlicensed dance parties.¹⁹

Despite the setbacks, dance music slowly pushed forward and soon found itself beginning to grow with the increased boom of the night club scene in the 1990's. This was a period which began to open the door for DJs to create their own material. By creating original material, DJs were given an identity. They were no longer just facilitating a party, they were becoming the party. These drastic and new changes in the DJ's status opened the door to production which was a segue in to sampling and remixing. In their article on the history of dance music in America, the dance music website *EDM Music Junkies* stated that, "remixes made it possible for DJs to extend songs or make a previous non dance song danceable." ²⁰

1997 marked a big year for electric dance music as the English dance group Prodigy's album *The Fat of the Land* rose to number 1 on U.S. Billboard Charts.²¹ While this was a large milestone for dance music and its' increasing popularity was starting to become evident, the genre still never quite made it to the forefront of the American music book. Finally, everything began to change in the latter half of 2000 when EDM found a way to penetrate popular music. Glenn Mendlinger, who runs EMI's dance imprint Astralwerks, recalls a meeting he had with super DJ and Producer David Guetta. Guetta told him that he wanted to cross urban cross-over music with dance music.²² Guetta, along with other DJ/producers accomplished that goal, and with it the genre was suddenly on its way to becoming a main stream staple. It is now not uncommon to hear Top 40 radio stations playing EDM tracks frequently. In fact, DJ/Producer Zedd reached number 1 on the U.S. Radio Charts with his single "Clarity" in September of this year, besting the likes of household named pop stars Katy Perry and Robin Thicke.²³ Artists like Calvin Harris and David Guetta have helped to catapult the genre to the forefront of the music scene, producing smash hits for and with artists like Rihanna²⁴ and Nicki Minaj.²⁵ This meteoric

rise became no more apparent than in 2011 when the DJ troupe Swedish House Mafia sold out Madison Square Garden in less than nine (9) minutes.²⁶

The music scene at large has even warmed to Electronic Dance Music. From 1997 through 2003 the Grammys – awards given by the National Academy of Recording Arts and Sciences of the United States for musical achievement-only had one category for electronic dance music and that was Best Dance Recording. Then in 2004 the academy added another category for best Dance/Electronica Album.²⁷ Sonny Moore-better known by his DJ name Skrillex-who to date has taken home six (6) Grammy awards in the last two years, including best “Dance Recording” and “Dance/Electronica Album of the Year” was even nominated for Best New Artist at the 2012 Grammys.²⁸ The three (3) trophies Moore took home at the 2012 awards put him among the top winners at the 54th Grammys.²⁹

While the genres roots are in nightclub performances, (performances that are still well compensated), EDM has become so popular that there are festivals all over the world that specifically cater to electronic dance music. In 2012, Miami’s Ultra Music Festival or “Ultra Fest” garnered an attendance of approximately 165,000 fans who showed up to listen to their favorite DJs.³⁰ With promoters noting the continued success of Ultra Fest, a ticket for the upcoming 2014 festival will cost a concert goer anywhere from 150 dollars (a ticket tier that sold out in 4 minutes) to upward of 850 dollars.³¹ Festivals like TomorrowLand in Belgium have even seen attendance top the 180,000 mark.³²

While the venues continue to change and the enormous modern boom has caused profits to swell, EDM culture has not changed all that much from the times where underground DJs spun in basement clubs. DJs still bring the club vibe with them, no matter how large the venue

and more importantly for the purposes of this thesis, DJs still continue to sample and remix. In fact, the culture of the genre is so remix heavy that a live DJ performance in itself is essentially a mix.³³ While in other musical genres such as Rock and Roll and even Hip-Hop, artists may cover a song or two in their sets, EDM DJs may play numerous tracks created by other DJs and Producers, while occasionally putting their own creative touch on the track.³⁴

As it seems clear that electronic dance music is thriving in the music world, the same cannot be said for the state of the music business as a whole. In fact it is quite the opposite as many record labels have seen significant financial declines.³⁵ The result of this has caused many in the industry to look for new ways to create revenue. Inventions like the 360 deal-where a record label or company gets a piece of various artist earnings-were created because of an evolving music scene where record label profits were beginning to decline.³⁶ An analysis done by the Recording Industry Association of America showed that between 1999 and 2009 music sales fell to the tune of 8.3 billion dollars. In 1999 the industry raked in 14.6 billion dollars. By 2009 that number had dropped to 6.3 billion. The RIAA has also reported that revenue from sales has fallen from the previous year in 9 of the last 10 years.³⁷

The drastic decline of music sales could trigger trouble for the electronic dance music genre. With labels and other music companies scrambling to find new ways to tap into different revenue, the growth of electronic dance music may provide just the new stream of revenue labels were looking for. While it has generally been genre custom to freely remix and let others remix works, labels may now begin to crack down on sampling and remixing, and begin to request fees (possibly high fees) from artists who do not have the means to pay for such samples. The situation that EDM could end up in is not one that is entirely new. A similar trend has already played out before in the music world starting in the late 80's when the Hip-Hop genre became

profitable and was clamped down on for sampling.³⁸ After Hip-Hop made a similar meteoric rise, labels began to take notice of sampling. In an interview with *Stay Free Magazine*, the famed hip hop group Public Enemy spoke about sampling in hip hop and more specifically the fact that once the genre became profitable and became big business, using samples became increasingly more difficult. When asked by the magazine whether it would be possible to make an album with many samples in today's music environment, the group responded by saying,

"It would just be very, very costly...you could purchase the rights to sample a sound--for around \$1,500. Then it started creeping up to \$3,000, \$3,500, \$5,000, \$7,500. Then they threw in this thing called rollover rates. If your rollover rate is every 100,000 units, then for every 100,000 units you sell, you have to pay an additional \$7,500. A record that sells two million copies would kick that cost up twenty times. Now you're looking at one song costing you more than half of what you would make on your album."

They continued on, "Corporations found that hip-hop music was viable. It sold albums, which was the bread and butter of corporations. Since the corporations owned all the sounds, their lawyers began to search out people who illegally infringed upon their records."³⁹ The interview is very telling in that it describes the progression and end result of labels realizing they could make hefty profits off artists for sampling and remixing, Public Enemy goes on to say they had to change their entire sound because of the tightening restrictions that were imposed on them by not only the copyright law, but by the way the labels were suddenly interested in taking advantage of the law.⁴⁰ The parallels between hip-hop and electronic dance music are clear. The more profit, the more scrutiny. The more scrutiny by the labels and corporations, the more the genres sampling and remixing customs become threatened.

To put in perspective how important the remix is in electronic dance music, I questioned Sam Frisch, one of the members of the major label DJ troupe Cash Cash about the role of remixes in electronic dance music. In the first hand interview, he states that remixes account for about 70 percent of their club sets. In a full set where the group plays anywhere between 50 and

60 songs, those numbers equate to about 42 remixes a set.⁴¹ Doing a quick search of Cash Cash's latest single "Take Me Home"-which has received considerable airplay on radio-turns up eleven remixes on its first two pages.⁴² While some of these mixes were commissioned as works for hire by their label (discussed below), many others are just unofficial remixes done by unsigned DJs. While these are technically illegal, Frisch didn't seem to mind much saying that the remixes create "more awareness" of their track which in turn is better for the group.⁴³ Frisch's comments most likely echo a broader theme in the scene and beg the question is remixing and sampling without license okay in electronic dance music to some extent? The answer is still technically no. But should it be permissible?

Part 2: Copyright: The Law, Case Law, The Work For Hire and Defenses

To understand the legality or illegality of remixing and sampling without a license, one must understand the law that governs the two. That law in the United States is largely copyright law. Copyright in the United States traces its roots to the beginning of the Republic as it was embodied in the United States Constitution. Article I, Section 8, Clause 8 of the United States Constitution promotes the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.⁴⁴ At its base copyright protection gives the creator of a musical track the exclusive right to do with it what he or she pleases with some limited exceptions.⁴⁵ These exceptions are the compulsory licenses discussed above. A compulsory license essentially forces a copyright holder to issue a license to another to use their work. These exceptions were meant to have an anti-monopoly effect in the copyright world.⁴⁶ They become important to note, because remixing and sampling are not covered under any compulsory licensing scheme.⁴⁷

In regards to musical recordings, an artist obtains a copyright of their work the second a tangible copy is made or fixed. This is commonly referred to as a phonorecord. The key here is that the recording or musical notes for example are created in a tangible form or fixed.⁴⁸ Any song or idea that is just that, an idea, is not entitled to copyright protection.⁴⁹ Once an artist fixes this idea in tangible form they are then awarded copyright protection.

It is important to note that copyright protection attaches to the musical composition and then to the actual performance personified in the actual sound recording. In essence, each single song carries two copyrights. In general a copyright would then be held by the writer of the song and usually the label that carries the artist as they own the copyright embodied in the master recording of a track.⁵⁰

The Law

Copyrights protections are awarded to artists and others via the most recent version of the Copyright Act, which came into law in 1976 and codified at 17 U.S.C. §§ 101-810. The act entitles copyright holders to a wealth of rights. These exclusive rights, listed in 17 U.S.C. § 106 read:

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.⁵¹

Taking the analysis a step further, another highly relevant provision for the purposes of musical composition is 17 U.S.C. § 114, mainly § 114(b) which reads in part:

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is 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.⁵²

The above provision becomes particularly important in the context of electronic dance music and its practice of sampling and remixing because it gives the song owner *exclusive* rights to remix his or her song. As a remix is a derivative work, as described in Section 114 above, and the owner of the copyright has the exclusive right to prepare this derivative work, which is not subject to any compulsory license that other types of works may subject to. This lack of a compulsory license for derivative works becomes problematic, because the rights holders are free to set their terms and or deny a request to sample their work flat out if they want too. Even if they do agree to let an artist sample or remix their work, they are free to set and charge any price they please which could present an obvious problem for fledgling artists who have little or no money.⁵³

In applying the above section to the analysis of remixing and sampling in electronic dance music it's not difficult to see the hurdles that current copyright law presents. In a genre where many artists are using remixes in 60 to 70 percent of their sets⁵⁴ it would be exceedingly difficult (in the worst case scenario) to clear so many tracks and or obtain licenses to remix and sample all of them. The aforementioned scenario is also assuming that other artists are willing to let their own tracks be remixed, which of course is not even a guarantee. The effect of the current clearance scheme only stands to hurt the fledgling artists in the genre. While most big

name EDM artists would see this licensing change as little more than annoyance with their enormous salaries, the negative effect it would have on lower level, independent artists could be incredibly stifling on future creativity and production.

The Case Law:

Aside from the various copyright provisions codified in 17 U.S.C. §§ 101-810, American courts have dealt with a multitude of issues involving sampling and remixing over the course of the last twenty five years. The first case involving sampling and remixing to make it through a United States court system was *Grand Upright Music, Ltd. v. Warner Brothers Records*.⁵⁵ In the case, the plaintiff, Grand Upright Music, Ltd. was the rightful copyright owner of the track “Alone Again (Naturally)” by songwriter Gilbert O’Sullivan.⁵⁶ The defendant, rapper Biz Markie was a popular rapper at the time who sampled O’Sullivan’s song in “I Need a Haircut” without obtaining the proper license. The sample in question was three (3) words from Alone Again (Naturally) as well as a portion of the music from the original track.⁵⁷ Grand Upright Music Ltd. moved for an injunction in the case and the Southern District of New York granted the injunction. Additionally, in a shocking twist, the court referred the defendants to the United States Attorney for criminal prosecution.⁵⁸ The court stated that O’Sullivan had transferred his rights in copyright to Grand Upright and that as legal owner of the copyright in the song, needed to give clearance for use of the sample, something that was apparently pending but never accomplished.⁵⁹

The effect that *Grand Upright v. Warner Brothers Records* had on artists was far reaching and left artists to think twice about sampling. Aside from the possible excessive fees and sample blockage that artists faced after *Grand Upright*, they also still had to worry about labels demanding royalties in any sampled or remixed record. These royalties could be upwards

of a 100 percent after the record company and publisher had taken their cut. This meant that in a worst case scenario an artist would break even on a track that he or she had put time and vision into.⁶⁰

After *Grand Upright*, other sampling and remixing cases started to filter through the United States court systems. One of the more recent, important cases and one that dealt a major blow to many musicians, who were trying to loosen the proverbial reins on remixing and sampling, was the Sixth Circuit's decision in *Bridgeport Music, Inc. v. Dimension Films*.⁶¹ The case centered on the hip-hop group N.W.A. and their sampling of a George Clinton Jr. and the Funkadelics track.⁶² The track, entitled "Get off Your Ass and Jam" opens with a three note guitar riff that is four seconds long. This riff was at the center of the litigation as the plaintiffs claimed N.W.A. had lifted the riff –which was protected by copyright- and sampled it for their track "100 Miles". The Sixth Circuit described the situation by saying, "According to one of plaintiffs' experts, Randy Kling, the recording "100 Miles" contains a sample from that guitar solo. Specifically, a two-second sample from the guitar solo was copied, the pitch was lowered, and the copied piece was "looped" and extended to 16 beats. Kling states that this sample appears in the sound recording "100 Miles" in five places; specifically, at 0:49, 1:52, 2:29, 3:20 and 3:46. By the district court's estimation, each looped segment lasted approximately 7 seconds..."⁶³ While seven seconds seems very small in the scheme of a song, the Sixth Circuit reversed the district court's ruling, which favored the defendants who claimed the use of such a small sample was *de minimis*. The court went on to say that, "The heart of Westbound's arguments is the claim that no substantial similarity or *de minimis* inquiry should be undertaken at all when the defendant has not disputed that it digitally sampled a copyrighted sound recording. We agree and accordingly must reverse the grant of summary judgment."⁶⁴

Bridgeport's legacy is defined by a very specific concept which is that the use of a de minimis defense in the Sixth Circuit is no longer applicable in sampling cases. The defining quote of the case, "Get a license or do not sample,"⁶⁵ bluntly stated that the Sixth circuit would not tolerate any form of sampling without a license, no matter how minute. By creating somewhat of a bright line rule within the circuit, they effectively eliminated one of very few defenses to copyright infringement that artists could attempt to rely on. Without that possibly defense do artists have any other recourse when defending a copyright infringement action?

The Defenses:

In the current state of music, a remixing artist who creates a derivative work without a license to use that work could very easily find themselves in a court room defending a copyright infringement claim. The situation is grim, though all hope is not lost as there are multiple defenses to a copyright infringement claim. These defenses come in the form of De Minimis Use and the Fair Use Doctrine.⁶⁶ A de minimis use defenses hinges on showing that the use of a work with copyright protection is so minute that it would not rise to a level where liability would be involved.⁶⁷ De minimis use in the area of copyright has deep legal roots in the United States. In the 1909 case *West Publishing Co. v. Edward Thompson Co.*, the court described the defense by saying, "[e]ven where there is some copying, that fact is not conclusive of infringement. Some copying is permitted. In addition to copying, it must be shown that this has been done to an unfair extent."⁶⁸ More recently, the Ninth Circuit described the use as "so meager and fragmentary that the average audience would not recognize the appropriation."⁶⁹ Testing for de minimis use is determined generally on a case by case basis by setting a threshold of similarity. Within the context of sampling and remixing, the de minimis defense has come under fire after the *Bridgeport* court handed down their ruling which effectively stated that the de minimis use

defense was not valid in regards to digital sampling, thus putting the future use of the defense in question in certain jurisdictions.⁷⁰

A second possible defense is a utilization of the Fair Use Doctrine. Fair Use is an affirmative defense, meaning it won't prevent an artist from being sued for copyright infringement, but it can be used to defend a case if an artist can make a showing that his or her work falls under one of the fair use prongs. The Fair Use Doctrine was codified in the Copyright Act of 1976 in Section 107 with the relevant section reading:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.⁷¹

As with the de minimis test, an issue that constantly presents itself regarding Fair Use is the lack of a unanimous bright line rule for the doctrine. As the Supreme Court stated in *Campbell v. Acuff-Rose Music, Inc.*, “The task is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis.”⁷² While this may seem like sound policy, it complicates matters and confuses artists who do not know if what they are creating is legal or illegal.

While these two defenses seem quite beneficial to EDM artist at first glance, they can be deceiving. First, EDM artists who are currently not licensing for their remixes and samples would most likely not succeed on a de minimis defense use. The reason being, most remixes use a chorus or hook from the original song and even a particular beat, therefore falling outside of the non-recognizable category. Secondly, while Fair Use would stand a far better chance when it comes to asserting a defense, it stands to reason that if a DJ is being paid to spin at a club or festival it would be difficult to conclude the use is of a non-commercial nature. Of course, the most glaring answer is to just acquire a license to use a sample or remix a track that has copyright protection. However, taking a step to stream line these defenses create a bright line rule and resolve some of the questions within the court system would also be an extremely helpful step in protecting artists and copyright holders alike.

The Work For Hire:

In my interview with EDM DJ Sam Frisch from the group Cash Cash, a large part of our discussion centered around the effect that remixes have on electronic dance music, particularly how their newest single “Take Me Home” had been remixed multiple times. When asked, Frisch said that the label had commissioned some of those remixes while others were done by DJs trying to break into the business. This technique of commissioning works is called a Work for Hire in the music business and occurs in the EDM community quite a bit. The simplest example of a Work for Hire in EDM is when a DJ is asked to create a remix for an existing song of a singer, group or other DJ. In these situations the DJ and the artist whose song is being remixed, negotiate a price for the DJ to do the remix, and when it is complete, the original artist keeps the copyright in the new mix while the DJ is paid the agreed upon price for his or her work.⁷³

Section 101 of the Copyright Act covers the technicalities of the work for hire. The relevant section reads:

A “work made for hire” is—

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.⁷⁴

In music, a work for hire generally falls into part two of this definition. In the case of the “Take Me Home” remixes discussed above, many of them were placed onto an album of remixes, thus fulfilling the Copyright Act in so far as the work was 1. Specifically commissioned, 2. Part of a compilation and 3. Expressly agreed upon. The work for hire is important to distinguish from a non-commissioned mix that without any license is technically created illegally.

Part 3: The Cases Studies:

In the past ten years many artists have dealt with threatened copyright infringement claims stemming from remixing and sampling. Because of the unique nature of these cases and how they are now becoming more prevalent because of the genres financial success, it is helpful to put a real world perspective on the law by analyzing various real world cases that DJs have found themselves involved in.

One of the most famous sampling/remix legal battles started in 2004 when Brian Burton, better known as his DJ name “Danger Mouse” released an album that he titled *The Grey Album*. To create the album, Burton used tracks from the Beatles’ *White Album* and Jay-Z’s *Black Album*

and remixed them together. The album proved to be revolutionary and launched Burton into the commercial arena where he has since had success as part of the group Gnarles Barkley. The listening public reacted quite favorably to the *Grey Album*, while EMI, the label who owned the masters to the Beatles' recordings did not.⁷⁵ In fact, the label immediately sent a Cease and Desist order to not only the artist, but also the small amount of stores that were selling the remix.⁷⁶ Following EMI's threatened legal action and cease and desist letter, a public outcry ensued. The group that charged themselves with leading that outcry was a music activism group called Downhill Battle who initiated a project which they dubbed "Grey Tuesday". The project culminated with 100,000 copies of the album being distributed for free over 170 websites that had agreed to distribute the album.⁷⁷

Though Burton escaped the situation unscathed, (with EMI eventually deciding against perusing legal action), *The Grey Album* represents an interesting, real world example of what can happen to an artist when the world of remix, sample and copyright interact. One interesting piece to *The Grey Album* saga is that Jay-Z, whose vocal tracks were used on the album, essentially gave implied permission for others to remix his work by placing acapella samples on the internet for DJs and others to freely create remixes.⁷⁸ But, even with the implied permission of one of the sampled artists, the multiple shared copyright in a song still comes into play with the record label generally owning master recordings.⁷⁹ The scenario goes to show that in some situations even where artists may give permission, their labels may staunchly oppose a remix, asserting their control over a track.

Another incident that garnered media attention in the sampling/remix community was the 2005 case of Dean Gray, a DJ team who created a remix album based off Green Day's 2004 album *American Idiot*. The album-titled *American Edit* by the duo was put up on the internet for

free. Within 10 days of the album being up online, they received a cease and desist letter instructing them that their music needed to be taken down. The letter came not from Green Day but from their label Warner Music. Interestingly enough, Green Day lead singer Billy Joe told MTV in an interview that he found the album to be "really cool".⁸⁰ What is striking about the Dean Gray case is that the label was threatening possible legal action for a work that was not even profit making. While no legal precedent has obviously been set, the *American Edit* incident represents a scary proposition for artists whose Fair Use Defense may be weakened even further.

Another more recent example of the effect that this tangled copyright web has on electronic dance music artists is illustrated in an article co-authored by new media attorney Gabe Levine. In the article, "Why Remix Culture Needs New Copyright Laws", Levine and his co-author speak with a DJ, Andy Baio who had received a letter from a law firm seeking 175,000 dollars based on a possible copyright infringement claim which stemmed from a remix Baio had done. Though Baio had cleared the actual works, he told BuzzFeed that, "For me, the chilling effect is palpably real. I've felt irrationally skittish about publishing almost anything since this happened."⁸¹ Baio's case, which is not so unfamiliar, is a perfect example of the destructive effect that copyright issues can have on DJs. If artists become scared or hesitant to create new music for fear of legal action, the original intention of copyright that was embodied in our Constitution to promote the Progress of Science and useful Arts⁸² will be diluted if not destroyed. These cases show a clear pattern that electronic dance music is becoming more susceptible to copyright claims and once again reiterate the point that the genre remixing culture may be on the verge of being threatened, not by the artists, but by the labels and the copyright system itself.

Part 4: The Future of Copyright and Licensing

While clearing is the safest way to stay out of legal trouble when sampling, it is generally not an easy process. Aside from the comments mentioned above on authorization of use, fees and royalties, many times a sample can't be cleared fully until a track is finished and the artist or other copyright holder has had a chance to listen to its use.⁸³ In this instance a newer artist could pay to record his or her track, and not have the clearance be authorized. Again, the same issues begin to come up. For artists who do not have the financial means, clearing can be nearly impossible.⁸⁴ Luckily, current advancements in the field of music copyright are begin proposed to attempt to remedy this harsh copyright situation.

The Creative Commons License:

Creative Commons is a non-profit organization that was created in 2001 by Lawrence Lessig, a remix proponent and one of the most cited law professors in the academic world⁸⁵. Lessig, a law professor who has taught at such schools as Stanford and Harvard⁸⁶ designed Creative Commons with an idea to promote the creation of new works by building upon older works through a legal framework. Creative Commons releases a copyright license (dubbed a Creative Commons License) that is free. Artists can distribute their works through the organization and essentially pick and choose which rights they wish to reserve. Rights that aren't reserved can be waived and thus can be used for the benefit of others artists and the public at large.⁸⁷ With artists being able to control which rights they want to release, newer artists are able to sample or remix their work freely without having to worry about legal repercussions. In 2002, Creative Commons released its first license and while their licenses are not direct replacements for copyright licenses, they maintain some similarities by working within the copyright

framework. As of 2008 there have been nearly 130 million works that were licensed using the Creative Commons system making it a highly successful endeavor.⁸⁸

While the Creative Commons license itself would help to ease copyright issues DJs face in dance music, a more interesting idea would be a Creative Commons model specific to DJs. A model in specific form is one that could be highly desirable for electronic dance music. While it would require some work, i.e. reaching out to artists for licensing and loading tracks into some sort of community sharing system and data base exclusively for DJs, the benefits could be tremendous. For instance, a popular DJ would be able to submit his vocal tracks for a popular song and license that acapella track so other DJs would legally be able to use it. Any system where a DJ could utilize an online community or data base that has preexisting permission for other DJs and user to sample and remix their work could help combat the effects of possible future copyright infringement claims and continue to grant access to up and coming artists who may not have the money to clear samples.

Changes to Copyright Law:

Another solution to the Copyright issue that electronic dance music faces is a potential overhaul to the actual copyright law. The current copyright law that is used today was passed in the 1970's and since then there has been significant changes in society, particularly advancements in technology.⁸⁹ Because of these advancements, it seems clear that it is time for a change. At the very least the law should be updated and clarified so that it is less confusing and easier to navigate. In his book *Remix*, Professor Lawrence Lessig (discussed above) presents a multitude of proposals for changing the current state of copyright law with the aim of enhancing creativity in society. The five proposals that he details in his book are: (1) deregulating

noncommercial amateur remix by making it fall outside of copyright law; (2) updating the current law to allow copyright holders to take their works and opt *in* to the Copyright system as opposed to opting *out*, which the current law calls for (3) simplifying the Copyright system to make it easier to understand (4) eliminating regulation of copies and (5) decriminalize file sharing.⁹⁰ While all of these proposals have their merits and could be helpful to musicians in general, the two that would be the most harmonious with electronic dance music would be deregulating noncommercial amateur remix by making it fall outside of copyright law and simplifying the Copyright system.

Lessig's first proposal in deregulating noncommercial amateur remix is good place to start in updating copyright law. Just as most mainstream musicians once started out as amateurs, electronic dance music artists are no different. As a society operating in the electronic age, it has become easier than ever for a youth to pick up a program and learn how to remix and sample⁹¹ and it is not unreasonable to believe that the future of the genre lies in the hands of current amateur DJs. Thus, it is incredibly important to protect their current creativity. While this particularly change in law would most likely not protect DJs in Danger Mouses' situation as his album was distributed commercially, it would provide crucial step in helping to give amateur artists the peace of mind that they can freely create and continue to carry on genre custom without worrying about a lawsuit wiping them out. Lessig further goes on to say that when that amateur creativity crosses over into professional creativity, or it becomes popular and there is money to be made, than the copyright holder should be compensated accordingly.⁹²

Lessig's thirds proposal on simplifying copyright law is one that would not only protect DJs and other musicians but also stop frivolous and unnecessary lawsuits from progressing. Specifically, in the case of Fair Use and the complex legal web it presents for most artists. Lessig

contends that the Fair Use Doctrine discussed above, and as a larger matter, copyright as a whole, was written with application by lawyers and corporations in mind.⁹³ If the act was written in a way that was understandable, artists would have a clearer picture of what they could and what they could not remix and sample. By doing so it would help to stave off copyright infringement claims before they ever occur while also relieving artists of any hesitation and trepidation while creating.

A final change that should be discussed is that of the compulsory license in remixing and sampling. While a compulsory license was not initially needed when musical recordings were added to the Copyright Act in 1971, Congress did *consider* adding a Compulsory License, one that was similar to existing license for compositions. At the time they didn't act because of certain concerns that a license in this area may lead licensees to eliminate the use of studio musicians and reduce studio time, thus affecting the economy of the music business at large.⁹⁴ However, the changes in technology and prevalence of sampling and remixing make a license system incredibly sensible at present.⁹⁵ In fact advancements in this area would not only be practical but beneficial to all parties involved. A DJ creating a remix would have a much more clear and streamlined way to to sample and remix tracks and more importantly not have to pay a fortune to create a remix. Additionally, it would give the creator of the remix an opportunity to profit off their track.⁹⁶ On the other hand, a copyright owner would be able to profit off a remix or use of their sample as well as open up their music to other fans that may not have heard them before.⁹⁷ Advancement in this area of copyright law would simplify much of the current process with clearing samples and help to ensure all parties involved in the transaction are paid. It is a proverbial win, win situation.

With the above suggestions and advancements coming from attorneys, scholars and others in the music field, the fact remains that any change largely sits in the hands of Congress. While economic turmoil has dominated much of the Congressional docket over the past few years, there actually has been debate in Congress regarding the above copyright issues, specifically discussions regarding DJs, sampling and remixing which have been waged by Rep. Mike Doyle (D-PA).⁹⁸ Doyle, who addressed his constituents at the House Telecom and Internet sub-committee hearing publicly endorsed Greg Gilis, better known by his DJ moniker Girl Talk. (Id.) Doyle had a sit down with Gilis to discuss the Copyright issues revolving remix, reporting back to his colleagues on Capitol Hill calling sampling and remixing "transformative art."⁹⁹ While Doyle may remain hopeful to someday change the Congressional and legal view on sampling and remixing, he went on to tell Gilis in their sit down that he doesn't see any relief coming to DJs in the near future. He stated most members of Congress don't understand how copyright affects music stating, "Some members don't even want to understand it."¹⁰⁰

While a bill may not yet be in the works, support for changes to the copyright law is coming from both inside and outside of Congress. Maria Pallante, who is a Register of Copyrights addressed the Subcommittee on Courts, Intellectual Property and the Internet Committee on the Judiciary in March of 2013.¹⁰¹ In her statement Pallante discussed the how Congress needs to address the changes that have come as our society has entered into a digital realm.¹⁰² In summation, she reiterates what many others have also been saying. Copyright laws are outdated and need to change.

Legit it mix:

Another forward thinking option for DJs has come out of Brooklyn, New York. The startup company, Legitmix has created a one (1) million dollar algorithm that helps artists to sell their remixes.¹⁰³ Legitmix attempts to “legitimize” remix by requiring purchasers to download the company’s software. What the software does is scan a purchaser’s computer for the tracks that are part of the remix they wish to purchase. If there are remixed tracks that do not show up, the consumer is directed to iTunes where they can purchase the *original* tracks. In this regard the company aims to get the original artist paid while hoping to free the way for the remixing artist to profit off his or her remix, to the tune of 70 percent of the sale price. The goal, according to their CEO Omid McDonald is to create a marketplace for remix where they “aim to legitimize the large amount of bootleg material that’s currently benefiting neither remixers nor the artists they sample.”¹⁰⁴

While the concept of Legitmix is intriguing and on the right path in trying to help alleviate copyright issues for DJs, it has its flaws. For one, just because an artist and or consumer legally purchases an original track that serves as a base for a remix or sample, does not mean they are absolved of legal responsibility when they create and sell a track with that original song. The fact still remains that the copyright holder has the exclusive right to remix that track and without a license the use of a track that still enjoys copyright protection is technically still illegal.¹⁰⁵ Still McDonald remains strong in his position. When asked how safe Legitmix was, McDonald said that their legal model has been “vetted by several copyright experts” and they are confident of their position.¹⁰⁶ He also went on to say that Legitmix would defend any users against claims against use of the companies software as long as it was used properly (Id.)

Conclusion:

While the current rise of electronic dance music is positive for the genre artists and law makers alike must take time to ensure that the future of the genre is not in peril. To ensure the genre survives and new works continue to circulate through the music world, a delicate balance must be struck between copyright and sampling/remix. This balance must strive for a proposal where copyright holders will be compensated for their works and contributions to the music world while future artists who remix and sample their work should also be able to release their creations without living in fear that they may be hauled into court. While many of the above proposals look to achieve this balancing act, a combination of multiple proposals, easier clearing procedures, a compulsory license for sampling, clarification and possible change to copyright law, would be an ideal approach to fixing the current problem and ensure that the aim of copyright, embodied first in the United States Constitution is met, in that the promotion of useful arts is a concept that continues to thrive.¹⁰⁷

¹ See Zach Greenburg, *Electric Cash Kings 2013: The World's Highest-Paid DJs*, FORBES (October 3, 2013, 10:00 A.M.), <http://www.forbes.com/sites/zackomalleygreenburg/2013/08/14/electronic-cash-kings-2013-the-worlds-highest-paid-djs/>

² See Ben Sisario, *Electronic Dance Concerts Turn Up the Volume, Tempting Investors*, THE NEW YORK TIMES (April 4, 2012) http://www.nytimes.com/2012/04/05/business/media/electronic-dance-genre-tempts-investors.html?pagewanted=all&_r=0

³ Telephone Interview with Samuel Frisch, Major label DJ, Cash Cash (Oct. 14, 2013).

⁴ The act of sampling is done technically by clipping portions of a song with either a program or via download and using those clips in another work that essentially creates a brand new song. The author's knowledge of such process comes from his first-hand experience in working with samples.

⁵ *Definition of Remix*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/remix> (last visited Sept 24, 2013).

⁶ 17 U.S.C. § 114

⁷ Donald Passman, *All You Need to Know About the Music Business*, 334 (5th ed. 2012).

⁸ *Id.* at 212

⁹ *Id.* at 334

¹⁰ See Antonia Mortensen, *How Electronic music industry takes festivals global*, CNN (August 9, 2013, 3:17 P.M.) <http://www.cnn.com/2013/08/09/business/david-guetta-electronic-music/>

¹¹ See Sisario, *supra* note 2 (quoting Michael Rapino, Chief Executive of the worlds largest concert promoter Live Nation)

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- ¹² See Greg Kot, *Will America's Love of Dance Music Go the Distance?*, BBC (June 21, 2013) <http://www.bbc.com/culture/story/20130621-america-raves-about-dance-music>
- ¹³ *EDM History*, EDM MUSIC JUNKIES, http://edmmusicjunkies.com/?page_id=31 (last visited September 24, 2013).
- ¹⁴ See Kara Warner, *Donna Summer 'Definitely Influenced' Flo Rida, Other EDM Acts*, MTV NEWS (May 17, 2012, 9:52 P.M.) <http://www.mtv.com/news/articles/1685355/donna-summer-flo-rida-edm-inspiration.jhtml>
- ¹⁵ See *EDM History*, supra note 13
- ¹⁶ See Michaelangelo Matos, *How Chicago house got its groove back*, CHICAGO READER (May 3, 2012) <http://www.chicagoreader.com/chicago/a-history-of-the-second-wave-of-chicago-house-music/Content?oid=6194277>
- ¹⁷ See *EDM History*, supra note 13
- ¹⁸ See Kot, supra note 12, (Describing Chicago and Detroit's dance music spawning Europe's rave scene)
- ¹⁹ *Id.*
- ²⁰ See *EDM History*, supra note 13
- ²¹ See Scott Plagenhoef, *Drop the Bass: How the 90's Won Again*, GQ MAGAZINE (March 23, 2012) <http://www.gq.com/entertainment/music/201203/dance-music-electronica-skrillex-bass>
- ²² See Antonia Mortensen, *Electronic Dance Music: How Bedroom Beat Boys Remixed the Industry*, CNN (April 12, 2012, 5:39 A.M.) <http://www.cnn.com/2012/03/30/showbiz/electronic-dance-music/>
- ²³ See Andrew Spada, *Zedd's 'Clarity' Reaches #1 on US Radio*, DANCING ASTRONAUT (September 9, 2013, 10:10 P.M.) <http://www.dancingastronaut.com/2013/09/zedds-clarity-reaches-1-on-us-radio/>
- ²⁴ See Glenn Gamboa, *Hear Rihanna's new single 'We Found Love'*, NEWSDAY (September 22, 2011, 12:13 P.M.) <http://www.newsday.com/entertainment/music/backstage-pass-1.811987/hear-rihanna-s-new-single-we-found-love-1.3191996>
- ²⁵ See Ken Capobianco, *David Guetta, 'Nothing but the Beat'*, THE BOSTON GLOBE, (August 29, 2011) http://www.boston.com/ae/music/cd_reviews/articles/2011/08/29/cd_review_nothing_but_the_beat_by_david_guett_a/?camp=pm
- ²⁶ See Lauren Lipsay, *Swedish House Mafia Brings the Party to Madison Square Garden*, ROLLING STONE, (December 17, 2011, 6:55 P.M.) <http://www.rollingstone.com/music/news/swedish-house-mafia-brings-the-party-to-madison-square-garden-20111217>
- ²⁷ See Brent Burns, *Dance/Electronica Marches to its Own Beat*, GRAMMY.COM (February 7, 2012, 5:10 P.M.) <http://www.grammy.com/news/danceelectronica-music-marches-to-its-own-beat>
- ²⁸ See Ryan Mac, *Déjà Vu: Skrillex Wins Three Grammys Before Broadcast Even Starts, Again*, FORBES (February 10, 2013, 7:22 P.M.) <http://www.forbes.com/sites/ryanmac/2013/02/10/deja-vu-skrillex-wins-three-grammys-before-broadcast-even-starts-again/>
- ²⁹ See Kari Mason, *Skrillex's Grammy Hat-Tricks: Good or Bad for EDM?*, BILLBOARD, (February 11, 2013, 10:36 A.M.) <http://www.billboard.com/articles/columns/code/1538729/skrillexs-grammy-hat-tricks-good-or-bad-for-edm>
- ³⁰ See Sisario, supra note 2
- ³¹ See Sam Abbassi, *Miami's Ultra Fest gets ultra expensive for 2014*, MIAMI HERALD, (July 11, 2013) <http://www.miamiherald.com/2013/07/11/3495963/miami-ultra-fest-fans-get-ready.html>
- ³² See Riley Hilliard, *The Top 10 Music Festivals in the World*, FESTIVAL FLING (June 18, 2012) <http://festivalfling.com/best-music-festivals-2012/>
- ³³ Sarah Joy Murray, Thesis, *Legitimizing the Remix: Exploring Electronic Dance Music's Hybrid Economy*, Boston College. 48 (2009).
- ³⁴ Frisch Interview, supra note 3, (discussing DJs playing remixes of other DJs in their club sets)
- ³⁵ See Richard Busch, *Major Label Records As Dinosaurs?*, FORBES (March 27, 2012, 1:05 P.M.) <http://www.forbes.com/sites/richardbusch/2012/03/27/major-record-labels-as-dinosaurs/>
- ³⁶ Passman, supra note 7, at 97 (“these deals started because the record industry was in such financial distress that the companies couldn't survive on their record business alone.”)
- ³⁷ See David Goldman, *Music's Lost Decade: Sales Cut in Half*, CNN MONEY (February 3, 2010, 9:52 P.M.) http://money.cnn.com/2010/02/02/news/companies/napster_music_industry/
- ³⁸ See Kembrew McLeod, *How Copyright Law Changed Hip Hop*, STAY FREE! MAGAZINE (Fall 2002) http://www.stayfreemagazine.org/archives/20/public_enemy.html.

³⁹ *Id.*
⁴⁰ *Id.*
⁴¹ Frisch Interview, *supra* note 3, (discussing the amount of remixes he plays in a usual club set)
⁴² *Search of Cash Cash Take Me Home Remix*, YOUTUBE, http://www.youtube.com/results?search_query=Cash+Cash+take+me+home+remix&sm=3 (last visited October 24, 2013).
⁴³ Frisch Interview, *supra* note 3 (Discussing how even unlicensed remix tracks create “awareness” for an artist’s original song).
⁴⁴ U.S. CONT. art. I, § 8, cl. 8.
⁴⁵ Passman, *supra* note 7, at 212 (“There are five major exceptions to this monopoly rule, and they’re known as compulsory licenses.”)
⁴⁶ *Id.*
⁴⁷ *Id.* at 334 (noting that there is no compulsory license for sampling).
⁴⁸ *Id.* at 210 (“Under, U.S. copyright law, as soon as you make a tangible copy of something, you have a copyright.”)
⁴⁹ Murray, *supra* note 33 at 11
⁵⁰ See Tonya M. Evans, *Sampling, Looping, and Mashing . . . Oh My!: How Hip Hop Music Is Scratching More Than the Surface of Copyright Law*, 21 Fordham Intell. Prop. Media & Ent. L.J. 843, 849 (2011).

⁵¹ 17 U.S.C. § 106 (2006)
⁵² 17 U.S.C. § 114 (2006)
⁵³ Passman, *supra* note 7, at 335
⁵⁴ Frisch Interview, *supra* note 3
⁵⁵ *Grand Upright Music Ltd. v. Warner Bros. Records, Inc.*, 780 F. Supp. 182, 183 (S.D.N.Y. 1991)
⁵⁶ *Id.* at 183
⁵⁷ *Id.*
⁵⁸ *Id.* at 185
⁵⁹ *Id.*
⁶⁰ Passman *supra* note 7, at 334 (“If you’ve lifted an entire melody line, or their track is the bed of your song, they might take 50% or more”).
⁶¹ *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792, 796 (6th Cir. 2005)
⁶² See Evans, *supra* note 50, at 886.
⁶³ *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d at 796
⁶⁴ *Id.* at 798
⁶⁵ *Id.* at 801
⁶⁶ See Evans, *supra* note 50, at 877
⁶⁷ *Id.* at 876
⁶⁸ *W. Pub. Co. v. Edward Thompson Co.*, 176 F. 833, 861 (2d Cir. 1910)
⁶⁹ *Fisher v. Dees*, 794 F.2d 432,434 (9th Cir.1986)
⁷⁰ See Michael Allyn Pote, *Mashed-Up in Between: The Delicate Balance of Artists’ Interests Lost Amidst the War on Copyright*, 88 N.C. L. Rev. 639, 665 (2010).

⁷¹ 17 USC §107 (2006)
⁷² *Campbell v. Acuff-Rose Music, Inc.*, 114 S. Ct. 1164, 1170 (1994)
⁷³ See Passman, *supra* note 7, at 315
⁷⁴ 17 USC § 101 (2006)
⁷⁵ Noah Sutcliffe, *Copyright Concerns For Digital DJs*, DJ TECH TOOLS (March 25, 2012) <http://www.djtechtools.com/2012/03/25/legal-concerns-for-digital-djs-should-i-worry-about-copyright/>
⁷⁶ Noah Shactman, *Copyright Enters a Gray Area*, WIRED (February 14, 2004) <http://www.wired.com/entertainment/music/news/2004/02/62276?currentPage=all>
⁷⁷ *Id.* at 641
⁷⁸ See Pote, *supra* note 70, at 686 (“Mashup remixers can essentially receive implied permission from artists, like Jay-Z, who release a cappella albums to encourage mashups and remixes of their works.”)
⁷⁹ See Evans, *supra* note 50, at 849

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- ⁸⁰ James Montgomery, *Green Day Mash-Up Leads to Cease-and-Desist Order, Grey Tuesday-Style Protest*, MTV NEWS (December 20, 2005, 8:59 P.M.) <http://www.mtv.com/news/articles/1518595/green-day-mash-up-leads-cease-desist-order.jhtml>
- ⁸¹ Benjamin Jackson & Gabe Levine, *Why Remix Culture Needs New Copyright Laws*, BUZZFEED (October 24, 2012, 5:32 P.M.) <http://www.buzzfeed.com/benjaminj4/why-remix-culture-needs-new-copyright-laws>
- ⁸² U.S. CONT. art. I, § 8, cl. 8.
- ⁸³ See Passman, *supra* note 7, at 334
- ⁸⁴ *Id.*
- ⁸⁵ Edward Lee, *Remixing Lessing*, 6 I/S: Journal of Law and Policy for the Information Society 41, 42 (2010)
- ⁸⁶ *History of Creative Commons*, CREATIVE COMMONS, <http://creativecommons.org/about/history> (last visited Nov 14, 2013).
- ⁸⁷ See Pote, *supra* note 70, at 686
- ⁸⁸ See *History of Creative Commons*, *supra* note 84
- ⁸⁹ William Patry, *Time to Update Copyright Law?*, CNN (January 31, 2012, 4:30 P.M.) <http://www.cnn.com/2012/01/31/opinion/patry-copyright-law>
- ⁹⁰ Lawrence Lessig, *Remix*, 254-272 (2008)
- ⁹¹ Natalie Robehmed, *How Hard is DJing? Count to Four*, FORBES (August 2, 2012, 10:06 A.M.) <http://www.forbes.com/sites/natalierobehmed/2012/08/02/how-hard-is-djing-count-to-four/> (discussing the plethora of programs and phone applications readily available for anyone to pick up and use).
- ⁹² *Id.* at 255
- ⁹³ *Id.* at 267
- ⁹⁴ Robert M. Vrana, *The Remix Artist's Catch-22: A Proposal for Compulsory Licensing for Transformative, Sampling-Based Music*, 68 Wash. & Lee L. Rev. 811, 850 (2011)
- ⁹⁵ *Id.* at 851
- ⁹⁶ *Id.* at 853
- ⁹⁷ *Id.* at 853
- ⁹⁸ See Jackson & Levine, *supra* note 81
- ⁹⁹ Steven Levy, *Politics and Hip-Hop Are Doing a Mash-Up*, NEWSWEEK (July 12, 2007, 8:00 P.M.) <http://www.newsweek.com/levy-politics-and-hip-hop-are-doing-mash-103989>
- ¹⁰⁰ *Id.*
- ¹⁰¹ *The Register's Call for Updates to U.S. Copyright Law: Before the H. Sub Comm. on Courts, Intellectual Property and the Internet Comm. on the Judiciary*, 2013 1st Sess. (2013) (statement of Maria A. Pallante, Register of Copyrights).
- ¹⁰² *Id.*
- ¹⁰³ Casey Newton, *Legitmix finds a legal way to sell remixes, but they're not always cheap*, THE VERGE (July 21, 2013, 3:49 A.M.) <http://www.theverge.com/2013/7/21/4541926/legitmix-omid-mcdonald-legal-remix-itunes>
- ¹⁰⁴ John Paul Hill, *Can Legitmix Solve Remix Copyright for DJs + Producers?*, DJ TECH TOOLS (September 12, 2013) <http://www.djtechttools.com/2013/09/12/can-legitmix-solve-remix-copyright-for-djs-producers/>
- ¹⁰⁵ 17 U.S.C. § 114 (2006)
- ¹⁰⁶ See Hill, *supra* note 104
- ¹⁰⁷ U.S. CONT. art. I, § 8, cl. 8.