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DIGITAL SOUND SAMPLING: A RE-EVALUATION AFTER *GRAND UPRIGHT MUSIC*

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INTRODUCTION

Digital sampling of recorded sounds is an issue that has generated considerable controversy throughout the record industry over the last several years, raising questions as to the ownership of sounds, of creative freedom and of ethics. During that time, the practice has flourished in a system where, in the absence of statutory or judicial guidelines, rules governing the conduct of those involved have been informal at best. In the first judicial expression on the issue, though, a U.S. District Judge has equated sampling with stealing, thereby sparking an even greater controversy and spurring a flurry of debate and activity within the record industry. This decision, *Grand Upright Music, Ltd. v. Warner Bros. Records, Inc.*,[2] has sent a strongly worded message to those engaging in unauthorized sampling, and the record industry has responded by re-evaluating its practices as other suits follow in the wake of the *Grand Upright* decision. All of this has contributed to the focusing of new attention on the entire sampling issue, calling into question the right of artists to sample as well as the rights of those being sampled. Now that the issue has been forced, though, there exists the possibility that those within the record industry will agree upon a more coherent and workable framework for the licensing of samples and for compensating the owner of sampled material.

This Article will briefly discuss the history and the nature of the controversy. Then it will provide a detailed examination of the *Grand Upright* decision and a view toward the future of digital sampling practices and legal action.

A BRIEF HISTORY

As the technical aspects of digital sampling have been set forth in detail elsewhere, it is not the purpose of this article to do so here.[3] In its most commonly understood form, though, digital sampling refers to the electronic borrowing of prerecorded sounds for use on new recordings.[4] Generally, the process will involve the electronic lifting of a live or recorded instrumental or vocal performance from its original context, where it may then be sonically processed or altered to suit the needs of the user before being transplanted into a new musical context in identical or altered form.[5] This process is generally performed with the assistance of a sophisticated keyboard.

Sampling is considered to have originated in the early 1980s when disc jockeys and mixers in dance clubs began to mix portions of different records together to create "new" works.[6] With the rise of rap music later in the decade, the practice spread to the recording studio, where producers and rappers would splice prerecorded passages of other works into rap recordings.[7] As rap grew in popularity throughout the decade, so did the practice of sampling, and it spread to other musical genres, most notably pop and rock.

Almost from its inception in its present form, digital sampling has been a controversial topic throughout the record industry. This controversy has certainly been abetted by the differing perspectives of those whose interests are actually involved. Many well-known recording artists often do not wish to be sampled, especially those artists who have developed a so-called "signature sound" through years of hard work, only to find that their distinctiveness makes them an attractive source for samplers.[8] Also, musicians who make their living doing recording sessions fear losing employment and income to sampled equivalents of their talents.[9] In addition, the owners of mechanical rights in works being sampled decry the loss of income.

On the other hand, producers and artists who sample claim that they are involved in the creation of new works and that their use of passages from older recordings can actually stimulate new interest in the older works; if they are prohibited from doing so, they argue, such prohibition will have a chilling effect on both the creation of new works and the development of new technologies.[10] In essence, they claim, they are involved in the most current phase in popular music's extensive history of recycling source material.[11]

Finally, there are the record companies, who often have to view the issue from both sides—that is, they are aware their catalog items are being sampled while they continue to release new albums containing increasing numbers of samples. As a result of this dual perspective, no record company had sued over the sampling of its catalog until very recently,[12] since, by winning such a suit, the company would run the

risk of contributing to a situation where the ability of its own producers and artists to sample would be crippled.

As the practice of sampling developed, it began to take one of several forms. The first and most basic involved the taking of a certain sound—for example, an often-imitated drummer's snare—and the re-use of that sound where the independent creation or imitation of that sound would be impossible or impractical. In fact, as computers gained acceptance in recording studios, it became common for producers to store such distinctive sounds on floppy discs and to use them over and over, with varying amounts of electronic processing.[13] The earliest well-known sampling dispute arose from such a use, when a sample of percussionist David Earl Johnson was used in the theme music for the television show "Miami Vice," composed and performed by keyboardist Jan Hammer.[14] Johnson had earlier agreed to let Hammer record him performing on a set of rare, old African drums which produced a distinctive sound.[15] The sample was featured prominently in Hammer's theme music, and Johnson did not receive compensation or credit for the sampled performance.[16] Johnson took the issue up with the musicians' union, which declined to become involved on his behalf since Johnson had originally consented to let Hammer record him.[17]

The second and more controversial type of sampling involves the actual electronic lifting of an instrumental or vocal passage from an existing recording and embodying the passage into a new musical context. Naturally, the amount of material taken and the manner in which it is used has varied greatly; however, in many instances, it has been clear to knowledgeable listeners that certain records are being sampled, and that some are being sampled more than others.[18] This is the type of sampling complained of by the plaintiff in *Grand Upright,* and most of the current debate has revolved around this type.

THE RIGHTS INVOLVED

There are two copyrights involved in each copyrighted recording which is sampled. The first, usually owned by a music publisher, covers the underlying musical composition. The other protects the recorded performance of the composition, or sound recording, which is owned by the record label. These two copyrights are treated very differently under the law.

The 1976 Copyright Act provides the owner of the copyright in a composition with the exclusive first right to perform the work publicly, to duplicate it, to distribute copies, and to prepare derivative works based on the original work.[19] However, the Act also provides that after a composition has been recorded for the first time, anyone may re-record it provided that the subsequent user obtains a compulsory license.[20] This means that the user must notify the copyright owner of his intent to do so, and he must pay royalties to the owner for each copy sold.[21] If the user gives the required notice, the copyright holder cannot refuse to grant her permission to record the composition.[22] In the record industry, such a license is known as a "mechanical" license, as the licensee has obtained the right to fix the new rendition of the work in a sound recording. The resulting mechanical royalty is set by statute, although the standard practice in the record industry is to pay seventy-five percent of the statutory rate.[23] Generally, the record company releasing the new rendition of the composition will assume the responsibility of both obtaining the compulsory license from and paying the mechanical royalty to the publisher.

However, copyright treatment of sound recordings has often been problematic. Sound recordings were not even protected works until 1971, when the 1909 Copyright Act[24] was amended by the Sound Recording Amendment of 1971.[25] The Amendment, though, was primarily designed to counter the problem of record piracy, or the re-recording of complete albums, which was rampant at the time.

Although sound recordings are expressly protected under the terms of the 1976 Act, the extent of that protection is less than that afforded to the underlying compositions. For example, Section 114(b) provides that the owner's exclusive right under Section 106(2) 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; the owner has no right to keep others from duplicating the sounds contained in the recording, so long as the duplication is entirely the result of the independent fixation of these sounds.[26] In other words, one could conceivably hire a group of session musicians to perform an exact sound-alike version without infringing on the copyright in the sound recording, as long as the imitation is the result of the independent fixation of the musicians, rather than the lifting of sounds contained in the copyrighted recording.[27]

In addition, Section 114 of the Act does not provide for a compulsory license or any other performance rights with respect to sound recordings; therefore, there is no royalty framework set forth in the Act upon which users may rely. Needless to say, this lack of statutory guidance has contributed to the confusion over how samples of recorded works are to be paid for. As a result, several different licensing approaches have been developed, based generally upon the amount and character of what is sampled, how the sampled material is used in terms of prominence and frequency of appearance in the new recording, and the fame of the sampler.[28]

One approach, of course, is to seek a gratis consent, which the owner might grant in a situation where the use is de minimus or the sampled material is largely unrecognizable.[29] As one commentator has

noted, however, free uses are uncommon, as a copyright holder will often want at least a token payment, either to cover its own overhead or to reinforce the principle that licenses are necessary even for nonsubstantial uses.[30]

Much more common is the payment of a one-time flat fee to the copyright holder in exchange for the right to use the sampled material and to claim exclusive ownership of the new recording. This method is often used where the source material is more recognizable or where the use of the material is more substantial. The amounts paid for such flat fee licenses have varied greatly.[31] This approach can also work to the advantage of the sampler or his record company. Several producers are known to prefer this method in order to eliminate potential problems and ensure that they will retain some bargaining power.[32] On the other side, there are labels who are willing to license samples for a one-time fee.[33] In addition to receiving income without having to sue, the label is then also in a position to maintain some control over its catalog and, again, to reinforce the principle that samplers must pay to use copyrighted works.

Another approach has been to pay a royalty to the copyright holder for each copy of the new work sold. This generally comes about when the sampler releases his record without obtaining clearances, or where the taking or use have been substantial, or both.[34] Royalty arrangements are more common with respect to the underlying composition than the sound recording and are generally disfavored by record companies.[35] Regarding the composition, the publisher will receive a portion of the mechanical royalties—and, in some cases, the mechanical rights—derived from sales of the new work.[36] A royalty agreement regarding a sound recording will often take the form of a master use license, rather than an actual transfer of rights to the new work.[37] While not as common as the flat fee license, royalty cases have attracted more publicity, especially when reached after the release of the new work.

One additional approach has been to pay nothing, and in many instances, to sample without obtaining or even seeking the permission of the copyright holder. It has been common in recent years for companies to release records containing samples without the samples having been cleared, with the intent to reach an after-the-fact accomodation with the copyright holder when (and if) the holder learns that the sampling has occurred, or to release the album while the negotiations are ongoing.[38] However, there have been numerous instances of artists and producers sampling works without permission and paying for their samples only when forced to do so.[39] In fact, some attorneys have counseled samplers against seeking permission in advance, since if a sampler is denied permission and then samples anyway, then the plaintiff can seek additional damages based on the willful conduct of the samplers, which is especially troubling to potential defendants where the use they made might have been otherwise arguably permissable.[40]

THE *GRAND UPRIGHT* DECISION

As a result of the conflicting and competing interests involved in sampling, and the lack of any statutory guidance, there were few if any rules to govern the conduct of those on either side of the issue. Surprisingly, before *Grand Upright,* there had been little litigation over sampling, and the few notable cases filed settled before trial.[41] As a result, the courts had not had the opportunity to step in and provide any resolution.

The *Grand Upright* decision rendered by U.S. District Judge Kevin Thomas Duffy, which begins with the Biblical admonition "thou shalt not steal,"[42] is notable for its force and tone in addition to the ruling itself. Therefore, a detailed examination of the opinion sheds considerable light on the nature, history and future of the sampling controversy.

The facts of the case were not seriously in dispute. In March of 1991, rap artist Biz Markie recorded a song entitled "Alone Again," which was released later that year on his album "I Need A Haircut."[43] "Alone Again" contained several samples from a 1972 recording by Gilbert O'Sullivan of a composition, written by O'Sullivan as well, entitled "Alone Again (Naturally)."[44] More specifically, Markie and his producers sampled the first eight bars of the older work, which were then made into a repeating pattern known as a tape loop, and Markie then recorded his own rap lyrics over the tape loop.[45] In addition, the phrase "alone again, naturally," arguably the lyrical "hook" of O'Sullivan's recording, was also sampled.[46]

After the recording was made, but before the record was released, Markie's attorney sent a tape of "Alone Again" to O'Sullivan and his agent and requested permission to use the sample.[47] However, before any agreement regarding the use of the sample could be reached, the "I Need A Haircut" album was released on Cold Chillin' Records, a subsidiary of Warner Bros. Records, Inc. Thereafter, O'Sullivan refused to give permission and demanded that "I Need A Haircut" be removed from the marketplace.[48]

After several exchanges between the parties, Grand Upright Music, Ltd., the assignee of the original publisher and the holder of the copyright in the underlying musical composition, filed suit in the U.S. District Court for the Southern District of New York, seeking a preliminary injunction.[49] Named as defendants were Markie, Cold Chillin', Warner Bros. Records, and Markie's production and publishing companies, as well as a number of other persons and entities. The defendants admitted that the sampling had in fact occurred.[50] As a result, Judge Duffy ruled that the only real issue was who owned the copy-

rights to the underlying composition and to the master recording of the original work by O'Sullivan.[51]

After conducting a hearing, Judge Duffy ruled that the plaintiff was the owner of the copyrights.[52] In reaching this conclusion, the judge relied on three categories of proof.[53] First, there were copies of the copyright registrations to the work, which were in the name of O'Sullivan's original publisher, and two deeds, the first transferring the copyrights from the publisher to O'Sullivan and the second transferring them from O'Sullivan to the plaintiff.[54] Over the defendants' objections, the judge accepted the registrations as valid public records pursuant to Rule 902 of the Federal Rules of Evidence, and he admitted the transfer documents as well.[55] He also found credible O'Sullivan's testimony regarding his authorship of the song and the defendants' attempts to secure permission from him.[56]

What the judge found most persuasive, however, were the "actions and admissions of the defendants."[57] He noted that, prior to the release of the album, the defendants discussed among themselves the need to obtain a license, which was followed by the letter to O'Sullivan's agent.[58] The opinion notes that the letter specifically requested O'Sullivan's consent and that Markie's attorney "admittedly was seeking `terms' for the use of the material."[59] As a result, Judge Duffy concluded that

> [o]ne would not agree to pay to use the material of another unless there was a valid copyright! What more persuasive evidence can there be![60]

The judge also quoted at length from a letter sent by Markie's attorneys to Cold Chillin' and the other defendants following the release of the album, wherein Markie's counsel appeared to attempt in advance to transfer the blame for any future liability, noting that Cold Chillin' knew that sample requests were pending and unresolved but chose to release "I Need A Haircut" anyway:

> Consequently, if any legal action arises in connection with the samples in question, such action will not arise due to the fact that Biz used the samples in his recorded compositions, but rather, due to the fact that Cold Chillin' released such material prior to the appropriate consents being secured in connection with such samples.[61]

In addition, each defendant who testified knew that it was necessary to obtain the owner's consent before using the work in another piece, and Judge Duffy also stated that, specifically, "Cold Chillin' Records, Inc. knew that such clearances were necessary."[62] The judge briefly addressed the defendants' contention that their conduct was essentially standard practice in the record industry, but he was clearly unimpressed:

> [T]he argument suggested by the defendants that they should be excused because others in the "rap music" business are also engaged in illegal activity is totally specious. The mere statement of the argument is its own refutation.[63]

Based on the evidence, Judge Duffy concluded that the defendants knew that they were violating the plaintiff's rights "as well as the rights of others," and that "[t]heir only aim was to sell thousands upon thousands of records."[64] As a result, he granted the preliminary injunction; in addition, he found that the defendants' conduct was so egregious that "sterner measures" were required.[65] Therefore, in the last sentence of the opinion, he referred the matter to the U.S. Attorney for consideration of prosecution of the defendants for criminal copyright infringement,[66] and noted further that "[t]he resolution of any issue left open in this civil matter should have no bearing on the potential criminal liability in the unique circumstances presented here."[67]

The effect of this ruling was felt immediately. Although the case was settled soon afterward,[68] Warner Bros. Records was still compelled to recall thousands of albums.[69] In addition, major record labels began to take serious steps to ensure that they would avoid a fate similar to that suffered by Warner Bros. These steps ranged from inserting additional clauses in their artist recording agreements, which contractually placed the responsibility for unlicensed samples on the artist, to requiring artists to submit lists of samples used and to obtain clearances for each prior to the release of the album.[70]

On the other side, copyright proprietors have begun to monitor their own catalogs closely,[71] and other plaintiffs have stepped forward and filed cases. The most notable of these was *Tuff 'n' Rumble Management Inc. v. Def Jam Recordings Inc.*,[72] which was filed during the same week that the *Grand Upright* decision was issued.[73] The plaintiff owned the copyrights to a composition and recording entitled "Impeach the President."[74] The defendants sampled the distinctive eight-beat drum break that began "Impeach the President" without seeking a license.[75] While it had been the practice to seek clearances for melodic or harmonic passages, this had generally not been the case with respect to drum samples.[76] As a result, the case, which settled shortly after it was filed,[77] is significant since it appeared to attempt to extend the *Grand Upright* holding to an area where licenses usually had not been previously sought. This issue is likely to arise again because, as Tuff 'N' Rumble alleged, it is the drum track and lead vocal that form the "musical basis" of rap recordings.[78]

At the time of this writing, *Grand Upright* is still the only judicial expression on the issue, and, while Judge Duffy's opinion is a strong statement, it is scant on supporting law. Besides several brief cites to the

1976 Act (and the Seventh Commandment), he makes no mention of the potentially applicable causes of action or defenses. A reading of the opinion leads one to the conclusion that the plaintiff relied solely on the Act, while the defendants offered what appeared to be a fair use defense. Judge Duffy does not make any mention of the legal support for either side's arguments; rather, he appeared to regard his conclusions as self-evident. As a result, there has still been no definitive ruling as to what will state a cause of action in a sampling case or a defense thereto.

A VIEW TOWARD THE FUTURE

The *Grand Upright* decision and the *Tuff 'n' Rumble* settlement have brought the entire issue of digital sampling into the open. In order to avoid potential liability, record labels have attempted to institute a variety of safeguarding measures, including the verification of clearances and the passing on of the responsibility to the artist or the producer. Notwithstanding these efforts, though, the issue will only be resolved when the industry recognizes that significant property rights are involved and that a workable system of obtaining and paying for licenses is needed. The obstacles to developing such a system are substantial, involving, among other issues, antitrust concerns, enforcement problems, and the likelihood of future lawsuits. However, by adopting the example of the individuals and labels who have tried, the industry could avoid another adverse judicial ruling. Composers and artists thrive on their creativity and originality; the industry would do well to strike a balance between the protection of their efforts with the need of the labels to exploit new and exciting trends in popular music.

1. David M. Bagdade received his J.D. from Duke University School of Law and is currently an associate with Harris and Berlin in Chicago. He is also an active musical performer and composer.

2. *Grand Upright Music, Ltd. v. Warner Bros. Records, Inc.* 780 F.Supp. 182 (S.D.N.Y. 1991).

3. *See generally,* Bruce J. McGiverin, Note, *Digital Sound Sampling, Copyright and Publicity: Protecting Against the Electronic Appropriation of Sounds,* 87 COLUM. L. REV. 1723, 1724; Thomas Arn, Comment, *Digital Sampling and Signature Sound: Protection Under Copyright and Non-copyright Law,* 6 U. MIAMI ENT. & SPORTS L. REV. 61, 64 (1989).

4. Stan Soocher, *License to Sample,* NAT'L L.J., February 29, 1989, 1, 26.

5. McGiverin, *supra* note 3, at 1724.

6. Soocher, *supra* note 4, at 26.

7. *Id.*

8. Arn, *supra* note 3, at 68; McGiverin, *supra* note 3, at 1726.

9. McGiverin, *supra* note 3, at 1726.

10. Soocher, *supra* note 4, at 26; Steven R. Gordon & Charles J. Sanders, *The Rap on Sampling: Theft, Innovation, or What?,* ENT., PUB. AND THE ARTS HANDBOOK, 207 (1989).

11. Jeffrey Jolson-Colburn, *Sampling Is Stealing, Judge Says in Landmark Music Ruling,* HOLLYWOOD REP., December 17, 1991, at 1, 94.

12. It is significant that the company who did file such a suit is a relatively small independent company, rather than a major label. Tuff `n' Rumble Management, Inc. v. Def Jam Recordings, Inc., No. 91 Civ. _____ (S.D.N.Y. December 23, 1991).

13. McGiverin, *supra* note 3, at 1726; *see also generally* T. Porcello, *The Ethics of Digital Audio Sampling: Engineers' Discourse,* NARAS J., Spring 1991 at 45.

14. Arn, *supra* note 3, at 66.

15. *Id.*

16. *Id.*

17. *Id.* at 66, n.28.

18. Soocher, *supra* note 4, at 26; *see also* Whitney C. Broussard, *Comment, Current and Suggested Business Practices for the Licensing of Digital Samples,* 11 LOY. ENT. L. J. 479, n.2 (1991) (noting that 180 recordings by 120 artists contain samples from the P-Funk series of bands and related spin-offs).

19. Copyright Act of 1976 Pub. L. No. 94-553, § 106, 90 Stat. 2541, 2546 (1976) (codified at 17 U.S.C. § 106 (1988)).

20. 17 U.S.C. § 115 (1988 & Supp. 1990); Gordon & Sanders, *supra* note 10, at 211.

21. 17 U.S.C. § 115 (1988 & Supp. 1990).

22. Gordon & Sanders, *supra* note 10, at 211.

23. Broussard, *supra* note 18, at 500 n.100.

24. Copyright Act, ch. 320, 35 Stat. 1075 (1909) (current version at 17 U.S.C. § 101 (1988)).

25. Sound Recording Amendment, Pub. L. No. 92-140, 85 Stat. 391 (codified as amended in scattered sections of 17 U.S.C.).

26. 17 U.S.C. § 114 (1988).

27. It must be noted, though, that such conduct may constitute an infringement of the copyright to the underlying musical work; in addition, the copyright owner would also have a potential action based on either unfair competition law or violation of his right of publicity, especially in light of *Midler v. Ford Motor Co.,* 849 F.2d 460 (9th Cir. 1988). In *Midler,* now recognized as the leading case in the area of sound-alike litigation, the defendants hired a sound-alike to impersonate a well-known singer's popular rendition of a song. The Ninth Circuit held that, even where a license to a musical composition is obtained, the singer associated with the recorded version of that composition may have a right of action where the defendants intend to cause the deliberate imitation of that singer's voice in order to sell a product. It is important to note, though, that the opinion was based on California law, rather than on unfair competition, since the parties were not actually competing, as would be so in a sampling case brought under the right of publicity. For an excellent survey of the recent changes in the area of sound-alike litigation, the reader is referred to W. Wierzbicki & J. Madonia, *The Sound Remains the Same: Protection of Voice From Commercial Misappropriation,* NARAS J., Spring 1992, at 35.

28. Broussard, *supra* note 18, at 496.

29. *Id.* at 498-99.

30. *Id.* at 499.

31. Soocher, *supra* note 4, at 26.

32. G. Edwards, *Pay to Play: A Guide to Sampling and What It Costs You,* DETAILS, March 1992, at 149. This is a user-friendly article illustrating the process used by a well-known sampler, Marly Marl, who was one of the defendants in the *Tuff `n' Rumble* case, *supra.*

33. Aaron Fuchs, *What's In a Hip-Hop Drum Beat?,* BILLBOARD, May 23, 1992, at 4.

34. Broussard, *supra* note 18, at 499 n.96.

35. *Id.*

36. In what has probably been the best-known example of such an agreement, rap star M.C. Hammer reportedly transferred half of the mechanical royalties to his hit "U Can't Touch This" to funk star Rick James, whose earlier hit "Super Freak," Hammer made heavy use of. J. Jolson-Colburn, *supra,* note 11. In addition, James received a share of the ownership credit for "U Can't Touch This," and he also shared—as a co-writer—in the 1990 Grammy Award received by Hammer for the song. *See generally* Marsha A. Willis, *Comment, Unauthorized Digital Sound Sampling, the Taking of a Constitutional Right,* 17 S.U.L. REV. 309, 313 (1990).

37. Broussard, *supra* note 18, at 499.

38. Jolson-Colburn, *supra* note 11, at 94.

39. *Id.*
40. Soocher, *supra* note 4, at 26.
41. Three cases in particular are often referred to by commentators. These are *Island Records, Inc., v. Next Plateau Records, Inc.*, No. 87 Civ. 8165 (S.D.N.Y. Nov. 17, 1987), and the two well-publicized cases involving the white rap group The Beastie Boys, *Castor v. Def Jam Records,* No. 87 Civ. 6159 (S.D.N.Y. Aug. 25, 1987), and *Thomas v. Diamond,* No. 87 Civ. 7048 (S.D.N.Y. October 1, 1987).
42. 780 F.Supp. at 183.
43. Robert G. Sugarman & Joseph P. Salvo, *Sampling Case Makes Music Labels Sweat,* NAT'L. L.J., March 16, 1992, at 34.
44. *Id.*
45. *Id.*
46. *Id.*
47. 780 F.Supp. at 184.
48. Sugarman & Salvo, *supra* note 43, at 34.
49. *Id.*
50. 780 F.Supp. at 183.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* at 184.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 185.
62. *Id.* at 184-85.
63. *Id.* at 185, n.2.
64. *Id.* at 185.
65. *Id.*
66. *Id.*
67. *Id.* at 185 n.3.
68. Sugarman & Salvo, *supra* note 43, at 34.
69. Melinda Newman & Chris Morris, *Sampling Safeguards Follow Suit,* BILLBOARD, May 23, 1992, at 80.
70. *Id.*
71. For example, at least one publisher and one record label have instituted the practice of buying each new rap album and single that reaches the charts in order to screen for samples that may infringe on their catalogs. Broussard, *supra* note 18, at 482-83. In addition, one label that had several disco hits in the 1970s recently ran an ad in *Billboard* warning that it intends to pursue legal action against those sampling from its catalog. Newman & Morris, *supra* note 69, at 80.
72. 91 Civ. 8637 (S.D.N.Y. Dec. 23, 1991).
73. Sugarman & Salvo, *supra* note 43, at 34.
74. *Id.*
75. Fuchs, *supra* note 33, at 4. Fuchs noted in his commentary that "[t]he eight-beat drum break that begins Impeach the President is as distinctive a musical entity in the hip-hop field as the opening riff of Beethoven's Fifth is to classical." *Id.*
76. Sugarman & Salvo, *supra* note 43, at 34.
77. Newman & Morris, *supra* note 69, at 80.
78. Sugarman & Salvo, *supra* note 43, at 34.