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Copyright and Copywroing

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Copyright and Copywrong

By Noah Granard (edited 4.21 by KH)

N.B. This essay includes an analysis of the following article:: “Jake Paul’s Christmas Just Got Less ‘Lit’: YouTuber Hit With Copyright Lawsuit, ” originally written by Chris Eggerston for Billboard’s December 23, 2019 edition

YouTuber and vlogger Jake Paul was sued for copyright infringement in 2017 by three Los Angeles music producers (Erik Belz, Jonathan Pakfar and Shane Eli Abrahams). These producers claim that Paul had directly copied the master recording of their song, “Bad Santa,” and used it as the backing track to Paul’s song, “Litmas.” The producers also claim Paul had direct access to the same studio, and that he was able to hear their work during the time of its recording and production. These producers also go on to claim that any average listener could hear direct and “blatant” similarities between the songs, so they requested the court force Paul to be reprimanded for his infringement.

Copyright law and infringement continues to be a hot-topic issue in today’s music industry. Ever since the beginning of the Internet and digital access to music, courts have cracked down on infringers in order to stop and deter unauthorized use. However, in recent years, many artists have felt these laws are not being designed to benefit them. Despite this, it is fair to say the laws *are* supporting the artists (or more specifically, the producers) from infringement, in this instance. The reasoning for this is that the courts and lawmakers alike have sided on behalf of the defendants, who are clearly being infringed upon. If you create an original work, you are entitled to all the rights to it and the rights to exploit it; Paul ignored and violated these laws rather blatantly, so he will have to accept the court’s decision and pay for his copyright infringement.

The author of the news report in *Billboard* appears to primarily, if not entirely, report on the facts of the matter. There does not seem to be an injection of opinion or an ulterior

interpretation – but this is likely because (for once) the case is extremely clear cut and straightforward. Paul ripped off a master recording without acquiring the proper licensing, nor giving credit to the original creators. He attempted to exploit and pass off the work of others all while creating a new work to hide and cover the infringement. The author does not appear to cite any sources beyond quoting from the defendants; reportedly, Paul and his team did not respond to *Billboard's* request for comments, so it may be possible to see some level of one-sidedness. It is difficult to detect a personal bias in the article, but it is no secret that Paul has been controversial in recent years and may not be the most liked individual in the industry. While there is certainly room within copyright law to legally use someone else's material, Paul did not make any effort to use these appropriate means and methods. For instance, a parody, using a small amount of content, with enough unique content and distinction, might have fallen into a fair use case. Again, Paul did not make any effort to obfuscate this stolen work, and directly copied work from the three producers.

This information and ruling could be viewed as both a threat and an opportunity for those in the music industry. First and foremost, it is a warning. You cannot use copyrighted material without obtaining the proper permits (licenses, express written consent, contracts and agreements, etc.) and if you fail to do so, there are serious consequences and ramifications. In conjunction with serving as a warning to those who would infringe, it also functions as a shield and reassurance to creatives everywhere that your work is protected under the full scope of the law. While there have certainly been instances where the artist is shortchanged and possibly not fully protected, this seems to be a case where justice was served swiftly and accurately. Such laws do especially well to show that nobody, pop-star status or not, is above the law. While it is easy to disagree with the stringency of the overall law at times, one can respect and likely agree

with this ruling because it was again, “blatant” and clear that Paul was being careless in regards to the law, thinking he was above using the proper channels to secure use of someone else’s work.

SUGGESTIONS FOR THE FUTURE

Labels, artists, producers, and any creative individuals working in the industry should thoroughly educate themselves on today’s laws and practices. As seen with Paul’s case and many others, one cannot be too careful when working with copyrighted material; studying the proper procedures for obtaining licenses and setting up contracts can be extremely beneficial in avoiding a costly legal battle. Common sense also goes a long way here – if you don’t own the material and aren’t the original creator, then someone else is, and they are going to want compensation for using their work. However, there are those who *are* aware of the laws and institutions in place, but cannot (or choose to not) use the proper means to acquire permission because of external factors working against them.

Often, it can be difficult, or nearly impossible, to afford the proper rights to take advantage of someone’s work. For instance, sampling costs and licenses can be particularly costly, which limit and stifle creativity. While the ruling of this case is agreeable, the existing copyright law is arguably outdated and needs serious updating. Unfortunately, Paul’s specific case is frankly not useful in this critique, because he is someone who has the financial means to legally obtain the necessary rights. His case does, however, open the conversation for everyone else who wants to use existing work and does not have those means. In the future, Paul and his team should be much more diligent in researching copyright law and going through the proper channels to secure the use of someone else’s work.

What do you do if you cannot afford the legal route to securing licenses and contracts? Hopefully, one would take the moral and legal highroad: moving onto a different project or idea. However, there are times when this may not seem like an option, and therein lies the problem: today's copyright licenses are too expensive and restrictive in regard to using existing work/materials. While some pundits may claim to simply use the public domain, this does not address the deeper, fundamental issue. The public domain is arguably devoid of relevant content because the current copyright laws are targeted at holding rights and content (i.e. making money for copyright holders) for as long as possible, rather than supporting the creation of new material through the inspiration or tandem use of existing works. To paraphrase the current copyright law, copyright exists for the life of the author plus 70 years (in the case of individuals) and 95 years from publication/120 years from creation for corporations (whichever is shorter). That means as of today, a supermajority of musical content and material is missing from the public domain. That is an asinine volume of work that will not be available for decades, upon decades, because the current law is more concerned with securing and holding onto profits, rather than the sharing of ideas. Not to mention that the federal punishment of hundreds of thousands of dollars in fines and possible jail time are far too severe for the nature of the "crime" being committed. Even someone educated in the current copyright law fighting for fair use may still be deemed a criminal and fined life-shattering amounts of money, because that is what the current system is designed to do. Clearly, these laws have long since moved past protecting artists and the ideas they stand for.

It is time to update and overhaul how copyright law works. This level of reform is not something that happens overnight, but is necessary in order to promote creativity and ensure that people can create freely without fear of their lives being destroyed by twisted, oppressive laws.

Such an example is touched upon in the documentary film *RiP!: A Remix Manifesto*, where sampling artist and DJ, Girl Talk, mentions the looming threat of being sued for ludicrous sums of money for using samples of other music to create new works. There is a massive amount of new, inspired work, that can be created from the borrowing and creative manipulation of existing copyrighted work. The first step is reducing the duration of copyright. One possible suggestion is that individuals should have the ability to protect their work for the length of their life, with possible extensions given with regards to the author's age at the time of creation. In tandem with this suggestion, corporations should have their current copyright length slashed in half. This is all to facilitate a healthy, relevant, and populous public domain from which individuals can draw from and create freely.

The next step is harder to specifically define and enforce, but is nonetheless essential in an updated, modern copyrighted world: the restrictions on fair use should be loosened and redefined to support artists, (especially those contributing directly to the public domain) more than it currently does. Sampling again plays a major role in this issue, given the immense costs to "rip" material from another source and repurpose it. With a new interpretation on what is deemed fair use, there can be a fairer balance between copyright holders receiving their proper compensation or credit, and other artists being able to use existing materials to create new works. The ability to allow a new type of "joint work," post-creation, may be a possible consideration.

This is not at all to say that copyright laws should not be enforced, however, there is great room for amendment. Just as the original premise of the Paul case explains, theft (direct copying) is not permissible, nor legal. For future productions it would be advisable for Paul to not create a work so largely intertwined and dependent upon the work of others; this would remove the hassle of securing rights in the first place – original compositions devoid of samples are

generally an easy way to ensure one would not run into copyright trouble. On the other side of things, artists should attempt to make accessing their work (in terms of licensing) as simple and direct as possible to negate any complications that could lead to legal trouble.

In conclusion, the key issue at hand is redefining the structure and purview that these laws have over artists and creators. This, in combination with strengthening and revitalizing the public domain, would likely lead to a more accessible and creative environment for artists. It is possible to extrapolate and speculate that from such revisions to copyright laws, there could be an increase in creativity (as others are freely inspired by the works around them; nobody creates in a vacuum), an increase of number of works (more works are able to be created without fear of intense legal punishment), which in turn could actually create more profit (due to more art being put into the world and exploited). It is important to address that the current system is flawed and needing revision; it is not pertinent that these suggestions be implemented exactly as they have been described, but it is crucial that they are considered, weighed, and tested against the current norms which so desperately need updating.

The original article may be viewed at:

<https://www.billboard.com/articles/business/legal-and-management/8547028/jake-paul-litmas-lawsuit>