

Pirate! Issues Of Copyright And Sampling



How much can you "borrow" and where's it all going..?

You are Richard Ashcroft, lead singer of The Verve, and author of Bittersweet Symphony, one of the records of 1997, and you're feeling pretty good.

After a long and frustrating career you've finally broken through and made it big sales, critical acclaim, and best of all, the money, particularly all that publishing income from radio airplay and record sales. Then you get a call from Allen Klein, ex-manager of the Rolling Stones who informs you that Bittersweet Symphony contains a string sample taken from a track by Andrew Loog Oldham, to which he owns the copyright.

Even though the sample is small, because you didn't get it cleared before release, Klein is entitled to all of your publishing income. 100% of the biggest hit you have ever written will go to an already very rich American because you thought the sample was insignificant. Oh dear... Luckily, Ashcroft was commendably philosophical about the loss. "It's horrible," he said, "but in the end, who gives a shit? There's more to this band than Bittersweet Symphony... We'll make another fucking symphony." He's probably right, but losing the rights to his biggest hit will cost him a small fortune. How did it happen?

Copycat Riots

The bottom line on sampling is this: you cannot sample any recorded work where a copyright exists and make it commercially available unless the copyright holder has granted you permission. Period. Forget myths like "you don't have to clear drum beats" or "you don't have to clear anything under five seconds". It doesn't matter how tiny the sample is; even if it's just a snare hit, you are infringing copyright and the holder can not only take out an injunction stopping manufacture and distribution of your recording, but can sue you for damages. If you're signed to a record company, have a look at the small print in your contract.

Most of them will have a clause insisting that you inform them of any samples on recordings you make for them and that you'll be held liable for any costs that arise from using illegal samples if you don't. On the plus side, operators like Klein are rare most copyright holders are perfectly willing to negotiate for use of their work.

The Borrowers

That's sampling then. But what of "interpolation", the practise of "borrowing" melodies and lyrics from another song and incorporating them into your own? Rap music is often cited as the pioneer of this, with Puff Daddy's I'll be Missing You rehash of The Police's Every Breath You Take being the latest example of a trend instigated by The Sugarhill Gang's Rapper s Delight, (based on Chic's Good Times) a worldwide hit in 1979. In this particular case, everyone's happy (apart from music-lovers).

As a producer of dozens of hits that have lifted bits of work from acts including Diana Ross and Herb "the A in A&M" Alpert, Sean "Puff Daddy" Coombs was wise enough to seek permission from Sting's publisher Miles Copeland, and a deal was done. Sting is thought to have made over a million pounds in publishing income, and Puff Daddy gets a cut of the songwriting action too, plus royalties from singles and spin-off album sales. More beloved of lawyers is the borrowing of bits of melodies, perhaps adding a note here and there and some new lyrics.

"Where There's a Hit There's A Writ" is often the case as disputes of this nature usually arise only when a song becomes widely heard. It may come as no surprise that Noel Gallagher's publishers (Creation Songs/Sony Music) have been kept busy. Several writers are now the happy recipients of publishing on many of Oasis's hits. Neil Innes, creator of spoof Beatles act The Rutles, receives a share of Whatever, which borrows from his Free To Be An Idiot, and MCA publishing get 50% of Hello (opening track on What's The Story) on behalf of Mike Leander and Gary Glitter, authors of Gazza's Hello Hello I'm Back Again. Half of Shakermaker is administered by Dick James Music on behalf of the four co-writers of I'd Like To Teach The World To Sing.

And Stevie Wonder is raking it in because Step Out, B-side of the Don't Look Back In Anger single, borrows from

his Uptight. Unlike sampling, there are few hard and fast rules on interpolation, but if you're worried about a song you've written, it's best to contact the publisher before release, as disputes often go to court and can get hideously expensive.

Getting Done For It

(Part 1)

One of the most infamous cases involving sampling was that of remixers DNA, whose radical reinterpretation of Suzanne Vega's Tom's Diner involved sampling the whole of Vega's accapella, adding a thunderous backing track and making a chorus out of a three second ad-lib. Despite the record going to number one in 11 countries, selling millions and being released as "DNA Featuring Suzanne Vega", DNA didn't get any royalties from the track. Nick Batt, one half of the duo admitted: "We always knew it was an illegal recording, but it was only ever intended to be a 500 copy white-label run, but radio picked up on it and within days we got cease and desist letters from A&M [Vega's record company]".

So what deal did they get? "We got a remixers fee £4000. We asked for producers points on the record, which I think was fair considering the radical nature of the re-arrangement, but they just kept saying they'd sue us if we didn't sign." Would he do the same again? "Definitely. I would have held out for some royalties though. There was so much demand for the record that A&M would have had to come to an agreement sooner or later".Getting

Getting Done For It

(Part 2)

White Town's recent No. 1 Your Woman has been the subject of both sampling and interpolation claims. The nagging "da da da-da da" chorus riff is sampled from a 1930s track by Al Bowley, something that White Town mainman Jyoti Mishra has freely admitted.

The owners of the copyright also claimed interpolation, as the Bowley original was called My Woman. The three co-writers of the Bowley track (including one Bing Crosby) now receive 50% of the publishing income of Your Woman. Sadly Bing isn't alive to reap the benefits, but George Clinton is. He's claiming an alleged use of a sampled drum beat on Your Woman, although Mishra's publishers dispute this.

Me Me Me!

Getting sampled can be the musical equivalent of winning the National Lottery, so it's hardly surprising that many acts are keen to encourage plundering of their work. David Bowie participated in the video to Puff Daddy's follow-up to I'll Be Missing You, Been Around The World, which fuses the melody of Lisa Stansfield's All Around The World with samples from his early eighties mega-smash Let's Dance.

Dozens of dance hits, including Black Box's Ride On Time, Snap's The Power and JX's Son Of A Gun have used vocals taken from the Acapellas Anonymous bootlegs that emerged in New York in the mid-80s. These albums are made up entirely of vocal tracks either copied straight from the b-sides of obscure 12" singles or lifted direct from the master tapes by unscrupulous engineers.

They have proved to be tempting material for bedroom producers looking for vocalists, and rich pickings for the copyright holders. If you're putting out a single, put an acappella version on it. You never know your luck...

Getting Clearance

To do it yourself, start by finding out who owns the rights. Check the sleeve notes or contact the MCPS (applicable only in United Kingdom)(Mechanical Copyright Protection Society, Tel. 0181 769 4400), a group that represents thousands of copyright holders.

Their Sample Clearance Department may be able to locate the copyright holder. Send them a tape containing the sample and your recording, and details of how you've used it. Then prepare to negotiate. These days, it's rare to be refused permission completely.

Where Now?

Cover versions have long been seen as an easy way to have a hit, but commercially astute artists have realised publishing is where the big money is. The cannibalisation of other people's work, whether it be through sampling or interpolation, has become an accepted way of having a hit while maintaining a piece of the lucrative publishing pie.

A complete unknown can bag a lucrative co-writing credit with a superstar just for adding a few words to a pop classic. However it's now such a common practice that it threatens to swamp originality. Radio stations are reluctant to program new, original material at the best of times, and songs incorporating elements already largely

familiar to an audience are always more likely to be playlisted ahead of the unfamiliar.

A quick look at the charts reveals an alarming amount of hits based in some way on other people's work, but as long as lucrative careers are being made, the record companies are happy. Publishers and copyright holders are making money for doing very little. Good for the music business, less good for music. What are we going to be sampling in ten years time? ' Neal Slateford is an Internet developer and record producer. He was the other half of DNA.