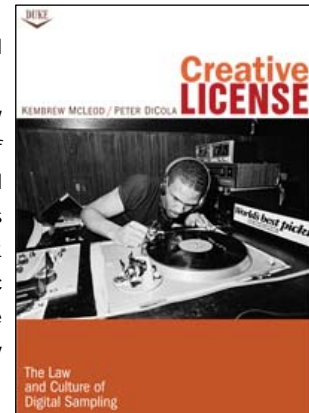


Kembrew McLeod & Peter DiCola, **Creative License: The Law and Culture of Digital Sampling**, Duke University Press, 2011, 325 pp., \$84.00 (hardcover); \$23.95 (paperback).

Reviewed by
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The cultural and artistic implications of the legal restriction of digital sampling has received relatively little scholarly attention. In *Creative License*, an engaging book that blends legal and cultural perspectives, Kembrew McLeod and Peter DiCola provide an informative introduction to the history of sound copyright and its sometimes baffling legal regulations. McLeod and DiCola set out to understand and explain the legal system that requires musicians to obtain a license to sample, or reuse, a fragment of another track in their own work. Instead of viewing the issue from the perspective of music industry professionals or copyright holders, the authors focus primarily on the experience of artists who sample, arguing that the current system is overly punitive and restricts creativity.



During the early years of hip-hop in the 1980s, there were few constraints on what artists could sample. On classic albums, groups such as Public Enemy, De La Soul, and the Beastie Boys melded sound fragments from a range of artists, generally without permission. McLeod and DiCola call this the “Golden Era of Sampling,” a fruitful period when rappers and producers were allowed to prioritize artistic innovation over financial considerations. Beginning with the court case *Grand Upright Music v. Warner Brothers Records* in 1991, however, sampling was increasingly criminalized, and the authors show that if many of the classic hip-hop albums of the early 1980s were made today, the artists would lose millions of dollars paying licensing fees.

McLeod and DiCola contextualize the practice of digital sampling in a valuable chapter on the history of sound collage, which they compare to blending techniques in literature and visual art associated with the avant-garde. They establish 20th-century composers Darius Milhaud, John Cage, and Karlheinz Stockhausen as forebears of digital samplers for their use of sound collage. Musical borrowing or appropriation occurred as early as the 17th century in European art music, with many key composers incorporating widely known folk melodies into their compositions.

The first appearance of sampling in popular music was “The Flying Saucer,” created by Bill Buchanan and Dickie Goodman in 1956, which was “a skit about alien invasion as told through then-current rock ‘n’ roll hits” (p. 38). Other popular musicians that experimented with sound collage include John Lennon, Yoko Ono, Brian Eno, and David Byrne. It is important to note that sampling as we know it today emerged within the African American performance tradition of hip-hop, and McLeod and DiCola are careful to situate it within the African diasporic context Paul Gilroy called the “Black Atlantic.” As Gilroy and others have argued, features such as an emphasis on orality, use of call and response, and a

tendency to view sound as communal property formed a transnational Black aesthetic that shaped the development of hip-hop. McLeod and DiCola explicitly counter the claim that hip-hop sampling is a lazy or "uncreative" technique, arguing that it "reflects the ingenious innovations of musicians across geography and genres" (p. 73).

The remaining chapters of *Creative License* focus on the operation of the legal system with regard to digital sampling. Sound samples differ from other types of intellectual property because the rights to musical compositions and sound recordings can be held separately. Like patents, though, these rights can be sold by the original owner, and they are occasionally bought by large aggregating corporations. Tracking down the copyright holder for a sample can require vast amounts of time and resources, and the fee for a license can cost anywhere from a few hundred to many thousands of dollars, depending on the popularity of the original track and the projected sales of the new one. Should an artist choose not to clear a sample before releasing an album, he or she is at risk of being sued by the copyright owner.

Most interesting and illuminating are the case studies that demonstrate the wide range of problems with the current licensing system. One key example involves Alan Lomax and Jay-Z. In his 2001 song "Takeover" from the album *Blueprint*, Jay-Z sampled a 2-second snippet of KRS-ONE's "Sound of Da Police," and according to the rules at the time, he then had to license all of the other samples included in the KRS-ONE track. One of these was a cover version of "Inside Looking Out," which originated as the 19th-century folk song "Rosie," collected and copyrighted by Alan and John Lomax in 1934 (p. 96). As a result of this convoluted musical genealogy, Alan Lomax received songwriting credit on Jay-Z's "Takeover," and his estate was able to collect royalties, despite the fact that Lomax never helped Jay-Z write the song. A similarly puzzling case involves Clyde Stubblefield, who worked as James Brown's drummer in the 1960s. Stubblefield himself came up with the beat on "Funky Drummer," which later became an immensely popular hip-hop sample. Since Brown was the copyright owner of the song, however, Stubblefield never received compensation aside from payment for his time in the studio.

Although they don't discuss it in detail, McLeod and DiCola suggest that there is a troubling racial component to these examples. Certain aspects of the copyright clearance system, such as Alan Lomax's songwriting credit on a Jay-Z song, recall the exploitation of African American artists by White music-industry executives. Current copyright law also favors melodic over rhythmic elements, reflecting the Western aesthetic preference for melody. If the system accounted for the African diasporic emphasis on rhythm, musicians like Clyde Stubblefield, who created the rhythmic foundations that hip-hop artists are most interested in sampling, would likely receive greater compensation.

The final chapter explores potential modifications that could overcome the biases and improve inefficiencies of the copyright clearance system. The authors are skeptical about the possibility of reform because an agreement between the government and the competing interests in the music industry is unlikely. Nevertheless, McLeod and DiCola propose a number of intriguing alternatives to the present system. Most radical is the notion of a "reverse liability rule," which would allow artists to sample, but require copyright owners to pay the government a small fee to block the song containing the sample from

being released if they wished. This would shift the financial burden from the sampling artists to the copyright holders.

Creative License is a carefully researched book that provides a comprehensible explanation of a confusing and often counterintuitive legal system, making it useful for a wide range of audiences. McLeod and DiCola's argument about the licensing system's detriment, especially to independent hip-hop artists, is both compelling and alarming. While the prospect of reform does appear remote at this point, *Creative License* will provoke informed debate on the topic and will ideally help facilitate what the authors seek: an atmosphere of interdisciplinary collaboration.