

ENTERTAINMENT AND SPORTS LAWYER

A PUBLICATION OF THE
ABA FORUM ON THE
ENTERTAINMENT AND
SPORTS INDUSTRIES

VOLUME 24, NUMBER 2
SUMMER 2006

Pick Me! Pick Me! The New Copyright Lottery

By Edwin F. McPherson

I represent artists in the music industry, the vast majority of whom write their own music (and some for others). It is for this reason that I am particularly sensitive about artists' and songwriters' rights. It is also for this reason that I am particularly sensitive about artists stealing other artists' music. If someone writes a song, he or she should and does own all right, title and interest in and to that song from the moment of creation, including all of the "bundle of rights" enjoyed by all copyright holders. The bundle of rights include: the right to reproduce the music, the right to prepare derivative works based upon the music, the right to distribute copies, the right to perform the music, the right to display the music publicly and, finally, the right to perform the music by means of a digital audio transmission.¹

Sampling is everywhere

With the advent of "sampling" in the last decade, the number of copyright suits that are filed every year has increased exponentially. Technically, a sample is "any digitally recorded representation of sound"² or "a digital snippet of

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Caveat Scriptor Don't Get Burned by Boilerplate Releases

By Peter L. Skolnik and Matthew Savare

The Catch 22 for unpublished writers

Writers often spend years crafting and perfecting their novels, screenplays, teleplays and stage plays. When their masterpieces are complete, they exult in a sense of euphoria, eager to shop their property to agents, studios and production companies. However, writers—particularly first-time writers—generally find it difficult to attract significant attention to their work. In the unlikely event an unpublished writer does find someone in the industry to read his or her material, the writer is oftentimes faced with a Hobsonian choice: to either sign a nonnegotiable release that is so favorable to the other party that it makes it extremely risky and costly for the writer to sue for copyright infringement or to decline to submit the property and pass on perhaps the only opportunity the writer may have to sell the work.

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Touchdown! Cleveland Browns Fans Earn Right to Use "Dawg Pound"

By Joseph Hanna

Victims of misery—from the last second heroics of John Elway and the Denver Broncos in "The Drive," to their franchise bolting east to Baltimore in 1995—the Cleveland Browns' faithful have reason to cheer again after a recent ruling rendered by the United States District Court for the Southern District of New York, which granted the National Football League Properties, Inc. (NFLP) and the Browns the rights to the phrase "Dawg Pound."

In the early 1980s, Cleveland's three-time Pro Bowl defensive back Hanford Dixon would bark like a dog to pump up his defensive teammates. The fans in Cleveland Municipal Stadium's bleacher section joined Dixon and, before too long, the 10,000-seat bleacher section became known as the "Dawg Pound." The die-hard Browns fans that made up the "Dawg Pound" began wearing dog noses, dog masks and bone-shaped hats. The Dawg Pound quickly developed a reputation around the league for their antics, including throwing dog bones and barking at the opposing team throughout the game.

The NFLP soon took notice of the vastly increased sale of the Brown's merchan-

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sound."³ Sampling is defined as "the process of encoding an analog signal in digital form by reading (sampling) its level at precisely spaced intervals of time."⁴ A sample, therefore, can include pieces of recorded music and other sounds that are taken from others' recordings and pieces that are not. Pieces that are taken from others' recordings are potentially infringing. Those that are not are simply digital sound bites from nature or machinery and are often from the artist's own recordings.

Fortunately, most of the artists that I represent do not engage in sampling other artists' music. In fact, at least one of my contemporary artists, Linkin Park, is so conscientious about using others' material that it not only refuses to use any samples of anyone else's music, it actually insists on recording its own vinyl records to use for "scratching," so that literally everything the band records or plays is original. However, some of my artists, like most contemporary artists, use samples. Such use has almost bankrupted many artists.

Some people in and out of the music industry do not understand the use of sampling. In some instances, sampling may make sense, particularly when the sample is of popular music. For instance, when M.C. Hammer sampled Rick James's "Super Freak" with his own "U Can't Touch This," the "Super Freak" sample was so pervasive and recognizable in Hammer's song that many people purchased the song, and presumably the entire album, because of their familiarity with the sampled song. When Run D.M.C. sampled Aerosmith's "Walk This Way," it gave Run D.M.C. instant credibility (and revitalized Aerosmith's career).

However, today's producers often use samples from music that is completely unrecognizable to most people. In fact, some of the samples are not considered music by many; they are just sounds or "beats." Many of today's producers do not play instruments and are constantly looking for new "beats," which they either make up on their own or take from other recordings as a sample. Unfortunately, most producers who use these "beats" generally take them from other artists' music.

Traditionally, although counter-intuitively, producers will place one or more samples in a recording, with or without telling the artist, and expect the record label to obtain "clearance"⁵ on the samples, essentially after the fact. Because the producer is, in theory, participating in the writing of the song, he or she expects to (and usually does) receive songwriting credit and publishing royalties in addition to his or her separately negotiated producer royalties.

Sample clearance

Generally, the clearance or permission for the sample must be obtained from both the copyright holder of the composition (usually the publisher) and the copyright holder of the sound recording (usually the record label). The sampled songwriter generally gets an upfront fee

and/or a percentage of the new composition, thus taking money directly from the new songwriter (including any cowriters, whether or not they had any knowledge of the sample).

The sampled record label (or whoever else owns the copyright to the sound recording) also generally gets an upfront fee, but may very well negotiate a percentage of the retail price of each album sold. All of this money gets charged to the artist, who may or may not have had any knowledge about the sample in the first place.

In some instances, these charges to the artist can substantially reduce the royalties that he or she earns from his album. However, if the artist is unrecovered⁶ with his record label (as most artists are) such charges will put the artist even further in debt with the label. Being further in debt further reduces his options and bargaining power (which was not significant to begin with).

Such permission is routinely given by both the sampled songwriter (or publisher) and the sampled label for various fees and fee structures. In fact, the practice of using samples and obtaining clearances is so pervasive in the music industry today that there are a number of companies whose sole function is to negotiate sample licenses.

In the early days of sample clearance, most samples were licensed for a one time, up front, buyout fee of \$500 to \$1000. Today, sample licenses from the publisher are generally sold on a percentage basis. Typically, publishers receive an ownership interest in the new song, which interest generally runs from 15 percent to 50 percent. In very rare occasions, the percentage is higher. On the sound recording side, there are advances paid ranging from \$2,000 to \$15,000 (typically \$5,000 to \$10,000), with a royalty "penny rate" of \$.02 to \$.07 per unit sold. What is paid depends on the length of the sample (as used in the new song) and the importance of the sample to the licensee's song.

Unfortunately, if for some reason clearance is not obtained, the sample is often already inextricably intertwined with the rest of the music that it would be impossible to remove the sample and keep the song. When this happens, labels, artists and producers find themselves in a very difficult position, potentially having to remove the entire song from the album, even if the song was earmarked as a potential hit.

Samples and the Copyright Act

When a sample from another's work is used without obtaining a license, the use of the sample generally constitutes copyright infringement.⁷ In fact, in general, the unpermitted use of a sample infringes both the copyright of the songwriter (or the publisher) and the copyright of the owner of the sound recording, as is obvious by the parties from whom permission must be granted for the use of a sample.

Once in a while, of course, a sample clearance "slips through the cracks," meaning that either the producer does not tell the label that the recording contains a sample or the sample clearance house is unable to get through to the copyright holder or someone at the label simply forgets to get the sample cleared.

Unfortunately, the Copyright Act is essentially a strict liability statute and, under any of those scenarios, the producer, label, artist, distributors, subdistributors and all the retailers of the recording containing the sample are technically liable for copyright infringement. This is the case whether the producer told anyone about the sample, whether the producer told the label about the sample, and whether the artist knew about the sample.

In some instances, the aggrieved artist will be a recognizable artist with a recognizable song. If this is the case, the artist has a genuine, valuable claim, whether or not she has a policy of rejecting sample requests. If the aggrieved artist is recognizable, that artist's song presumably has a significant value, the sample of which is designed to elicit the same or a similar response (by the audience) as the original. People may begin listening to the song and otherwise paying attention to it just because of the recognizable music in it.

More often than not, however, the aggrieved party is an unrecognizable artist with a completely unrecognizable song who invariably claims in a subsequent lawsuit to be absolutely, unequivocally, devastatingly offended by (1) the use to which the sample was put, (2) the persona of the artist who used the sample, (3) the type of audience to which the artist appeals, (4) the people with whom the artist associates, (5) the lyrics to the new song, or (6) some combination thereof.

In those cases, it is usually quite clear that despite his protests, the sampled artist would have agreed to just about any amount of money for a sample license because, in general, any amount of money would be found money that the artist never would have received but for the sample license. In addition, this money would usually be exponentially more money than the artist ever earned in connection with his own song.

It is nevertheless rare in such cases that the sampled artist will agree to any amount that is even remotely close to a reasonable sample license fee. In fact, such cases have become a new form of "copyright lottery" for sample plaintiffs, and they are out to win. Following is a case in point, one in which the plaintiffs presumably would have accepted any amount of money for a sample license; now, no amount of money is too much:

Turino v. Island Def Jam, et al. U.S.D.C., C.D. Cal. Case No. CV 05-01314 AHM (CWx)

Takiy Orqo

In 1980, three graduate students at the University of Texas at Austin formed a musical group to perform ethnic folk music from South America. Their names are Thomas Turino, Larry Crook and Dan Dickey. They named their group "*Takiy Orqo*" (which means "song mountain" in the Andean language Quechua). One of the graduate students, Thomas Turino, was proficient in playing a small, 12-(steel) string, Bolivian or Peruvian tin string instrument called a Charango.

In the summer of 1983, *Takiy Orqo*, which was never signed to a recording contract, recorded a vinyl album for the total cost of \$4,000, which included manufacturing costs and was borrowed from Larry Crook's wife. The album, recorded in four days, contained songs that were based on "traditional" South American folk music styles, some of which the graduate

students purported to write and some of which were written by others. Some of the composers of some of the music were credited on the album but were not paid from the sales. Some were not credited, let alone paid.⁸

The band recorded what they claim to be an original song entitled "*La Sirena*" (the mermaid). The liner notes for the album, also entitled "*La Sirena*" indicated that the song "*La Sirena*" was written by Thomas Turino, the Charango player, and was "based on the Peruvian wayno rhythm and form, but incorporates a varied ostinato pattern, subjectively reminiscent of mbira music." The liner notes reflected that some of the other songs were written by one or more of the other graduate students.

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Approximately 800 copies of the album were sold. Each of the members of *Takiy Orqo* cleared approximately \$700 in profits from the album. Nobody ever asked any of the graduate students to license any of the songs from the album; nor did anyone ever ask any of them to license the sound recording. Similarly, they did not receive a single dollar in public performance royalties from any of the tracks on the album. The only airplay that they even claimed to have received was on KUT-FM, a public radio station in Austin.

Thomas Turino is now a professor of anthropology and musicology at the University of Illinois at Champagne/Urbana. Larry Crook is an associate professor of music at the University of Florida. Dan Dickey is a Spanish teacher and the lower school dean of students at St. Andrews Episcopal School in Austin.

Christina Milian

Christina Milian, born Christine Flores, is an actress, dancer, singer and songwriter. She was a year old when "*La Sirena*" was recorded. She began her acting career when she was nine years old. When she was 13, she had a recurring role on the Disney Channel, in a television show entitled "Movie Surfers." She also had roles in "*Charmed*" and "*Sister to Sister*." She performed (her voice) in the 1998 film "*A Bug's Life*." Her feature film career began to flourish when she achieved starring roles in "*Love Don't Cost A Thing*" and "*Torque*." In 2005, she starred in a John Travolta film entitled "*Be Cool*," which was the much-anticipated sequel to "*Get Shorty*." That year, she also starred in "*Man of the House*," with Tommy Lee Jones and Cedric the Entertainer. In 2006, she is starring in "*Pulse*," written by Kiyoshi Kurosawa and Wes Craven. At the age of 24, Milian has appeared in over 21 movies and television episodes.

In 2000, Milian, who was always interested in music, signed a recording agreement with Island Def Jam. Island Def Jam released Milian's first single in 2001, entitled "AM to PM." The song was an instant success in many formats, including Pop, Rhythm, Hot AC and crossover, and reached No. 1 on *Billboard's* Hot Single Sales chart. The single was supported with a music video that received major play on local, regional and national video outlets.

Milian also wrote and recorded a single entitled "Between Me and You" with Ja Rule, which was also very successful, receiving a tremendous amount of video play on MTV and BET. The song became an instant hit on many formats, including Pop, Crossover Urban, Rhythm and Urban AC, and it reached Number 2 on many charts for up to five consecutive weeks. In addition, she wrote a song entitled "Play," which was recorded by Jennifer Lopez (with Milian on extensive backing vocals) and became a hit for Lopez when her album was released in 2001.

Milian was also featured on a track entitled "It's All Gravy" in a duet with Romeo of So Solid Crew. The song became a U.K. top ten hit single in 2002. She also wrote and sang the theme song to the Disney series "Kim Possible," which was entitled "Call Me Beep Me." The song became a number one hit on RadioDisney for twelve weeks. She also wrote the debut single for the group PYT, entitled "Same Ol' Same Ol'."

Poli Paul and Teedra Moses

In 2003, while Milian was in the process of recording her first U.S. album for Island Def Jam Records, Island Def Jam introduced her to a producer named Paul Poli, who is professionally known as Poli Paul. Poli had written the music for a song entitled "Dip It Low" approximately one year earlier, and had given the track to his writing partner, Teedra Moses, who wrote the lyrics and the melody to the song.

Poli had seen the vinyl "La Sirena" album in a record store in Pasadena, California, and decided to purchase it to use for samples. He used a 12-second segment of the song "La Sirena" in "Dip It Low." He looped the 12-second sample so that the sample played over and over again in the track. He then gave the track to Teedra Moses so that she could write the lyrics and melody.

When Milian first met Poli, he played five songs for her, including "Dip It Low." She and her mother, Carmen, who is her manager, asked Poli whether there were any samples in any of the songs. Although Poli does not remember this conversation and may have misunderstood what they were asking, Milian and her mother recall that he responded in the negative.

When Milian first heard "Dip It Low," she really liked it, and told Poli and Island Def Jam that she wanted to record it for her album. Island Def Jam thereafter set up a recording session for her, during which she sang the lyrics of "Dip It Low" to Moses's melody, over Poli's track, while Poli recorded her vocals.

Island Def Jam clearance

When Poli delivered the album to Island Def Jam, he informed them of the sample, and expected Island Def Jam's clearance department to obtain the proper clearance. Island Def Jam then hired an experienced sample clearance house to

clear the "La Sirena" sample. After several failed attempts to contact the copyright holders, the clearance person, Eric Weissman, got through to Tom Turino by telephone and had a short, preliminary conversation with him.⁹

In the interim, however, Island Def Jam asked Poli to replace the sample with a replay to avoid any infringement of the copyright in the "La Sirena" sound recording.¹⁰ Island Def Jam then hired two studio musicians "to create the same feel, but not copy" the sample. Poli then recorded the new music and delivered two versions of the album to Island Def Jam. One contained only the replay, and the other contained the replay and the sample.

Unfortunately, the version containing the sample was somehow sent to the person who ultimately mixed the album, and the final mix contained the sample. Notwithstanding that Island Def Jam authorized production of the "replay version only," the album was mistakenly manufactured and released with both the sample and the replay. However, the sample was essentially buried in the replay tracks and other musical elements, so that it was barely discernable.

Release of "Dip It Low"

"Dip It Low" was released as a single in January 2004 and became a moderate success with the advent of downloads. However, the song did not perform nearly as well as Milian's earlier hit, "AM to PM" or her single with Ja Rule. Notwithstanding a substantial amount of marketing and promotion, the album "It's About Time," which was released in June 2003, was by all accounts a failure, registering only 370,000 units sold on Soundscan.

Lawsuit filed

When Thomas Turino's son heard "Dip It Low," he immediately knew that the sample was from his father's song. Not long thereafter, Turino contacted his "partners," and then he contacted a lawyer, the same lawyer that is representing Bridgeport Music in over 400 separate sampling cases in the Sixth Circuit in Nashville. He filed a lawsuit on behalf of Turino, Crook and Dickey in the Central District of California, naming Island Def Jam, Universal Music & Video Distribution Corp., Poli, and Moses as defendants. Interestingly, they never named Milian as a defendant until more than nine months after the lawsuit was initially filed.¹¹

Nobody except the plaintiffs and their counsel had any idea why plaintiffs decided to sue Milian, a 24-year-old girl, who has supported her mother and two sisters since she was 10 years old. Although she received a very modest advance for the "It's About Time" album, she did not receive a single dollar in connection with "Dip It Low" (or "It's About Time") after it was released; nor did she receive any money whatsoever for performing the song.

Nevertheless, the plaintiffs were extremely aggressive with their theories. They claimed that their 12-second looped sample from "La Sirena" was responsible for 100 percent of the success of "Dip It Low." This contention completely ignored the fact that "Dip It Low" has lyrics (and "La Sirena" does not), thereby cutting their 100 percent figure at least in half. This contention also ignored Milian's popularity from acting and the fact that Milian had had two hit singles before "Dip It

Low,” and that there had been no album released following her first solo single. Essentially, plaintiffs asserted that neither Milian’s image, persona and popularity nor Island Def Jam’s multi-million dollar marketing and promotion program had anything to do with the sales of the single or the album.

Plaintiff’s expert

In fact, plaintiffs’ expert witness, an economist, opined that to his knowledge, the only successful singer who came to fame as an actress is Jennifer Lopez. He pointed out that a great number of leading actresses—including Meryl Streep, Jodi Foster, Maggie Smith, Katherine Hepburn, Elizabeth Taylor, or Judith Drench (sic)—have not made record albums, and a great number of singers have never actually acted in a movie.

Nevertheless, in deposition, the plaintiff’s expert was read a list of 26 famous actors who had substantial music careers and was asked if he had ever heard of any of them. They included Doris Day, Judy Garland, Rick Nelson, Frankie Avalon, Vanessa Williams, Jack Wagner, Rick Springfield, David Soul, John Travolta, David Cassidy, Shaun Cassidy, Shirley Jones, Patrick Swayze, Eddie Murphy, Jim Neighbors, Jamie Foxx, David Hasselhoff and Hilary Duff. The expert had not heard of many of them, had no idea that many of them had music careers, and attempted to distinguish the others from Milian’s situation. With respect to the expert’s statement “nor do a great number of singers actually act in a movie,” he was apparently also unaware of Frank Sinatra, Dean Martin, Sammy Davis, Jr., Bing Crosby, Eartha Kitt, Loretta Young, Dinah Shore, Bobby Darin, Rosemary Clooney, Mario Lanza, Jeanette McDonald, Jane Powell, Nelson Eddy, Pearl Bailey, Della Reese, Elvis Presley, Glen Campbell, Desi Arnez, Cher, Sonny Bono, Bette Midler, Dolly Parton, Kenny Rogers, Willie Nelson, Bob Denver, Sting, Kris Kristofferson, Hank Williams, Jr., Madonna, Harry Connick, Jr., Enrique Iglesias, Natalie Cole, Steve Van Zandt, Cyndi Lauper, Ricky Martin, George Strait, Reba McEntire, Randy Travis, Dwight Yoakum, Patti LaBelle, Chris Isaak, Queen Latifah, Snoop Dogg, Alicia Keys, Usher, Jay-Z, Beyoncé (Knowles), Janet Jackson, Whitney Houston, Courtney Love, Mariah Carey, Gwen Stefani, Paulina Rubio, Method Man, LL Cool J, DMX, Ice-T, André 3000 (Benjamin) and Ja Rule.

Plaintiff’s expert also testified and included in his expert report that with respect to Milian’s writing a hit song for Jennifer Lopez and writing other songs for *PYT* and a Disney television show, “none of these efforts has anything to do with the success of a subsequent record release. Indeed very successful songwriter persons or teams have failed to make a single successful album as a performer.” He then listed a few such songwriters. His list notably did not include Randy Newman, Neil Diamond or Dolly Parton, all of whom wrote songs for other stars before they became famous for singing their own songs. However, the expert admitted that none of the songwriters that he had mentioned was actually a performer of music.

The plaintiffs’ expert next claimed that the sample was responsible for between 86.2 percent and 100 percent of the sales of the album. The theory, again by the economist, was that because none of the other songs on the album (save one) had any significant radio airplay, they

did not drive any of the sales of the album. However, when the expert was asked what he would do if the infringing song were one of the other songs on the album, he testified that he would have to adjust his numbers and perform a different type of analysis.

The plaintiffs actually had the temerity to claim that “*Dip It Low*” was responsible for Milian’s success as an actress and, in particular, was responsible for plaintiff’s getting the part in “*Be Cool*.” They maintained this position for months, until they learned that Milian had been acting since she was nine years old and that the “*Be Cool*” part was cast long before the single was released.

Milian maintained throughout the litigation that she did not earn any money from the song no matter how much credit the jury ultimately gave to the sample. After recording costs, marketing, promotion and other costs, her royalty account with Island Def Jam was several million dollars in the negative.

Before “*Dip It Low*” was released, her attorney had several discussions with Island Def Jam about certain issues that existed between them. As a result of those discussions, Island Def Jam agreed to reduce her royalty account by \$1.25 million.

After the album was released, Milian “earned” approximately \$650,000 in artist royalties for the entire album. Her royalty account was credited with this amount. However, even with the credit, her royalty account was still several million dollars in the negative, and she never received a single dollar for the album.

The plaintiffs’ expert developed a novel theory as to how the \$650,000 and the \$1.25 million was a benefit to Milian and, therefore, amounted to a profit, which must be disgorged to the plaintiffs. As Island Def Jam’s attorney mentioned, these credits were like drowning in 75 feet of water instead of 100 feet of water; you are still going to drown. Is that a benefit? Perhaps, but it certainly does not rise to the level of a profit. The expert had a very difficult time responding to the question of how Milian was supposed to disgorge herself of these supposed profits and pay them to the plaintiffs.

The copyright lottery

In short, plaintiffs who earned a total of \$700 for their entire album are now demanding several million dollars for the 12-second loop used in one of the songs on their album. This amount is in great excess of all of the money that was earned by Island Def Jam, Milian, Poli and Moses, put together, for the entire “*It’s About Time*” album. Neither plaintiffs nor their counsel appear to be overly concerned with this fact. The parties are now awaiting trial.

This case is not atypical among sampling cases. In fact, it is quite rare that a sampling plaintiff does not grossly overestimate the value of the sample to the infringing song. It is also quite rare that a sampling plaintiff does not grossly over-



estimate the value of the infringing song to the revenue of the album. Although, in theory, plaintiffs' pervasive greed should not control the outcome of their lawsuit, anyone who has tried more than a few cases understands that juries, even federal juries, do not always make decisions based upon logic or justice.

As discussed above, samples are being used pervasively in the music business, and in this day and age, such use cannot be construed as "stealing" any more than an artist's "covering" someone else's entire song can be so construed.¹² Moreover, with sample plaintiffs becoming more and more avaricious and opportunistic, there must be a better way to manage the financial issues of samples than under traditional copyright laws.

A proposed solution

Perhaps a system could be created, similar to the compulsory license system, whereby a producer could obtain a sample for a predetermined rate. That rate should be a penny rate, either based upon how many seconds of the original song is taken or how many seconds are ultimately used in the new song (by looping or other method). The amount could be shared equally by the publisher and the label.

However, there must be some consideration for the relative popularity of the original song. For instance, it could be argued persuasively that a license for four seconds of "Stairway to Heaven" should cost more than four minutes of a charango-driven song without lyrics that might have played on one public radio station and was included on an album that could not achieve sales of more than 1,000 units. Perhaps, at the very least, there could be a premium rate for songs from albums that have sold more than 500 copies (gold) or 1,000,000 copies (platinum).

In a mechanical license situation, the songwriter has the right of first recording. In other words, there are no compulsory licenses available for artists that want to record a song that has never been recorded by the songwriter or by someone else with the songwriter's permission. In those cases, someone who wants to record the song must negotiate with the songwriter, and the songwriter can charge literally whatever he or she

wants to charge for the song. If the songwriter does not want anyone else to record his song, he can ensure that nobody does, simply by not recording the song himself.

In a sample situation, a few select artists absolutely refuse to allow any other artists to sample their music. Part of the new system could include a procedure by which a publisher or label could essentially opt out of the compulsory sampling system for a given song, album or entire catalogue.

However, in a situation that does not involve an opt-out, there should be a procedure by which a potential sample licensee can obtain a retroactive compulsory sample license by simply paying the compulsory license fee after the new recording is released. In the event that the clearance for a particular song was one of those that "slipped through the cracks," an artist could obtain a compulsory sample license rather than opening himself up to paying potentially more money than he (and his label) earned on his entire album. In this way, perhaps the copyright lottery that presently exists could be eliminated once and for all. ♦

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Endnotes

1. 17 U.S.C. § 106.
2. *Glossary of Electronic Musical Terms*: http://www.tagnet.org/digitalhymnal/en/glossary_m-z.html#S.
3. *Modern Music Scoring and Audio Glossary*: <http://www.ddmusic.com/Glossary.html>.
4. *Glossary of Electronic Musical Terms*: http://www.tagnet.org/digitalhymnal/en/glossary_m-z.html#S.
5. The act of obtaining proper copyright licenses.
6. Before an artist can receive any artist royalties from the sales of his or her albums, the record label deducts from otherwise earned royalties certain expenses relating to the album, including recording costs, marketing costs, print, television and other advertising costs, manufacturing

costs, independent promotion costs, transportation costs, living expenses, producer royalties, 50 percent of video costs, etc. Until the artist earns enough artist royalties to reimburse the label for all such costs, he or she remains "unrecouped." Once recouped, the artist will actually receive royalty payments from the label. However, the vast majority of artists are unrecouped with their record labels.

7. This is so unless the use is considered "de minimis." However, in the Sixth Circuit, and no other circuit, every unpermitted use of a sample is considered a per se violation of the Copyright Act, no matter how small and even if the sample was so distorted that it is impossible to hear the original sound.

8. Unfortunately, many courts in a copyright case would not allow a jury to hear that music from an underlying album is essentially stolen (or otherwise constitutes an infringement) unless the exact song that was sampled was one of the stolen songs.

9. Although Turino had an e-mail account and an e-mail address set up through the University of Illinois (his employer), he later testified that he had not used the account or the address for three years.

10. An "interpolation" or "replay" is essentially a reproduction of the sound of the original sample. A "replay," by definition, cannot infringe the copyright in a sound recording but may still infringe the copyright in the underlying composition.

11. Plaintiffs sued Milian exactly two days after the court-ordered cutoff to do so; however, the court denied Milian's motion to dismiss on that basis.

12. Any artist that desires to record any songwriter's song may do so with impunity and without permission as long as (1) the original songwriter has allowed the song to be recorded once before (either by himself or by someone else); and (2) the artist pays a "compulsory" license fee to the songwriter (or publisher). The amount paid is governed by statute and is presently nine cents per album sold.