



# Creative License: The Law and Culture of Digital Sampling

By Kembrew McLeod, Peter DiCola

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How did the Depression-era folk-song collector Alan Lomax end up with a songwriting credit on Jay-Z's song "Takeover"? Why doesn't Clyde Stubblefield, the primary drummer on James Brown recordings from the late 1960s such as "Funky Drummer" and "Cold Sweat," get paid for other musicians' frequent use of the beats he performed on those songs? The music industry's approach to digital sampling—the act of incorporating snippets of existing recordings into new ones—holds the answers. Exploring the complexities and contradictions in how samples are licensed, Kembrew McLeod and Peter DiCola interviewed more than 100 musicians, managers, lawyers, industry professionals, journalists, and scholars. Based on those interviews, *Creative License* puts digital sampling into historical, cultural, and legal context. It describes hip-hop during its sample-heavy golden age in the 1980s and early 1990s, the lawsuits that shaped U.S. copyright law on sampling, and the labyrinthine licensing process that musicians must now navigate. The authors argue that the current system for licensing samples is inefficient and limits creativity. For instance, by estimating the present-day licensing fees for the Beastie Boys' *Paul's Boutique* (1989) and Public Enemy's *Fear of a Black Planet* (1990), two albums from hip-hop's golden age, the authors show that neither album could be released commercially today. Observing that the same dynamics that create problems for remixers now reverberate throughout all culture industries, the authors conclude by examining ideas for reform.

*Interviewees include* David Byrne, Cee Lo Green, George Clinton, De La Soul, DJ Premier, DJ Qbert, Eclectic Method, El-P, Girl Talk, Matmos, Mix Master Mike, Negativland, Public Enemy, RZA, Clyde Stubblefield, T.S. Monk.

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## **Editorial Review**

### Review

“[A] very readable layman’s guide to the legal framework underpinning the American sampling regime. . . . [A] great addition to the growing library of works showing that the endless addition of expanded property rights does nothing to ‘promote the progress’ of music, stifles expression and serves only to let Jimmy Page buy another Aleister Crowley first edition.” - Peter Shapiro, *The Wire*

“Do you ever listen to records like the Beastie Boys’ *Paul’s Boutique* or Public Enemy’s *Fear of a Black Planet* and wonder why they sound so different from today’s hip-hop? It turns out one of the biggest reasons may be copyright law. . . . McLeod and DiCola always keep an eye on the bigger picture. They are as interested in the cultural as the legal, and the book succeeds greatly in broad terms as a history of music sampling.” - John McLeod, *Flagpole*

“*Creative License* is for musicians, music fans and anyone interested in the history of hip-hop, sampling, and mash-ups, as well as for those who are curious about the evolution of US copyright and licensing laws. It’s also incredibly timely, given the present climate of our musical culture, when the internet has made sampling—in every medium—a way of life.” - Christel Loar, *PopMatters*

“*Creative License* is recommended not just for music geeks or music business geeks, but for anyone interested in law, the arts or both. Well written and treated with care, McLeod and DiCola’s work should be read on college campuses around the country.” - Stephon Johnson, *Amsterdam News*

“*Creative License* is a fantastic and deep look at the business, art, culture, ethics, history and future of musical sampling. The authors—respected academics/writers/filmmakers—undertook to interview a really amazingly wide spectrum of people involved in music production, and what emerges is a clear picture of how legal rulings, historical accidents, musical history, good intentions, naked greed, and conflicts of all kind came to produce our current, very broken system for musical sampling. . . . It’s a fascinating and important read.” - Cory Doctorow, *Boing-Boing*

“Readers whose experience started with ‘Can’t Touch This,’ matured with *The Gray Album* and ended with *All Day* can expect to have their knowledge substantially broadened. Music junkies, intellectual property lawyers and cultural critics will journey into ‘enemy’ territory. The authors give voices and personalities to sampling artists, holders of publishing and reproduction rights, and the sampled artists who have become a natural resource for the other two groups.” - David A.M. Goldberg, *Honolulu Weekly*

“Kembrew McLeod and Peter DiCola have written a masterful exploration of the complex creative, financial, and legal issues raised by digital sampling. Their book should be required reading for anyone with a serious interest in music copyright.”—**Jessica Litman**, author of *Digital Copyright*

“The fact that a seemingly simplistic artistic notion—of collecting, meshing, and arranging previously recorded sounds—would eventually result in a sharp and comprehensive book, *Creative License*, and companion film, *Copyright Criminals*, is mind boggling. This study is a work of art in itself, so solid that it may leave no other choice but to be sampled as well.”—**Chuck D**, co-founder of Public Enemy

“*Creative License* provides a solid explanation of music copyright process and practice and the law for anyone from the legal novice to the full-time music lawyer.”  
(Eric Farber *California Lawyer*)

“A methodical yet accessible exploration that addresses concerns from several perspectives and invites spirited discussion. Essential for students of intellectual property law, aspiring recording artists or producers, and hip-hop history buffs.”  
(Neil Derksen *Library Journal*)

“With the high-cost, litigation-aware environment that has emerged around the art of sampling, many artists simply won’t sample any more. As the authors of this excellent book acknowledge. . . . This is not simply a book for people with an interest in hip hop production. It is a must for anyone who is interested in copyright stories so absurd that they reveal the contradictions and tensions at play when unclear and convoluted laws put creativity and commerce on a collision course.”  
(Martin James *Times Higher Education*)

“*Creative License* is a fantastic and deep look at the business, art, culture, ethics, history and future of musical sampling. The authors—respected academics/writers/filmmakers—undertook to interview a really amazingly wide spectrum of people involved in music production, and what emerges is a clear picture of how legal rulings, historical accidents, musical history, good intentions, naked greed, and conflicts of all kind came to produce our current, very broken system for musical sampling. . . . It’s a fascinating and important read.”  
(Cory Doctorow *Boing-Boing*)

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(Christel Loar *PopMatters*)

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(Peter Shapiro *The Wire*)

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(Stephon Johnson *Amsterdam News*)

“As someone who has studied the subject of digital sampling at some length, I am impressed with and grateful for this book by Kembrew McLeod and Peter DiCola. I am delighted to recommend *Creative License*, an engaging, provocative, and thoroughly researched study of a practice that is equally celebrated, maligned, and misunderstood.”

(Mark Katz *ARSC Journal*)

“A smart, impeccably researched, clearly written book that guides the reader through the murky quagmire of musical copyright law and normative industry practices with wit and style.”

(Gilbert B. Rodman *Cultural Studies*)

#### About the Author

Kembrew McLeod is Associate Professor of Communication Studies at the University of Iowa. He is the author of *Freedom of Expression®: Resistance and Repression in the Age of Intellectual Property* and *Owning Culture: Authorship, Ownership, and Intellectual Property Law*, and co-creator of the documentary film *Copyright Criminals*.

Peter DiCola is Assistant Professor at Northwestern University School of Law. He is a board member and former Research Director of the Future of Music Coalition.

## Users Review

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#### Rodney Schmitt:

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