How Copyright Affected the Musical Style and Critical Reception of Sample-Based Hip-Hop

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In the Write

In 1991, the first lawsuit regarding sample-based hip hop, Grand Upright Music Ltd. v. Warner Brothers Records, was decided in court, and this decision forever changed how artists and their record labels approached sample-based hip hop. Although several lawsuits had been filed before 1991, all of those were settled out of court. There was no established legal precedent until this particular case. After 1991, artists changed how they sampled, largely out of fear of copyright infringement lawsuits. Hip-hop artists adapted and modified their musical language to accommodate the reduced availability of samples. Considering the music of five hip-hop groups, all of whom released sample-based music before and after 1991, I have developed a typology to quantify how the sample-based music of the Beastie Boys, De La Soul, Public Enemy, Salt 'n' Pepa, and A Tribe Called Quest changed after 1991.

The typology, which is a classification system for every individual sample in a sample-based hip-hop track, is a concrete language for discussing the structural components in sample-based hip hop. As we will see, each group adapted their production styles in interesting and creative ways in order to accommodate fewer available samples.

While some scholars such as Kembrew McLeod, Peter DiCola, Joanna Demers, and Siva Vaidhyanathan claim that the sample clearance system has only negative consequences for musicians, I would argue that these outcomes for the musicians are not necessarily positive or negative. The current scholarly conversation about sample-based music from this period is framed by rhetoric in which the hip-hop producers are the innocent bystanders who fall victim to the evil record labels, greedy copyright holders, and sneaky sample troll companies. A typological analysis of this music is a means of quantifying how the musicians adapted their production in light of fewer available samples.

This is not to minimize the importance of copyright law and its effect on artistic and creative processes, of course. I agree wholeheartedly

with Mark Katz, who avoids arguing for revisions to the copyright laws surrounding sampling but notes that "sampling—in many cases—should be treated as a form of protected speech immune to prosecution for copyright infringement" (157). However, I would like to open a discussion about how musicians were able to maintain a sense of their earlier musical styles even when their primary creative tools—that is, samples—were severely restricted. By and large, these five groups did not lose critical acclaim or financial success solely on the basis of the observable changes in their sample-based music.

In fact, Public Enemy—the group most often cited by scholars and critics as a victim of sample licensing and lawsuits—did become less popular during the 1990s, but not because they changed their approach to sampling. As we will see, Public Enemy and its production team, the Bomb Squad, found a number of creative ways to replicate their pre-1991 sample-based sound using a fraction of the samples. A survey of contemporary reviews and criticism reveals that Public Enemy's decline in popularity during the 1990s was largely a result of the group's unwillingness or inability to update their sound or lyric message. If anything, Public Enemy's music sounded the same to critics and other listeners, not different.

Legal Ramifications of Sampling

Because artists such as the Beastie Boys and De La Soul settled the earliest sampling lawsuits out of court, there was no legal precedent for sampling until the 1991 decision in Grand Upright Music Ltd. v. Warner Brothers Records (Arewa; Demers; McLeod and DiCola; Vaidhyanathan). This case regarded Biz Markie's "Alone Again," which included a sample of the piano accompaniment from Gilbert O'Sullivan's "Alone Again (Naturally)." Judge Kevin Thomas Duffy not only found the defendants guilty of copyright infringement but also advocated criminal prosecution for the theft of the music:

> "Thou shalt not steal" has been an admonition followed since the dawn of civilization. Unfortunately, in the modern world of business this admonition is not always followed. Indeed, the defendants in this action for copyright infringement would have this court believe that stealing is rampant in the music business and, for that reason, their conduct here should be excused. The conduct of the defendants herein, however, violates not only the Seventh Commandment, but also the copyright laws of this country. (Grand Upright v. Warner, 780 F. Supp. 182)

Duffy's decision reveals that the defendants may have made their case for the ubiquity of sampling, but the courts were not ready to accept sampling as anything other than outright theft.[1]

Another sampling lawsuit settled in court was the unanimous 1994 Supreme Court decision in Campbell v. Acuff-Rose Music, Inc., which involved 2 Live Crew's parody of Roy Orbison's "Pretty Woman" (Demers 54–59). 2 Live Crew sampled the guitar from Orbison's track and looped it, and they added a drum machine. 2 Live Crew's rapped lyrics then parody Orbison's. In this case, the Court found in favor of 2 Live Crew, ruling that parodies were covered under fair use. In other words, the samples in 2 Live Crew's "Pretty Woman" were not considered copyright infringement because the new lyrics parodied those of the source track. This case established that samples were fair use only if they were joined by additional musical borrowing in the form of parody.

Both Grand Upright Music and Campbell v. Acuff-Rose address what I call structural sample types, that is, samples of instrumental sounds that are looped throughout a new track. However, there is a third, lesser known legal decision from the 1990s that addressed samples of lyrics. In Jarvis v. A&M Records (decided 1993), the court found that The Crew infringed copyright when they sampled lyrics from Boyd Jarvis's "The Music Got Me" in their track "Get Dumb" (Demers; McLeod and DiCola). The court found that the sampled words "ooh" and "free your body" were copyrightable expressions. The court in this case cited the 1991 Grand Upright case as legal precedent.

These lawsuits instilled fear in artists and record labels about the potential losses of millions of dollars per lawsuit. As McLeod notes, "The assumption is that any sampled sound of any length in any context is without doubt copyright infringement, unless it's a parody" (83). Between the out-of-court settlements and the courts' tendencies to rule in favor of the sampled plaintiff—except in the case of parodies—hip-hop artists found themselves accused of theft and vulnerable to six-figure lawsuits. In response, hip-hop artists and labels began licensing all sampled sounds for their new tracks.

Sampling lawsuits were not a problem limited to the early 1990s. They remain prevalent to this day: in April 2012, the Beastie Boys were sued for samples that appeared in "Hold It, Now Hit It," "The New Style," and "Car Thief," all of which were released in the 1980s. Hip-hop artists and their record labels are constantly on the lookout for lawsuits from "sample trolls," one-person corporations such as Bridgeport Music that acquire hundreds of copyrights and subsequently file hundreds of copyright-infringement lawsuits. Also, DJ Jazzy Joyce told me that certain record companies ignore

requests for licensing and wait to see if the artist releases the track without permission, and then they sue, using the artist's original request as evidence.

In the interviews I conducted with hip-hop producers, they described a number of ways they avoid costly sample licensing fees. First, many producers, most notably Dr. Dre, will hire studio musicians to replay selected passages of music. After recording the studio musicians' performance, they sample their own recording of the replayed material. By using studio musicians, producers only have to pay publishing—or songwriting—fees for the music. In comparison, musicians who sample an existing recording have to pay both publishing fees and mechanical—or recording—fees. The mechanical fees are usually much more expensive. Sampling their own recordings of studio musicians allows producers to sample a version of a particular track for less than half the cost of sampling the original recording. These producers are still sampling, in a sense, although they are sampling their own recording rather than the original recording. Several producers I interviewed agreed that, while replaying the material is a less-costly alternative to sampling, they would not replay material if they could sample without legal consequences or if it was not so expensive to sample the original recording. Forest Factory, who replays nearly all of his music himself, explains succinctly, "If copyright wasn't a problem, I would sample."

A second approach producers take is to "chop" or "flip" a sample. Chopping and flipping have always been a part of sampling practice, but now they are a way to avoid paying a licensing fee as well as to show off one's skills as a producer or DJ. These practices involve manipulating sampled material beyond recognition, either by shredding it to sonic bits or playing it backwards or upside down, as it were. As producer Vinroc explained to me, if a producer wants to sample a famous recording without having to pay for a license, he must "completely chop it to pieces so it's unrecognizable." Similarly, in his interviews with hip-hop producers, Joseph G. Schloss was also frequently told that "samples are often not cleared at all, on the assumption that the owner of the master rights would not be able to recognize that the song had been sampled in the first place" (177). A hip-hop producer's skills, therefore, can not only earn them recognition as a musician but also as an evader of lawsuits.

Third, producers avoid sampling the music of entire catalogues, record labels, or artists. Certain artists always refuse requests for licensing, such as Anita Baker, the Beatles, Led Zeppelin, and Prince (Demers; McLeod and DiCola). Also, the licensing fees for certain artists are always

sky-high. Producer Apple Juice Kid told me that he avoids sampling groups such as Van Halen because he knows it would be too expensive to license. After a disastrous lawsuit in the 1980s, De La Soul's record company Tommy Boy gave them a list of artists that they could not sample under any conditions. The "sample troll" company Bridgeport owns the copyrights for nearly all of George Clinton's music, making it virtually impossible to sample Clinton's music without risking a lawsuit from Bridgeport or else paying them tremendous licensing fees.

Producers also avoid costly licensing fees by working closely with other artists and those artists' record labels. As Apple Juice Kid explains, he has sampled the music of his friends' band, Delta Rae. When Delta Rae signed a record contract with Warner, he knew they would help him with the sample clearance. His personal connections with the musicians he wants to sample will expedite his ability to license those samples, and he assumes he will pay a lower fee than another artist with no personal connection to the band. Thus, the sampling artists' materials may also be limited by who they know and what connections they have.

Finally, some producers simply abandon a track if they cannot clear the samples it contains. In some cases, if they can not clear one specific sample, the producer will try to rework the track with different samples. The end product, though, is very different; as DJ Bobcat explained, "I ended up creating something that worked, but it really turned into another song. Whether lyrics are there or not, it turns into another song." One wonders how many sample-based tracks have never been completed because of sample clearance issues.

Producer Mr. Len told me about his attempts to license a sample for "Taco Day," a track with lyrics by rapper Jean Grae. "Taco Day" is a tale of the revenge a sexually abused teenage girl takes on those who harmed her, and it was supposed to be the centerpiece on Mr. Len's 2001 album *Pity the Fool*. He found the perfect material to sample for that track: an excerpt from Philip Glass's soundtrack to the 1985 film *Mishima: A Life in Four Chapters*. According to Mr. Len, his label Matador could not afford to pay the amount Glass's label wanted for the sample:

> In my head, I was like, "Philip Glass is cool." He is! That style of minimalism was perfect for the *Pity the Fool* album because I wanted to be minimalist existentialist, and I found nothing more right than sampling Philip Glass. ["Taco Day"] is the biggest song on the record, like nine minutes long. It was a statement record. You

can show how much you can do with so little. His [Glass's] whole thing was, "Pay me." I don't think anyone there took the time to actually see what I was trying to do. It was like, "You're using it. Pay us."

Mr. Len was forced to leave out the samples.[2] Instead, he and Jean Grae recorded a different version of "Taco Day" for *Pity the Fool*, but it is a completely different track than he had originally envisioned. He told me that he plans to release a free version online that includes the Philip Glass sample, but for now, he has discarded it.

This story of "Taco Day" illustrates several of the problems with sample licensing: artists are limited by what their record labels can afford to license, people other than the artists make financial decisions, and producers have to change or abandon their music because they cannot afford or clear the samples they want.

Stylistic Reactions to Sample Licensing

With the imposition of so many limitations, not to mention the fine line between creativity and a lawsuit, sample-based hip-hop artists have adapted their production approaches in many ways. The music of sample-based hip-hop artists the Beastie Boys, De La Soul, Public Enemy, Salt 'n' Pepa, and A Tribe Called Quest changed quantifiably over approximately a ten-year span. Applying the analytical methods of the typology to these artists' music reveals that they not only sampled less often but included different types of samples in their music to accommodate the smaller total number of samples available. By changing the types of samples and their techniques of sampling, each group modified certain elements of their musical styles without necessarily abandoning every defining feature of their sample-based musical styles.

I selected these five groups for this study for several reasons. First, all five are rap ensembles with multiple members, and the lead rappers in the groups remained consistent across the various albums examined. Second, all of these groups are relatively well-known and have had a reasonable amount of commercial success—all five have had at least one platinum record as certified by the Recording Industry Association of America. Finally, all of these groups released at least two albums before the December 17, 1991 Grand Upright decision and at least two albums after the Grand Upright decision. By using 1991 as the turning point, it becomes clear how the groups' musical styles changed.

Artist Album	Year	Label	Primary production team
The Beastie Boys			
Licensed to Ill	1986	Def Jam	Rick Rubin
Paul's Boutique	1989	Capitol	The Dust Brothers
Check Your Head	1992	Capitol	Mario Caldato, Jr.
Ill Communication	1994	Capitol	Mario Caldato, Jr.; the Beastie Boys
De La Soul			
3 Feet High and Rising	1989	Tommy Boy	Prince Paul
De La Soul is Dead	1991	Tommy Boy	Prince Paul
Buhloone Mindstate	1993	Tommy Boy	Prince Paul
Stakes is High	1996	Tommy Boy	De La Soul
Public Enemy			
Fear of a Black Planet	1990	Def Jam	The Bomb Squad
Apocalypse '91 . . . The Enemy Strikes Black	1991	Def Jam	The Bomb Squad; the Imperial Grand Ministers of Funk
Muse-Sick-N-Hour-Mess-Age	1994	Def Jam	The Bomb Squad
He Got Game	1998	Def Jam	The Bomb Squad
Salt 'n' Pepa			
A Salt with a Deadly Pepa	1988	London	Hurby Luv Bug
Blacks' Magic	1990	London	Hurby Luv Bug; Spinderella
Very Necessary	1993	London	Hurby Luv Bug; Salt 'n' Pepa
Brand New	1997	Island Black	Salt 'n' Pepa; Esmail
A Tribe Called Quest			
People's Instinctive Travels and the Paths of Rhythm	1990	Jive	A Tribe Called Quest
The Low End Theory	1991	Jive	A Tribe Called Quest
Midnight Marauders	1993	Jive	A Tribe Called Quest
Beats, Rhymes, and Life	1996	Jive	A Tribe Called Quest

Figure 1: Albums studied, listed chronologically by artist.

Figure 1 lists every album studied. These are commercial studio albums, and they do not include compilations, collaborations, or greatest hits. I analyzed every track on these twenty albums—328 tracks in total—according to the types in the typology. Using these data from my typological analyses, I then determined how the groups' sample types changed over time.

During the next section, I refer to each group's album 1, album 2, album 3, and album 4. This is shorthand for the albums studied, not the albums the group has released over its entire career: a group's album 1 means the first of the four studied, not the first album the group ever released. In other words, a group's album 1 was released prior to 1991. A group's album 2 was released either prior to or during 1991; albums released during 1991 were still released prior to the Grand Upright decision, however. Albums 3
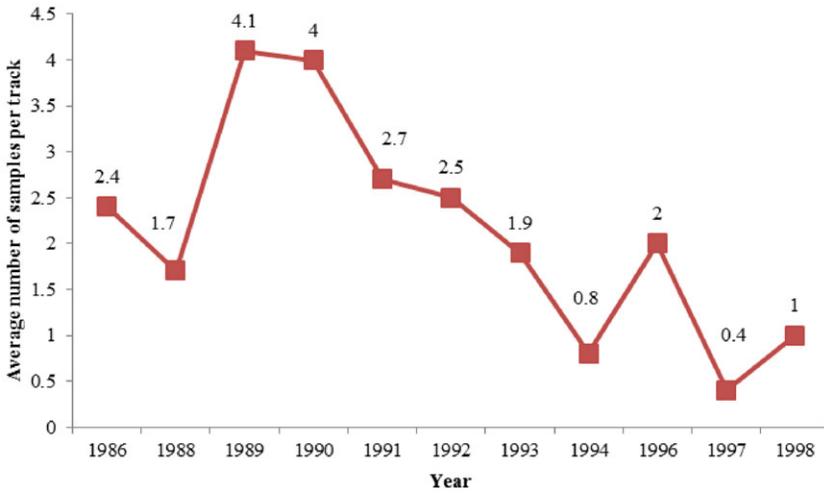
Figure 2: Average number of samples per track by year in selected albums released by the Beastie Boys, De La Soul, Public Enemy, Salt 'n' Pepa, and a Tribe Called Quest.

and 4 were released after 1991. In the cases of the Beastie Boys, De La Soul, and A Tribe Called Quest, what I term album 1 in this chapter is actually the group's debut album, but Public Enemy and Salt 'n' Pepa each released albums prior to their album 1 in this study.

Not surprisingly, the sheer number of samples each group used begins to drop in 1991. Although some groups such as Public Enemy and the Beastie Boys released albums before 1991 that contained over 100 different samples, most groups' post-1991 albums contain fewer than 30 samples, and sometimes as few as five samples, in the case of *Brand New*, Salt 'n' Pepa's 1997 album.[3] For ease of comparison, I refer to the average number of samples per track (rounded to the nearest tenth) rather than the average number of samples per album. Figure 2 charts the average number of samples per track per year of all 20 albums combined. Note that there is no data for 1987 and 1995 since none of the five groups released an album in those years. For years when more than one group released an album (1989, 1990, 1991, 1993, 1994, and 1996), I also averaged the groups' average number of samples per track.

The average number of samples per track peaks during 1989 and 1990, when tracks contain an average of at least four samples. The average number of samples per track decreases dramatically after 1991. By 1994, most tracks, on average, contain fewer than two samples and sometimes even less than one, meaning that the album has fewer total samples than it has tracks.
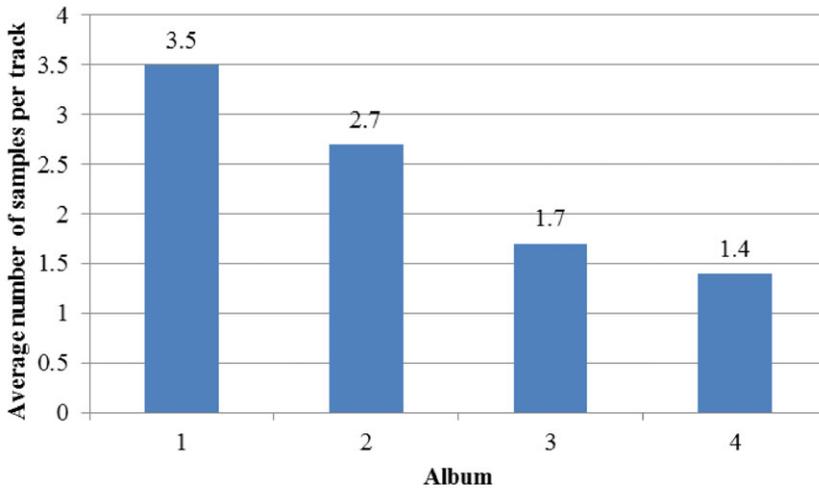
Figure 3: Average samples per track in albums 1, 2, 3, and 4 by the Beastie Boys, De La Soul, Salt 'n' Pepa, and A Tribe Called Quest.

Another way to consider the decline in number of samples is to look at the average number of samples in albums 1, 2, 3, and 4 (see Figure 3). Each data point then has the same number of albums to average, unlike the above figure in which some years have one album while other years have three albums to average.[4]

The average number of samples per track begins to decline after album 1, but the steepest drop is between albums 2 and 3, when the average drops by an entire sample per track. By album 4, artists included half the number of samples that they had in albums 1 or 2.

A Typology of Sampling in Hip Hop

In order to discuss concretely the structure and form of sample-based hip hop, I have created a typology. The typology is a systematic terminological and conceptual approach to the repertory of sample-based hip hop. I developed the typology after studying hundreds of hip-hop tracks released between approximately 1985 and 2011. The basis of the typology and the differentiation of sample types come from my own listening and analysis. For the preliminary source identifications, I used websites such as Who Sampled, The Breaks, Crate Kings, and Wikipedia, as well as CD liner notes and artists' websites. By analyzing the relationships between source tracks and the hip-hop tracks that sampled them, I was able to identify several specific formulas producers use to incorporate sampled sounds into new

- **Structural**: looped (repeated end-to-end in sustainable patterns throughout a track)
  - o **Percussion-only**: borrowing only non-pitched rhythmic instruments from the source
  - o **Intact**: borrowing drums and various combinations of bass, keyboard, guitar, or other instruments, all of which sounded simultaneously in the source
  - o **Non-percussion**: using original bass, keyboards, or other instruments, but lacking any sampled drums
  - o **Aggregate**: using drums and various combinations of instruments, but each sampled from a distinct source
- **Surface**: decorate or emphasize the structural samples
  - o **Constituent**: only a beat long and appearing at regular intervals atop the groove
  - o **Emphatic**: appearing at the beginning or end of a track
  - o **Momentary**: appearing only once in a track but in an unpredictable place
- **Lyric**: spoken, sung, or rapped text
  - o **Singular**: heard once during a track
  - o **Recurring**: heard repeatedly during a track, usually in the choruses

Figure 4: A typology of sampling in hip-hop.

hip-hop tracks. To create the typology, I named these formulas; therefore, the typology is a way to speak of extant musical practices.[5]

In the typology, I have identified three main types of samples: structural samples, surface samples, and lyric samples, a short guide to which appears in Figure 4.

Typological Analysis of Sample-Based Music Before and After 1991

With the typology, we can now describe the artists' changing use of samples with a greater level of specificity. Not only do groups include fewer samples in their later albums, but they also include different types of samples. Figure 5 is a graph of the distribution of the three main sample types across the groups' four albums. In calculating these numbers, I first determined the distribution of sample types in each album as a percentage, rounded to the nearest tenth of a percent. For example, Salt 'n' Pepa's album *A Salt with a Deadly Pepa* has 20 total samples, 11 of which are structural sample types (55.0%), three of which are surface sample types (15.0%), and six of which are lyric sample types (30.0%). Next, I averaged the percentages for each group's albums 1, 2, 3, and 4, determining the average distribution of sample types per period.

As the graph shows, the percentage of structural sample types spikes in album 2, which was released before or during 1991. Structural sample types do decline slightly in the groups' albums 3 and 4, but they continue to account for approximately half of all samples each album contains. In
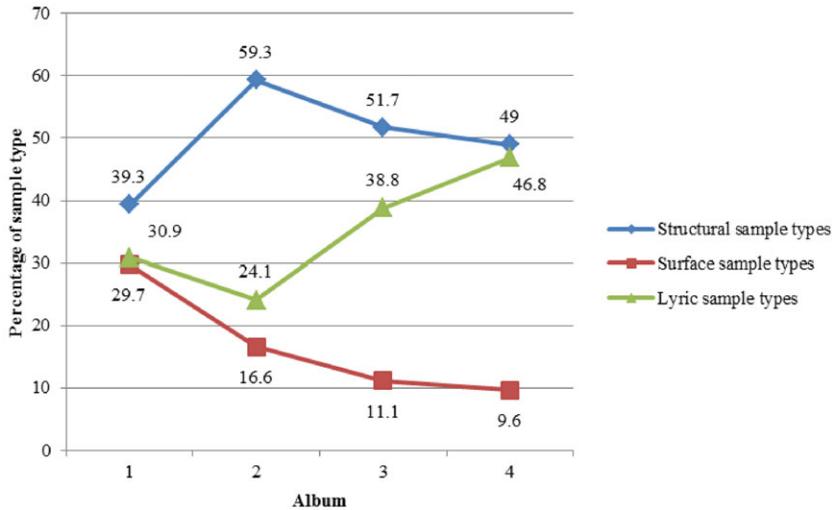
Figure 5: Average percentage of sample types in albums 1, 2, 3, and 4 by the Beastie Boys, De La Soul, Public Enemy, Salt 'n' Pepa, and A Tribe Called Quest.

contrast, surface sample types plummet: in album 1, between one-fourth and one-third of the samples were surface types, but by album 4, surface sample types account for less than 10% of all samples. At the same time, lyric sample types increased dramatically, nearly doubling in proportion between albums 1 and 4. From these data alone, it is clear that artists continued to use about half of their available samples for structural sample types, but in albums 3 and 4, the proportion of lyric samples increased significantly while the proportion of surface sample types decreased significantly. Further, sampling artists approached each of the three sample types differently over time.

Structural samples

The most noticeable change in albums 3 and 4 was the near total disappearance of the aggregate structural sample type—in which the drums, bass, guitar, horns, or other parts are each sampled from a different source. Of the five groups studied, only three included any aggregate tracks on album 4, and each of those three groups only included a single aggregate track. This is quite a contrast to earlier albums: for example, over three-quarters of the tracks on A Tribe Called Quest's 1991 *The Low End Theory* were aggregate types (11 of 14 total tracks on the album are aggregate types).

Clearly, all five groups avoided aggregate sample types, but what did they use instead?

First, groups began using more intact structural sample types than aggregate structural samples. In an intact structural sample, the producer samples all sounding layers from the source track together. Intact structural samples only have a single track to license, but they also reduce the uniqueness of the sound. Combining component layers from different sources into an aggregate structure is much more distinct than an intact structural sample in which every layer comes from the same place in the same source track.

To combat the easy recognition that can come with intact samples, producers sought obscure materials to sample. For instance, Salt 'n' Pepa's 1997 single "R U Ready" includes an intact structural sample from Brass Construction's "Watch Out," which, to my knowledge, is the only time this particular Brass Construction track has ever been sampled. Salt, who coproduced this track, attempted to combat the easy recognizability of an intact structure by sampling an obscure source track.

A second way sampling artists changed their approach was to rely on nonpercussion structural samples instead of aggregate. Unlike an aggregate structural sample, in which the drum line and at least one other layer are each sampled from a different source, a nonpercussion structural sample includes only the "other" layer, such as bass, synthesizer, or guitar. The drum line is then created by a drum machine such as a Roland TR-808, played by a live drummer, or assembled from miniscule fragments. Non-percussion samples are a reasonable substitute for aggregate structures when the total number of samples in a track or an album must be limited. Producers still combine layers from different sources, although in the nonpercussion structure, the percussion line is new and not sampled.

A Tribe Called Quest's music demonstrates this shift from aggregate to nonpercussion samples. Their albums from 1990 and 1991 contained many aggregate structures and no nonpercussion structures, while their later two albums contain more nonpercussion tracks than any other structural sample type. While they continued to sample recordings by 1960s- and 1970s-era jazz and funk artists such as Steve Arrington, George Duke, and Howard Roberts, A Tribe Called Quest created the drums in these tracks using different means than in their earlier two albums. However, the underlying aesthetic of a nonpercussion structure is quite similar to that of an aggregate structure because they drew on the same source materials.

Although the source materials for sample-based hip-hop grooves changed, the fundamental aesthetic of looping did not fall off. Producers continued to loop, but the source materials used to create those loops changed. In this sense, hip-hop producers created loops according to what Amiri Baraka (LeRoi Jones) called "the changing same," that is, the constituent materials of post-1991 hip-hop grooves differ but the resulting aesthetic and effect are similar to those produced prior to 1991. As Baraka wrote of African American music in 1966:

> Form and content are both mutually expressive of the whole. And they are both equally expressive, each have an identifying motif and function. In Black music, both identify place and direction. We want different contents and different forms because we have different feelings. We are different peoples (185).

If, as Baraka claims, form and content in African American music play equal roles in expression, then the change in content in sample-based music (from more to fewer samples) can be balanced by retaining the form of sample-based music (looping). Producers had to make allowances in certain cases for the availability of fewer samples, sometimes relying on nonpercussion or intact grooves rather than aggregate grooves, but the overall result for the listener is roughly the same. Thus, the content of later based hip-hop grooves included fewer samples, but producers retained the majority of the earlier aesthetic tenets of hip-hop grooves, such as looping and repetition.

Surface samples

As for surface samples, producers very rarely included surface sample types after 1991. The groups' first two albums contained a total of 138 surface sample types, while their third and fourth albums contained only 11 total surface samples—92% fewer samples. Of these 11 surface samples, eight are the constituent type, which are only a beat or a second long and appear atop the structural samples at regular intervals. Producers who included surface samples after 1991 overwhelmingly preferred the constituent surface sample type. Constituent surface samples are usually sounds such as horn stabs or James Brown grunts. Producers' preference for the constituent surface sample after 1991 is not surprising. Adding a constituent surface sample type to an intact structural sample is another way a producer can create a unique sonic identity without using an aggregate structure.

Lyric samples

Lyric samples usually appear either in the chorus of a new track or are scratched in during an interlude. Most lyric samples in albums 3 and 4 come from other hip-hop recordings because it is extremely unusual for one hip-hop artist to sue another.[6] There seems to be an unspoken agreement among hip-hop artists not to sue each other over lyric sampling.[7] For example, the Beastie Boys' albums 3 and 4 contain lyric samples from hip-hop artists such as Big Daddy Kane, Kurtis Blow, EPMD, Fab Five Freddy, Grandmaster Flash and the Furious Five, Run-D.M.C., and Slick Rick, none of whom seem to have raised any legal or financial concerns about those samples.

Not only do hip-hop artists not sue each other over lyric sampling, but they do not sue themselves over lyric sampling. The only copyright they infringe, if any, is their own. A copyright holder—usually a record label—owns exclusive rights to reproduce the copyrighted work or to create a derivative from that copyrighted work. Not surprisingly, each of the five groups studied sampled itself at least once. A Tribe Called Quest's *Beats, Rhymes, and Life* contains 37 total samples, and 17 of these samples are of the group's earlier recordings. Thus, because it is highly unlikely for one hip-hop group to sue another, the practice of including lyric samples, particularly self-samples, is prevalent in sample-based hip hop.

Artists' Responses to Sampling Restrictions

In the preceding paragraphs, I addressed general trends in sampling, such as which sample types became less popular. Now, it is worth addressing how each group individually responded to the new limitations imposed by a fear of copyright infringement. How do the musical styles and sampling procedures of these artists change when they have fewer samples at their disposal?

The Beastie Boys

The three Beastie Boys returned to their instrumental roots in their post-1991 albums. The Beastie Boys began as a punk rock group before transitioning to hip hop in the early 1980s. Many of the tracks on both *Check Your Head* and *Ill Communication* include them playing their instruments: MCA on bass, Ad-Rock on guitar, and Mike D on drums. As MCA noted, "I guess the hectic sampling laws are a bit of deterrent from sampling, so

sometimes it's easier to just make up something new" (McLeod and DiCola 191). The limits on sampling are not solely responsible for the Beastie Boys' increased use of their own instruments in later albums: they also played their own instruments in albums 1 and 2, albeit on fewer tracks than in albums 3 and 4.

De La Soul

De La Soul responded to the limitations on sampling by combining sampled material with music played by live musicians, but they did not invite just any live studio musicians to perform with them. Multiple tracks on the De La Soul's 1993 album *Buhloone Mindstate* feature new music performed by the legendary funk musicians Maceo Parker, Fred Wesley, and Pee Wee Ellis. Saxophonist Maceo Parker performed with James Brown, Parliament, and Bootsy Collins, and he also led his own bands. Trombonist Fred Wesley played with James Brown as well as the JB's, a band that backed artists such as Lyn Collins and Bobby Byrd. Pee Wee Ellis was a saxophonist in James Brown's band. As musicians who played in scores of funk recordings from the 1960s and 1970s, these artists' performances have been sampled in hip-hop tracks by hundreds of artists ranging from Run-D.M.C. to MC Lyte to Cypress Hill to Makaveli (Tupac Shakur's alter ego). However, these tracks on *Buhloone Mindstate* do not sample recordings of these musicians; instead, they feature the musicians performing new material. For example, "I Am I Be" is an aggregate structure because it includes samples of piano and tambourine from Lou Rawls's "You've Made Me So Very Happy" and a Hammond organ melody from Jefferson Starship's "Miracles." In addition to this sample-based aggregate structure, Ellis, Parker, and Wesley play new material on their instruments. "I Am I Be" and other tracks on *Buhloone Mindstate* such as "I Be Blowin'" and "Patti Dooke" juxtapose past and present by including new material played by oft-sampled performers. Rather than sampling existing recordings by these musicians, the members of De La Soul went straight to the sources, inviting the musicians themselves to perform new material on *Buhloone Mindstate*.

Salt 'n' Pepa

In their pre-1991 albums, both Salt and Pepa engage textually with the samples in their music, drawing attention to the individual samples and to the act of sampling more generally. In their track "Expression," for example,

a sample of a treble-range keyboard melody from Bob James's "Take Me to the Mardi Gras" appears as a momentary surface sample at the end of the second chorus and in the first few rapped lines of the second verse (1:18–1:39). Pepa refers to the source of this sample in her rapped line:

> Yes, I'm Pep, and there ain't nobody like my body
> Yes, I'm somebody, no, I'm sorry
> I'm a rock this Mardi Gras until the party ends, friends.

Similarly, "Do You Want Me" is built on an intact structural sample of guitar, bass, and the drums from James Brown's "Say it Loud, I'm Black and I'm Proud." The first rapped line of the track (0:23–0:27) is "you said it loud and I heard you, never tried to hurt you," thus transforming the title of the James Brown track into an entirely different context.

The two rappers also engage more generally with the act of production and sampling in "I Like It Like That." During a scratching interlude of several lyric samples (3:03–3:24), producer Hurby "Luv Bug" Azor drops the underlying groove, leaving only the scratched lyric samples. In response, Salt says, "Yo, what are you doing? Put the beat back on. Come on, stop playing around, Hurb." By speaking directly to Azor, she draws attention to the producer's presence and to the type of music he is making—scratching sampled material.

These textual references in Salt 'n' Pepa's lyrics stop almost entirely after 1991, most likely because their post-1991 contain vanishingly few samples for them to make reference. Only a single post-1991 track contains any textual references either to specific sampled material or to the act of sampling in general. Their 1997 album *Brand New* only contains five samples in total, the smallest total number of samples and the smallest number of samples per track of all twenty albums in this chapter. Although several post-1991 tracks contain borrowed material replayed by studio musicians—such as "Gitty Up," Heaven or Hell," and "Brand New"—none of these tracks with replayed music contain textual references to the musical borrowing. The rappers' textual references seem to be limited to samples rather than replayed material.

A Tribe Called Quest

Many tracks on A Tribe Called Quest's 1991 *People's Instinctive Travels and the Paths of Rhythm* are united with the same sampled material

from Eugene McDaniels's "Jagger the Dagger." This stepwise guitar figure appears as an emphatic sample at the ends of five different tracks on the album, thus creating an aural sense of continuity in the album. In their post-1991 albums, A Tribe Called Quest also unifies the tracks and the albums with sonic material, but their choices of sonic material after 1991 are not sampled. For example, 1993's *Midnight Marauders* contains a "tour guide," a mechanized-sounding female voice who in the first track (0:11–0:24) announces that she "will be enhancing your cassettes and CDs with certain facts that you may find beneficial." The tour guide reappears at the ends of seven different tracks on the album, offering such information as "A Tribe Called Quest consists of four members: Phife Dawg, Ali Shaheed Mohammad, Q-Tip, and Jarobi. A, E, I, O, U, and sometimes Y" ("We Can Get Down," 3:57–4:19) or "You're not any less of a man if you don't pull the trigger; you're not necessarily a man if you do" ("Sucka Nigga," 3:55–4:06). The tracks on 1996's *Beats, Rhymes, and Life* are unified with spoken passages recorded from various conversations among and between the members of the group. For example, "Jam" concludes with an intoxicated-sounding Q-Tip slurring his speech and complaining about needing to find something "new." Similar aesthetics govern these three albums because all include a unifying type of sonic material throughout the album, but with the availability of fewer samples after 1991, the members of A Tribe Called Quest unified the tracks with material that was not sampled.

Public Enemy

Of the five groups, Public Enemy's average number of samples per track declined the most dramatically in the 1990s. Public Enemy's sampling style began to change following the 1990 release of *Fear of a Black Planet*. As Chuck D explains, the aesthetic changes on their next album, 1991's *Apocalypse '91. . . The Empire Strikes Black* may be attributed to a number of factors:

> There really wasn't any grandiose plan for this album [1991's *Apocalypse '91. . . The Empire Strikes Black*], sorta written, recorded, and done on the run. *Fear of a Black Planet* [1990] had burned my brains out. Not so much the recording process, but the preparation beforehand. More than a hundred tapes of speeches, music bits, as well as research books, and the arrangement of pages and pages of lyrics on *Fear* fried me by the time of the mix. Thus the transition of

Gary G-Wiz working with Hank Shocklee replaced the Bomb Squad
and thus my studio role was both shrunken while yet expanded. . . .
Gary G-Wiz brought a stripped down bare beat to the process. Less
on the melody of sample, but a crushing beat of it. (170)

First, Chuck D and Public Enemy's production team were exhausted
after producing two enormous sample-based albums, 1988's *It Takes a
Nation of Millions to Hold Us Back* and 1990's *Fear of a Black Planet*. For
their next album, they chose an approach which required less preparation
and gathering of materials to sample. Second, the production team for
Apocalypse '91 changed significantly from the earlier albums. The Bomb
Squad produced Public Enemy's earlier albums, but by 1991, Hank Shocklee
was the only remaining member of the original Bomb Squad. Producer
Gary G-Wiz joined the production team, but his production style differs
significantly from that of the Bomb Squad's earlier members.

The unstated aesthetic change in Chuck D's observations is the use
of fewer samples. Although some tracks on the later albums have samples,
none come close to the cacophony of densely layered tracks that appeared on
Fear of a Black Planet, such as "Welcome to the Terrordome" (16 samples),
"Fight the Power" (17 samples), or "Anti-Nigger Machine" (18 samples).
According to Chuck D, by 1994, "It had become so difficult to the point
where it was impossible to do any of the type of records we did in the late
1980s, because every second of sound had to be cleared" (McLeod and
DiCola 27).

However, Public Enemy was already using fewer samples during
the production of *Apocalypse '91*. Their decrease in sampling had already
begun in 1991, before the Grand Upright decision. In other words, the legal
ramifications of sampling had not yet taken full effect by the production of
Apocalypse '91, but Public Enemy was already including fewer samples for
the reasons described above. It is unclear if Public Enemy viewed *Apocalypse
'91* as a rest period and would have then resumed their same earlier sample-
heavy style were it not for the legal restrictions placed on sampling. By 1994's
Muse-Sick-N-Hour-Mess-Age, Public Enemy could not sample copiously for
legal and financial reasons, but in 1991's *Apocalypse '91*, they sampled less
by choice, not necessity.

Unlike their pre-1991 tracks that typically consisted of aggregate
sample-based grooves with several surface sample types, Public Enemy's
post-1991 tracks typically contain intact structural samples and very few
surface sample types. These intact samples contain percussion and guitar

or bass, but unlike other artists' intact samples, Public Enemy's usually also include voices. Thus, rather than sampling voices separately and incorporating them as constituent surface samples or lyric samples, Public Enemy instead chose intact structural samples that contained the same kinds of sounds that they would have sampled separately before. Tracks such as "1 Million Bottlebags," "By the Time I Get to Arizona," "Get the Fuck Out of Dodge," and "Nighttrain" all contain intact grooves whose structural sample includes short vocal or instrumental utterances. While this type of intact structural sample does not have the exact same sonic effect as lyric and constituent surface samples atop an aggregate structure, it represents Public Enemy's attempt to recreate a sense of their earlier noisiness but with fewer samples. Now, all of the sounds come from the same source track rather than combining several different sounds from a variety of sources.

Critical Responses to Public Enemy in the 1990s

Both the numbers of samples and the distribution of sample types in hip-hop dramatically changed after 1991. Groups included fewer total samples, and they also changed their approaches to accommodate the lack of samples, as we heard in Public Enemy's use of intact structural samples that include voices. The limitations placed on samples thus encouraged musicians to alter their creative processes. Many hip-hop groups adapted their sampling techniques to provide their listeners with a hip-hop version of Baraka's "changing same": the sound sources were different but the aural effects were largely unchanged. With a typological methodology, we can see specifically how artists rechanneled their creative impulses when they were no longer able to sample as much as they once had.

My analytical approach to this repertory is an attempt to maneuver the current scholarly conversation away from its present state, which is dominated by a good-versus-evil rhetoric in which the producers of sample-based hip hop are David to the Goliaths of major record labels, disingenuous copyright holders, and sample troll companies such as Bridgeport. Demers concludes her book by asking the reader, "What kind of musical culture to we want in the future?" She suggests that outdated laws, lack of support from major record labels, and the right of the copyright holder to determine how or if at all their music is sampled reflect "the potential of IP [intellectual property] law to silence and deaden our future musical culture" (144–46). McLeod rails against what he calls the "shell game" of sample licensing: "In the end, everyone loses: the samplers, the samples, the uncredited musicians,

and the public, which has been denied the opportunity to hear the full creative potential that digital sampling once promised" (104–5). By these scholars' estimations, the inability to sample is equivalent to the destruction of an entire musical genre. According to Vaidhyanathan, "The death of tricky, playful, transgressive sampling occurred because courts and the industry misapplied stale, blunt, ethnocentric, and simplistic standards to fresh new methods of expression" (144).

Most scholarship fails to acknowledge artists who adapted their musical language to suit the limitations placed on sampling. McLeod and law scholar Peter DiCola seem reluctant to recognize artists who adapted their approaches:

> Just because licensing requirements spurred creative workarounds doesn't necessarily mean that limiting creative options was a good or a necessary thing. It just means that hip-hop survived in one form or another. Making the effort to hide samples or steering away from sampling toward other techniques may have either negative creative effects or serendipitous ones—it's hard to generalize. (192)

McLeod and DiCola suggest that any artists who adapted their music production were either affected negatively or else were only successful due to luck.

Further, present scholarship on this music is mired in nostalgia. Many scholars and critics, including these and others, either lament the loss of the sample-based music style of the late 1980s or else suggest revisions to copyright law and licensing fee structure that would make it possible for artists to produce that kind of sample-based music once again (Arewa 629–30 and 641–45; Demers 142–44; McLeod and DiCola 217–57).[8] The group whose sample-based musical style they most often lament the loss of and long for its return is Public Enemy.

Scholars and critics frequently cite Public Enemy as the prime example of a hip-hop group ruined by the restrictions placed on sampling. McLeod and DiCola argue that releasing a *Fear of a Black Planet* album today would be financially untenable (213). Demers claims that Public Enemy is "unwilling to sample music anymore," but this is not entirely true (10). As shown above, Public Enemy continues to sample, albeit less often and using different techniques. Further, they had already begun sampling less often in 1991's *Apocalypse '91*, an artistic choice they made, not one dictated by sample licensing fees or their record label. McLeod, DiCola,

and Demers, as well as a number of critics, argue that the changes in Public Enemy's sample-based style irreparably damaged the group's music and that the lack of samples is to blame for the group's decline in popularity and influence after 1991. For example, in 2006, *Pitchfork* critic Sean Fennessey wrote, "Public Enemy's post-*Apocalypse '91* output has been scattershot to say the least, and though Chuck D's preacher-cum-prophet perspective began to wear on listeners, the noticeable dip in beat quality played a huge role in the group's decreasing importance."

When *Muse-Sick-N-Hour-Mess-Age* was released in 1994, however, contemporary critics were evenly divided between generous praise and complaints that Public Enemy no longer had the same effect on listeners that it once had. Most of the negative reviews criticized Chuck D's lyrics and style of lyric delivery, not the group's "beats," "hooks," or "music"—all of which are terms reviewers use to describe structural samples. According to Jon Pareles of the *New York Times*, Chuck D was "starting to sound like a street-corner demagogue, preaching to the wind." Critics complained that Chuck D's lyrics, once electrifying, had grown wearisome, both in content and in style of delivery. *Rolling Stone*'s Touré claimed the album was "plagued by Chuck's uninventive cadences, unimaginative lyrics, and rhyming that never swings enough to qualify as flow." Reading contemporary reviews, it is clear that the problems with Public Enemy's post-1991 output were not the lack of samples.

This is not to say, of course, that the changes in Public Enemy's production went completely unnoticed. Some critics did observe that the music sounded less dense than that of earlier Public Enemy albums. For instance, Danyel Smith of *Rolling Stone* praised what she called the album's "less dense, more melodic" style, while Pareles lamented that the album "loses momentum about halfway through. The music thins out; self-righteousness takes over." The rest of Pareles's critique focuses on the "self-righteousness" of the lyrics, though, not the "thinness" of the music.

Other critics mention nothing of a different sound, continuing to admire the same qualities that defined the music of Public Enemy's earlier albums. While the sources of the samples may have changed and the number of samples may have dwindled, Public Enemy's music continued to achieve effects similar to its earlier output, a point confirmed by Christopher Jon Farley's observation that "the songs are relentless, pummeling, chaotic," and Paul Verna's praise of the "unadorned fervor and kinetic force" of a few "chaotic but truly candid" tracks.

The tendency of 21st-century scholarship to blame sampling lawsuits for single-handedly ruining Public Enemy's musical style fails to take additional musical and social factors of their reception into account. Public Enemy's sampling did change after 1991, but this is not why their musical style was received differently. Instead, Public Enemy's inability or unwillingness to change their message or style contributed to their decreased popularity. The group's politically charged message of "fight the power" was no longer as shocking or relevant as it had been in the late 1980s. Rapper Flavor Flav publicly and embarrassingly struggled with the law and with drug addiction. Perhaps most significantly, the genre of gangsta rap exploded in popularity in the early 1990s, and many listeners simply wanted to hear a different style and message in hip hop than what Public Enemy was offering. By the mid-1990s, listeners were less interested in what Guthrie P. Ramsey, Jr. has called "the political insurgency of Public Enemy's lyrics [that were] encouraging listeners to stand up to hegemonic forces in society" (180). Instead, Public Enemy and hip-hop had become the hegemonic forces in society, leaving little for the listeners to stand up to.

The reduced samples and corresponding changes in Public Enemy's style had surprisingly little to do with the group's declining popularity. While many critics and scholars in the 21st century claim that Public Enemy's new approach to sample-based music irreparably damaged their music and popularity, it was, perhaps ironically, the group's failure to adapt their lyrical messages and lyric delivery style that negatively affected them much more significantly than did their samples.

Conclusion

As we saw in the case of Public Enemy, sample-based music's reception is based on many factors, not just the number of samples it contains. As frustrating as the limitations placed on sampling can seem, these limitations have encouraged musicians to learn new techniques for making hip hop. As Justin Williams has argued, "Hip-hop music production post-mid-1990s is too varied to define comprehensively, but it often includes a mix of technology such as samplers, sequencers, synthesizers, drum machines, and more traditionally 'live' instruments" (2). Focusing entirely on these limitations traps the discussion in the past, and this kind of critical nostalgia only addresses the fact that sample-based hip hop is different than it used to be, rather than discovering and exploring the specific ways artists changed their approaches to hip hop after the Grand Upright decision.

Katz has claimed—correctly, in my opinion—that focusing on the legal issues of sampling "overshadows so many more interesting aspects of the practice [of sampling]" (157). Music scholarship is able to broaden and diversify the conversations about sample-based hip hop and the people who make it.

This typological study is one methodological means of reorienting the discussion toward the creative and musical processes of sampling. Rather than spending our scholarly energy lamenting the loss of the sample-based music of the past, it is far more productive to evaluate and specify the changes that occurred. By focusing our attention on what music and techniques have emerged as artists have responded to various challenges, we can have far more productive scholarly conversations about sample-based hip hop.

Notes

1. For more on how court cases and legal commentary often misunderstand aesthetic issues of African American music, see Arewa, "From J. C. Bach to Hip-Hop," 624–28.

2. I contacted Philip Glass's publisher, Dunvagen, for additional information and was told, "Unfortunately, we don't have any further information to provide." Drew Smith, email message to the author, 18 September 2012. My email messages to Glass's record company, Orange Mountain Studios, have gone unanswered.

3. The number of samples on an album refers both to the sound sampled and to that sampled sound's function in the new track. For example, a recurring lyric sample is counted as just one sample, because each time it is heard, it has the same function in the track. A few tracks include the same sampled sound in different functions, and in these cases, I count these as separate samples. For example, "I Like it Like That" by Salt 'n' Pepa contains a sample of Chuck D's word "bass" from Public Enemy's "Bring the Noise." This sampled "bass" is used both in the choruses of "I Like It Like That" and in a lyric substitution later in the track. In this case, I counted these as two separate samples.

4. For example, the above graph implies that samples drop between 1986 and 1988, but the data on this graph represents a single album released in 1988, Salt 'n' Pepa's *A Salt With a Deadly Pepa*, which has 1.7 samples per track. On average, Salt 'n' Pepa's music contains the fewest samples of the five groups. As mentioned above, Public Enemy's 1988 album *It Takes a Nation of Millions to Hold Us Back* falls outside the chronological parameters of this study, but it contains an average of 5.8 samples per track. Thus, *A Salt With a Deadly Pepa* and *It Takes a*

Nation of Millions to Hold Us Back contain an average of 3.8 samples per track, which is probably a more accurate representation of general sampling practice in 1988 than the 1.7 samples per track represented by the single Salt 'n' Pepa album from 1988.

5. For further discussion of the theoretical and musical bases of the typology, see Sewell, "A Typology of Sampling in Hip-Hop," 1–25.

6. A rare exception is Marley Marl's 2001 lawsuit against Snoop Dogg, in which Marley Marl alleged that Snoop Dogg had replayed portions of "The Symphony" without permission. However, Snoop Dogg shot back, arguing that "The Symphony" contained unlicensed samples from Otis Redding's "Hard to Handle" In other words, Marley Marl did not have a valid copyright in the first place and thus could not sue. See McLeod and DiCola, *Creative License*, 136. However, because Snoop Dogg's track borrowed and replayed the material from Marley Marl, the case is not one of a hip-hop musician suing another over sampling.

7. This unspoken agreement among hip-hop artists not to sue each other for lyric sampling may also originate in a conflict between DJ Premier and Public Enemy, although this conflict is just outside the chronological parameters of this chapter. In "Ten Crack Commandments," a 1997 track he produced for the Notorious B.I.G., DJ Premier sampled Chuck D's recitation of the numbers one through nine from the 1991 Public Enemy track "Shut 'em Down." In response to the copyright infringement and defamation lawsuit filed by Chuck D and Public Enemy, DJ Premier offered a scathing monologue on Gang Starr's 1998 album *A Moment of Truth*, criticizing Chuck D and other hip-hop artists for allowing the recording industry to control the rules and parameters of hip-hop. The two artists settled amicably. See Randy Reiss, "Public Enemy's Chuck D Settles B.I.G. Copyright Suit," *MTV News*, 17 November 1998. Available at http://www.mtv.com/news/articles/504067/chuck-d-settles-big-copyright-suit.jhtml.

8. Interestingly, many of the producers whom Schloss interviewed also suggested revisions to existing copyright law. According to Schloss, "Hip-hop artists' approach to copyright tends to be more reformist than revolutionary, often arguing that the laws simply do not do what they claim to do: protect the original musician." See *Making Beats*, 178–81.

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