LIFE IN THE POP LANE

Will ruling on samples chill rap?

By Renee Graham, Globe Staff  September 14, 2004

Last week, the biggest news in hip-hop didn't concern a concert tour, a hot new album, or a fresh beef between rappers looking for headlines and attention. Instead, it was a federal appeals court ruling that determined artists must pay for every sample they use, even those that are unrecognizable.

"If you cannot pirate the whole sound recording, can you 'lift' or 'sample' something less than the whole? Our answer is negative," the three-judge panel of the 6th Circuit Court of Appeals stated. "Get a license or do not sample. We do not see this as stifling creativity in any significant way." The ruling stems from a suit over NWA's 1990 song, "100 Miles and Runnin'," which features a two-second sample of a guitar riff from Funkadelic's "Get Off Your Ass and Jam." The decision reversed a lower court ruling that the sampling "did not rise to the level of legally cognizable appropriation."

Not since the early 1990s has a legal decision carried such potential for a chilling effect on hip-hop. In 1989, De La Soul released its classic debut, "3 Feet High and Rising," with the song " Transmitting Live From Mars." Slightly more than a minute long, the track featured a trippy sample of "You Showed Me" by the Turtles, a 1960s pop group. Hip-hop fans didn't recognize the song, but the Turtles did, and De La Soul was sued for unauthorized use. The pop group won, yet the loss wasn't felt only by De La Soul. From that point, all recognizable samples had to be legally cleared before a song or album could be released.

It brought to a close hip-hop's wild nascent years when the only limit in sampling was the producer's imagination. Never again would there be such sonic masterpieces as the Beastie Boys' "Paul's Boutique," released in 1989, or Public Enemy's "It Takes a Nation of Millions to Hold Us Back."

In an interview with Stay Free! magazine, Public Enemy's Chuck D and producer Hank Shocklee reminisced about making that 1988 album, and how copyright clearance for the many samples they used "wasn't even an issue."

"The only time copyright was an issue was if you actually took the entire rhythm of a song, as in looping, which a lot of people are doing today," Shocklee said. "But we were taking a horn hit here, a guitar riff there, we might take a little speech, a kicking snare from somewhere else. It was all bits and pieces."

But those "bits and pieces," many of them unrecognizable, are exactly what would now be illegal without licensing. On "It Takes a Nation of Millions to Hold Us Back," the samples are so manipulated, fried, and compressed that it's often impossible to tell where they came from. Besides, if PE or the Beastie Boys had to pay for every borrowed riff or beat, the price for making their albums would have been so exorbitant, the music would never have been heard.

"In the long run, this will lead to mediocrity in the music," says DJ and hip-hop journalist Davey D Cook, who also runs the popular website Davey D's Hip-Hop Corner. "People may say, 'Well, why is [Sean "P. Diddy" Combs] just sampling Rick James, that's not very creative.' But if you sit down and talk to him, he'll break it down that he could have done more creative stuff -- a Rick James riff, a James Brown beat -- but it would have cost him an arm and a leg."

What those who claim rap isn't really music have always misunderstood is the remarkable creativity of sampling. Sure, some people lazily take an entire musical track, add new lyrics, and call it their own song. But especially during hip-hop's golden era, producers such as Shocklee, the Dust Brothers ("Paul's Boutique"), or Prince Paul ("3 Feet High and Rising") layered hundreds of samples and snippets to create a collage of sound fashioned into a new song. It is artistry in the tradition of Brian Wilson or Ornette Coleman, both of whom always worked without boundaries in stretching the possibilities of their music.
But this latest court ruling will deter such efforts because few artists or labels will be willing or able to pay to secure licensing for every sample. (Can you imagine if the courts decided Bo Diddley should be compensated for his signature thundering guitar riff, which has been borrowed by such artists as Bruce Springsteen and The Who? He'd be richer than Oprah.) Can someone really prove that a chopped and looped two-second riff came from a 40-year-old song, or that a chattering hi-hat was borrowed from an obscure rock track?

Yes, musicians have a right to protect their original work, but the open-ended nature of this ruling invites all kinds of frivolous lawsuits that will benefit neither artists nor fans. Hip-hop has survived the deaths of major stars, censorship, and Vanilla Ice, and it will certainly survive this ruling. Still, there's little doubt that the judges who came to this devastating decision may well end up stifling the artistry and creativity their ruling sought to protect.

Renée Graham's Life in the Pop Lane appears on Tuesdays. She can be reached at graham@globe.com.