Sampling, Interpolations, Beat Stores and More:

An Introduction for Musicians Using Preexisting Music

Information provided by: Copyright United States Copyright Office



Today it is easier than ever to create and distribute professional-quality music. Musicians can create songs on laptops, tablets, or phones without ever setting foot in a recording studio, and they can be released to the public via digital platforms without a record label or music publisher. Even individual tracks, stems, loops, and beats can be offered on the internet for other musicians to add creative elements, including instruments or vocals. The prevalence of "beat stores" – digital marketplaces for buying and selling audio recordings and music compositions – has made it easier than ever to use preexisting music to create new songs.

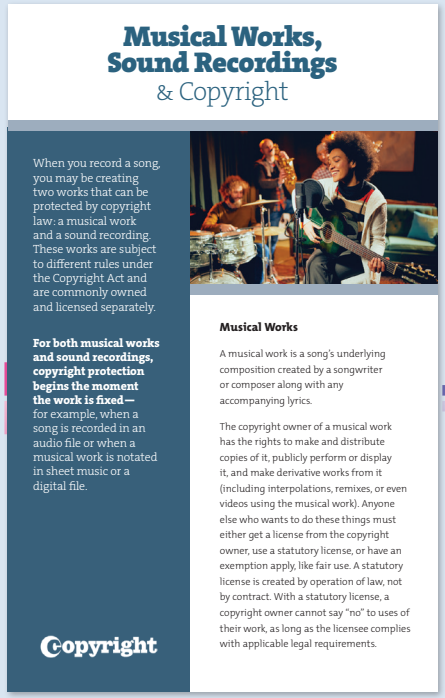
Musicians should be careful in using preexisting music to ensure they do not infringe their fellow creators' copyrights. This includes understanding what rights musicians have in their own works, how to license someone else's works when creating new works (including sampling, mashups, remixes, covers, and interpolations), the scope and limitations of those licenses, and some legal exceptions to consider.



One of the most successful songs based on a beat from a beat store is Lil Nas X's "Old Town Road." The basis for this song was the song "34 Ghosts IV," written by Trent Reznor and Atticus Ross and recorded by Nine Inch Nails. Producer YoungKio used the Nine Inch Nails song to make a beat, which he made available online in a beat store. Lil Nas X purchased a license to use that beat and then added lyrics to create "Old Town Road." He later recorded a remixed version of the song featuring Billy Ray Cyrus.

We're going to use "Old Town Road" to demonstrate some of the potential issues involved when using preexisting music.

As a starting point, it is important to understand the difference between a musical work and a sound recording. In short, a musical work is a song's underlying composition created by a songwriter or composer along with any accompanying lyrics. A sound recording is a series of musical, spoken, or other sounds fixed in a recording medium, such as a CD or digital file. For more information on musical work and sound recording copyright owners' rights, see **Musical Works, Sound Recordings & Copyright**.



Sampling, Mashups, and Remixes

Sampling involves taking part of an existing sound recording and incorporating it into a new work. For example, a piano line or guitar riff from one recording might be used as a melody in a new recording (instead of re-recording the melody or creating a new melody), or the audio from drums or a piano might be incorporated into a new sound recording as the rhythm or melody of the new work.

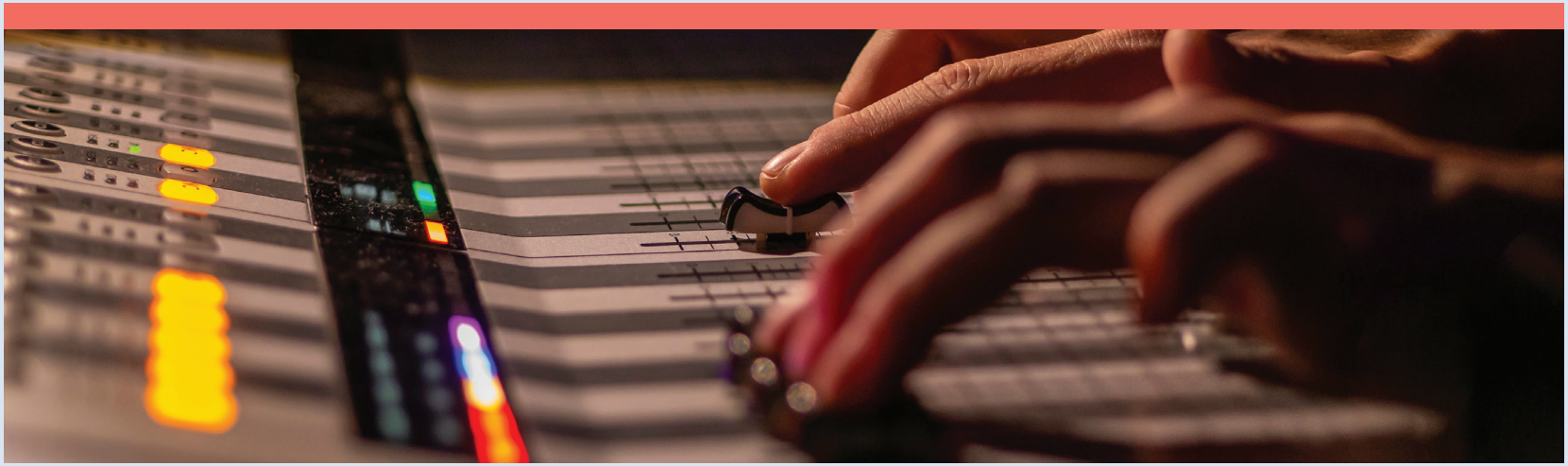
YoungKio **sampled** the banjo and other instruments from "34 Ghosts IV" when creating the beat that became "Old Town Road."

The following songs contain samples of other songs:

- Avicii's "Levels" contains a sample of "Something's Got a Hold on Me" by Etta James
- Sam Hunt's "Hard to Forget" contains a sample of "There Stands the Glass" by Webb Pierce

Note that samples do not have to come from recorded music. For example:

- Charli XCX's "Boys" samples the coin sound from the Super Mario Bros. video game
- Living Colour's "Cult of Personality" samples famous speeches, including President Kennedy's 1961 inauguration speech
- Billie Eilish's "Bad Guy" samples the audio from a pedestrian crosswalk signal



A **remix** involves taking an existing sound recording and adding, changing, or removing sounds to make a new version of the work.

When Billy Ray Cyrus's vocals were added to "Old Town Road," among other changes that were made, this created a **remix** called "Old Town Road – Remix."

A **mashup** involves combining two or more samples of sound recordings into a new work. This may include merging the vocals from one song with the instrumentals from a second song or blending multiple instrumental or vocal samples to create new melodies or harmonies as part of a new work.

For example, if someone combined lyrics or music from Brooks & Dunn's "Boot Scootin' Boogie" with "Old Town Road," this would be a **mashup**.

In many cases, samples, remixes, and mashups will infringe a copyright owner's **exclusive rights**, unless the use is authorized or qualifies for a legal exception or limitation, such as fair use. Because samples, remixes, and mashups all use preexisting sound recordings, not only are those recordings themselves implicated, but the underlying musical works they embody may be implicated as well. Consequently, licenses from both the sound recording and musical work copyright owners—which in many cases can be different—may be necessary.

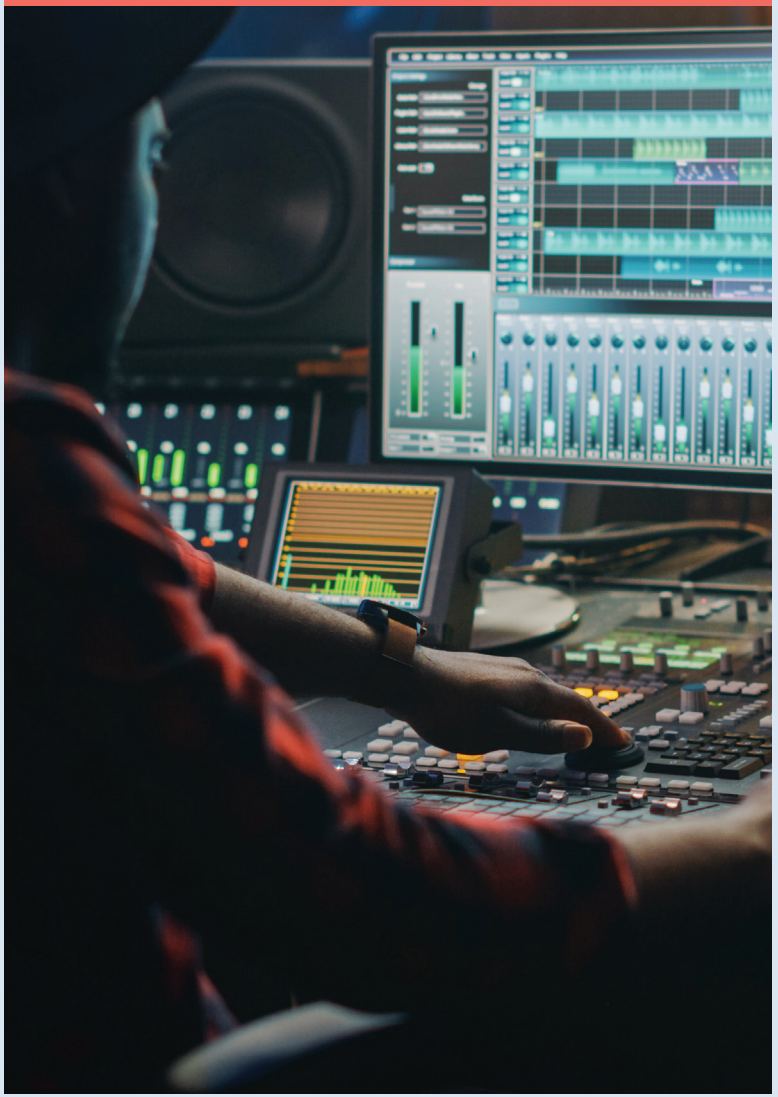
Interpolations

An **interpolation** involves taking part of an existing musical work (as opposed to a sound recording) and incorporating it into a new work. While sometimes confused with **sampling** a sound recording, **interpolating** a musical work is different because it does not involve using any of the actual audio sounds contained in a preexisting recording. Instead, new audio is recorded.

In many cases, similar to samples, interpolations may infringe a copyright owner's exclusive rights. However, unlike samples, interpolations only implicate the preexisting musical work, which means that only a license from that musical work's copyright owner may be necessary. Permission from the copyright owner of a preexisting sound recording is not necessary when interpolating a musical work, regardless of how similar the new recording may be to an old recording. This is because, under U.S. copyright law, the exclusive rights in sound recordings do not extend to making independently recorded "sound alike" recordings. Note that re-recording the entirety of an existing song would create a cover recording (discussed below).

The following songs contain interpolations:

- Nas's "I Can" interpolates Beethoven's "Für Elise"
- Flo Rida's "Right Round" interpolates Dead or Alive's "You Spin Me Round (Like a Record)"
- Ariana Grande's "7 Rings" interpolates Rodgers and Hammerstein's "My Favorite Things"



Covers

A **cover** (also called a "cover song" or "cover recording") is made when a previously recorded musical work is re-recorded into a new sound recording. Some covers seek to imitate the earlier recording, while other covers apply different interpretations, styles, and sounds and may create new arrangements. Similar to an interpolation, only the musical work being re-recorded is implicated when creating a cover.

Some examples of popular covers include:

- "All Along the Watchtower" by Jimi Hendrix (original by Bob Dylan)
- "Hallelujah" by Jeff Buckley (original by Leonard Cohen)
- "I Will Always Love You" by Whitney Houston (original by Dolly Parton)

To make a cover, you can either secure a license from the musical work copyright owner or secure what is known as a statutory (or compulsory) mechanical license. A statutory mechanical license operates by law, which means that a musical work copyright owner cannot normally say "no," if all legal requirements are satisfied. This license can only be obtained for nondramatic musical works. Complying with this license can be complicated. There are several specific rules that need to be carefully followed, including rules on who is eligible for the license, how much money (or "royalties") must be paid to use the license, and other details.





If you secure a statutory mechanical license, you are allowed to make a musical arrangement of the work, but the arrangement cannot "change the basic melody or fundamental character of the work."

Remember that **recording** a cover involves separate rights from **performing** a cover—in most (although not all) cases, musical works' public performance rights are licensed by performance rights organizations. For more information on musical work performance royalties see: **How Songwriters, Composers, and Performers Get Paid**. Note also that different or additional licenses may be needed to create and disseminate covers captured on video (as opposed to audio-only recordings).

A note on the Music Modernization Act:
Importantly, 2018's Music Modernization Act (the "MMA") updated the statutory mechanical license system for musical works offered digitally (called "digital phonorecord deliveries" or "DPDs"), including downloads and interactive streams. The MMA also amended, but retained, the statutory mechanical license for musical works for non-DPD phonorecords (e.g., CDs, vinyl). To learn more about the MMA, including how songwriters and publishers get paid when their musical works are used on download or interactive streaming services, please see the Office's **MMA webpage**.

For more information on the statutory mechanical license see: **Circular 73A** (for the statutory mechanical license for physical uses) and **Circular 73B** (for the statutory mechanical license for digital uses).

Beat Stores

While online beat stores can be attractive to artists early in their careers, it is critical to understand what you are agreeing to when you use one of these services. A beat store typically offers the same beat (audio recordings and possibly music compositions) at different price points, each with its own distinct contractual arrangement. While different headline descriptions like “basic,” “premium,” “unlimited,” “license,” “lease,” “sale,” or “exclusive” may be used, in many cases these are all licenses with different scopes that define what you are allowed to do with the beat, as well as related responsibilities. Though the terminology is not always the same (even within the same beat store), typically, the lowest priced option has the most use restrictions and the highest price has the fewest. Some common types of limitations in these agreements may include:

- restrictions on what formats the beat can be used in (e.g., MP3 or WAV);
- restrictions on how the beat can be used or what rights are involved (e.g., to incorporate the beat into a music video or to publicly perform the work);
- restrictions on the number of sales, downloads, streams, or views; and
- a date on which the agreement expires.



Note that most of these agreements are “non-exclusive,” meaning that the beat can be offered to and used by multiple artists at the same time. In some cases, an “exclusive” agreement may be offered, which typically means that you are the only one who can use the beat during the term of the agreement for the uses specified in the agreement. Exclusive licenses are less likely to have format or use restrictions or expiration dates—but they can.

Important Considerations When Using Beat Stores

Do the terms of the agreement fit your needs?

Musicians should carefully read and understand any contract before agreeing to its terms. Even though beat store licenses are typically in the form of internet "click-through" agreements, reviewing these carefully can be just as important as reviewing a recording contract or publishing deal. When using a beat store, it is important to consider whether the terms of the agreement fit your needs. Agreements described with words like "premium" or "unlimited" may still have important restrictions relevant to the uses you have in mind. **Even "free" beats are often subject to license terms.** There may also be cases where you may think you are "buying" a beat, but instead of obtaining full ownership of it, you might only be purchasing permission to use it temporarily in limited ways. If your license term ends, you may be left with a recording that cannot be exploited.

In sum, care should always be taken to review the full agreement, as descriptions are unlikely to tell the whole story. Even agreements from the same beat store that use the same headline descriptions can have significantly different restrictions when examined more closely.

Lil Nas X originally licensed the beat for "Old Town Road" for $30, but once the use of the song exceeded the terms of that agreement, those terms were successfully renegotiated with the beat's producer, YoungKio. Other artists who have had breakout hits using beat store beats have been less successful in negotiating new license terms with beat producers.

Does the beat contain samples or interpolations?

It is important to know whether the beat you are considering licensing contains a sample or interpolation, and whether the sample or interpolation needs to be "cleared" (i.e., licensed) from the original creator. In some cases, the producer of the beat may not have cleared the prior work's use in the beat, and in other cases, even if they have, their agreement with the original creator may not cover your use.

While Lil Nas X was able to secure licenses from both YoungKio (for the beat) and Nine Inch Nails (for the use of the sample of "34 Ghosts IV" used in the beat), an uncleared sample has the potential to cause significant problems.

Do the agreement's terms include a right for the beat's producer to collect royalties?

It is not uncommon for a beat store agreement to provide a beat producer with rights to a certain percentage of royalties for certain uses of the new work using the licensed beat, even when selling exclusive rights to a beat. This percentage, sometimes called "points," ensures that the beat's producer will share in the new song's success if it becomes a breakout hit.

Fair Use, the Public Domain, and Other Considerations

Fair Use

In some cases, sampling, interpolating, or creating a mashup may be considered a "fair use" and not copyright infringement. Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. When a court determines whether a use is a fair use, it will evaluate at least the following four factors:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work (including considering whether the work is creative vs. factual or published vs. unpublished);
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

Courts evaluate fair use claims on a case-by-case basis, and the outcome of any given case depends on a fact-specific inquiry.

Fact or Fiction?

It's always fair use if I sample seven seconds or less of a song.

FICTION! Because fair use is evaluated on a case-by-case basis, there is no formula to ensure that a predetermined percentage or amount of a work—or specific number of words, lines, pages, or copies—may be used without permission.

If I use a disclaimer that restates the fair use law or says "no copyright infringement intended," then I cannot be found guilty of copyright infringement.

FICTION! Copyright infringement does not require proof of intent. The disclaimers are an internet myth.

To learn more about fair use, visit the Copyright Office's **Fair Use Index**, which tracks a variety of judicial decisions to help both lawyers and non-lawyers better understand the types of uses courts have previously determined to be fair—or not fair. But remember, only a court can determine whether a certain use is a "fair use."

Public Domain

A work is in the "public domain" if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of a copyright owner—you do not need to secure a license to use them. But be careful to remember that musical works and sound recordings are different works. If you want to make a copy, interpolation, or performance of a musical work in the public domain in the United States—for example, Grieg's "In the Hall of the Mountain King"—you can. But if you want to make a copy or sample of the Offspring's sound recording of "In the Hall of the Mountain King," you could not do so without permission, because the Offspring's sound recording is not in the public domain. Also, remember that a work may be in the public domain in some countries but still protected by copyright in other countries.

Common Musical Building Blocks

Nobody can prevent you from using common building blocks such as scales, chords, or arpeggios. For example, even though Jimi Hendrix was known for using the "Hendrix Chord" (a dominant 7th chord with a sharp 9th), any other musician can use that chord in their songs. Similarly, short musical phrases would not be protected by copyright, even if other elements of the song are protected.

Other Concepts

Certain other copyright concepts may allow you to use preexisting musical works or sound recordings without permission. This handout only discusses a few, more common topics.



For more information on copyright and music, see the following Copyright Office resources:

- What Musicians Should Know about Copyright
- Musical Works, Sound Recordings & Copyright
- How Songwriters, Composers, and Performers Get Paid
- Music Modernization Act Educational Materials

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copyright.gov

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