

# Social Responsibility Assignment

## MUSC 228 History of Electronic Music

updated November 26, 2021

### Introduction

Throughout the semester, we have seen many ways in which technology is used for various forms of appropriation or otherwise infringing upon others. This may include outright sampling, recreating others' creative works, or recreating sounds of acoustic instruments or other cultural soundmarks in ways that threaten others' livelihoods or abuse others' cultures. Most music technology is at its heart designed for copying in some way, whether for recording and playback, broadcast of a single performance, in simulating acoustic instruments, or automating work.

We have seen in several cases that this has positive impacts and negative impacts, and each musical culture holds different values regarding different forms of appropriation. Some practices, such as turntablism, could not even exist without appropriation.

### The Assignment

You will:

- Analyze a case study of appropriation in terms of the legal and ethical principles at work;
- Identify and explain the cultural values surrounding appropriation represented in two differing cultures, and compare how each community has been affected by its art; and
- Trace the exchange (or avoiding the exchange) of money for art experiences, reflect on its impacts, and relate the practice to your personal values

Since the required textbook does not directly discuss these issues, the rest of this document (as well as class discussions and notes) present many materials you can use to inspire and inform your analysis. You are not expected to master/memorize all of these materials; you will not be tested on them. Use them as needed to serve your research and discussion. These materials avoid taking sides, but you will need to present and explain your own viewpoint as directed. In most cases, these materials present the side of the arguments that is less than obvious, for the purpose of setting up an informed debate. You may also use your own research and choose a different case study in electronic music to discuss.

## Core Curriculum Expectations

You will be expected to define an issue that warrants inquiry or investigation and provides considerable room for depth of interpretation; present and analyze a clear viewpoint on a work of art or its significance; define logical claims and theories; acknowledge and question information from coursework or other sources and compare or contrast it with your own established viewpoint; identify objective evidence to support your viewpoint by acknowledging, analyzing, and synthesizing multiple viewpoints and clearly showing how this synthesis verifies your viewpoint.

Your writing will be expected to explain your concept in an organized, accessible manner; demonstrate understanding of relevant vocabulary; and apply a discipline-appropriate analysis method, for example, models used in class meetings or the required textbook.

In considering multiple cultures, you will be expected to recognize the beliefs and values of diverse cultures or perspectives; distinguish and analyze pertinent cultural viewpoints within the creation or interpretation of works of art; and explain your own relevant cultural beliefs, values, or practices.

In considering civic responsibility, you will be expected to examine, analyze, and reflect upon the manner in which art impacts different cultures in different ways; identify or propose how works of art have impacted or would impact a specific culture and its communities; and describe what you have learned about your own involvement with art by relating your involvement with art to your identity to its impact/influence in a broader social context.

---

## Goals

- Serves the Learning Outcomes: Analyze the social impact of electronic music in culture; The ability to demonstrate critical thinking; Effective communication; and Social responsibility.
  - Partially satisfies the Core Objectives of Critical Thinking Skills (inquiry, analysis, evaluation, and synthesis of information), Social Responsibility (intercultural competence and knowledge of civic responsibility), and Communication Skills (written communication).
-

## Steps for Using This Document

This section is a guide to get you started on your assignment. Do not include responses to this list in your assignment submission.

1. Browse the Questions section (p. 4) to get a sense of what kinds of information, issues, etc. you will need to seek in your case study.
  2. Browse the Definitions section (pp. 5–11), spending more time on terms you find interesting or unfamiliar. Note which examples and issues interest you the most.
  3. Study the diagram of How People Get Paid for Making Music (p. 12), checking definitions as needed, until you develop a conversational understanding of the flow of rights and compensation. Consider which forms of appropriation or other issues interested you the most in previous sections, and imagine how they would fit into or alter this diagram.
  4. Browse the brief copyright history (p. 13) and note which historical era or which aspects of copyright law are pertinent to the issues that have interested you the most.
  5. Browse the Case Studies section (pp. 14–22), spending more on the works, cultures, or issues that interest you most. For those cases, refer to the diagram (p. 12), and trace which parts of the diagram are in play in each case.
  6. Submit your work according to the instructions on page ??.
-

## Questions

In Canvas via Peerceptiv, submit your answers to each prompt below.

1. Case Study: In your own words, summarize your chosen case (either from this document, from the textbook, or from your own research into electronic music issues). Sticking to facts and a neutral voice, describe the pertinent events and the relevant rights and forms of appropriation involved. (One paragraph)
  2. Argue for one side of the conflict. Explain how one party wronged the other, what should have been done instead, and suggest what should be done to make it right. Consider legal rights as well as ethical principles. (1–2 paragraphs)
  3. Now argue for the other side of the conflict. Explain what legal or ethical principles could work to defend this party's actions. (1–2 paragraphs)
  4. Intercultural Competence: Identify a conflict (or imagine a potential conflict) resulting from cultural/subcultural differences or other differences in personal values. Explain. Use the same case study you chose for questions 1–3 if you can.
  5. Personal Values: Explain a common scenario in arts or technology in which someone might give or avoid giving money (or another valuable resource) in exchange for some experience engaging with art. Trace what was given or taken and the legal and ethical principles involved. Describe the impact on the community or art form if everyone participated in this way. Discuss whether and how those decisions align with your relevant personal values. Keep each answer relevant to your overall conclusion. (One page.)
    - For example, you might give an account of donating when it was not required, pirating when it was not authorized, or participating in an act of civil disobedience.
    - Use a generic or hypothetical scenario, or use pseudonyms for the purpose of discussion. The point is not for you to confess any wrongdoing or accuse others. You will be graded on your analysis of the scenarios discussed, not on any particular actions or beliefs described in the scenarios.
  6. Defining Social Responsibility in Art: Finally, considering the information, beliefs, and conclusions above, define social responsibility as it pertains to art using your own words. (One focused paragraph.)
-

## Definitions

Use the following definitions for the purpose of this assignment.

**Appropriation** Taking someone else’s creation to use for one’s own purposes, typically without permission or compensation to the original creator. Several types of appropriation are defined and discussed on pages 7–10.

**Civil Disobedience** Disobeying a law not for personal gain but as an effort to effect change in that law. For example, beginning in 1969, John Oswald created music he called *plunderphonics* from blatantly unauthorized popular commercial recordings, giving them away for free, encouraging others to copy (pirate) it, and later circumventing CD copy protection measures to enable further copying.

**Civil law vs. criminal law** *Civil law* protects individuals against infringements on their rights; *criminal law* penalizes individuals for crimes against the government (including especially egregious violations of personal rights that threaten the state, such as murder). Civil law suits seek reparations for damages (usually money); criminal trials seek punishment (such as a prison sentence).

**Copyright** Entitlement to control how a work is used, according to law or ethics. By default, the creator of a work holds the right to control how it is used, until licenses for specific uses are sold or the overall rights are assigned to someone else (such as a publisher).

**Culture/community** A group of people, identifiable by some clear name or descriptor, who are unified in part by their common use of art. This may include people of the same geographical region, national origin, ethnicity, age range, historical epoch, gender/sexuality identity, religion, philosophical/ethical mindset, profession, or shared life experiences, or simply active fans of certain performers or styles, active users of specific equipment or composition/performance/ listening practices, or active participants in certain discussion groups.

**Cultural values** This can refer to any object or practice that a given group of people holds as important, especially objects or practices that contribute to defining that culture/s identity. These values may come from government law, philosophical or religious writings, ethics principles, etc. or it may simply be observable in the culture’s behavior. Examples include copyright law, business models, holy scriptures, Thoreau’s *Civil Disobedience*, informal ethics principles like the Golden Rule or “The end justifies the means,” or observations that aren’t prescribed anywhere, such as internet memes or glow sticks at raves.

**Fair Use** A doctrine in US copyright law allowing limited use of copyrighted materials without requiring licenses. In general, it requires that the purpose of use is nonprofit, advances knowledge or the progress of the arts, use a relatively small portion of the work or a small portion of the key content of the work, and have a negligible impact on the the work's value to the copyright holder. Best practices for educational applications of Fair Use would be limited to nonprofit uses of up to 10% of a work that is necessary for the class, with access limited to one copy per student, and with an upright reason for avoiding purchasing the work (or license to use it).

**Intellectual Property** Creations of a human's intellect that can be protected by laws, e.g., objects of creative expression (like songs) can be protected by copyright, invented devices or processes can be protected by patent law, and images used to identify a business can be protected as trademarks.

**Labor union** A private organization designed to protect and serve members of a given profession. It is not a government entity, and it cannot make laws, but it can lobby for lawmaking and negotiate on behalf of members for fair treatment, using the weight of all its members acting in solidarity as its influential factor.

**License** Permission granted by the copyright holder for someone to use their work in some way, e.g., for sampling, arranging, or public presentation, or just for playback for personal use.

**Patent** While this document focuses on copyright, a patent gives its owner the exclusive right to make, use, or sell an invention, which must be a product or process that solves a specific problem. Whereas modern copyright law does not require official registration, patents do.

**Public Domain** Intellectual property that is no longer covered by copyright law, because the copyright has expired, been forfeited, or was ineligible for copyright (e.g., if it was created by the US government). Note that, for example, while J. S. Bach's compositions are no longer covered by copyright law (since he died centuries ago), recordings and modern print editions of his music likely are still covered by copyright law (because aspects of them were created by others, more recently).

**Related issues** Throughout this course, we have discussed other forms of infringement (legal or other) that are not forms of appropriation but can have similar impacts, such as using synthesizers to replace acoustic instruments, using automation to replace manual workers, using recorded music instead of live performers, and creating tools that enable people to infringe on others. You may choose to include issues such as these in your assignment instead of appropriation if desired.

**Royalty payment** Payment made to a rights holder in exchange for license to use their work in a specified way. This term is usually used when payments are made after the use, rather than before, and usually in cases where payments have been standardized by the government (compulsory licenses) or negotiated in advance as a percentage of sales.

## Types of Appropriation

The following are several examples, arranged into groups by similarity. They are not all or always considered illegal or immoral, but you may find them useful in your analysis and discussion.

### Appropriation in *creating* a work:

**Arrangement or transcription** Rewriting an existing work, often for a different instrumentation, in which case it might be called a *transcription*. Such works might also be called *cover versions*, especially in the case of popular song. For example, Kraftwerk’s songs have been arranged for string quartet by the Balanescu Quartet (1992) and for conjunto band by Señor Coconut (Uwe Schmidt; 2000).

**Constellation of similarities** Creating a new work that bears several similarities to someone else’s work, beyond common properties within a given genre or musical style. This phrase came about in the law suit against Robin Thicke and Pharrell Williams for their “Blurred Lines” (2013) bearing a “constellation” of eight similarities with Marvin Gaye’s “Got to Give it Up” (1977), including using the same unusual percussion selections and similarities (without direct quotes) in melody, keyboard, and bass lines.

**Contrafact** Either (1) using the same music from another composition with new words or (2) using the same distinct harmonic progression (chords) with a new melody. For example, “The Aggie War Hymn” applies new lyrics to “Goodbye, My Coney Island Baby,” “Hot Time in the Old Town Tonight,” and “Go Tell Aunt Rhodie.” John Cage’s *Cheap Imitation* (1969) systematically changed the melodic line of Erik Satie’s *Socrate* (1919) while keeping the rhythm and harmony intact. Most famously, several dozen jazz songs like Charlie Parker’s “Anthropology” (1945) apply new melodies to the harmonic progression of George Gershwin’s “I Got Rhythm” (1930).

**Cover version** A performance of a work that has already been recorded or publicly performed, by someone other than the original performer or the songwriter/composer. This often involves *arrangement* or *transcription* for a different instrumentation, and might be used as a *mash-up* (see *remix*). For example, in 2002, Johnny Cash recorded a cover version of Nine Inch Nails’s “Hurt” (1995).

**Counterfeit** Creating a fraudulent (fake) replica of something else without authorization and with intent to present it as actually being the replicated item. For example, U2 sued Negativland for its album *U2* (1991) in part for presenting itself as a counterfeit of a genuine U2 album.

**Cultural appropriation** Making use of expressive materials indigenous to a culture outside one's own. Likely to cheapen, commoditize, or disrespect the originating culture, although it can benefit the culture as well. For example, white rappers have been accused of appropriating a black cultural art form, Afrofuturism might be said to appropriate elements of ancient Egyptian culture, and KLF's *Chill Out* (1990) appropriates stereotypes of Texan culture in the name of exoticism (to UK rave audiences) as has Rednex since 1994.

**Derivative work** The general term in copyright law for a work that is created by using another work in some way. This can include many of the techniques listed here. For example, John Oswald's *plunderphonics* compositions are new works made entirely from other commercial recordings, making them derivatives of the original works. This could also include sonifications from other media, as artists have done by turning photographs into sound by reading them as sonograms, in Plaid's "Rest Proof Clockwork" (1999), Venetian Snares's "Look" (2001), and Aphex Twin's " $\Delta M_i^{-1} = -a \sum_{n=1}^N D_i[n][\sum_{j \in C[i]} F_{ji}[n-1] + F_{ext_i}[n-1]]$ " (1999). Since 2008, Yuichi Ito has created music from video by connecting a video output to an audio input, making his music a derivative work of the video content.

**Interpolation** Re-performing someone else's work as part of one's own work, e.g., The Sugarhill Gang hired a rhythm section to perform parts of Chic's "Good Times" (1979) to accompany their rap in "Rapper's Delight" (1979).

**Parody** Creating a recognizable imitation of someone else's work for the purpose of humor or commentary (not necessarily humorous), using any of the techniques described here, most commonly contrafact or interpolation. "Weird Al" Yankovic is famous for many humorous parody songs. Note that direct appropriation isn't necessary to create a parody. For example, *The Simpsons* cartoon character Krusty the Clown is a parody of the Bozo the Clown television show, McDonald's restaurants, and Disney theme parks by bearing key similarities without directly copying materials from Bozo, McDonald's, or Disney.

**Plagiarism** Taking someone else's work and presenting it as one's own work. In music, this term has been used in a broad sense, including techniques ranging from sampling to a constellation of similarities. For example, Radiohead's "Creep" (1992) was accused of plagiarizing The Hollies's "The Air That I Breathe" (1973).

**Quotation** Re-performing a brief but recognizable segment of someone else's creation, integrated within one's own creation, e.g., Near its end, "Texas Fight" (the University of Texas fight song) includes a quotation of the music (and sometimes the words) of "Hail, Hail, the Gang's All Here" (a 1917 American popular song), the chorus (not the verse) of which is a contrafact of Arthur Sullivan's "With Cat-Like Tread" from comic opera *Pirates of Penzance* (1879).



**Remix** Creating an arrangement of a song by making significant use of original recorded material from the song, often introducing other instruments, sounds, effects processes as well. When two songs are edited together into one in a way that both songs are recognizable, it may be called a *mash-up*. For example, Nine Inch Nails and Erasure have gone as far as releasing recorded materials or remixing tools to encourage fans to remix their music.

**Sampling** Using a recording of one work as part of another work, e.g., the drum break in James Brown’s “Funky Drummer” (1970) has been sampled in over one thousand songs including Public Enemy’s “Fight the Power” (1989) and Ed Sheeran’s “Shirtsleeves” (2014).

**Work for hire** Creative work made by an employee or a person directly contracted to create it. Copyright for a work for hire is owned by the hiring company, not the actual creator. For example, the Philip Morris company paid photographers like Sam Abell to make photographs to advertise Marlboro cigarettes; by default, the Philip Morris company would own the copyright, and the photographer would only be paid a one-time fee.

**Appropriation in *distributing or accessing* a work:**

**Bootlegging** Making an unauthorized recording of someone else’s performance, e.g., by hiding a sound recorder in the leg of your boot, hence “bootleg.”

**Circumventing digital rights management measures** Bypassing or disabling digital measures taken by publishers to restrict unauthorized use or copying of intellectual property, or distributing tools or techniques to do so, whether or not any other form of copyright infringement takes place. This was criminalized in the 1998 Digital Millennium Copyright Act (DMCA) of 1998.

**Cracking or breaking** Modifying software to circumvent copy protection measures or using such modified software, e.g., downloading a crack of Ableton Live in order to avoid purchasing it.

**Freeloading** Excessively taking advantage of products or services that are offered free of charge by a company with the hope of leading to future sales.

**Leaking** Unauthorized publication of intellectual property from the inside, as a partial rights holder in it (a form of *bootlegging*), e.g., Throbbing Gristle’s *The First Annual Report* was recorded in 1975 and not officially released until 2001, but it was leaked in 1987.

**Piracy** Unauthorized reproduction of someone’s work. For example, peer to peer (P2P) file sharing services like Napster have been attacked for allowing users to illegally share commercial recordings.

**Sneaking in** Entering a ticketed performance somehow without purchasing a ticket for admission. This may be considered larceny (as theft of services), trespassing, or burglary, depending on local legal definitions.

**Theft** Taking a physical object or service without permission, e.g., shoplifting a CD from a store.

**Unlicensed public performance** Unauthorized presentation of someone else's intellectual property for a large audience, beyond personal use, e.g., Jean Michel Jarre's *Music for Supermarkets* (1983) was purposely created to sell one copy (and the masters were deliberately destroyed), and someone broadcast on Radio Luxembourg, which in turn was bootlegged by listeners by recording the broadcast and distributing the recordings.

**Not necessarily appropriation, but potentially relevant to social responsibility:**

**Violating terms of service** Using a service in a way that is forbidden by the service provider. For example, Vulfpeck's *Sleepify* (2014) violated Spotify's terms of service by allowing fans to play the silent album for free in a loop as they slept, causing Spotify to pay Vulfpeck royalties. Spotify is meant to stream music, and *Sleepify* was not created as a sincere musical work but as a hack to earn money without drawing genuine listeners.

**Violating warranty/intended use of hardware** Using or modifying a product in a way unintended or expressly forbidden by its manufacturer, e.g., jailbreaking an iPhone so you can run applications that aren't approved by Apple, or circuit bending a Texas Instruments Speak & Spell toy to use it as a novel musical instrument.

## Types of Rights/Licenses

Owned by the *songwriter/composer* by default:

**Dramatic/grand** License to use a composition as part of a larger live performance, e.g., theater. Owned by the composer and publisher. Each license is negotiated individually.

**Mechanical** License to publish a composition in a sound recording. Owned by the composer and publisher. Compulsory license, meaning the royalty rate is fixed by the government and others can license the music without negotiating with the rights owner.

**Performance** License to perform a composition in public, including playing it as a recording, even as background music, and also in broadcasts. Owned by the composer and publisher. Paid by performance venues in blanket licenses, through annual fees.

**Synchronization** License to use a composition to accompany other media, e.g., advertisement, television program, film soundtrack, video game. Owned by the composer and publisher. Each license is negotiated individually.

Owned by the *record label* by default:

**Master use** License to use a **recording** of a composition in any way. Will also need other types of licenses from the songwriter/composer and publisher.

## Types of Roles

**Songwriter/composer** wrote the composition.

**Publisher (rights owner)** publicizes and monetizes the composition, collects royalties, and manages licensing in exchange for 50% of all payments.

**Print publisher** promotes sales of the composition as sheet music.

**Record label** records the composition and manages sales and licensing of recordings.

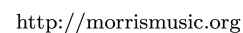
**Performer** plays the composition, whether in live performance or on recording. Paid a fixed fee, regular wages, or percentage of sales.

**Producers & engineers** includes every financier or decision maker on a recording aside from the performers. Paid a fixed fee, regular wages, or percentage of sales.

**Performance promoter** includes everyone else involved in having the performer play the composition live.

**Rights Management Organizations** Companies that track usage of copyrighted materials and get the necessary royalties from licensees to rights owners. They administer blanket licenses and compulsory licenses. ASCAP and BMI handle performance rights, Harry Fox Agency handles mechanical rights, and SoundExchange handles streaming rights (which involves both master use and performance royalties).

Generally:  
 ← **Money** (dark green) flows up and toward the left.  
**Music** flows down and toward the right. →



---

## A Glimpse of Evolving Copyright Law in the West

**c. 1440 Gutenberg printing press** Made rapid duplication and dissemination easy.

**15<sup>th</sup>–17<sup>th</sup> centuries** Various laws against unlicensed publishing, primarily for governments and churches to limit the dissemination of knowledge they found threatening. Permanent or renewable indefinitely.

**1710 Statute of Anne (UK)** 14 year copyright term. Still seen as a way of preserving printers' monopoly rather than protecting authors' rights.

**1789 US Constitution** Includes copyright but lets other laws specify duration.

**1790 US Copyright Act** Up to 28 years.

**1831 US Copyright Act** Up to 42 years.

**1909 US Copyright Act** Up to 56 years.

**1976 US Copyright Act** Up to 75 years or 50 years after the death of the author. Introduced Fair Use doctrine. Establishes that registration is not required for copyright protection—copyright is assigned immediately upon creation.

**1984 Sony vs. Universal** Universal Studios and Disney fought Sony's time-shifting (VCR) technology (precursor to DVRs). The US Supreme Court ruled that it is Fair Use.

**1998 Sonny Bono Copyright Term Extension Act** Up to 120 years or 70 years after the death of the author. Notable for preventing many early 20<sup>th</sup> century works from entering the public domain, including Disney characters.

**1998 Digital Millennium Copyright Act (DMCA)** Criminalized tools and efforts to circumvent copyright protection methods, whether or not copyrights are actually infringed. Some have argued that this makes it illegal to make or distribute felt-tip markers, since they can be used to circumvent some protection measures.

**Since 2001 “Copyleft” movements** formalize methods for authors to grant permissions for certain uses by indicating them in the creation itself, including the GNU Public License (GPL) in 1985 for software and Creative Commons in 2001 for any kind of creative work.

---

## Case Studies

Note: Some of these case studies lie outside the realm of electronic music but are closely related to it. Any of these is acceptable for you to choose in answering the assignment questions. You may also use a case from your own research, but if so, it must be centered on electronic music.

**The American Federation of Musicians (AFM)** is the musicians' labor union in the USA in Canada, established in 1896. Its most notable action was the musicians' strike of 1942–1944. Previously, performers were not paid royalties for recordings, just a flat fee for a single performance. AFM organized a strike, forbidding all union member musicians from playing on recordings, although they were still allowed to give live performances. In the weeks before the strike, record labels made many new recordings of artists like Bing Crosby and Glenn Miller, to stockpile recordings they could release during the strike, but the strike outlasted the stockpiles. This impacted music in unexpected ways. (For the sake of World War II soldiers' morale, an exception was made in 1943 allowing musicians to make recordings that were only distributed to troops.)

Previously, swing band (or “big bands”) ruled popular recorded music. They sometimes included vocalists, but in an auxiliary way: they would sing the melody and then stand aside while the band played the rest of the arrangement. Frank Sinatra's career started this way, singing for the bands of Harry James, Tommy Dorsey, and Benny Goodman. Harry James's 1939 recording of “All or Nothing at All” included the typical credit, “Vocal Refrain by Frank Sinatra” in small type. Sinatra's contract with Tommy Dorsey assigned Dorsey 43% of Sinatra's lifetime earnings in the entertainment industry. Sinatra's influence changed when teenage girl “bobby soxers” saw him singing live and in films in his mid-twenties. When Benny Goodman introduced Sinatra as their vocalist at a 1942 performance in New York, the crowd burst with cheers for Sinatra, to everyone's surprise (Goodman had reportedly never heard of him before hiring him, and such a crowd response was unheard of).

This is marked as the downfall of the big band era. Columbia signed Sinatra as a solo artist and re-released the 1939 recording of “All or Nothing at All” in 1943 with Frank Sinatra's name printed large, with “Acc. by Harry James and his Orchestra” in small print. Furthering this transition, the AFM strike still allowed vocalists to record.

When the strike ended with a win for AFM, annual record sales doubled compared to pre-strike sales. Besides its role in the shift from instrumental to vocal popular music, the strike prevents today's audiences from hearing the origins of bebop (virtuosic small ensemble jazz). Another strike, just one year long, in 1948 addressed royalties for musicians in a new medium: television.

**The Chamberlin and Mellotron** were the first sample-playback synthesizers, using one tape loop per keyboard key. American Harry Chamberlin invented it in 1946 (nine years before Hugh LeCaine's Special Purpose Tape Recorder, and two years before the first *musique concrète* out of Paris). For instrument tones, Chamberlin contracted members of the popular Laurence Welk orchestra to record each instrument separately plus some

drum beat loops, making it also the first *sampling* drum machine (although the very first electronic drum machine was Léon Theremin's 1930 Rhythmicon).

The Chamberlin received notable attention, including comedian Jerry Lewis filming a demonstration of it. The American Federation of Musicians (AFM), the musicians' labor union, was concerned that it would put musicians out of work, since the Chamberlin allowed one performer to do the jobs of several musicians. AFM banned the Chamberlin from all public venues except cocktail lounges. Since organ manufacturers Hammond and Lowrey were largely focused on homes and lounges, AFM's ban intensified Chamberlin's impact on their market shares. AFM also made a rule that any Chamberlin performer be paid the wage of three musicians.

Chamberlin patented his invention but ran a small operation. He made the instruments by hand himself, sold them out of his house, advertised minimally, selling 4–5 units per month, and the construction was not robust. He hired one salesman, Bill Fransen. Frustrated that Chamberlin would not pursue mass production, Fransen took two Chamberlins to England and found a company to manufacture them. It is unclear whether Fransen meant to steal the Chamberlins or if UK manufacturer Streetly Electronics misunderstood him, but it was sold as the Mellotron in 1963. Chamberlin found out and sued, and lengthy negotiations ended with a \$30,000 payment to Chamberlin, royalties for all sales, and an agreement limiting Chamberlins to the USA and Mellotrons to the UK. Both parties shared some of the recorded sounds they made for their instruments, and Chamberlin's "3 Violins" sound became common to both.

The Mellotron became popular in 1960s psychedelic rock and 1970s progressive rock, notably used by the Beatles in "Strawberry Fields Forever"—listen for the chords of reversed flutes in the introduction and the sweeping pitch bend made with the tape speed control.

**Painter Richard Prince** made news in 2014 for presenting and selling a series of enlarged photos taken directly from Instagram without permission. Much of his work probes issues of appropriation, including photographing and selling Sam Abell's photograph of a cowboy made for a Marlboro advertisement in 1980. Regarding this case, it may be useful to consider how a photograph is necessarily a copy of something else; perhaps all art is a derivative of something else, if not a direct copy. You might bring Plato, Barthes, or Walter Benjamin into the discussion if you're already familiar with their relevant philosophies.

**Kutiman, *Thru You* (2009)** is a mash-up album of videos found on YouTube. Kutiman credited all his sources but appears not to have obtained permission to use them. It appears that one source, bassist Thomas Risell, requested to have Kutiman's credits point to his website instead of identifying his YouTube account. Risell's site <http://playbassnow.com> is a donation-supported educational site. Risell hosts his videos on YouTube but prefers they be viewed through his own site so he can better solicit donations. Because his videos include "play-along" versions of commercial recordings, his YouTube account has been suspended for copyright violations. His inclusion in *Thru You* may have brought undesired attention to his work in that way.

**Danger Mouse, *The Grey Album* (2004)** mashed up vocal tracks released by Jay Z from *The Black Album* (2003), for the purpose of remixing, with Beatles recordings from *The Beatles* (known as *The White Album*; 1968). Beatles record label EMI sued Danger Mouse, even though Jay Z and the surviving members of the Beatles approved. In a public act of civil disobedience held in 2004, protesters made the album available on their own websites for twenty-four hours in order to argue that sampling (even to this degree) should be allowed with a compulsory license.

**The Beatles's "All You Need Is Love" (1967)** contains a quote (interpolation) of the introduction to Glenn Miller's arrangement of Garland and Razaf's "In the Mood." That song was first recorded in 1938, but according to the copyright law at the time, since it had not been registered for copyright, it was [supposedly] in the public domain and free for the Beatles to use. The music for "In the Mood" was largely taken (with only a different ending) from "Tar Paper Stomp" composed by Wingy Manone in 1929 and recorded in 1930, which was also performed by Fletcher Henderson in 1931 with the title, "Hot and Anxious," credited to Horace Henderson (perhaps more accurately called the arranger). Both of these precursors were instrumentals; "In the Mood" is distinct in its last few bars of music and its lyrics. Glenn Miller's arrangement was recorded in 1939, and that arrangement was registered for copyright. Since the Beatles used music that came from Miller's arrangement (and not even from earlier versions or precursors of the tune), the Beatles's record label EMI had to pay royalties to Miller's publisher.

Other facts are interesting here.

- Note that the lyrics are the main thing that distinguishes "In the Mood" from its precursors, Glenn Miller's arrangement didn't include the lyrics, and the Beatles's quote didn't even include the melody from "In the Mood."
- It was Miller who paid Razaf to write lyrics for Garland's (heavily borrowed) tune, "In the Mood," anticipating that it would be a hit that others would want to sing. Razaf was paid \$200 for the lyrics, which Razaf thought was an advance payment to be followed by royalties; instead, Razaf's agent agreed with Miller that it would be a one-time payment, without informing Razaf. (No one knows the words anyway. Does that help anything?)
- The Beatles didn't write "All You Need is Love:" the Beatles performed it. Beatles members John Lennon and Paul McCartney wrote it, so they would normally receive royalty payments as songwriters as well as performers. Their long time producer George Martin (often called "the fifth Beatle" wrote the orchestra arrangement that included the Glenn Miller quote, as a work for hire. So, George Martin was paid fifteen pounds for the arrangement, but he was responsible for the royalty payment to Miller's publisher. His record label EMI paid it for him.
- Copyright records show that "In the Mood" wasn't actually in the public domain by the time the Beatles quoted it in 1967. Joe Garland filed for copyright in 1939 through publisher Shapiro, Bernstein & Co., and its original 28-year term would have



expired in 1966, but it was apparently renewed to the maximum of 56 years, meaning it would expire in 1995. The 1976 copyright act extended all unexpired copyright terms to seventy-five years. It would have entered the public domain in 2014, but the 1998 Sonny Bono Copyright Term Extension Act extended its copyright term to a total of 120 years, so you will be free to use it without owing royalties in 2059, unless another copyright act changes the term lengths again—this is why people complained that the 1998 Sonny Bono act effectively “froze” copyright terms (from ever expiring).

**Negativland, *U2* (1991)** is an infamous album by an experimental electronic band that includes an unauthorized parody of U2’s “I Still Haven’t Found What I’m Looking For” (1987) and embarrassing and profane bootleg outtakes of national radio host Casey Kasem introducing U2’s song. Further, the packaging was labeled to appear like a U2 album (arguably counterfeiting), especially since U2’s much-anticipated *Achtung Baby* was coming three months later. U2’s record label Island Records sued Negativland with a 180-page complaint accusing Negativland of profiting from U2’s name, resulting in the albums being pulled from all stores after two weeks, but not before selling 6,951 copies and distributing 692 promotional copies to media outlets. This made the album a hot collector’s item for ten years. Kasem threatened to sue if Negativland were to “do anything” with the album but never took any further action, preferring to avoid bringing extra attention to it.

Aftermath:

- Every store and media outlet sent the CD was instructed to send it back immediately, facing imprisonment and fines for not complying.
- All recordings, masters, and related design materials must be delivered to Island Records immediately.
- The rights for Negativland’s album are assigned to Island Records and publisher Warner/Chappell.
- Negativland and record label SST Records were forced to pay \$25,000 plus half of their sales profits, and SST forced the band to pay it all, totaling \$70,000, more than the band had earned in 14 years of activity. Negativland left the label a few months later.
- In 1992, Negativland released a book containing details of the lawsuit with U2, including all 38 exhibits entered into the case, along with a CD containing one track called titled “39. Crosley Bendix Discusses the U.S. Copyright Act,” an annoying but thoughtful (parody of Kasem?) 25-minute essay and demonstration that may be useful in guiding your research on this assignment.
- Negativland’s own record label, SST Records sued Negativland for publishing this book, complaining that it contained “literary works” owned by SST: legal agreement forms made with Island, a public press release, a promotional bumper sticker—which

were already public record or used for public dissemination and were used here for the purposes of citing facts (seen favorably in the Fair Use doctrine)—along a few internal letters, contracts, and reports, additionally seeking to claim full rights to the Negativland’s album (taking them away from Negativland, who had lost them to Island and Warner/Chappell) and \$90,000 in damages.

- In 1994, U2 and PolyGram, Island Records’s parent company gave Negativland permission to re-release the album, a public effort to avoid the appearance of bullying the “little guy,” but the agreement was contingent upon Kasem withdrawing his complaints against Island, which Kasem never did.
- In 1997 after Negativland left SST Records, SST released *Negativ(e)land: Live on Tour* to spite the band.
- In 2001, Negativland re-released the tracks from their album *U2* along with nine other tracks, presenting it as a bootleg release they hadn’t authorized.
- When Kasem died in 2014, Negativland released the source materials for *U2* freely for remixing and reuse.

**Suzanne Vega’s “Tom’s Diner” (1982)** was released in 1987 on A&M Records, owned by PolyGram (like U2’s Island Records discussed above). British electronic dance music duo DNA “remixed” Vega’s track (using its entirety, unchanged, except for repeating one riff as a chorus) by playing a dance beat loop from Soul II Soul under it. This loop was taken from a remix of the song “Keep on Movin’” (1989) by producer and performer Jazzie B and featuring vocalist Caron Wheeler; the “Club Mix” was credited to Jazzie B and Soul II Soul producer Nellee Hooper. DNA released the remix to dance clubs in 1990 as “Oh Suzanne” by “DNA featuring Suzanne Vega” without license from A&M. Instead of suing DNA, A&M decided to buy the remix and release it officially later the same year. This version was much more popular than Vega’s original version, and became DNA’s best known work.

***Caustic Window*** was recorded for release in 1994, but Rephlex Records canceled the release after only five (possibly more) copies were pressed on phonograph. The artist, Richard D. James, used the name Caustic Window here, but he became better known as Aphex Twin. This album comes from very early in his career, recorded at the same time as Warp Records’ *Artificial Intelligence* album series. Almost nothing was heard of it for twenty years, until one of the physical copies (LP phonograph discs) appeared on sale for \$13,500 in 2014. In response, electronic music community We Are the Music Makers negotiated with the seller, Rephlex, and Kickstarter to purchase the LP for £5,000 (\$8,364.54 at the time) and release a digital transfer of the LP to all Kickstarter backers, in a one-time duplication license from Rephlex.

The kickstarter campaign began with a goal of about 500 backers each paying \$25, ultimately to receive a digital copy. Ultimately, the limit on backers/recipients was lifted and it raised over \$40,000 within three days. Per the plan, the physical LP was sold on

eBay before releasing the digital copies, with one third of the proceeds going to James and Rephlex (presumably split evenly), one third serving to discount the purchase price for the Kickstarter backers, and one third going to a charity, which was later decided to be Doctors Without Borders. The physical LP was won on Ebay for \$46,300 (by Markus “Notch” Persson, creator of *Minecraft*).

Critics say the album itself is “second tier,” but released now after twenty years, it demonstrates James’s foresight regarding future trends in electronic dance music—possibly making it more valuable for James and fans than if it had been released in 1994 as originally intended.

**The Amen Break** is a widely-used sample from The Winstons’s recording of “Amen Brother” (1969), on the B-side of the “Color Him Father” single, appearing in thousands of other songs including N.W.A.’s “Straight Outta Compton” (1988) and Christopher Tyng’s “Futurama Theme” (1999, until its sixth season when it was replaced with a similar drum beat), which itself is an appropriation of Pierre Henry’s “Psyché Rock” from *Messe pour le temps present* (1967)—framed as a “tribute” to Henry, since they were unable to obtain a license to use “Psyché Rock” directly. “Psyché Rock” was remixed by Fatboy Slim in 1997 (two years before *Futurama*), and curiously, there is little discussion about Fatboy Slim influencing the *Futurama* theme.

None of the members of the band, nor the song’s copyright owner, Richard Spencer, have been able to pursue royalties for the song. Spencer, who left the music industry the year after the release, wasn’t aware of its being sampled until 1996 when a record label approached him to buy the master recording (it’s uncertain who has them, but it appears he did not). Although the original single sold one million copies, Spencer is reported never to have received any royalties from publishing or performance. By the time he discovered the sampling, the statute of limitations (time period in which he could sue) had expired, and law at the time did not sufficiently address the practice of sampling (DMCA came two years after his discovery, in 1998). Drummer Gregory Coleman, who actually played the drum beat that was sampled, never received royalties either and died in 2006 broke and homeless.

In 2015, British DJ Martyn Webster created a GoFundMe.com campaign to raise money for Spencer, which raised £24,000, exceeding its £1,000 goal, from 1,811 donations in 2 months. Webster closed that campaign, paid Spencer, and opened another campaign to collect even more donations.

**“Happy Birthday to You”** has been used almost universally for private birthday celebrations throughout the twentieth century and beyond. The Summy Company copyrighted it in 1935, crediting Orem and Foreman as authors. In 1988, Warner/Chappell Music (of Warner Bros.) bought the company that owned Summy, including the rights to the song, which had an estimated value of \$5 million. Warner/Chappell reportedly collected \$700 per use of the song in a broadcast and \$1,500 for use in a film (according to two recent accounts). This is why businesses and broadcast media typically used different birthday songs, to the confusion or disappointment of some patrons. Still, Warner/Chappell reportedly earned \$2 million in royalties per year for it. USA copyright law might have protected

it until 2030. The song is one classic example of intellectual property being effectively “frozen” in copyright by new laws that extend copyright terms before they expire.

In 2010, it was discovered that the song clearly predated 1935, most likely created by kindergarten teacher Patty Hill and her pianist sister Mildred J. Hill in the nineteenth century. Warner/Chappell was sued for falsely claiming copyright to the song. In 2016, a court ruled that the song itself is in now the public domain and that Warner/Chappell owns the copyright to the specific piano arrangement (without lyrics), and Warner/Chappell settled the case for \$14 million.

**Men at Work, “Down Under” (1978)** brought a lawsuit for quoting the Australian folk song “Kookaburra” (1932) without paying royalties. The song was written and performed in 1978 by Colin Hay and Ron Strykert, who co-founded the Australian band Men at Work later that year, but the “Kookaburra” quotes were added by flutist Greg Ham who joined the band in 1979 and recorded the song with them in 1980. It wasn’t until it was mentioned in a 2008 Australian television quiz show that copyright holder Larrikin Music sued Hay and Strykert for royalties. Larrikin sought about half of their royalties, retroactively from the year the song was composed. In 2010, a judge finally awarded Larrikin 5% of all royalties, retroactive back to 2002, believed to be approximately \$100,000, plus 5% of any new royalty payments coming in.

Other points on this case:

- Assuming the publisher gets 50% of all royalties and the songwriters split the rest, Hay and Strykert would have collected over \$60,000 each in royalties per year. However, these payments were frozen during the trial, causing financial difficulties for them, especially given their new legal expenses.
- The band may have tried a “fair use” argument to defend their case, but it would have failed the test of “amount and substantiality” (i.e., “how much” and “which part”), since they used half of the tune, and the most recognizable part (the first half).
- Songwriters Hay and Strykert always insisted that the quote was not part of their songwriting, and they and flutist Ham insisted that it was completely improvised. However, “Kookaburra” had been a well-known camp song for decades, and became a musical symbol of Australia internationally. That fact combined with the unlikely pitch clashes created when working the quote into “Down Under” make it very hard to believe Ham purely improvised it.
- Marion Sinclair, the music teacher who composed the song in 1932 and lived until 1988, never commented on this use of her tune, suggesting that she didn’t notice the infringement or did not protest it. This speculative argument was used in court and failed.
- Larrikin Music bought the rights to “Koobaburra” from Ms. Sinclair for \$6,100 in 1990.

- Both sides of the case reportedly spent \$4.5 million in legal fees each. At its 2002–2010 earning rate, it would take each side hundreds of years to break even, long past the expected expiration of the copyright term.
- The lyrics of “Down Under” suggest that Australia has become greedy and sold out its identity. This is ironic given its status as the main icon of Australia in popular music and given its history to date.

**“The Star-Spangled Banner”** is a contrafact of a British song, “To Anacreon in Heaven,” written by John Stafford Smith c. 1773 for his gentlemen’s club, the Anacreontic Society, which reveled in witty poetry, music, and wine, typically sung in club functions by skilled soloists and later adopted in the UK and USA as a drinking song, well suited to loud, sloppy belting by inebriated amateurs. As “The Star-Spangled Banner,” lyrics are taken from Francis Scott Key’s 1814 poem, “Defence of Fort M’Henry.” In this form, the US congress made it the national anthem in 1931 (well into the twentieth century). It is known for its difficulty to sing, because of its wide pitch range, difficult lyrics, and long phrases (one full stanza—all of what is normally sung—only contains two long sentences, arguably only one complicated sentence).

Russian composer Igor Stravinsky, the Picasso of music, you might say, created an arrangement (reharmonization) of the song after he emigrated to the USA, as a tribute—he had made arrangements of many other countries’ national anthems already. He introduced some more modern harmonies but only with the intent to make the melodies, harmonies, and rhythms easier for the public to sing.

Stravinsky conducted the Boston Symphony Orchestra performing his arrangement in 1944 (13 years after the song was made the official national anthem), with his back to the orchestra, facing the audience to lead them in singing, which no one did. The next day, Boston police confiscated the sheet music, citing a Massachusetts law (still in effect today) requiring any performance of the song be “without embellishment or addition in the way of national or other melodies. . . , as dance music, as an exit march or as a part of a medley.” Stravinsky meant no disrespect and complied thereafter, and he was later found to have done nothing wrong; the police had misinterpreted the law by reportedly rephrasing it as prohibiting “tampering with national property.”

Immediately after this incident, the Boston Globe proclaimed, “No Official Version Exists of the ‘Star Spangled Banner,’” tracing different versions of it, and by one estimate there were more than 200 different recordings of it. This wasn’t just in response to Stravinsky. In 1940, popular arts magazine *Script* had already written, “WANTED—A NEW NATIONAL ANTHEM,” and the Hollywood *Citizen-News* bemoaned the arrangements that were being used. In 1942, President Franklin Delano Roosevelt informed the Navy band that he didn’t like it performed with “frills” (meaning the flourishes of brass and percussion typical of military bands), later requesting that no efforts be “made to jazz or modernize this anthem.” Well, Stravinsky’s arrangement was more modern, but not in the sense of jazz or contemporary popular music, and it was much less embellished than precursors. Since then, John Williams (composer of many celebrated film scores including *Star Wars*) has been hired to write multiple arrangements that take more liberties than

Stravinsky dared, to no controversy at all.

José Feliciano's performance at the 1968 World Series in Detroit, Michigan, with his solo voice and guitar playing simple chords, lacking the common 19th century Romantic chromatic harmonies, drew negative responses that hurt his career.

The following year, a musician from a country with which the USA has had multiple wars, who had been outspoken in criticizing the USA's use of violence, presented a heavily elaborated arrangement laden with harsh noises resembling war machines, bombs, explosions, and screams. It was by all rights a protest, much louder and aggressive than the scandalous silent kneeling protests started in the 2016 National Football League season. How do you think this arrangement was received? See the footnote for the answer.\*

Whitney Houston's arrangement performed at the 1991 Superbowl in Tampa, Florida exemplifies the contemporary tradition of performing it with elaborate vocal flourishes. This arrangement was released as a audio single and music video by Arista Records, earning Houston, Arista, and publisher Bertelsmann Music Group (BMG) over \$500,000 in profits from sales royalties (after covering production costs). The arrangement and that recording are their intellectual property, and it is their right to do that. However, Houston, Arista, and BMG donated these proceeds to charity.

Some cities in New York, including New York city, have laws requiring a permit to perform the song or the pledge of allegiance in public. This got public attention when a group of visiting middle school students were stopped from singing at the National September 11 Memorial & Museum, and as of 2017, a state bill is in process to forbid cities in New York from requiring such a permit. Note that the cases in Massachusetts and New York are state laws, and they concern derivative works and performances, but without citing intellectual property as the reason. Neither state has any ownership of the song, but they can shape its use in these other ways, for better or worse.

## Other Artists You Might Research for Discussion

- Electronic music examples from the Definitions section (pp. 5–11), if the case gives you enough material to fully address the questions
- Girl Talk
- Scanner (Robin Rambaud)

---

\*That was Jimi Hendrix's performance at the 1969 Woodstock Festival in New York, which received great acclaim. It is remembered for its musical innovation and scarcely discussed as a protest.

## Resources

Use any of the following resources or your own research to find responses that best suit your interests.

### In the Course Textbook

#### New/Changed Practices of Making or Experiencing Music

- Ch. 1 Introduction: pp. 1–2, 7, 9–10
- Ch. 2 Recording Technologies and Music: pp. 14–16, 18, 20–21
- Ch. 3 New Sounds and New Instruments—Electronic Music Up Until 1948:  
pp. 29–30, 34, 36
- Ch. 4 The Post-War Sonic Boom: pp. 48, 51, 59
- Ch. 5 From Analog to Digital: pp. 68–70, 73
- Ch. 6 Into the Mainstream: pp. 79–81
- Ch. 7 Synth Pop: pp. 90, 92–94, 96–97, 99, 101
- Ch. 8 Electronic Dance Music: pp. 102, 105–106, 109, 112–114, 118
- Ch. 9 Continuing the Classical: pp. 121
- Ch. 10 Experimental Electronica: pp. 137–138, 142–143, 145
- Ch. 11 Sound Art: pp. 151–152, 155, 158–159
- Ch. 12 Further Connections: pp. 167–169, 171, 173–178
- Ch. 13 Live Electronic Music: pp. 182–184, 186–191
- Ch. 14 Conclusions: pp. 192–193

#### Other Social Responsibility Issues

- Ch. 1 Introduction: pp. 7, 10
- Ch. 2 Recording Technologies and Music: pp. 14, 20–23
- Ch. 3 New Sounds and New Instruments—Electronic Music Up Until 1948:  
pp. 28, 34, 37
- Ch. 4 The Post-War Sonic Boom: pp. 48, 52, 56
- Ch. 5 From Analog to Digital: pp. 73
- Ch. 6 Into the Mainstream: pp. 79, 85–86
- Ch. 7 Synth Pop: pp. 93, 98
- Ch. 8 Electronic Dance Music: pp. 105, 115–116
- Ch. 9 Continuing the Classical: pp. 130–131
- Ch. 10 Experimental Electronica: pp. 138, 140, 145–146
- Ch. 11 Sound Art: pp. 156–157, 161
- Ch. 12 Further Connections: pp. 165, 169
- Ch. 13 Live Electronic Music: pp. 183, 187

## History/Literature Websites

- Barros, “History of Electronic Music” on *UbuWeb*—<http://ubu.com/sound/electronic.html> (Note: this includes many innovative compositions, but you will need other sources to learn details about technologies, techniques, and materials used.)
- cdza, *8 Milestones in Recorded Sound*—<https://www.youtube.com/watch?v=zTuZ7PzJk0I> (Note: this discusses innovations but not their origins or impacts. You’ll need to follow up with other sources to track down origins, and read more or think for yourself to discover impacts.)
- Complex Media, *AllMusic* — <http://www.allmusic.com/>
- Complex Media, *Who Sampled: Exploring the DNA of Music* — <http://www.whosampled.com/>
- Crab, *120 Years of Electronic Music*—<http://120years.net/> (Primarily covering musical instrument inventions.)

## Weblogs

- *Create Digital Music*—<http://cdm.link/>
- *Networked Music Review*—[http://archive.turbulence.org/networked\\_music\\_review/](http://archive.turbulence.org/networked_music_review/) (Note: this site is down at the time of writing this document; hopefully it will return soon.)

## Periodicals

These publications may have some content available online and other content available through the university library.

- *Computer Music Journal*—<http://www.computermusicjournal.org/>
- *Electronic Musician*—<http://www.emusician.com/>
- *Future Music* (UK)—<http://www.musicradar.com/futuremusic>
- *Keyboard Magazine*—<http://www.keyboardmag.com/>
- *Sound On Sound*—<http://www.soundonsound.com/>
- *The Wire*—<http://www.thewire.co.uk/>

## Books

An list of books relevant to this course, with annotations by your instructor, is available at [https://www.goodreads.com/list/user\\_vote/5773054](https://www.goodreads.com/list/user_vote/5773054). On that page, click the title of the list to see recommendations made by others.