

keith
AOKI

james
BOYLE

jennifer
JENKINS

DUKE

CENTER FOR THE
STUDY OF THE
PUBLIC DOMAIN

TALES FROM THE PUBLIC DOMAIN

THEFT

A HISTORY
OF MUSIC



A
TALE OF LAW
AND MUSIC THAT
LEADS THROUGH
THE GATES OF
TIME!

Theft! A History of Music
© James Boyle and Jennifer Jenkins (2017)

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Credits:

Initial Sketches: Keith Aoki

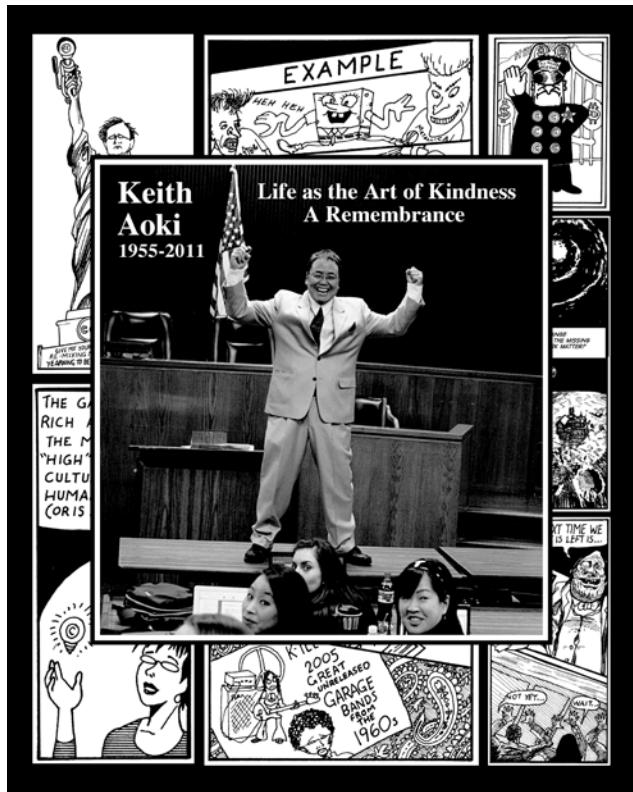
Research, Writing and Graphic Design: James Boyle & Jennifer Jenkins

Art, Illustration and Inking: Ian Akin & Brian Garvey

Lettering, Coloring, Digital Publishing: Balfour Smith

About the Artists: After the tragic death of Keith Aoki, we had to find new artists to redraw the book from scratch. Those artists were Ian Akin and Brian Garvey. Veteran comic book illustrators and inkers, Ian and Brian have done work for Marvel, DC, Disney and many others. Their task was a daunting one: they had to come into a book designed and written by law professors and translate the vision of a beloved deceased artist into their own idiom. All of this in a work that was part comic book, part academic monograph. They were, quite simply, magnificent. You can see, in the pages that follow, what consummate professionals they are. They are also lovely folk to work with and we recommend them wholeheartedly. <http://www.akinandgarvey.com/>

Dedicated to Keith Aoki 1955–2011



This book is dedicated to Keith Aoki: our colleague, co-author and, above all, our friend. Keith passed away, tragically young, while we were creating the comic. He told us of his illness matter-of-factly, a week before his death, as an “apology” for not completing more of the drawings Jennifer and I had designed. He also told us that he wanted us to finish the book we had begun together; in fact he told us that we had to finish the book. Those were the last words we heard him say. We later realized that he had been battling his illness through much of our work on the comic, never complaining.

Keith had told us we had to finish the book. It was only half done. We had no heart for it. In the end, it meant starting again and redrawing the book from scratch with two wonderful professional artists, Ian Akin and Brian Garvey. Every page we went through was a reminder of a conversation we had had with Keith, a joke we had made, a crazy reference to pop culture, or film noir or music or law — because Keith was an artist, a legal scholar, and a hilarious culture-jammer. And each of those reminders was a sad one. It was a deeply painful task. Still, Keith had told us we had to finish the book. Those are the kinds of commands one does not disobey.

If Keith had written this dedication, it would be unsentimental, it would redirect all the praise to others and it would be darkly funny, because Keith had a very dark sense of humor where he was the subject. The last law review “article” he published was a comic with himself as a character. If one looks closely at the T-shirt the character is wearing, it says, “You can’t avoid the void.” Keith knew he was dying when he drew that. No one else did.

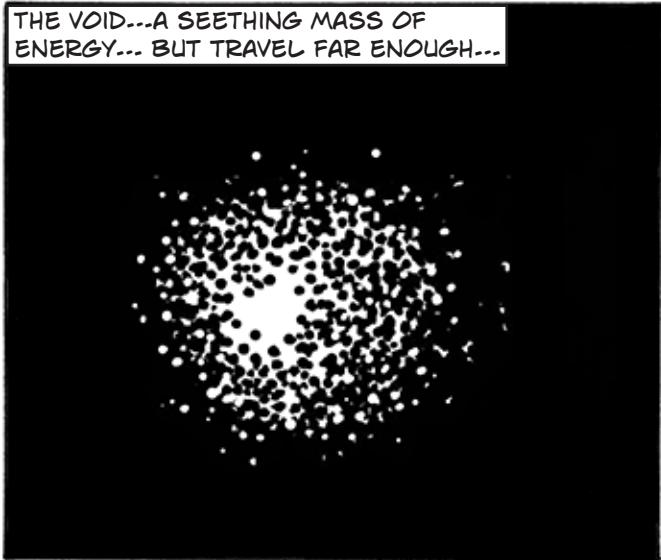
We published a book of quotes and drawings to remember Keith — *Keith Aoki: Life as the Art of Kindness*. You can find it elsewhere. We will not rehash it here except to say: we shall not look upon his like again. Would that the rest of us could be that kind, that modest, that creative.

We finished the comic for you, man. It took us long enough. Sorry about that. But you were terrible with deadlines too, just terrible. So perhaps you’ll cut us a break. You can’t avoid the void. But you can make something beautiful, funny and even maybe insightful that escapes it for a little while.

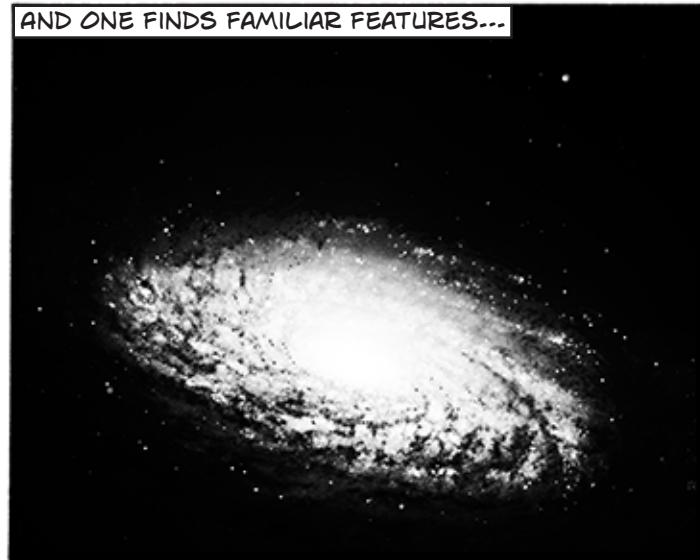
James Boyle & Jennifer Jenkins
Durham, NC. 2016

Acknowledgments: We are standing on the shoulders of giants. J. Peter Burkholder’s magisterial set of works on musical borrowing—he literally wrote the book(s) on the subject—was our constant guide. Professor Michael Carroll is a pioneer of the history of copyright and music and many of his insights are reflected here. Professor Olufunmilayo Arewa has written extensively about musical borrowing, appropriation and copyright. Her work was an inspiration. Our colleague and co-teacher, Dr. Anthony Kelley of the Duke Music Department provided a composer’s insights more times than we can remember. But our debts go far beyond the people mentioned here. At the end of the book you will find a lengthier list of acknowledgments and further reading, while an online companion to this comic lists references for each page and every point we make. (We are geeks. So sue us.) We would also like to thank our indispensable colleague Balfour Smith, who lettered and colored the comic and wrangled the digital files over countless versions. We have been helped over the years by many research assistants: Peter Berris, Cody Duncan, Cory Fleming, Branch Furtado, Justin Greenbaum, Federico Morris, Dan Ruccia, Michael Wolfe, and Jordi Weinstock. Finally, we would like to acknowledge the generous support of the Ford and Rockefeller Foundations and of the Duke Law School. Errors are ours alone.

THE VOID...A SEETHING MASS OF ENERGY... BUT TRAVEL FAR ENOUGH...



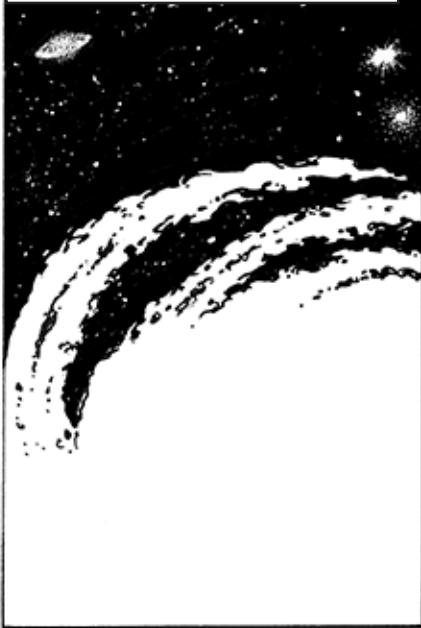
AND ONE FINDS FAMILIAR FEATURES...



EXPERTS TELL US THAT MOST OF THIS GREAT UNIVERSE IS UNSEEN, INVISIBLE...



SCIENCE KNOWS LITTLE OF IT. YET IT MAKES UP 90% OF EVERYTHING AROUND US...



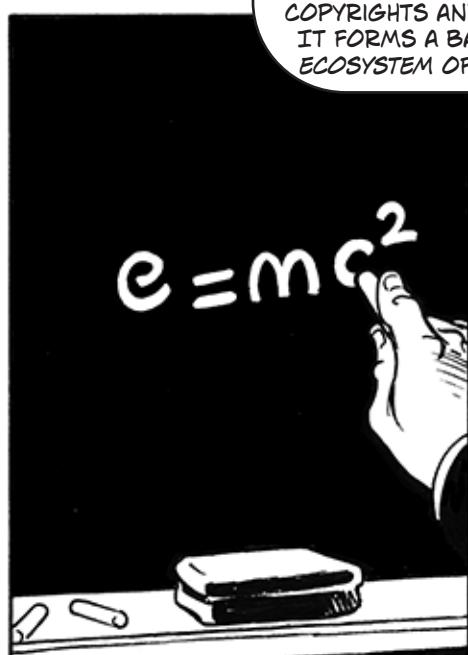
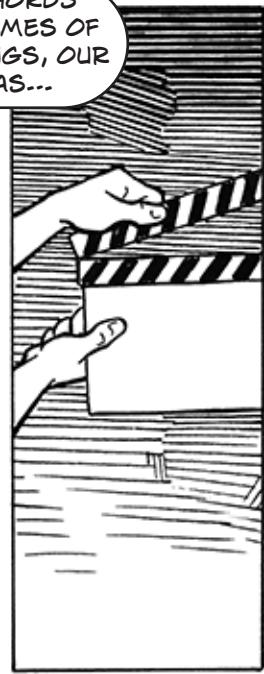
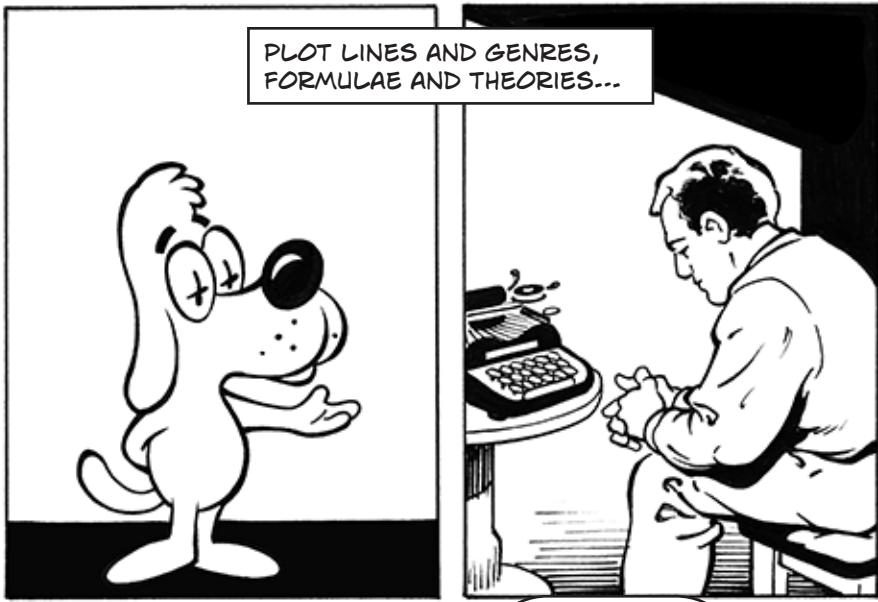
IS THIS STRANGE SUBSTANCE THE MISSING MASS?... DARK MATTER?



NO. IT IS THE PUBLIC DOMAIN... AND I AM THE TELLER OF ITS TALES.



COME IN,
I HAVE BEEN
EXPECTING
YOU...



OUR HOSTS: TWO FIGURES WHO OBSESSIVELY STUDY THIS REALM, AS THOUGH THEY HAD BEEN CURSED TO CHART THE LINE BETWEEN FREEDOM AND CONTROL IN EACH FIELD OF HUMAN CULTURE.*

WHAT ART FORM SHALL WE EXPLORE TONIGHT? MOVIES? LITERATURE?

HI! HI!



*FOR THEIR PREVIOUS ADVENTURE,
SEE BOUND BY LAW? -EDS.





AND HERE IS YOUR GUIDE ON
THAT JOURNEY. COMPOSER,
MUSICOLOGIST, HISTORIAN
---AND HE HAS A NICE CAR.

MOON? VACUUM?
I GUESS IT'S
FOR DRAMATIC ...
"ATMOSPHERE."

PLEASED TO
MEET YOU.
HOP IN.

WOW!



WHAT KIND OF
MILEAGE DO YOU
GET IN THIS THING?

ABOUT
500 YEARS
A GALLON.

?????



WHAT DOES THIS
BUTTON DO?

HEY, DON'T
TOUCH THA....





SO, THAT GUY SAID YOU WERE THE EXPERT.
WHEN WAS THE FIRST TIME SOMEONE LISTENED
TO A SONG AND THOUGHT IT WAS SOMETHING
THAT COULD BE OWNED...?

WELL, THAT DEPENDS
ON WHAT YOU MEAN BY
"IT" AND WHAT YOU
MEAN BY "OWNED."

IS THIS ONE OF THOSE LEGAL ANSWERS?
DEPENDS WHAT THE DEFINITION OF "IS" IS?

"I DID NOT
SAMPLE SONGS
WITH THIS WOMAN!"

ACTUALLY, NO...



2015
1730
1000
486
335

WHEN WE THINK
OF MUSIC, WE
THINK OF IT
AS "FROZEN."
IN CDS OR
MP3 FILES...

-151 809

79

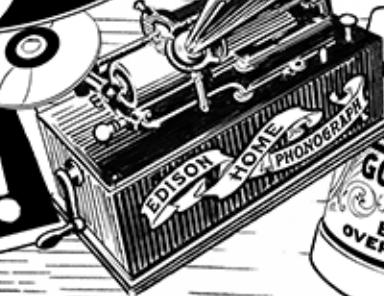
...OR TAPES,
VINYL, SHELLAC...
WAX CYLINDERS.

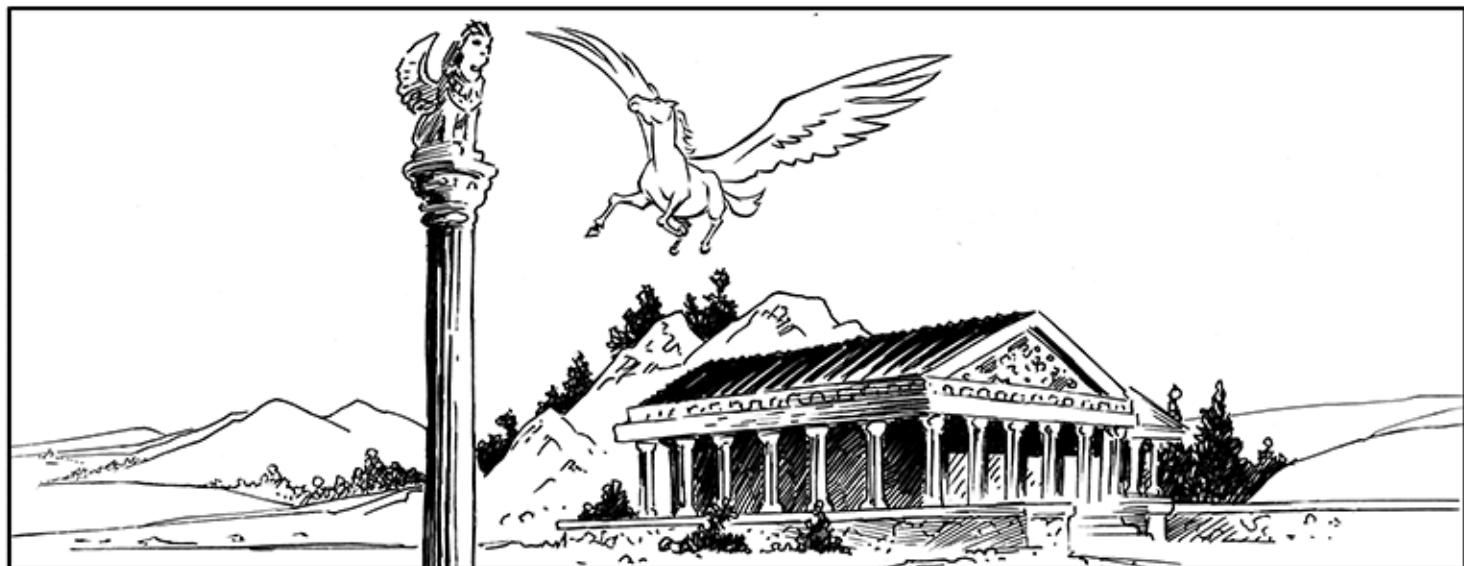
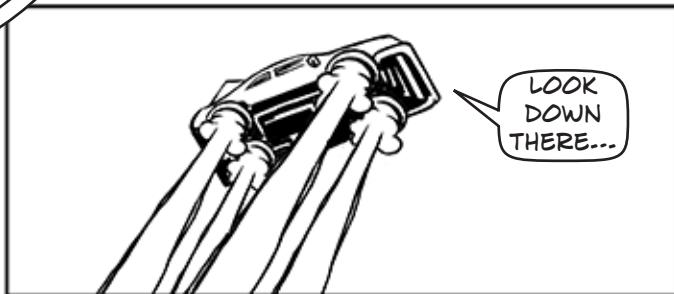
TOWER RECORDS
STORE

THE BEATLES with Tony Sheridan
HAMBURG TWIST



THING
GO!







THE EARLIEST NOTATION WE KNOW OF COMES FROM LONG BEFORE THIS - 1400 BC IN MESOPOTAMIA. BUT ... HOLD ON. I NEED TO LAND BY THAT STONE DOWN THERE.

THAT'S A HYMN TO APOLLO. THE MARKS ABOVE THE LETTERS INDICATE THE MELODY.



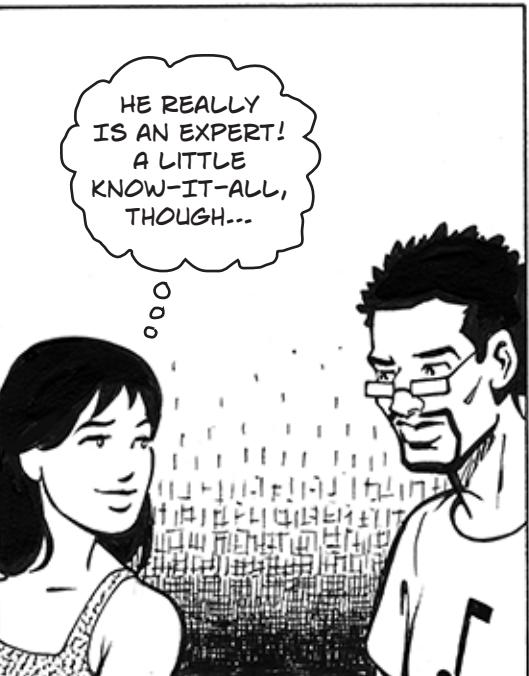
THIS IS A 2ND CENTURY CE ROMAN SCROLL OF A GREEK SONG. BUT IT GIVES US AN IDEA OF WHAT GREEK MUSIC WAS LIKE.



SO THE GREEKS CERTAINLY HAD NOTATION, THOUGH IT SEEMS TO HAVE BEEN USED INFREQUENTLY - AS A HISTORICAL RECORD OF SONGS, NOT SOMETHING MUSICIANS USED EVERY DAY.



WE USED TO THINK WE'D NEVER KNOW HOW THESE TUNES SOUNDED - NOW, SOME SCHOLARS THINK THEY CAN MAKE A PRETTY GOOD GUESS.

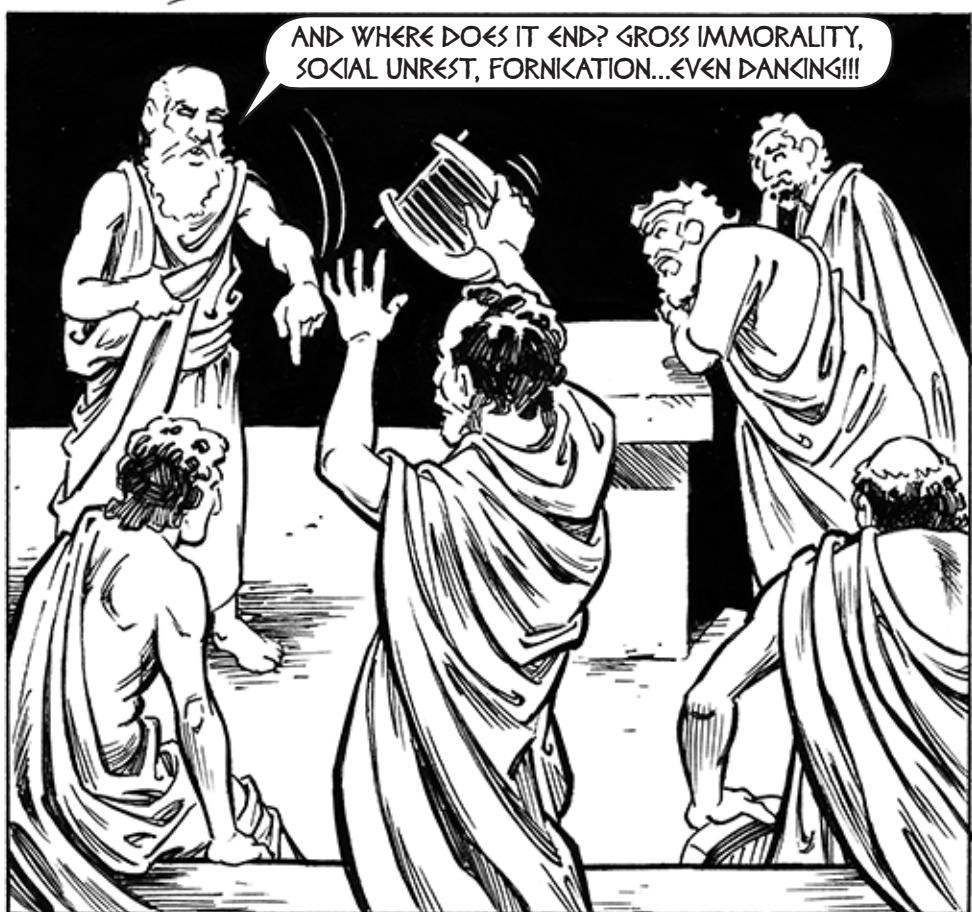


THE SMALL SYMBOLS ABOVE THE TEXT ARE NOTES; THE LINES, THE RHYTHM.





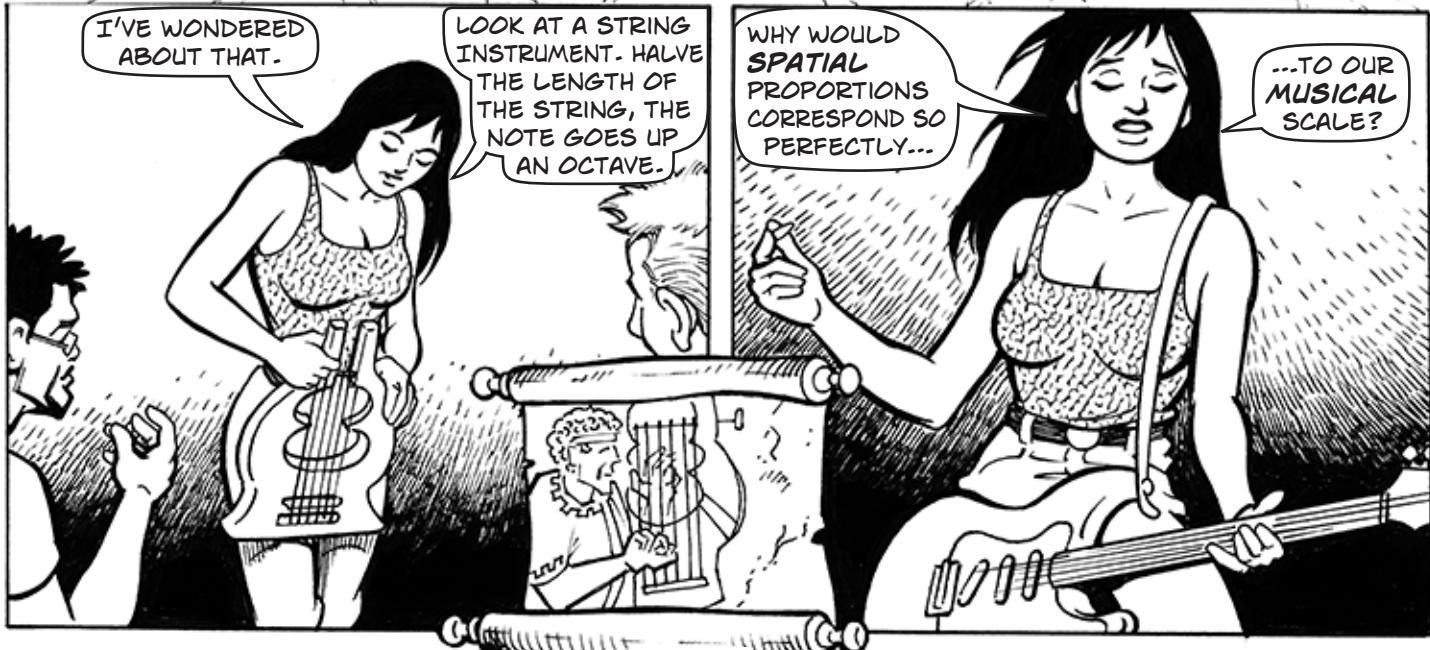
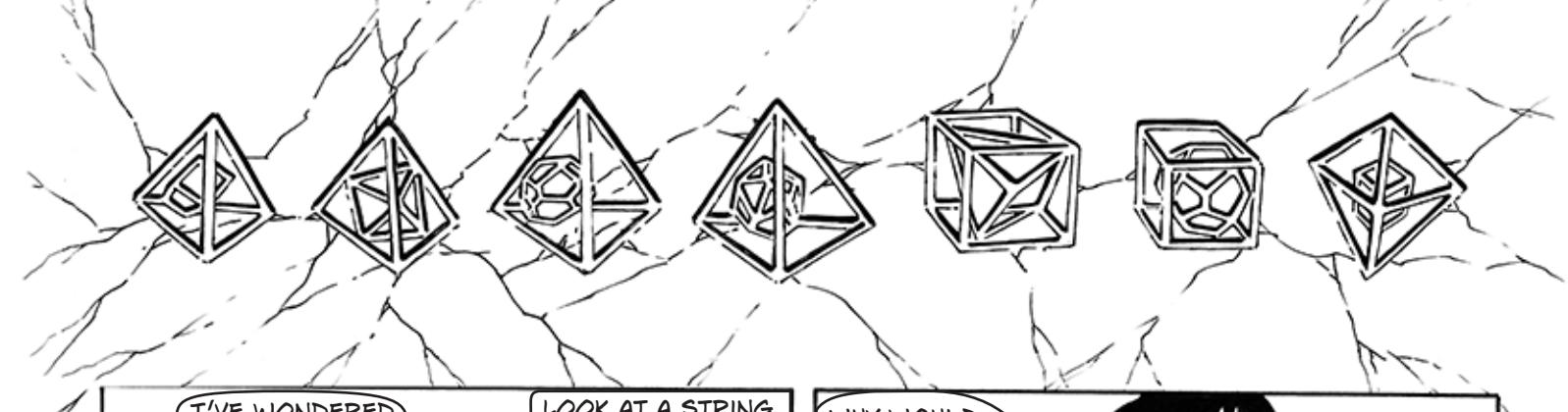
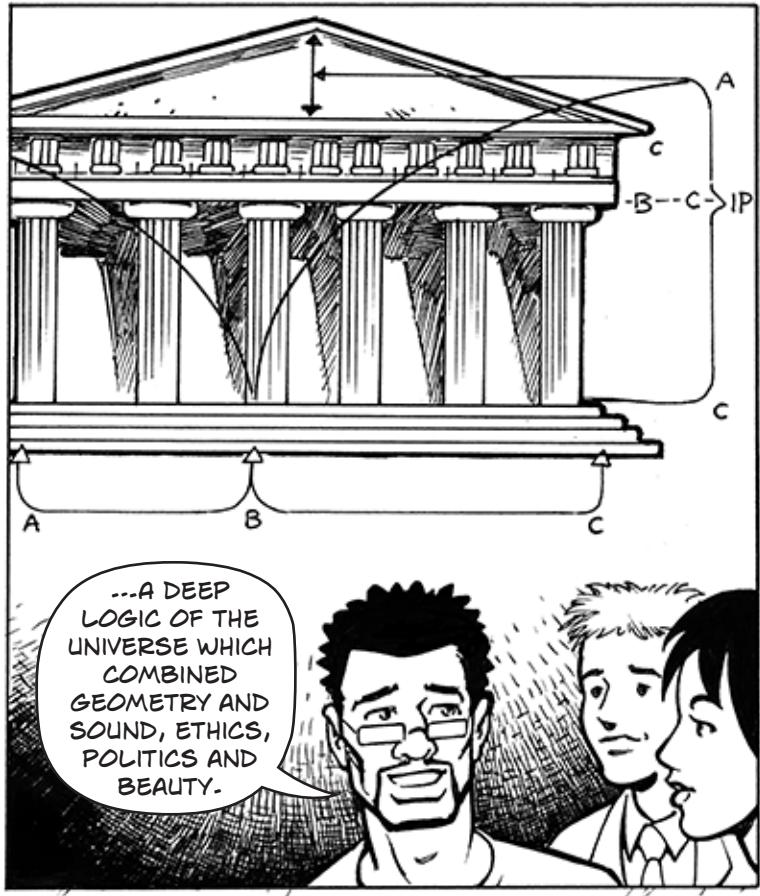
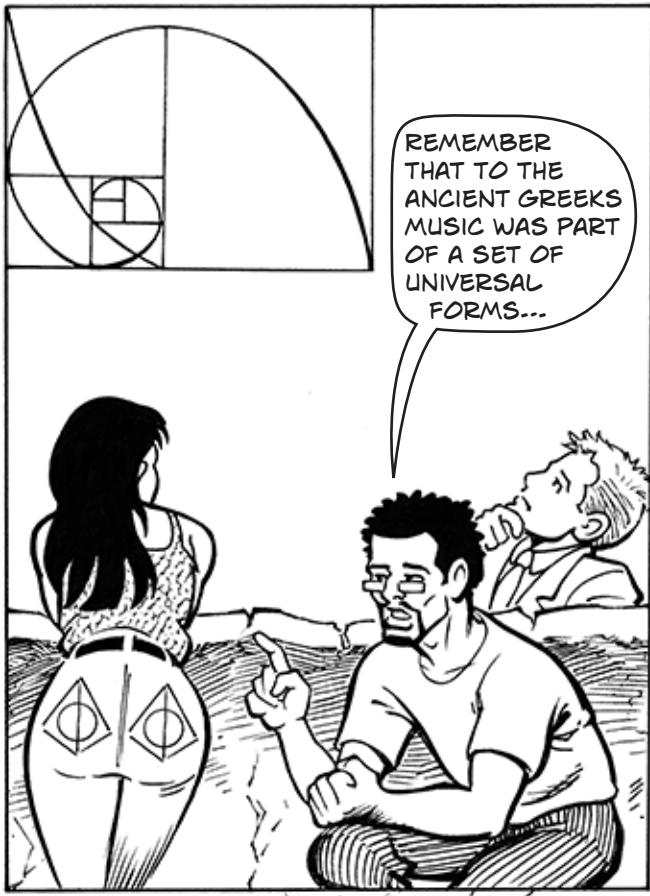






"THIS IS THE POINT TO WHICH, ABOVE ALL, THE ATTENTION OF OUR RULERS SHOULD BE DIRECTED, -- THAT MUSIC AND GYMNASTIC BE PRESERVED IN THEIR ORIGINAL FORM, AND NO INNOVATION MADE. THEY MUST DO THEIR UTMOST TO MAINTAIN THEM INTACT. AND WHEN ANY ONE SAYS THAT MANKIND MOST REGARD 'THE NEWEST SONG WHICH THE SINGERS HAVE,' THEY WILL BE AFRAID THAT HE MAY BE PRAISING, NOT NEW SONGS, BUT A NEW KIND OF SONG; AND THIS OUGHT NOT TO BE PRAISED, OR CONCEIVED TO BE THE MEANING OF THE POET; FOR ANY MUSICAL INNOVATION IS FULL OF DANGER TO THE WHOLE STATE, AND OUGHT TO BE PROHIBITED. SO DAMON TELLS ME, AND I CAN QUITE BELIEVE HIM; -- HE SAYS THAT WHEN MODES OF MUSIC CHANGE, THOSE OF THE STATE ALWAYS CHANGE WITH THEM."

[PLATO, THE REPUBLIC --EDS.]



A BRIEF SNIPPET FROM GREEK MUSIC THEORY

THE GREEKS USED FAMILIAR CONCEPTS SUCH AS "NOTES" THAT CORRESPONDED TO A PARTICULAR PITCH, AND "INTERVALS" - THE SPACE BETWEEN NOTES - WHICH PYTHAGORAS DERIVED FROM MATHEMATICAL RATIOS.

IF THESE WERE VIBRATING GUITAR STRINGS, THE SECOND WOULD SOUND AN OCTAVE HIGHER THAN THE FIRST:



1:1



2:1 = AN OCTAVE HIGHER



THE GREEKS ALSO HAD UNIQUE CONCEPTS SUCH AS THE "TETRACHORD," WHICH WAS A BASIC MUSICAL UNIT, LIKE THE OCTAVE TODAY.

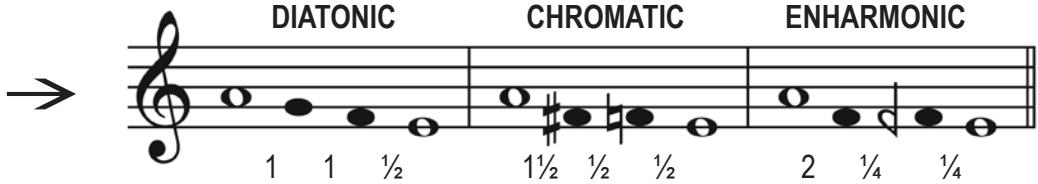
A TETRACHORD IS A GROUP OF FOUR PITCHES. THE OUTER PITCHES ARE FIXED AND ALWAYS SPAN A "PERFECT FOURTH" - THE SPACE BETWEEN THE FIRST TWO NOTES OF "HERE... COMES THE BRIDE" OR OF "AULD LANG SYNE" ("SHOULD...AULD...")



A "PERFECT FOURTH"

GREEK TETRACHORDS

DIFFERENT INNER NOTES MADE THREE KINDS OF TETRACHORDS



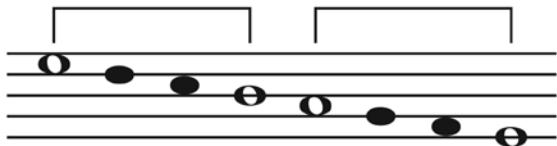
RT @Apollo THE SECOND STRING IS A LITTLE SHARP...



"TETRACHORD" MEANT "FOUR STRINGS," AND THEY WERE USED FOR TUNING INSTRUMENTS LIKE THE LYRE AND KITHARA.

GREEK THEORISTS COMBINED TETRACHORDS TO MAKE DIFFERENT SCALES OR MODES (THE GREEKS USED THE TERMS "HARMONIAI" AND "TONOI") THAT DETERMINED THE NOTES YOU WOULD HEAR IN A PIECE OF MUSIC.

2 DIATONIC TETRACHORDS



Ptolemy's Dorian Mode

MEDIEVAL CHURCH MODES BORROWED THE GREEK NAMES, BUT THEY WERE ACTUALLY DIFFERENT.

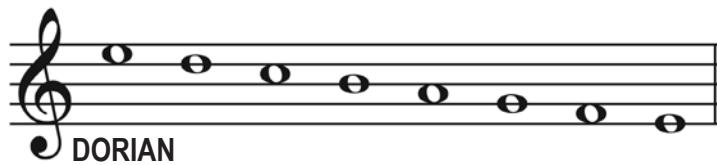


GREEK PHILOSOPHERS THOUGHT THE **MODES** COULD AFFECT A PERSON'S CHARACTER. PLATO ONLY APPROVED OF THE DORIAN AND PHRYGIAN MODES, WHICH WERE ASSOCIATED WITH COURAGE AND TEMPERANCE. (ARISTOTLE WAS SLIGHTLY MORE FORGIVING.)

FROM PLATO'S
"THE REPUBLIC"

"WARLIKE, TO SOUND THE NOTE OR ACCENT WHICH A BRAVE MAN UTTERS IN THE HOUR OF DANGER AND STERN RESOLVE"

GREEK MODES

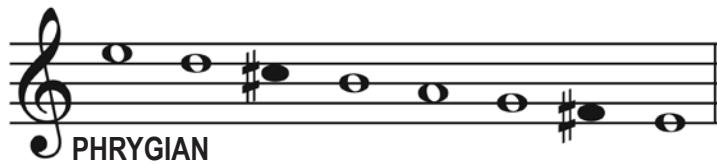


DORIAN

FROM ARISTOTLE'S
"POLITICS"

"PRODUCES A MODERATE AND SETTLED TEMPER... ALL MEN AGREE THAT THE DORIAN MUSIC IS THE GRAVEST AND MANIEST."

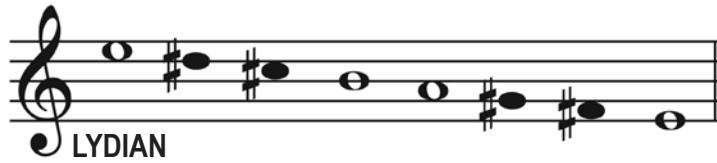
"TO BE USED...IN TIMES OF PEACE AND FREEDOM OF ACTION, WHEN THERE IS NO PRESSURE OF NECESSITY... WHEN BY PRUDENT CONDUCT HE HAS ATTAINED HIS END, NOT CARRIED AWAY BY HIS SUCCESS, BUT ACTING MODERATELY AND WISELY UNDER THE CIRCUMSTANCES, AND ACQUIESCING IN THE EVENT"



PHRYGIAN

"INSPIRES ENTHUSIASM... BACCHIC FRENZY AND ALL SIMILAR EMOTIONS... ARE BETTER SET TO THE PHRYGIAN THAN TO ANY OTHER MODE."

"SOFT OR DRINKING HARMONIES"; "DRUNKENNESS AND SOFTNESS AND INDOLENCE ARE UTTERLY UNBECOMING THE CHARACTER OF OUR GUARDIANS"



LYDIAN

"ENFEEBLE[S] THE MIND"

I BET GLAUCON WOULD AGREE TO A STATE BAN OF INSTRUMENTS THAT ALLOW INNOVATION!

I KNEW THIS WOULD HAPPEN!



THERE REMAIN THEN ONLY THE LYRE AND THE HARP FOR USE IN THE CITY, AND THE SHEPHERDS MAY HAVE A PIPE IN THE COUNTRY.

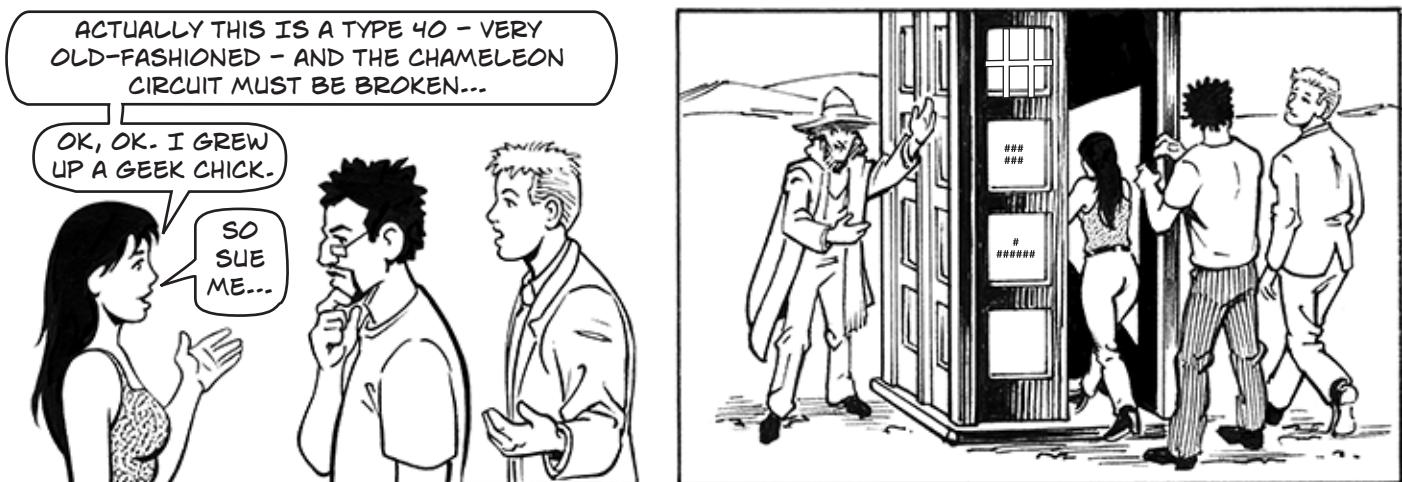


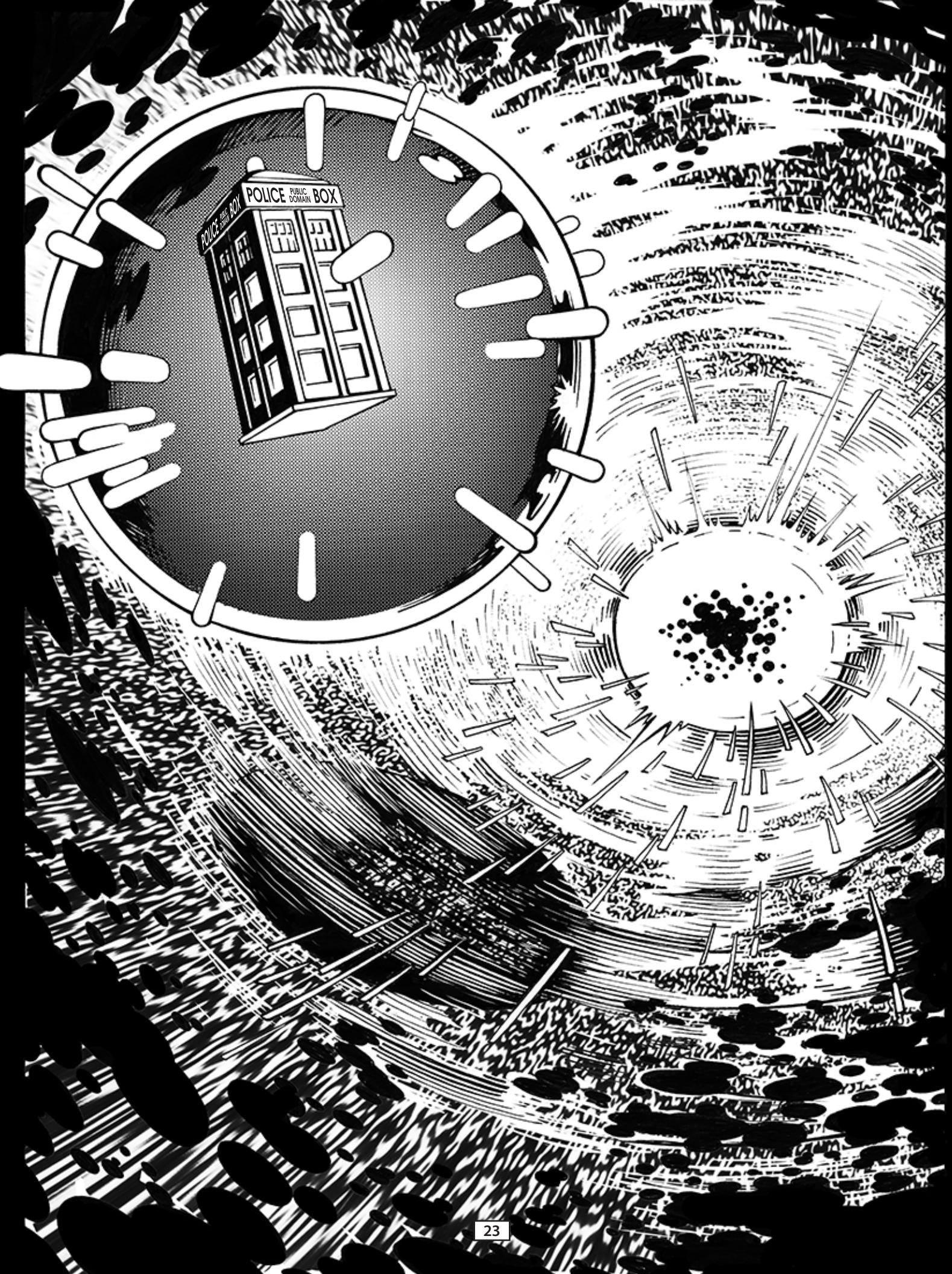
CONTROL HARDWIRED INTO THE TECHNOLOGY...

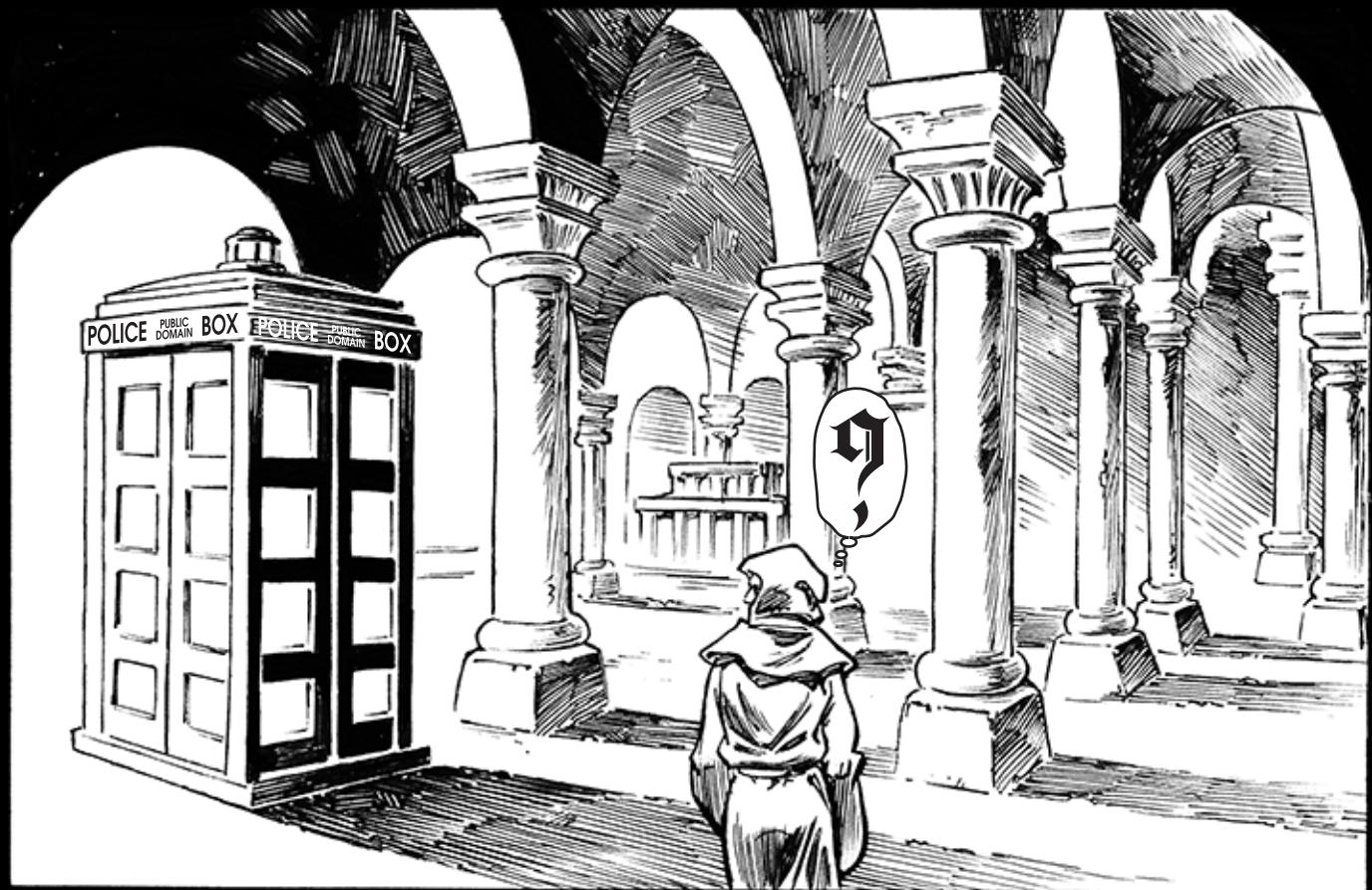
IT'S "DIGITAL" RIGHTS MANAGEMENT!

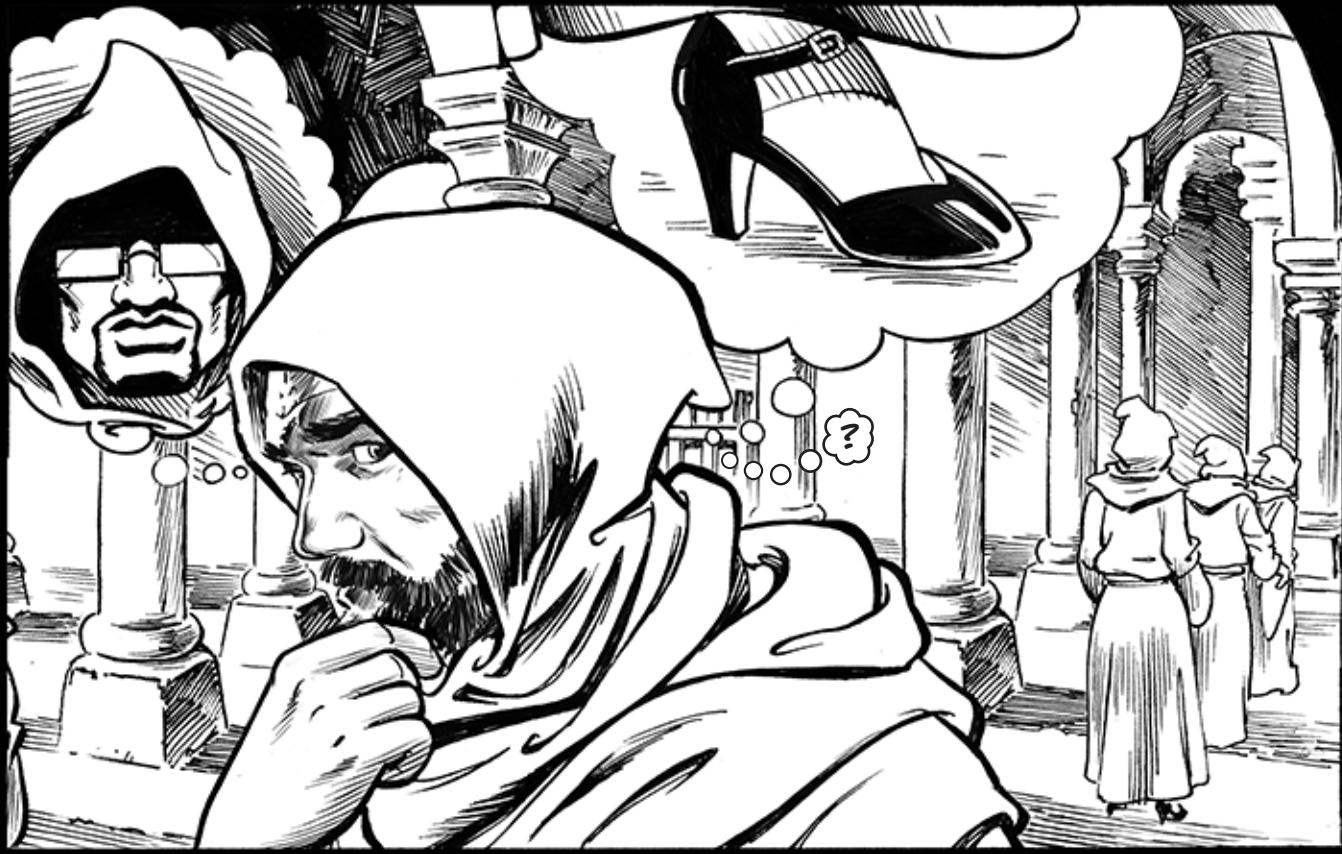














THE CHURCH WAS STRUGGLING TO IMPOSE UNIFORMITY, CENTRAL CONTROL. EVERYWHERE YOU WOULD HEAR THE SAME MUSIC, THE SAME LITURGY...

SO INNOVATION IS BEING FORBIDDEN AGAIN? DON'T REMIX MY MASS?

...ONE POPE,
ONE CHURCH,
ONE SONG.



IT WASN'T JUST A MATTER OF RELIGIOUS ORTHODOXY. PIPPIN GOT LEGITIMACY FROM THE CHURCH.



HE ACTUALLY CREATED THE POSITION OF "KING OF THE FRANKS" BY GETTING THE POPE TO BLESS HIS ELECTION.



AFTER THIS VISIT, HE DECLARED THE ROMAN LITURGY AND MUSIC TO BE THE ONLY OFFICIAL VERSION IN HIS KINGDOM.



HE EVEN TRIED TO STAMP OUT LOCAL RITES AND MUSIC.

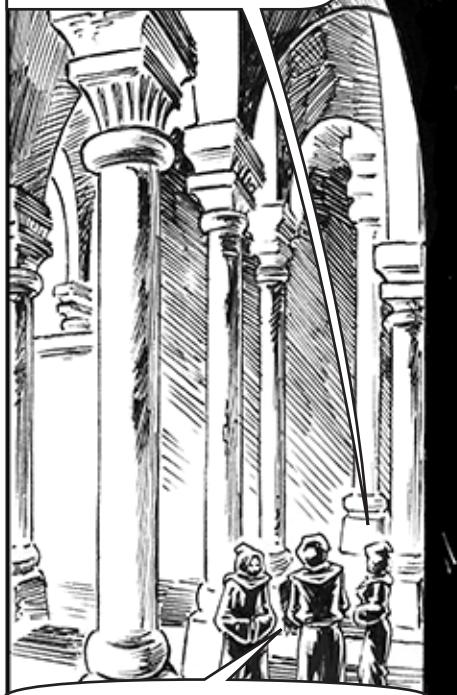
...A PROCESS THAT CHARLEMAGNE CONTINUED. INTERESTING. SO CHARLEMAGNE'S HOLY ROMAN EMPIRE IS PARTLY BUILT ON MUSICAL ORTHODOXY?



WELL, IT IS EASY TO OVERCLAIM. NOTHING IN HISTORY IS SIMPLE. BUT, YES, THAT WAS A SMALL PART OF BUILDING A RELIGIOUS EMPIRE.

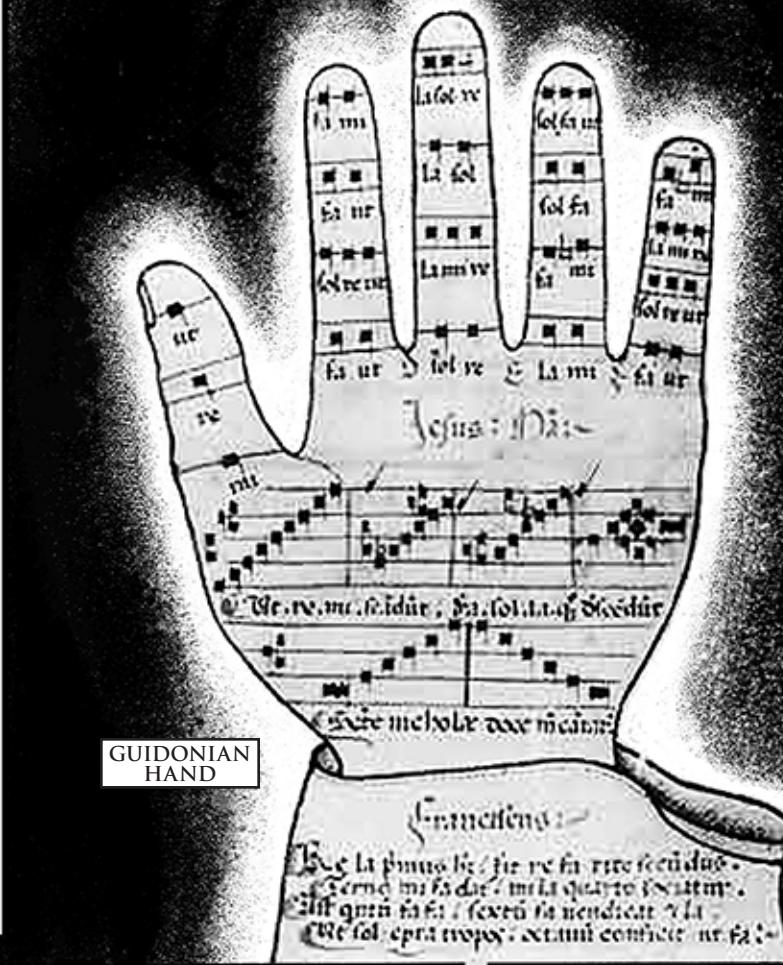


WERE THERE OFFICIAL MUSICAL SCORES THAT EVERYONE HAD TO USE?



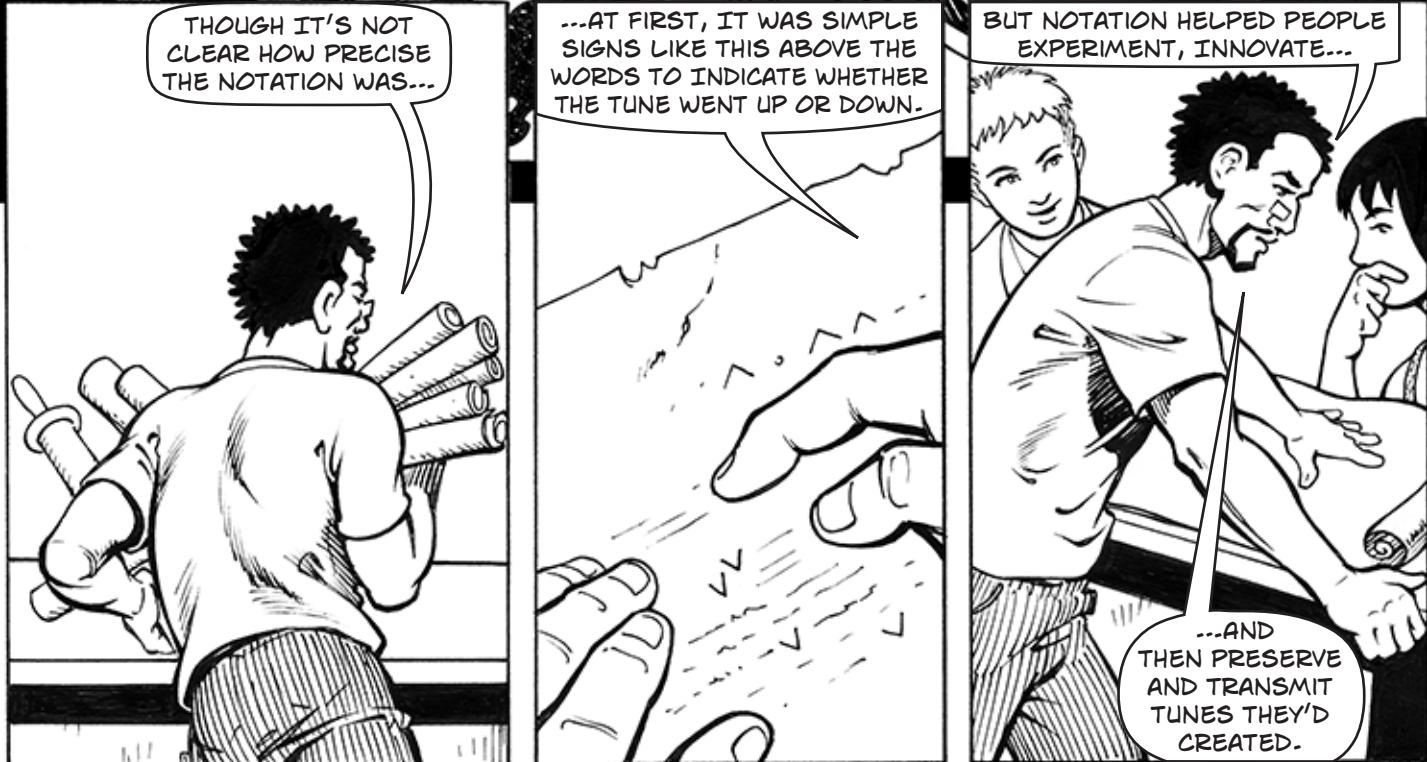
NOT AT FIRST. THE IRONY WAS THAT NOTATION HAD DIED OUT. IT HAD TO BE REINVENTED - WHICH IT WAS OVER THE NEXT HUNDRED YEARS OR SO. AND A LOT OF SCHOLARS THINK...

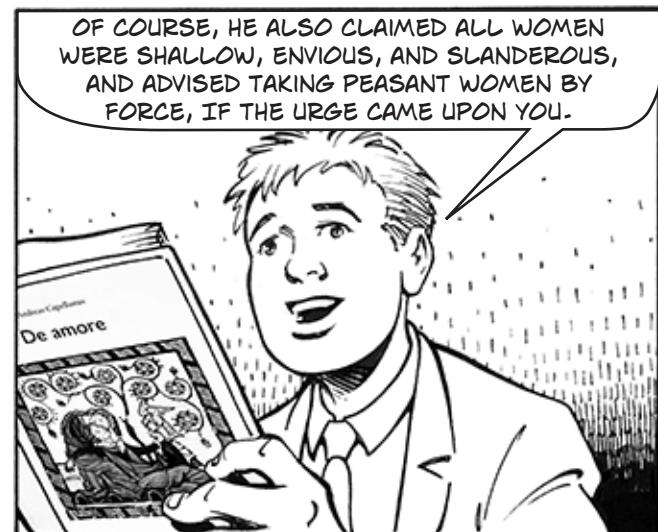
GUIDONIAN HAND



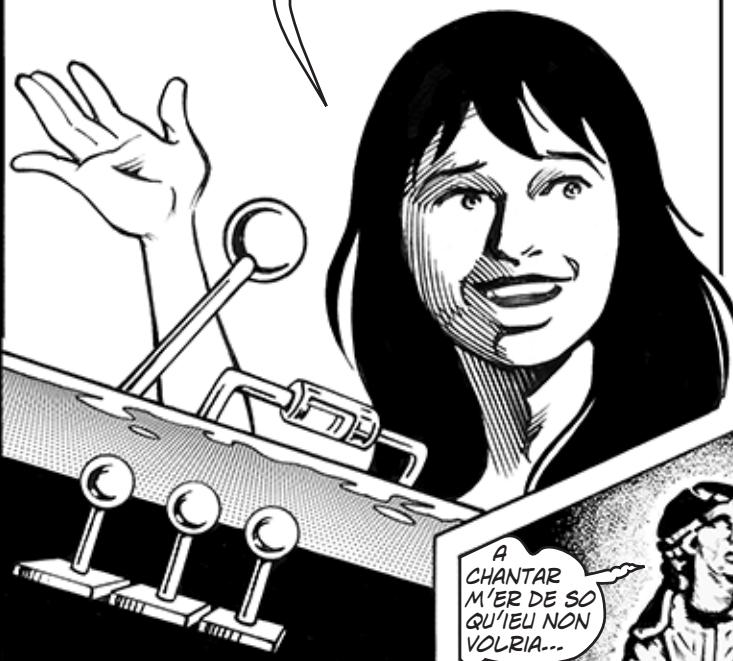
...THAT IT WAS INVENTED TO EXERT CONTROL! TO MAKE SURE PEOPLE WERE ALL SINGING THE SAME TUNE. LITERALLY!







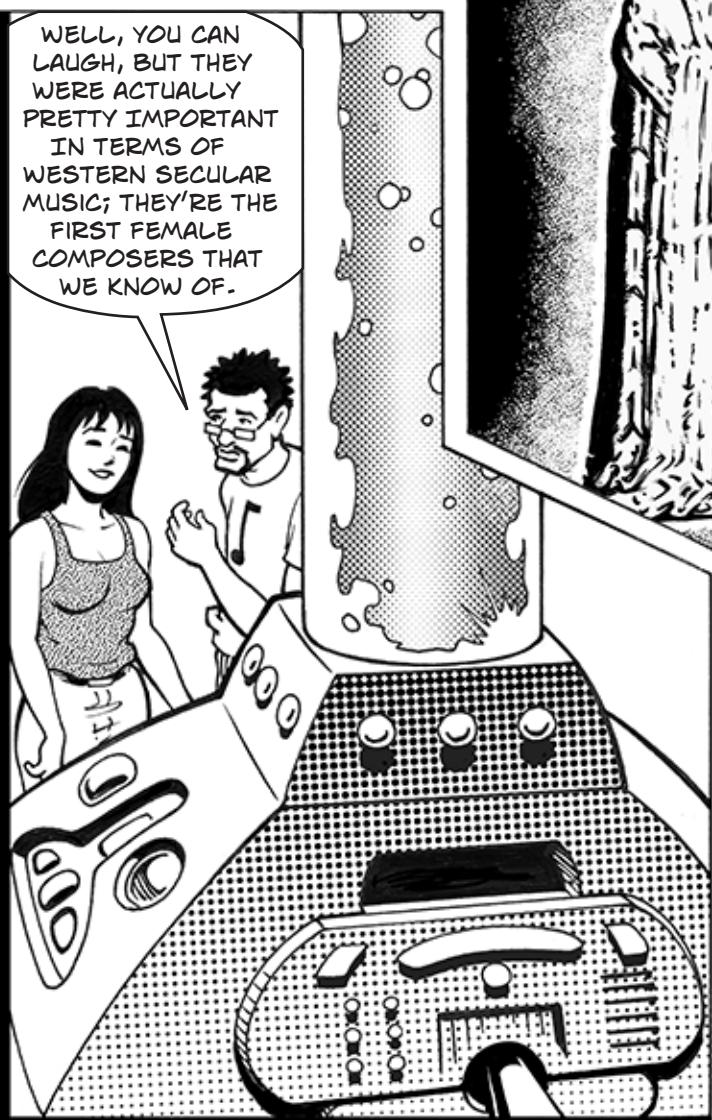
HOW COME IT WAS ALL MEN SINGING ABOUT WOMEN? DIDN'T THEY LET WOMEN BE TROUBADOURS?



ACTUALLY, THERE WERE FEMALE TROUBADOURS, THEY CALLED THEM "TROBAIRISES." IN THE LATE 1100S AND 1200S THEY WERE WRITING AND PERFORMING MUSIC FOR THE ARISTOCRACY OF WHAT'S NOW FRANCE.

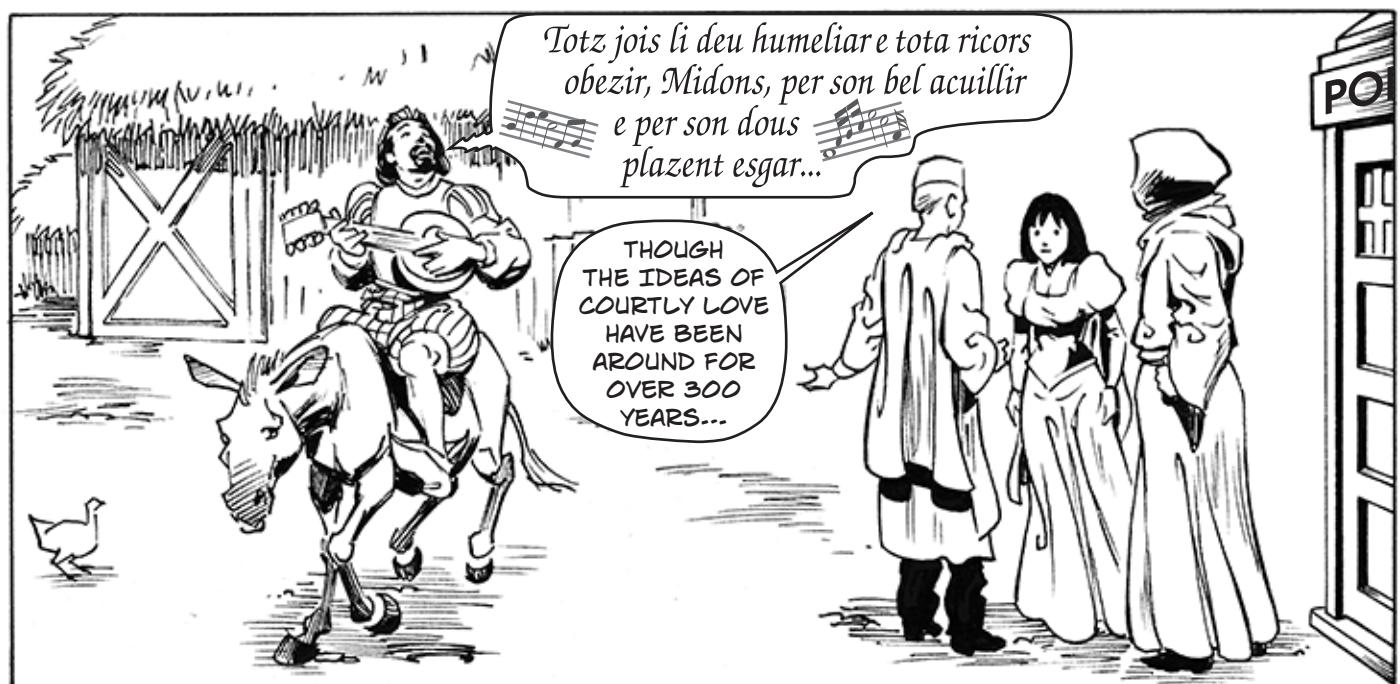
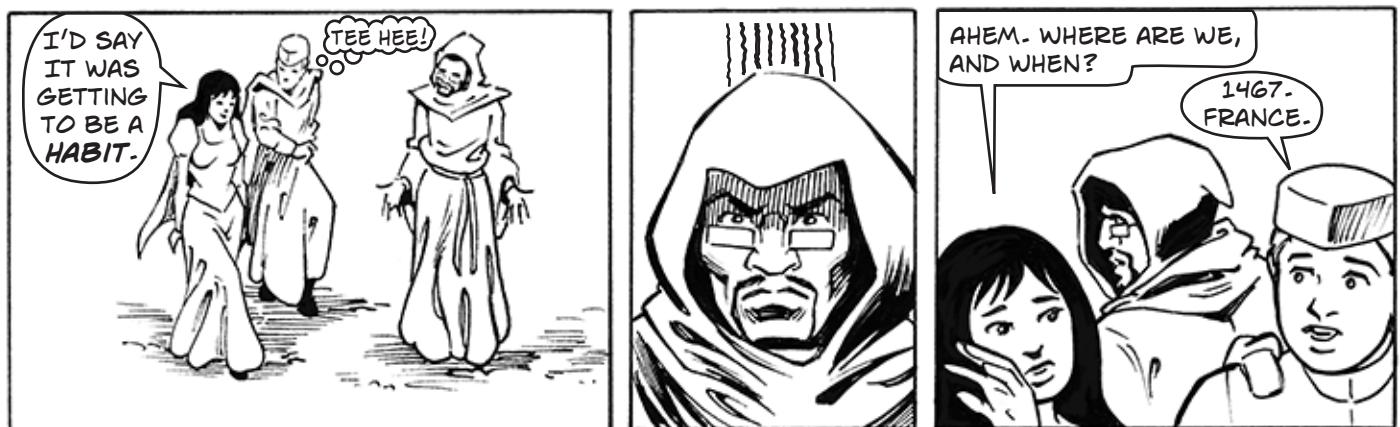


WELL, YOU CAN LAUGH, BUT THEY WERE ACTUALLY PRETTY IMPORTANT IN TERMS OF WESTERN SECULAR MUSIC; THEY'RE THE FIRST FEMALE COMPOSERS THAT WE KNOW OF.



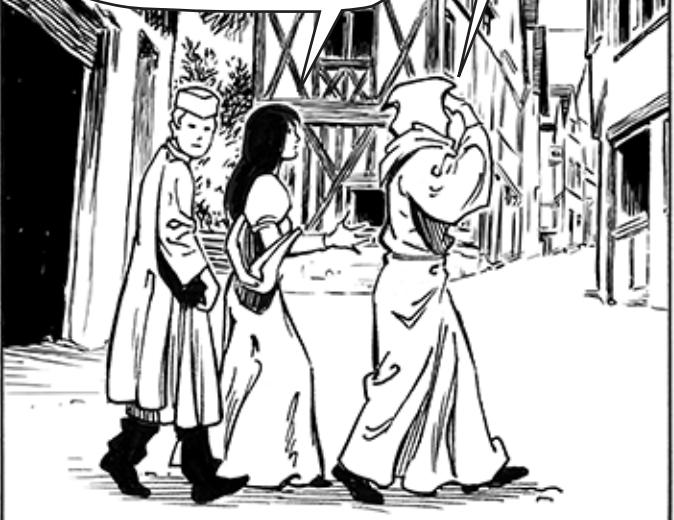
WE ARE FAMILY - I GOT TRO-BAI-RISES WITH ME...





THAT SONG IS OVER 300 YEARS OLD, EVEN NOW. JOYFULLY, I SET MYSELF TO LOVE, BY WILLIAM THE 9TH OF AQUITAINE. WILLIAM THE TROUBADOUR THEY CALLED HIM.

I LIKE THE IDEA OF ALL THESE SONGS ABOUT PURE ROMANCE...MUSIC TODAY IS JUST SO CRUDE!



ACTUALLY, A LOT OF WILLIAM'S SONGS WOULD HAVE THE "EXPLICIT LYRICS" LABEL EVEN TODAY. HE WAS FOND OF...



...BOASTING ABOUT HIS EXPLOITS...IN ONE SONG HE PRETENDED TO BE MUTE, SO TWO LADIES WOULD THINK HE COULDN'T REVEAL THEIR SECRETS. THEN...

MADE SNOOP DOGG LOOK LIKE A CHOIRBOY.



ENOUGH!!! OK, SO OUR GENERATION DIDN'T INVENT DIRTY LYRICS. IS THAT THE POINT OF THIS TRIP?

I'D SAY THAT WE'RE LOOKING AT A CULTURE WAR...

HMM...



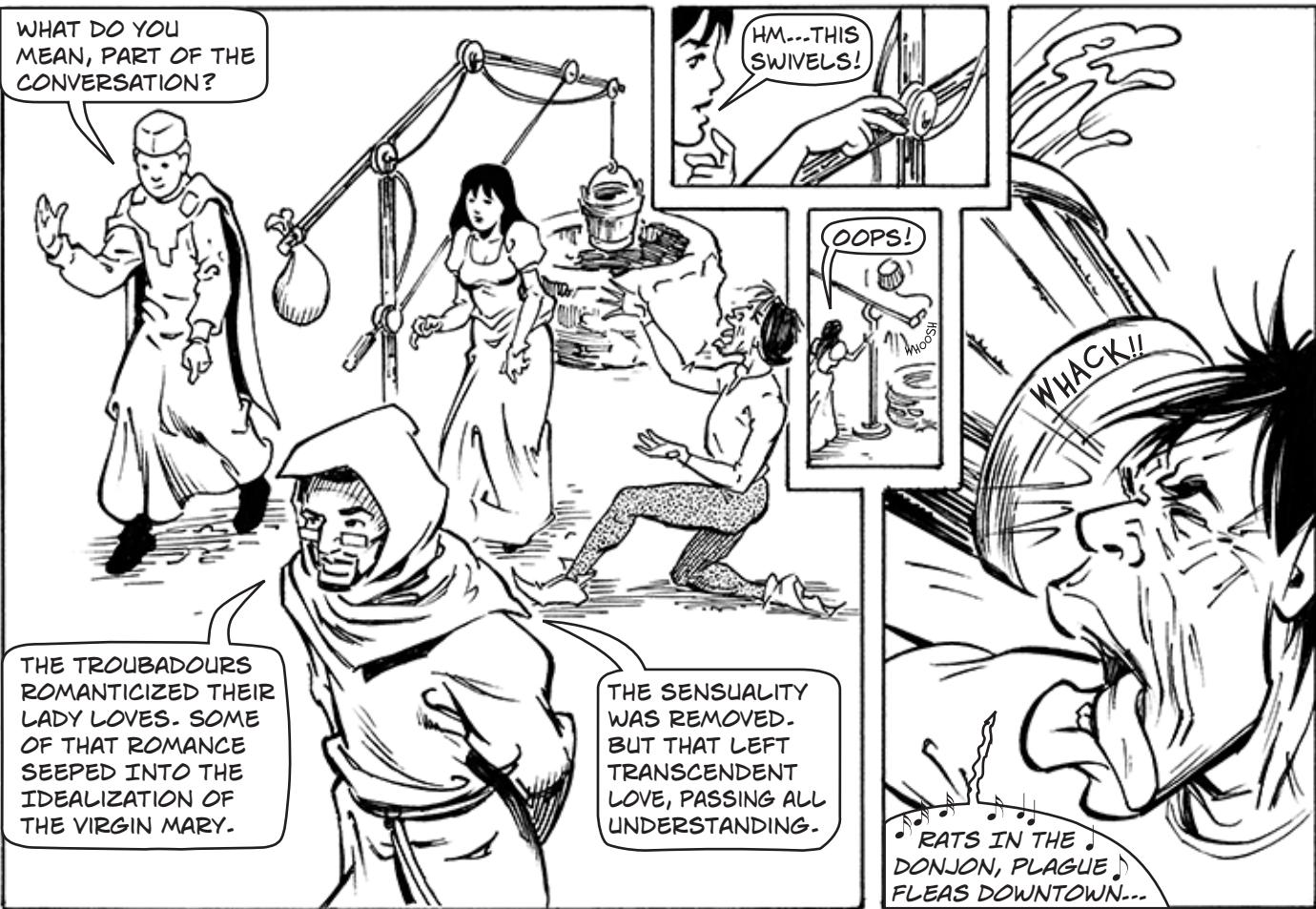
...AND MUSIC IS ONE OF THE BATTLEGROUNDS.

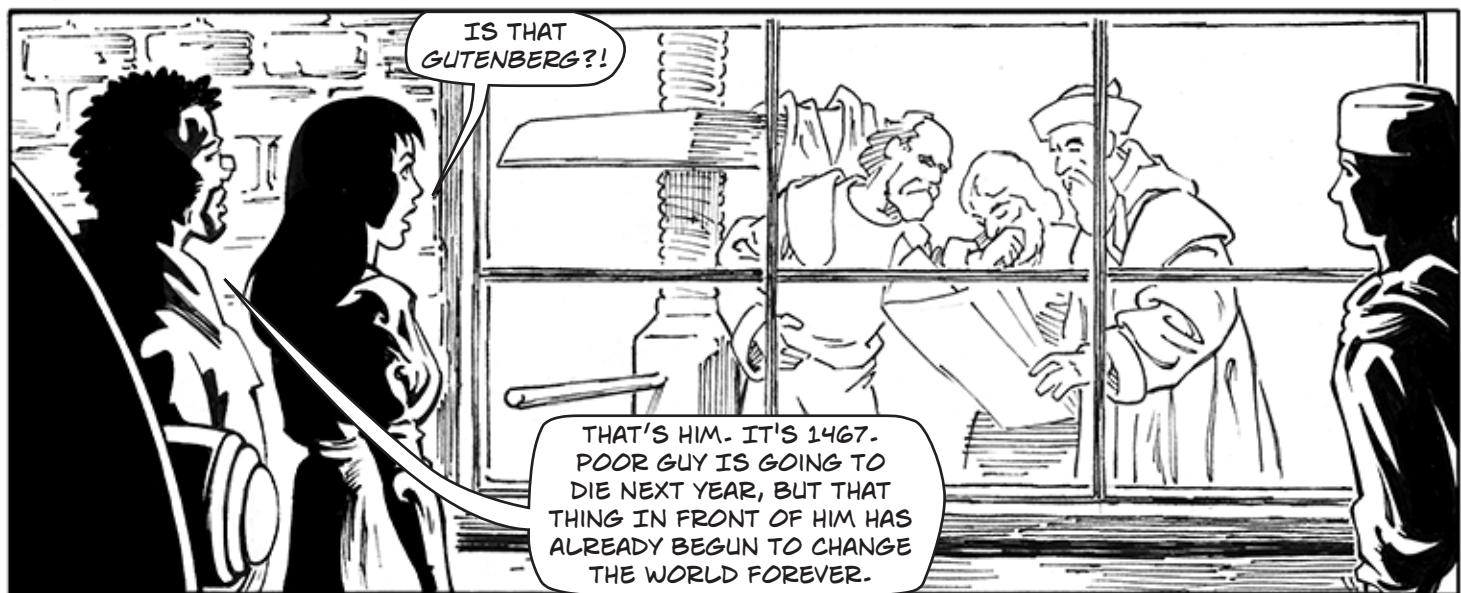
THE EARLY CHURCH DIDN'T AGREE WITH THE IDEAS OF COURTLY LOVE. YET THE TROUBADOUR THOUGHT LOVE FOR HIS LADY MADE HIM NOBLER. IT WASN'T JUST TEMPTATION TO SIN...

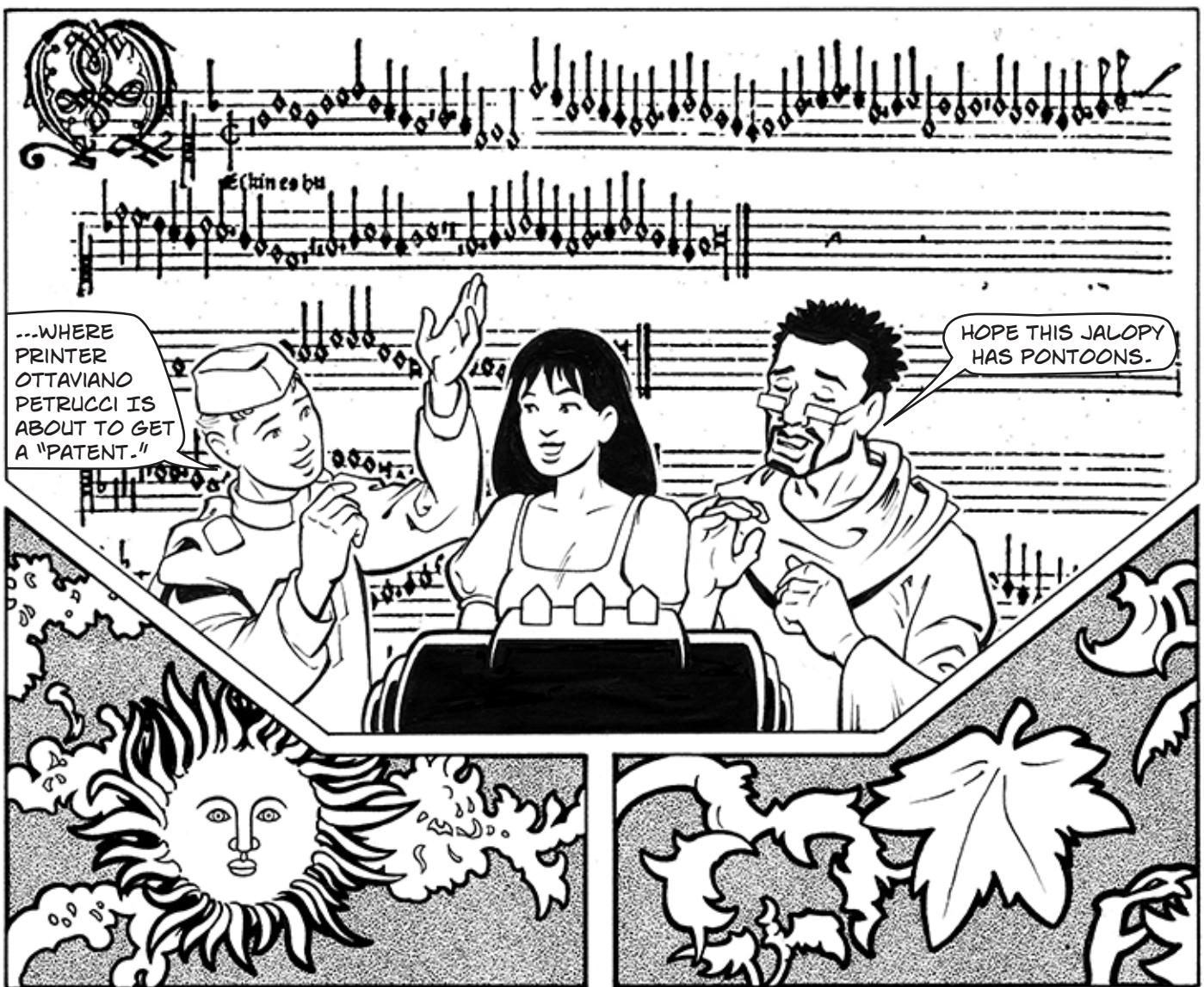
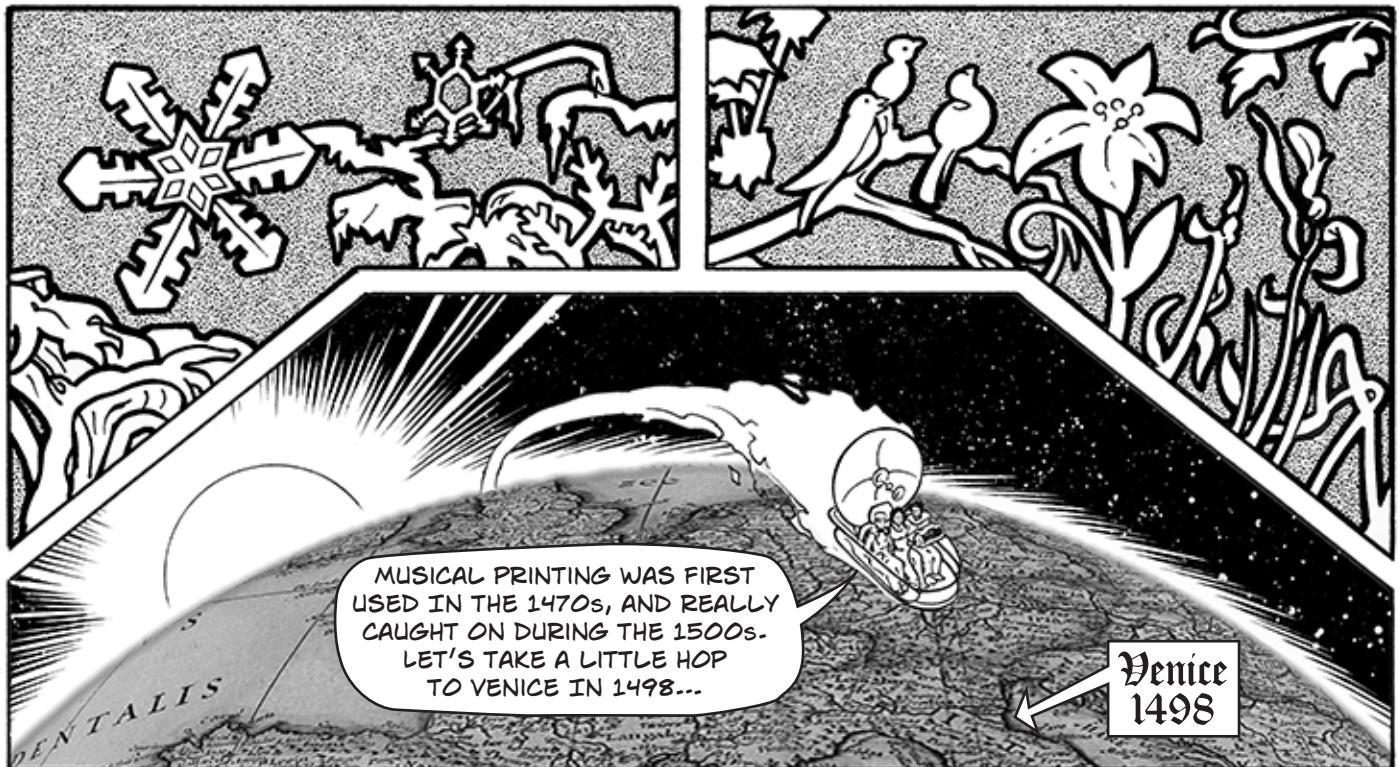


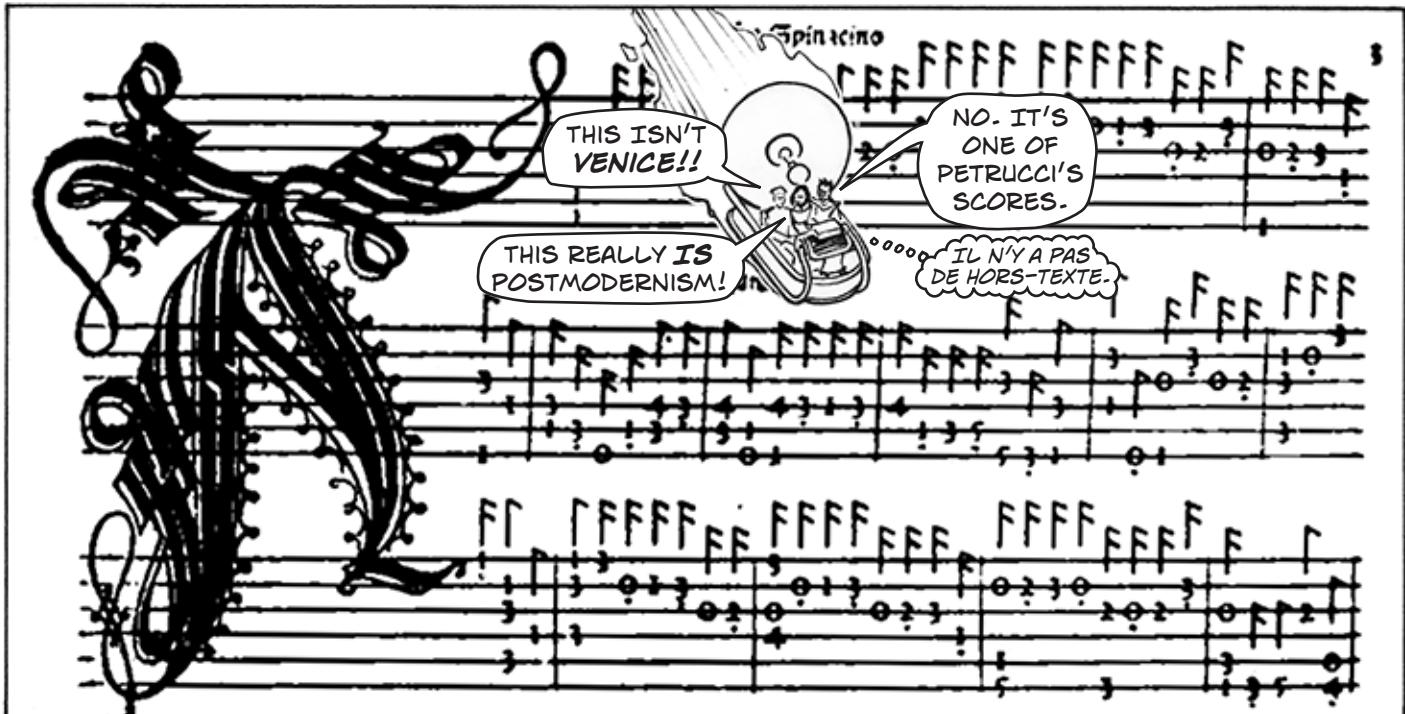
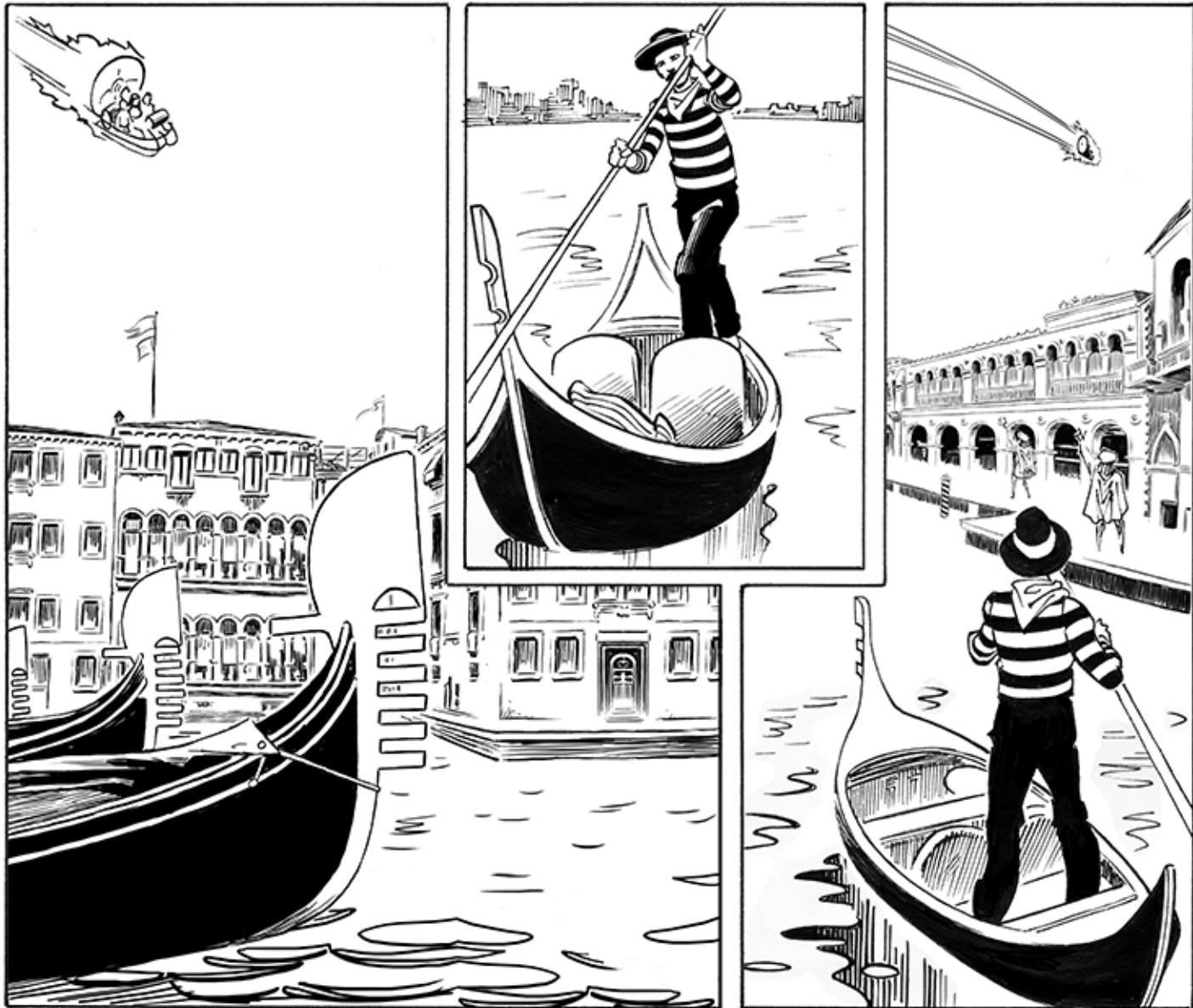


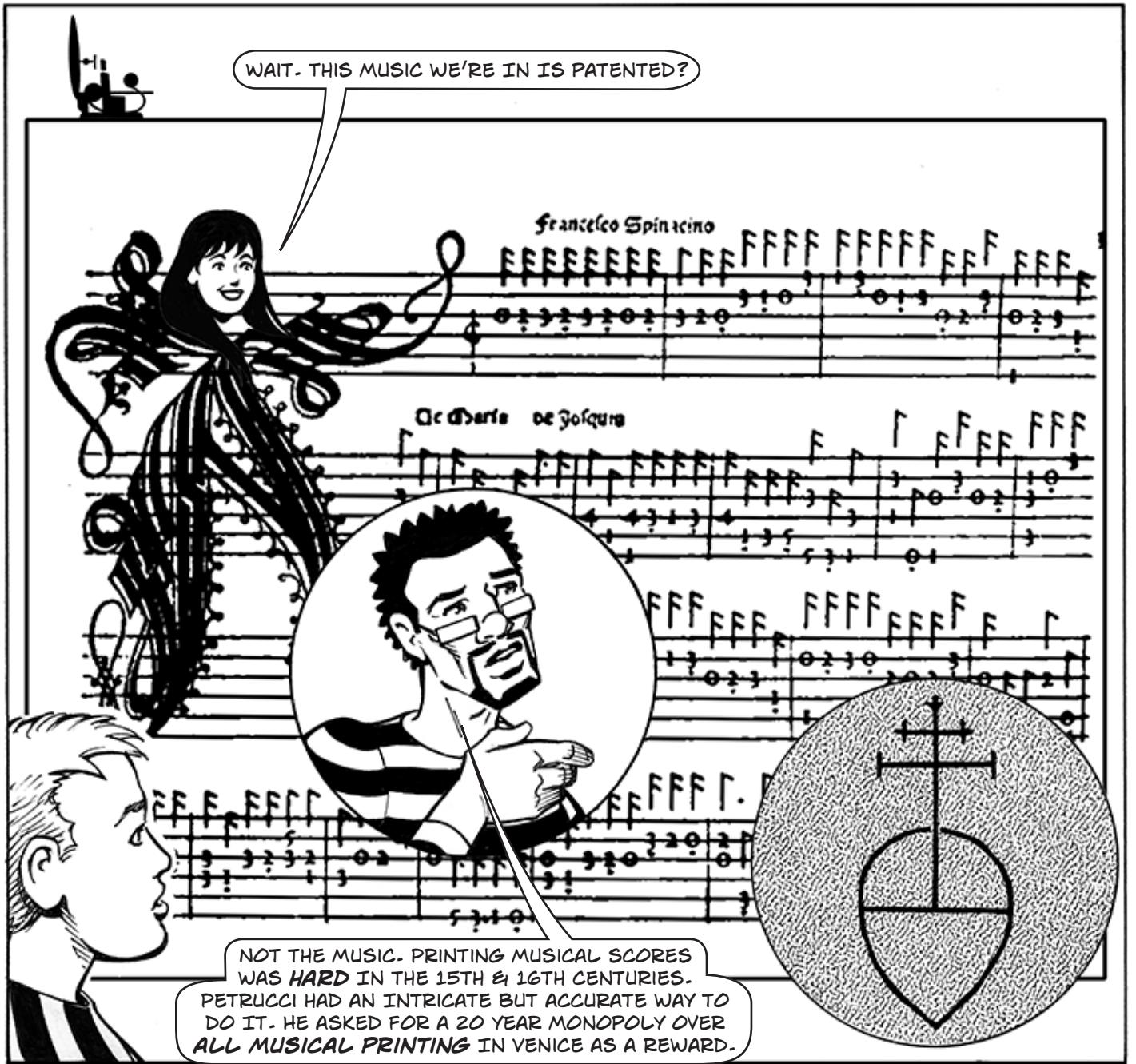


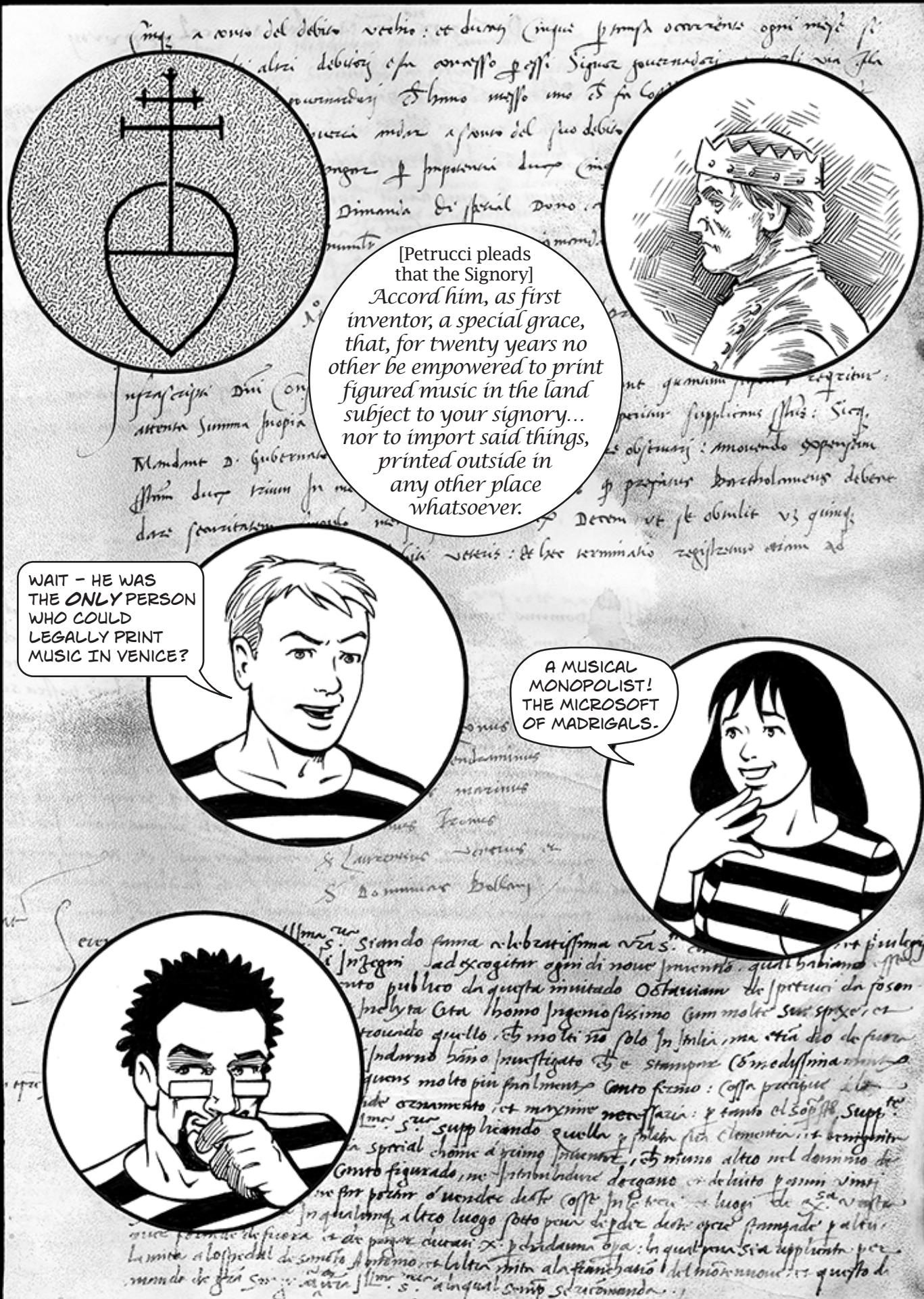


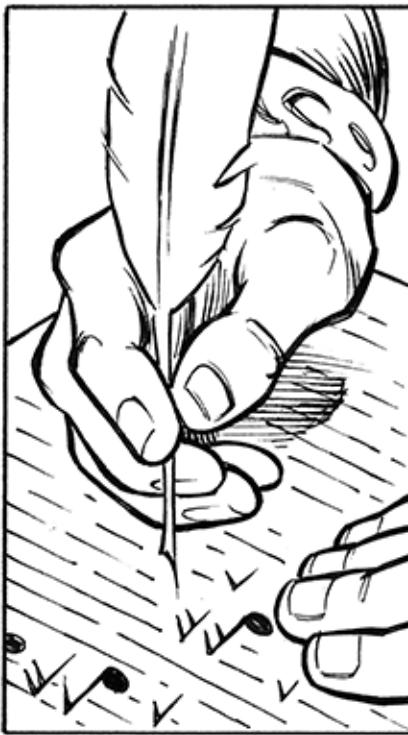












PETRUCCI WAS A SAVVY INNOVATOR - BUT WHAT HE AND THE OTHER PRINTERS DID CHANGED THE FACE OF MUSICAL STYLE.

WAIT - HOW DOES PRINTING CHANGE MUSICAL STYLE?

UNTIL THIS, MOST MUSIC WAS PLAYED FROM MEMORY. THAT WORKS IF YOU ARE PLAYING A SIMPLE SINGLE TUNE - BUT HOW TO COORDINATE LOTS OF DIFFERENT MUSICIANS PLAYING DIFFERENT PARTS?

SO CHEAP PRINTED MUSIC MAKES POLYPHONIC MUSIC SPREAD AND ENCOURAGES EXPERIMENTATION - THE TECHNOLOGY ALLOWS A NEW KIND OF COMPLEXITY!

BUT WERE THE COMPOSERS GETTING THEIR CUT OF THE ACTION?

COMPOSERS?

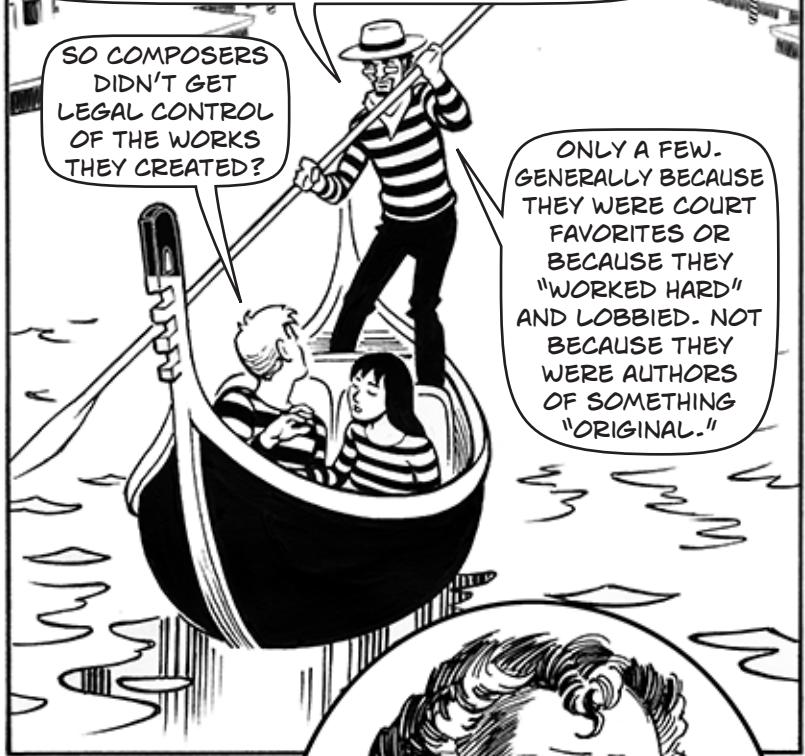
WELL, MOST OF THEM DIDN'T HAVE PRINTING RIGHTS. THOSE BELONGED TO THE PUBLISHER.

THANKS!



PEOPLE WERE STARTING TO THINK OF COMPOSERS AS ARTISTS, NOT ARTISANS, BUT THEIR PAYMENT CAME FROM WAGES OR PATRONAGE. THEY JUST DIDN'T HAVE OUR CONCEPT OF COPYRIGHT.

SO COMPOSERS DIDN'T GET LEGAL CONTROL OF THE WORKS THEY CREATED?



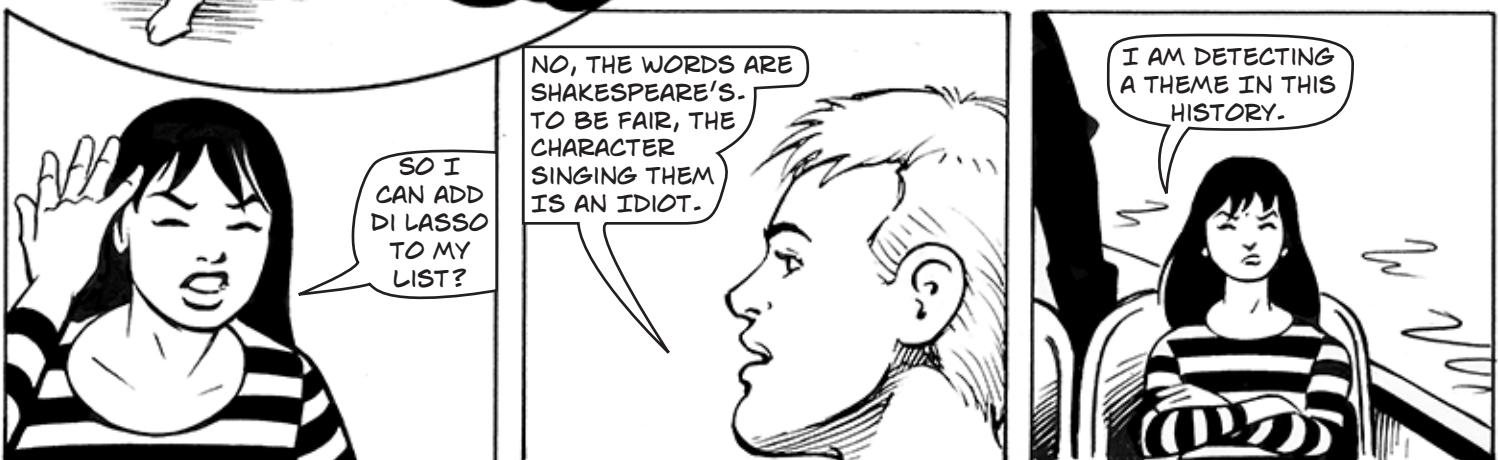
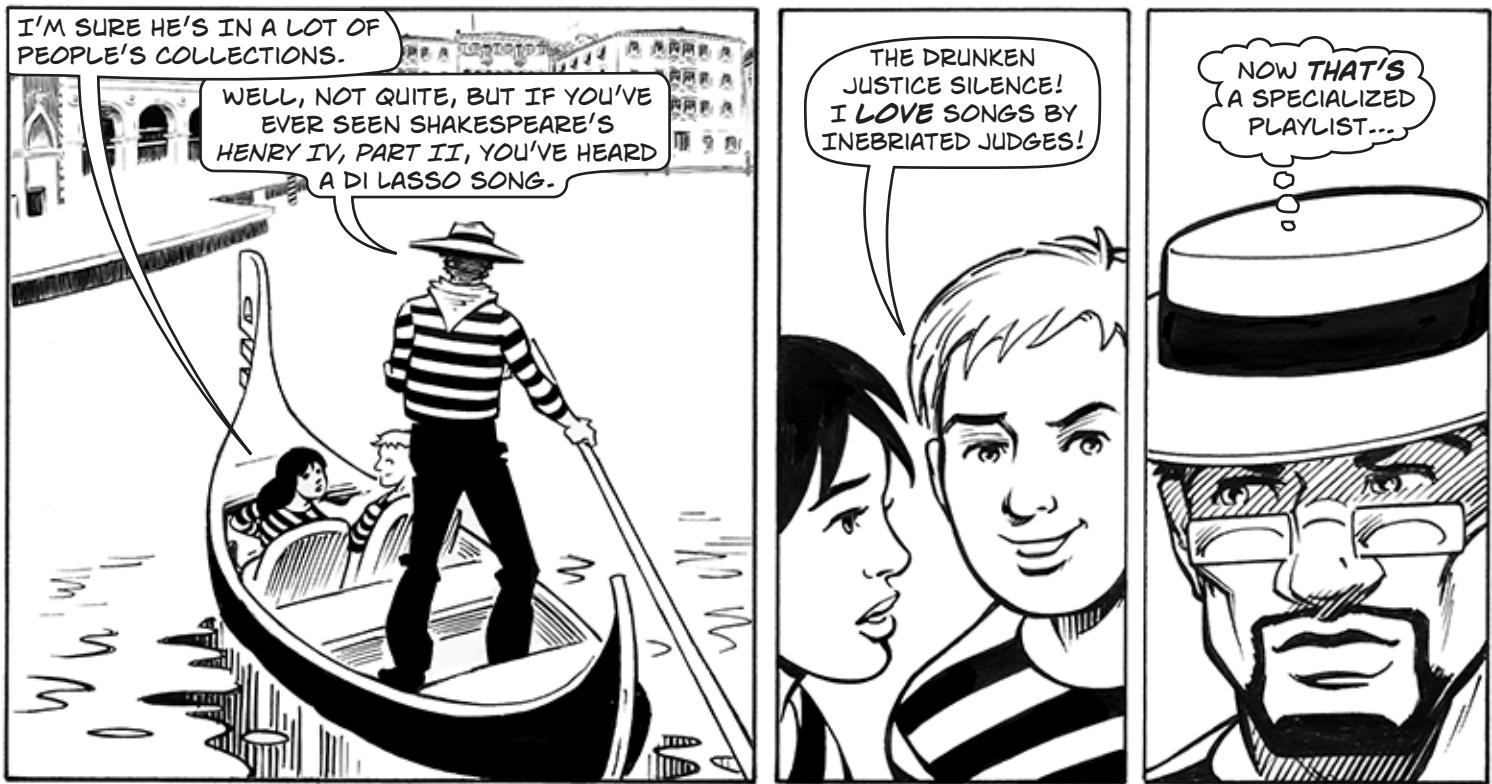
ONLY A FEW. GENERALLY BECAUSE THEY WERE COURT FAVORITES OR BECAUSE THEY "WORKED HARD" AND LOBBIED. NOT BECAUSE THEY WERE AUTHORS OF SOMETHING "ORIGINAL."

SO...WHO IS THAT GUY?



THAT'S THE EXCEPTION. ORLANDO DI LASSO.



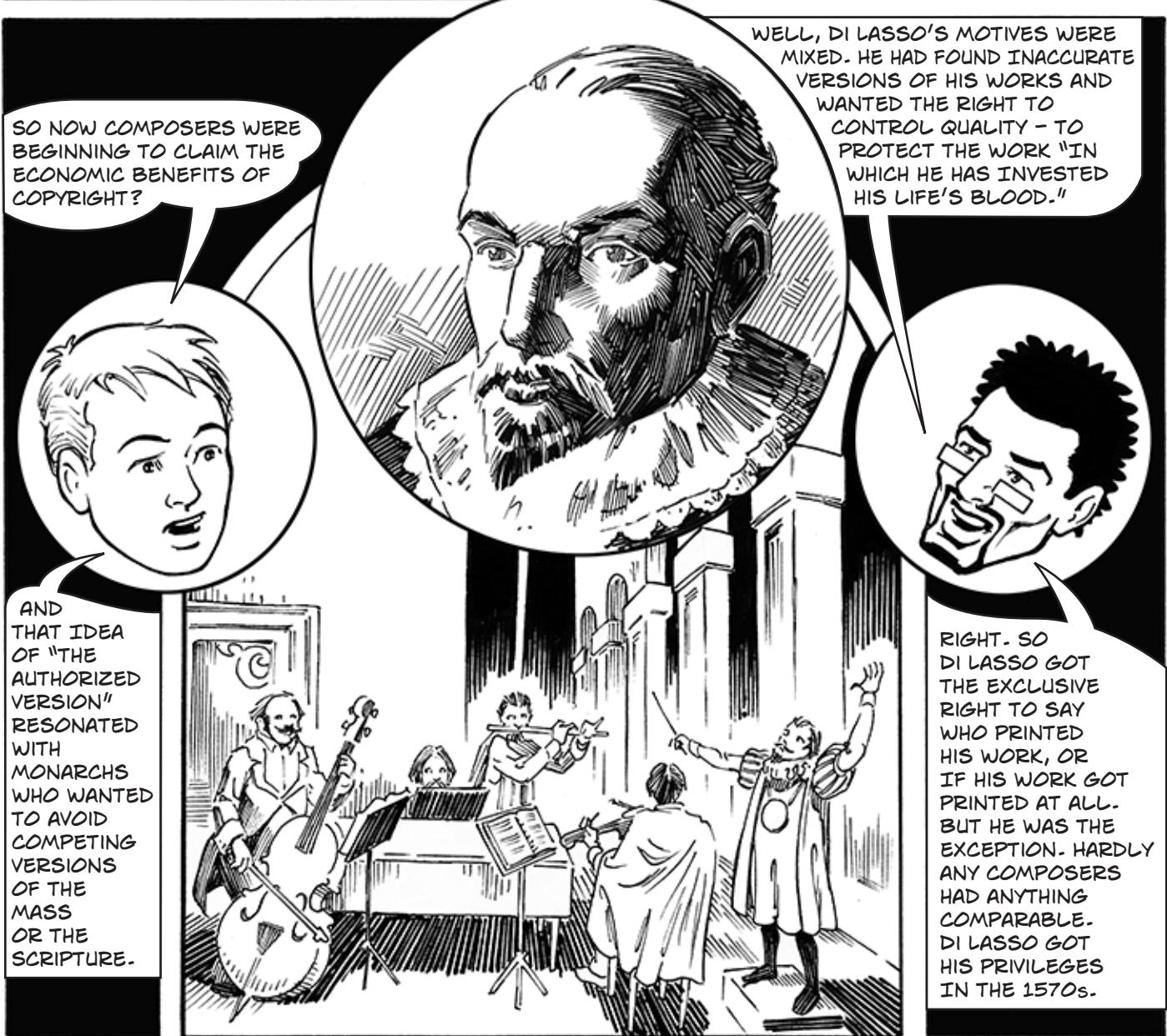


THOUGH DI LASSO DID TURN A SONG CALLED YOU 15 YEAR OLD GIRLS INTO A MASS CALLED ENTRE VOUS FILLES. THE ORIGINAL WAS PRETTY RACY...

"YOU GIRLS, FIFTEEN YEARS OLD, DON'T COME TO GET WATER AT THE FOUNTAIN, BECAUSE YOU HAVE DARLING EYES, PERT BREASTS, LAUGHING MOUTHS..."

TAKING BAWDY PROFANE SONGS AND MAKING THEM HOLY.

NICE THAT HE FOUND THE ORIGINAL SO "INSPIRING."



AND IT WASN'T UNTIL 1710 THAT THE FIRST COPYRIGHT STATUTE WAS PASSED - THE "STATUTE OF ANNE" GAVE AUTHORS A LEGAL RIGHT OVER THEIR CREATIONS.



(261)

Anno Octavo

Annæ Reginæ.

An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.



Whereas Printers, Booksellers, and other Persons have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, Extending to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For Preventing therefore such Practices for the future, and for the

Encouragement of Learned Men to Compose and Write useful Books; May it please Your Majesty, that it may be Enacted, and be it Enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority of the same, That from and after the Tenth Day of April, One thousand seven hundred and ten, the Author of any Book or Books already Printed, who hath not Transferred to any other the Copy or Copies of such Book or Books, Share or Shares thereof, of the Bookseller or Booksellers, Printer or Printers, or other Person or Persons, who hath or have Purchased or Acquired the Copy or Copies of any Book or Books, in order to Print or Reprint the same, shall have the Sole Right and Liberty of Printing such Book and Books for the Term of One and twenty Years, to Commence from the said Tenth Day of April, and no longer; and that the Author of any Book or Books already Composed and not Printed and Published, or that shall hereafter be Composed, and his Attorney, or Attorneys, shall have the sole Liberty of Printing and Reprinting such Book and Books for the Term of Fourteen Years.

TOOK YOU LAWYERS LONG ENOUGH TO DECIDE TO PROTECT CREATORS!

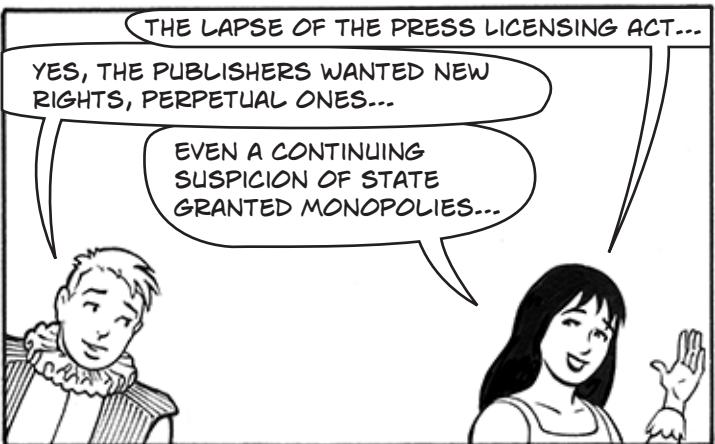


ACTUALLY,
IT WAS A
LITTLE MORE
COMPLEX...

ALL KINDS OF THINGS WENT INTO THE MIX.
RESENTMENT AGAINST THE CONTROL THE PUBLISHING GUILDS HAD OVER WHAT WAS PRINTED...



...CHANGING IDEAS
OF AESTHETICS...



THE LAPSE OF THE PRESS LICENSING ACT...

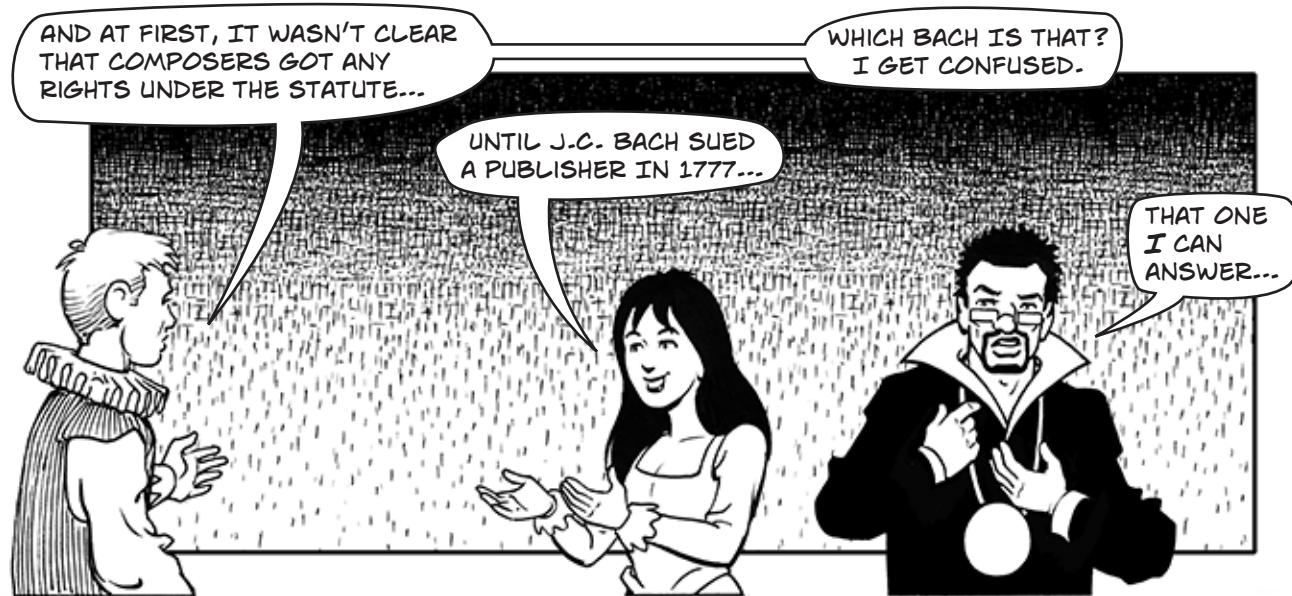
YES, THE PUBLISHERS WANTED NEW RIGHTS, PERPETUAL ONES...

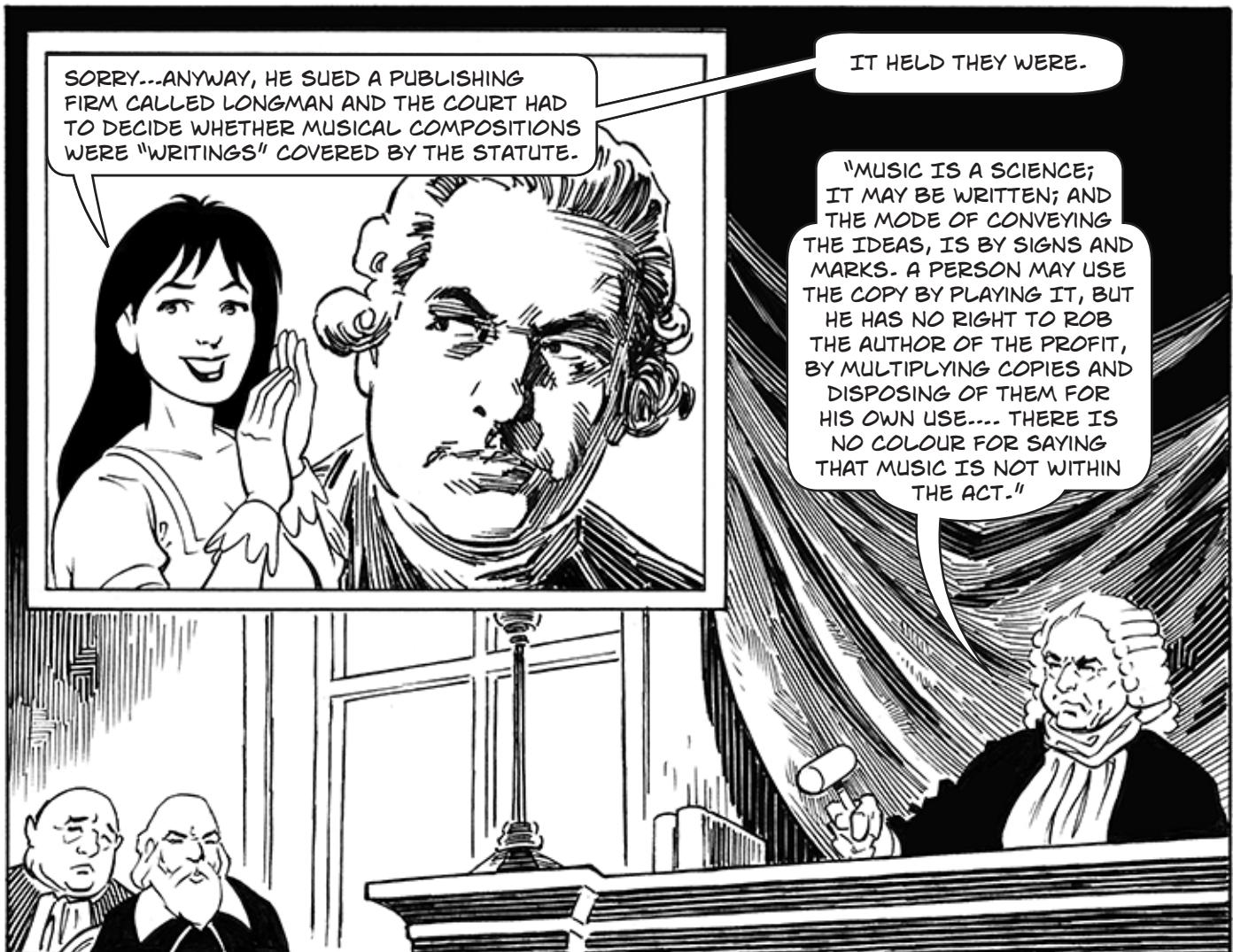
EVEN A CONTINUING SUSPICION OF STATE GRANTED MONOPOLIES...

...THAT WENT ALL THE WAY BACK TO THE STATUTE OF MONOPOLIES OF 1624.



BUT I AM SURE
YOU ARE AWARE
OF ALL THAT.



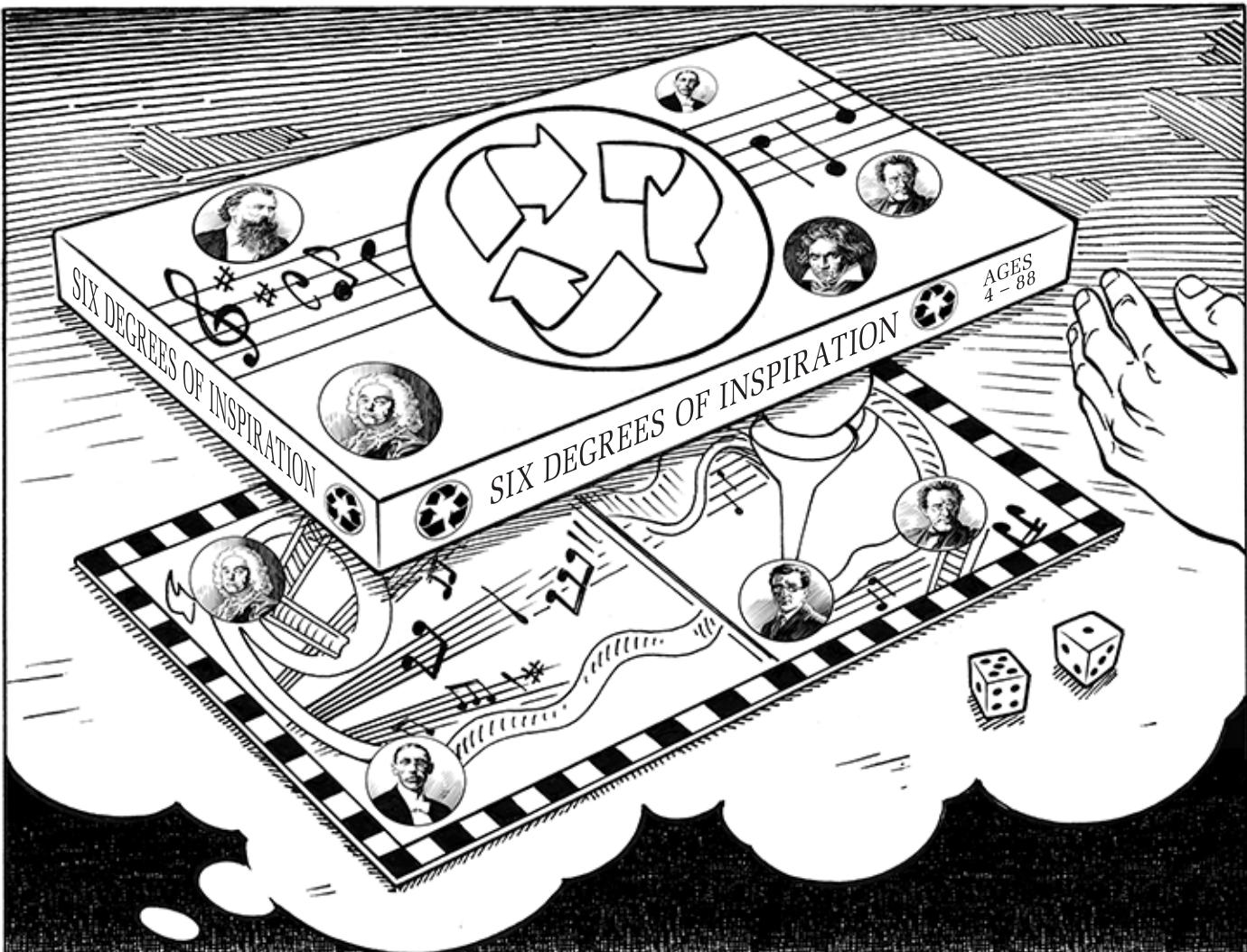


BORROW? THESE ARE CLASSICAL COMPOSERS, NOT SAMPLERS LIKE P DUDDY OR THAT GIRLSPEAK FELLOW.

THAT'D BE PUFF DADDY AND GIRL TALK.

I DON'T THINK THEY'D BE GOING AROUND BORROWING FROM EACH OTHER'S MUSIC!!

ARE YOU KIDDING?!!! CLASSICAL MUSICIANS BORROWED FROM EACH OTHER ALL THE TIME! KEEPING TRACK OF THE BORROWING CAN DRIVE YOU CRAZY. IT'S LIKE AN INSANE GAME OF MUSICAL CHUTES AND LADDERS.



GEORG FRIEDRICH HANDEL (1685–1759)

Borrowed from
Astorga,
Bononcini,
Carissimi,
Cavalli...

...Kerll,
Kuhnau,
Legrenzi,
...Stradella,
Telemann,
Urio



AND HE SHALL
REIGN FOR EVER
AND EVER...

I LOVE THAT
PASSAGE,
HANDEL'S
MESSIAH!



LUDWIG VAN
BEETHOVEN
(1770–1827)

YES, WHICH BEETHOVEN QUOTED
IN MISSA SOLEMNIS.

STRAVINSKY'S
OPERA OEDIPUS
REX PARODIED
HANDEL.

PARODEIA
IS GREEK FOR
"A SONG SUNG
ALONGSIDE
ANOTHER."

YOU WANT
THE TRUTH?
YOU CAN'T
HANDEL
THE TRUTH!

HANDEL
ONLY MANAGED
TO COMPOSE
MESSIAH SO
FAST BECAUSE
HE BORROWED
FROM HIS
OWN PRIOR
SECULAR
WORK.

...AND
A VERY
SIMILAR
PHRASE
REAPPEARS
IN MAHLER'S
FIRST
SYMPHONY...

WHEE!

THE OWNERS OF HAPPY BIRTHDAY
AGREED! THEY COMPLAINED THAT
STRAVINSKY USED IT IN A FANFARE.
THEN IT TURNED OUT THAT THEY
DIDN'T EVEN OWN HAPPY BIRTHDAY!

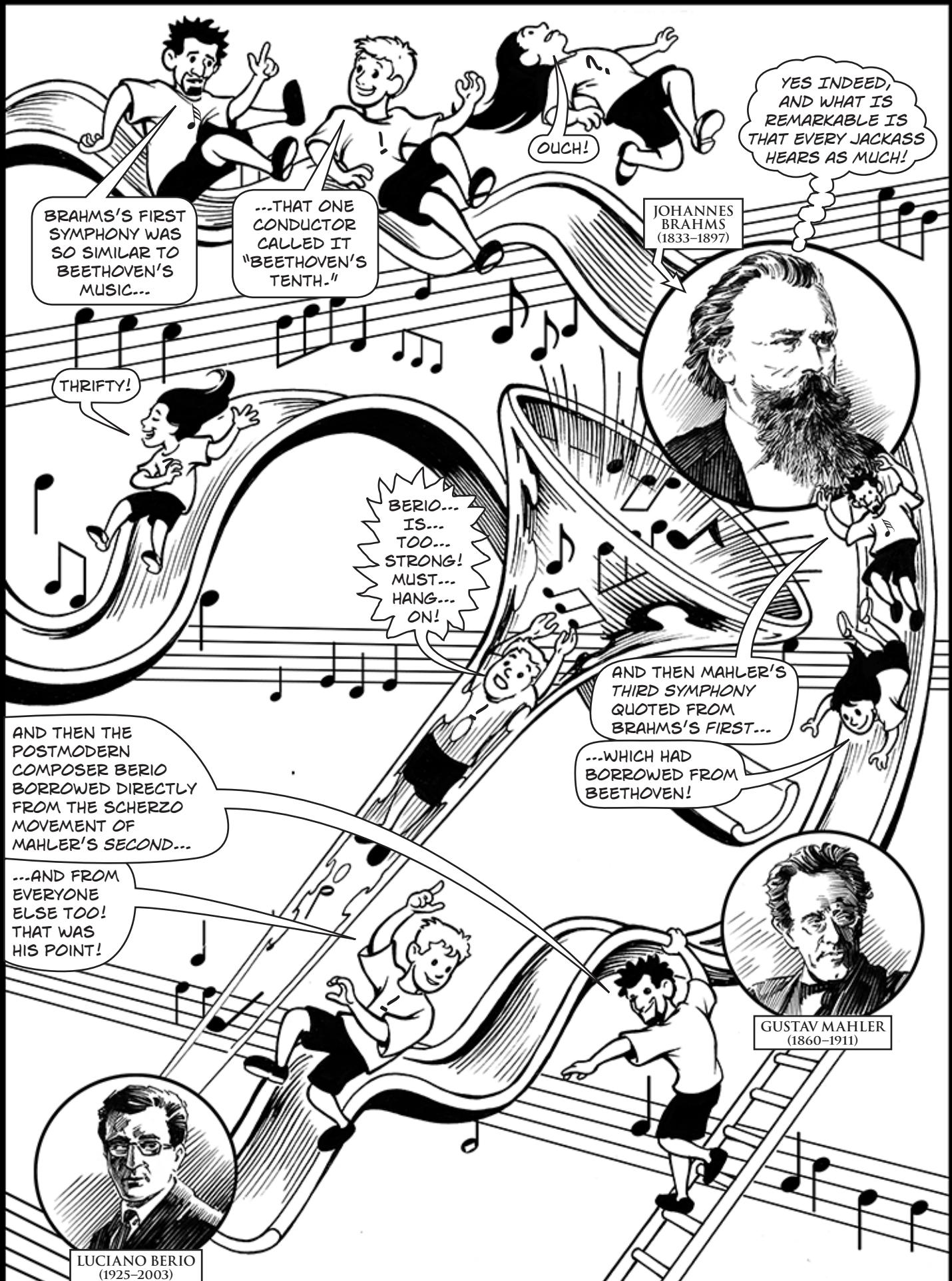
A GOOD COMPOSER
DOES NOT IMITATE;
HE STEALS.

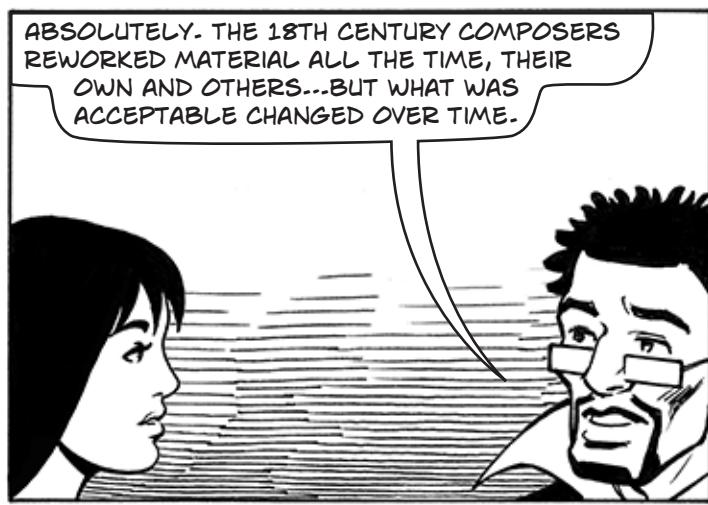
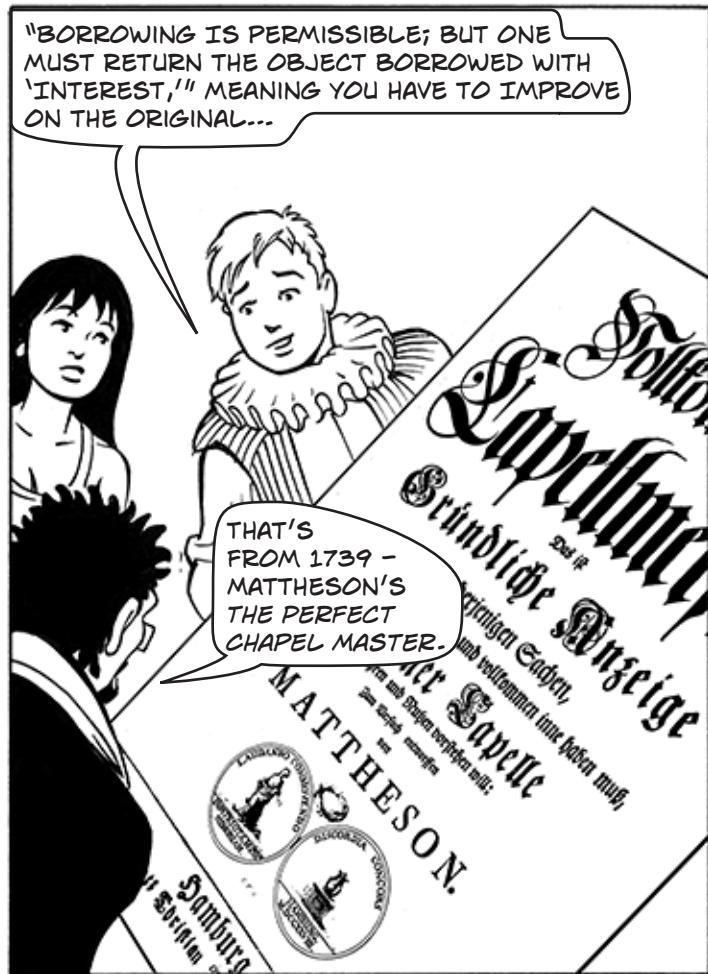
STRAVINSKY'S THE
RITE OF SPRING
WAS USED BY BERIO.

GOOD THING
IT WASN'T THE
COPYRIGHT
OF SPRING!



IGOR STRAVINSKY
(1882–1971)





YOU SAID YOU LIKED THE CHUTES AND LADDERS. DID YOU PLAY MANY VIDEO GAMES WHEN YOU WERE A KID?

SURE...
WHY...?

Pull

YANK!



HRASE

SUPER BERO BRO.
00000000

WORLD
1-1

TIME
1740-2017



BACH DID THIS REPEATEDLY TO VIVALDI'S WORK.



ARRANGEMENT

Arranging a composition for another style or medium.

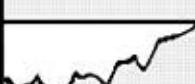
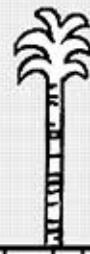


REMEMBER THE COMPOSERS WHO USED POPULAR SONGS AS THE BASIS OF MASSES? LIKE JOSQUIN DES PREZ? OFTEN THAT BORROWED TUNE WAS USED AS THE CANTUS FIRMUS.



CANTUS
FIRMUS

A pre-existing tune that is used as the basis for a new polyphonic work.

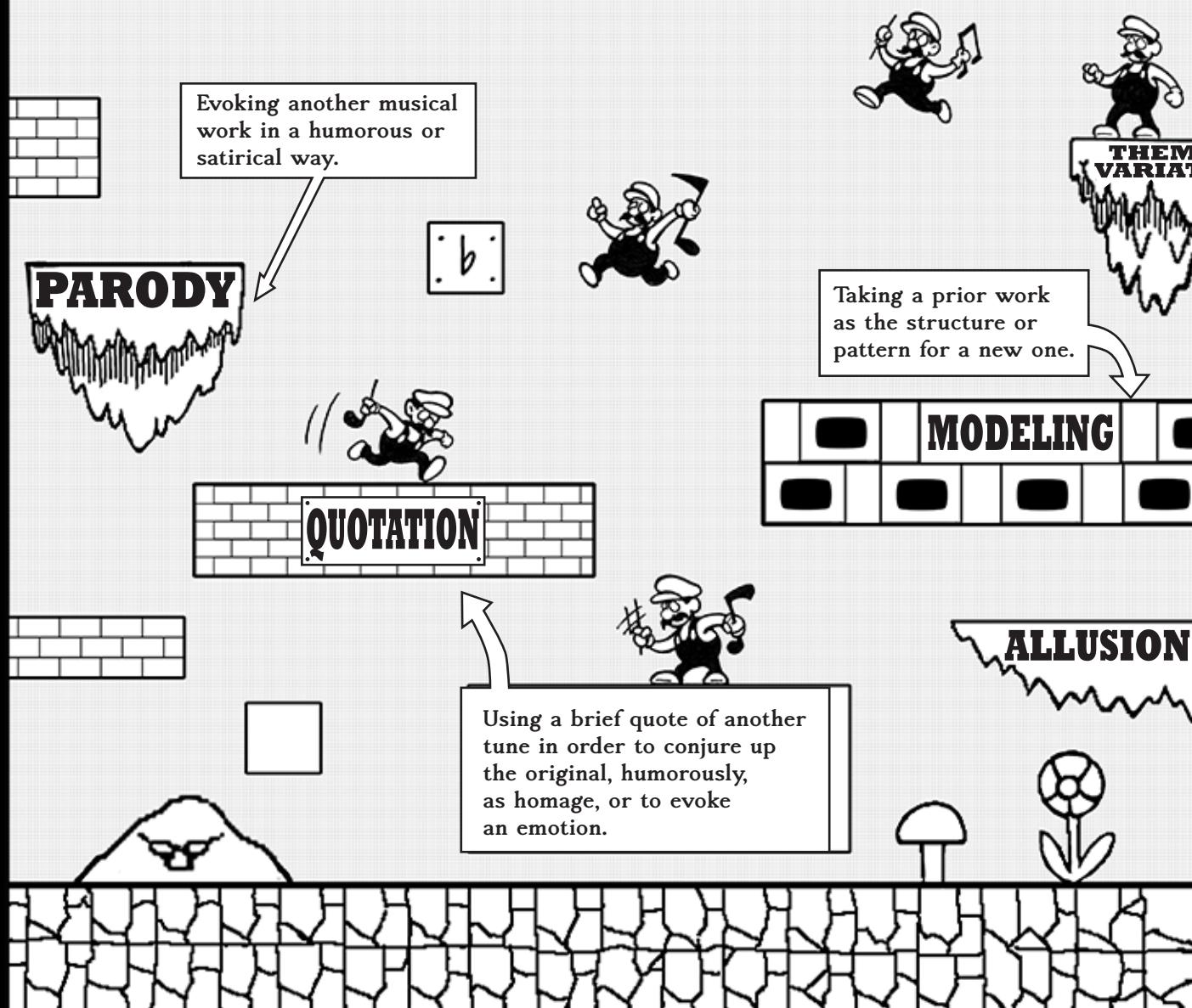




SUPER BERIO BROS. 00001000

WORLD
1-1

TIME
1740-2017



LOOK "SUPER BERIO BROS" IS ALL VERY CUTE AND SO WAS "SIX DEGREES OF INSPIRATION."



I GET IT.

BAROQUE AND CLASSICAL COMPOSERS BORROWED A LOT, FOR LOTS OF DIFFERENT REASONS. THEIR BORROWING WAS PART OF THE MUSICAL TRADITION, NOT A CAUSE FOR A LAWSUIT.

YES, THE VITAL DIFFERENCE BETWEEN OBSERVED BEHAVIOR AND EXPERIENCED MEANING!



GREAT. BUT THAT'S NOT ENOUGH. IT TELLS ME WHAT THEY DID. NOT WHAT THEY FELT...

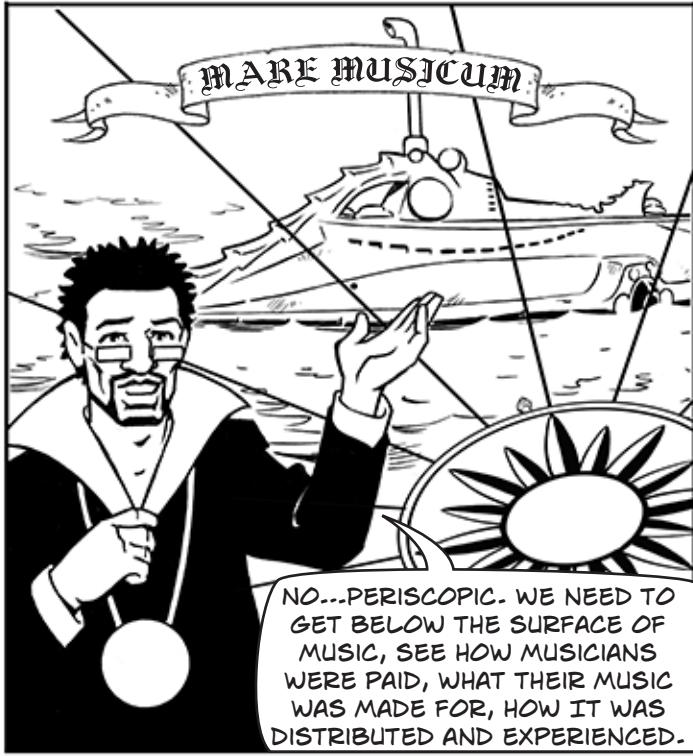
IF I WANT TO KNOW HOW MUSIC TODAY IS DIFFERENT FROM MUSIC MADE 200 OR 2000 YEARS AGO, IT ISN'T ENOUGH TO KNOW WHAT WAS IN THEIR COMPOSITIONS...

HMM...
CUTE AND SMART?

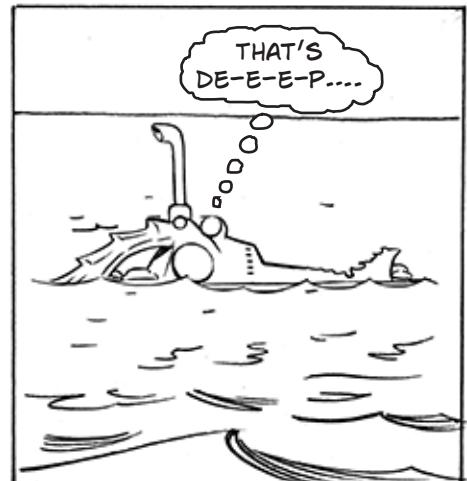
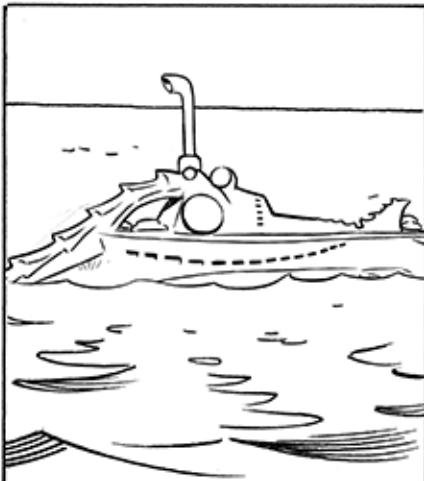
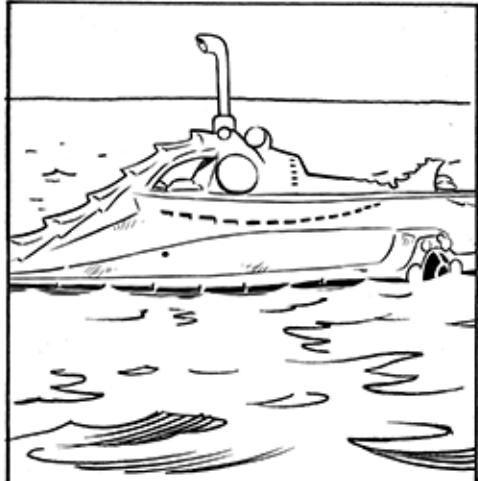
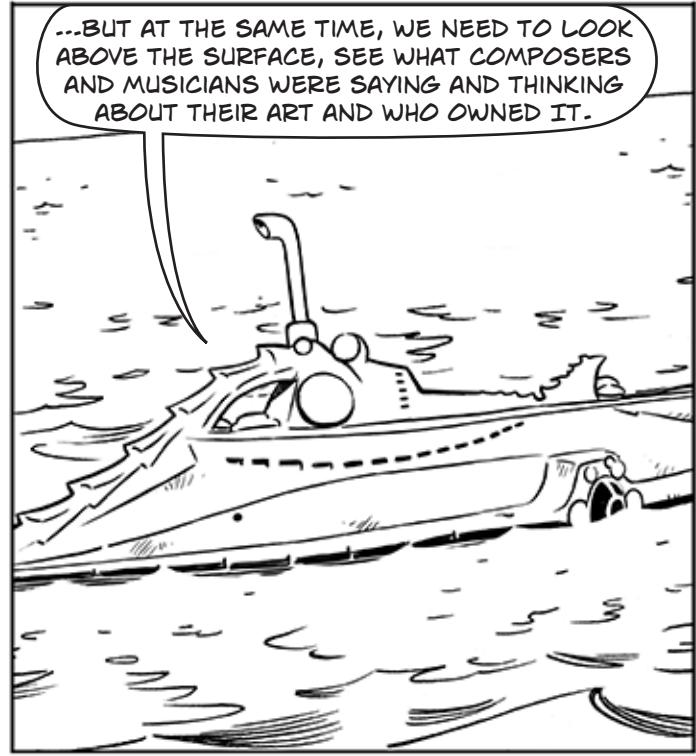


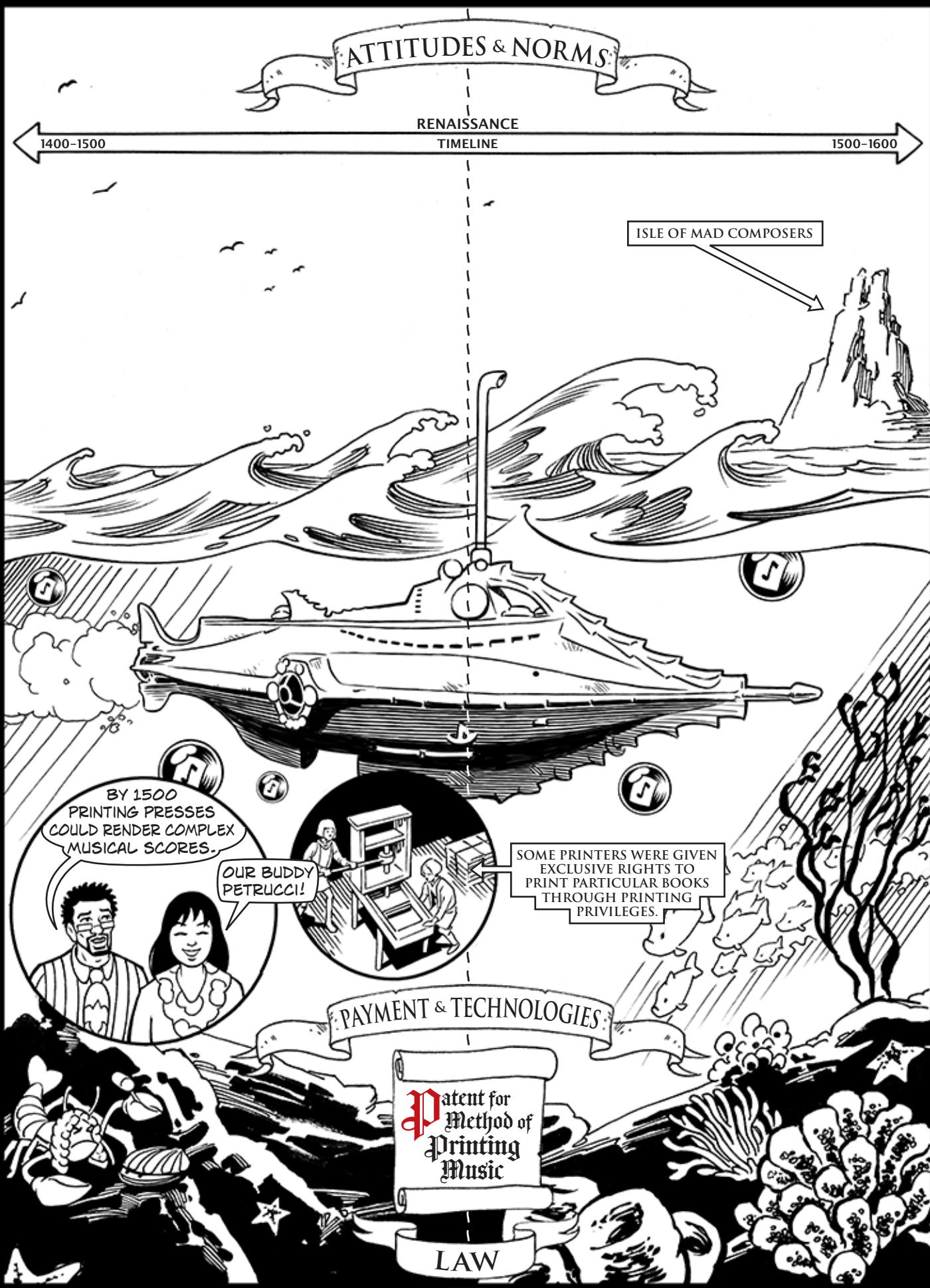
...I NEED TO KNOW WHAT WAS IN THEIR HEADS.





NO...PERISCOPIC. WE NEED TO GET BELOW THE SURFACE OF MUSIC, SEE HOW MUSICIANS WERE PAID, WHAT THEIR MUSIC WAS MADE FOR, HOW IT WAS DISTRIBUTED AND EXPERIENCED.





ATTITUDES & NORMS

RENAISSANCE
1500-1600

BAROQUE
1600-1750

TIMELINE

ISLE OF MAD COMPOSERS



COMPOSERS DID COMPLAIN ABOUT POORLY PRINTED VERSIONS OF THEIR WORK.

BUT DIDN'T COMPLAIN WHEN OTHERS REWORKED IT. CREDIT, NOT OWNERSHIP!

MOST COMPOSERS DEPENDED ON PATRONAGE. MUSIC WAS CREATED FOR A PARTICULAR PERSON AND OFTEN A PARTICULAR EVENT.



PAYMENT & TECHNOLOGIES

1575:

Composer's
Printing
Privilege

DI LASSO WAS ONE OF THE FIRST COMPOSERS TO GET A PRINTING PRIVILEGE.

LAW

ATTITUDES & NORMS

BAROQUE
TIMELINE

1600-1700

1700-1750

"The type of borrowing practiced in the Baroque era that has seemed most foreign to later centuries was the re-use or reworking of entire pieces...."

—J. Peter Burkholder

REVERSIONED VIVALDI!

RE-HASHED HANDEL!

BURKHOLDER LITERALLY WROTE THE BOOK ON MUSICAL BORROWING.

ISLE OF PUBLISHING COMPOSERS

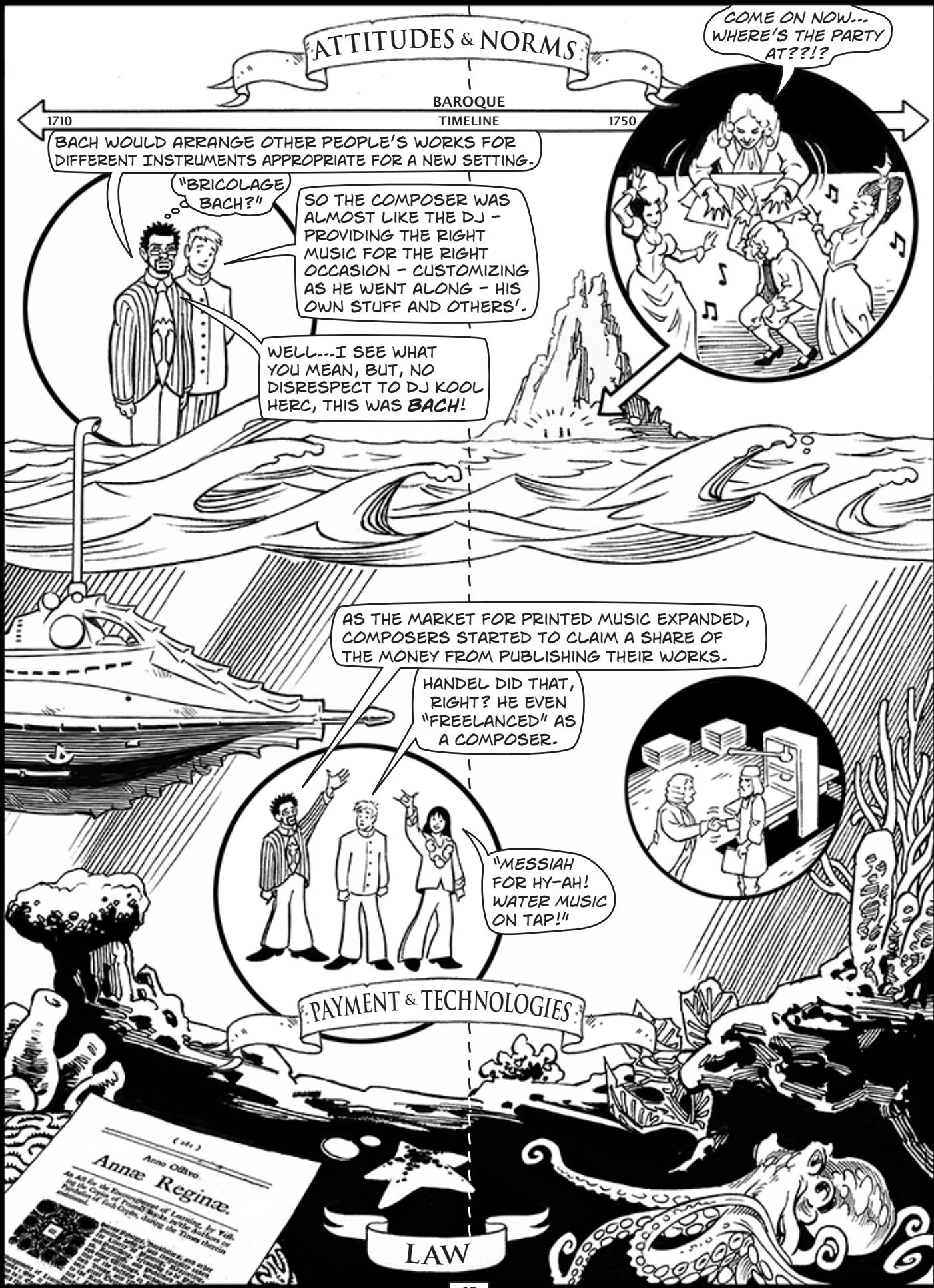
SO UNDER PATRONAGE, IF MUSIC WAS COMPOSED FOR PARTICULAR EVENTS OR PEOPLE, YOU WOULD PROBABLY HAVE TO REVISE IT.

1624: STATUTE OF MONOPOLIES LIMITS GRANTING OF MONOPOLIES AND CHARTERS "EXCEPT" LETTERS PATENTS FOR INVENTORS.

1710: STATUTE OF ANNE WAS THE FIRST TRUE COPYRIGHT STATUTE...IT COVERED THE RIGHT TO REPRINT THE ENTIRE WORK – NEITHER BORROWING NOR PERFORMING WERE AFFECTED.

LAW

Anno Domini
Anne Reginæ,



SO HOW DID THAT CHANGE IN CLASSICAL MUSIC?

ATTITUDES & NORMS

CLASSICAL
TIMELINE

1750

1820

BY THE MIDDLE OF THE 18TH CENTURY, THE IDEAS BEGAN TO CHANGE IN LITERATURE AND THEN IN MUSIC. ART CAME TO BE DEFINED IN TERMS OF ORIGINAL GENIUS -



AND THAT IDEA OF THE ORIGINAL AUTHOR ENDS UP BEING THE ORGANIZING PRINCIPLE OF COPYRIGHT! IT ALL CONNECTS.



COMPOSERS DISTINGUISHED THEMSELVES THROUGH NOVELTY, NOT BRILLIANTLY REWORKING TRADITIONAL MATERIALS.

MY PRINCIPAL SOURCE OF INSPIRATION IS ME!!



THE INVENTION OF LITHOGRAPHY IN 1796 MEANT PRINTING MUSIC, WITH ATTRACTIVE PICTURES, WAS SUDDENLY CHEAPER AND EASIER.



SO IS THIS WHEN COMPOSERS SHIFT TO SELLING THEIR MUSIC TO THE PUBLIC, NOT TO SOME PATRON?

PARTLY. BUT PATRONAGE DOESN'T DISAPPEAR. EVEN THOUGH HE FREELANCED, LISZT WAS STILL RELYING ON A DUKE'S PATRONAGE IN THE 1880S.

AT ONE POINT, HE AND HANS CHRISTIAN ANDERSEN WERE BOTH BEING SUPPORTED BY THE DUKE OF WEIMAR. NOW THAT'S WHAT I CALL TALENT SPOTTING.



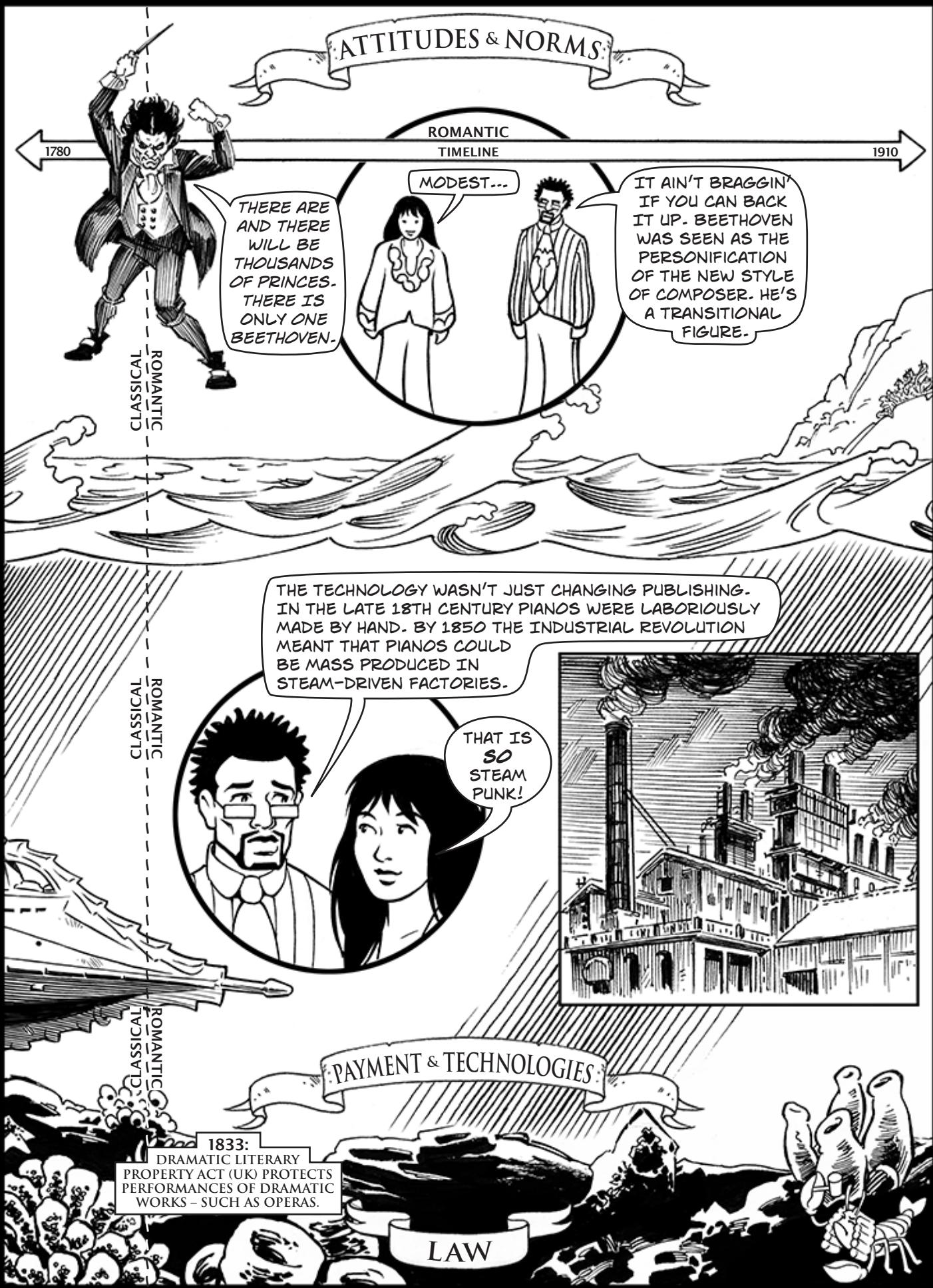
PAYMENT & TECHNOLOGIES

1793: FIRST FRENCH COPYRIGHT LAW COVERING ALL THE "BEAUX ARTS"

1777:
BACH v. LONGMAN (UK)
MUSIC IS COVERED BY COPYRIGHT.
DOESN'T AFFECT BORROWING OR PERFORMING -
JUST REPRINTING.

LAW





SO THIS IS WHERE
WE START SEEING
COMPLAINTS THAT
IMITATION IS
PLAGIARISM, NOT
JUST SINCERE
FLATTERY?

ATTITUDES & NORMS

1810

ROMANTIC
TIMELINE

1910

EXACTLY. BUT BORROWING
DIDN'T STOP, IT JUST
CHANGED SHAPE. YOU
COULD COPY FOLK
SONGS TO SET
A SCENE...

CHOPIN,
TCHAIKOVSKY,
DVORAK...

ALL THOSE PIANOS IN
MIDDLE CLASS DRAWING
ROOMS NEEDED MUSIC...

AND THE ROMANTIC
COMPOSERS WERE
READY TO PROVIDE IT.

ORIGINALITY WASN'T
JUST AN AESTHETIC,
IT WAS A WAY TO
DISTINGUISH YOURSELF
FROM YOUR COMPETITORS...

I'D LIKE TWENTY
ASSORTED SLAVIC
FOLK SONGS AND
A BUSHEL OF
NAIVE MELODIES,
PLEASE.

...AND A BIG
SHOUTOUT
GOES OUT
TO MY MAN,
MOZART.



1851: SACEM COLLECTING
SOCIETY ESTABLISHED
IN FRANCE TO COLLECT
COMPOSERS' AND PUBLISHERS'
PERFORMANCE ROYALTIES
FROM PUBLIC VENUES.

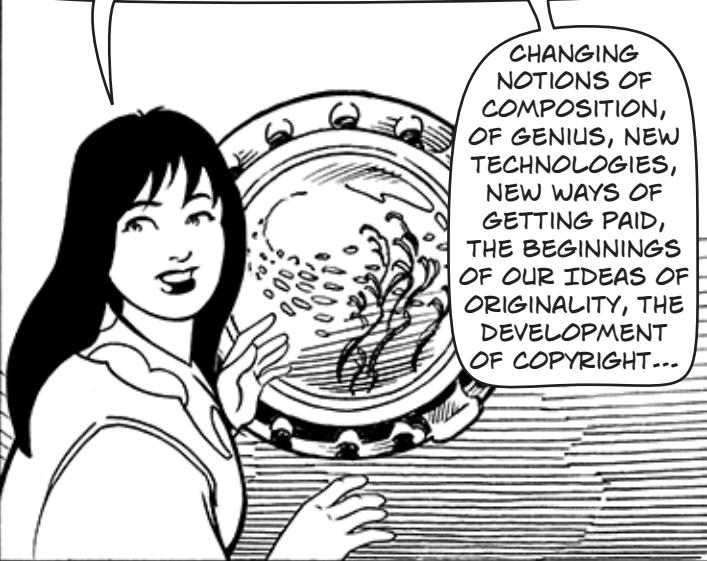
PAYMENT & TECHNOLOGIES

1886:

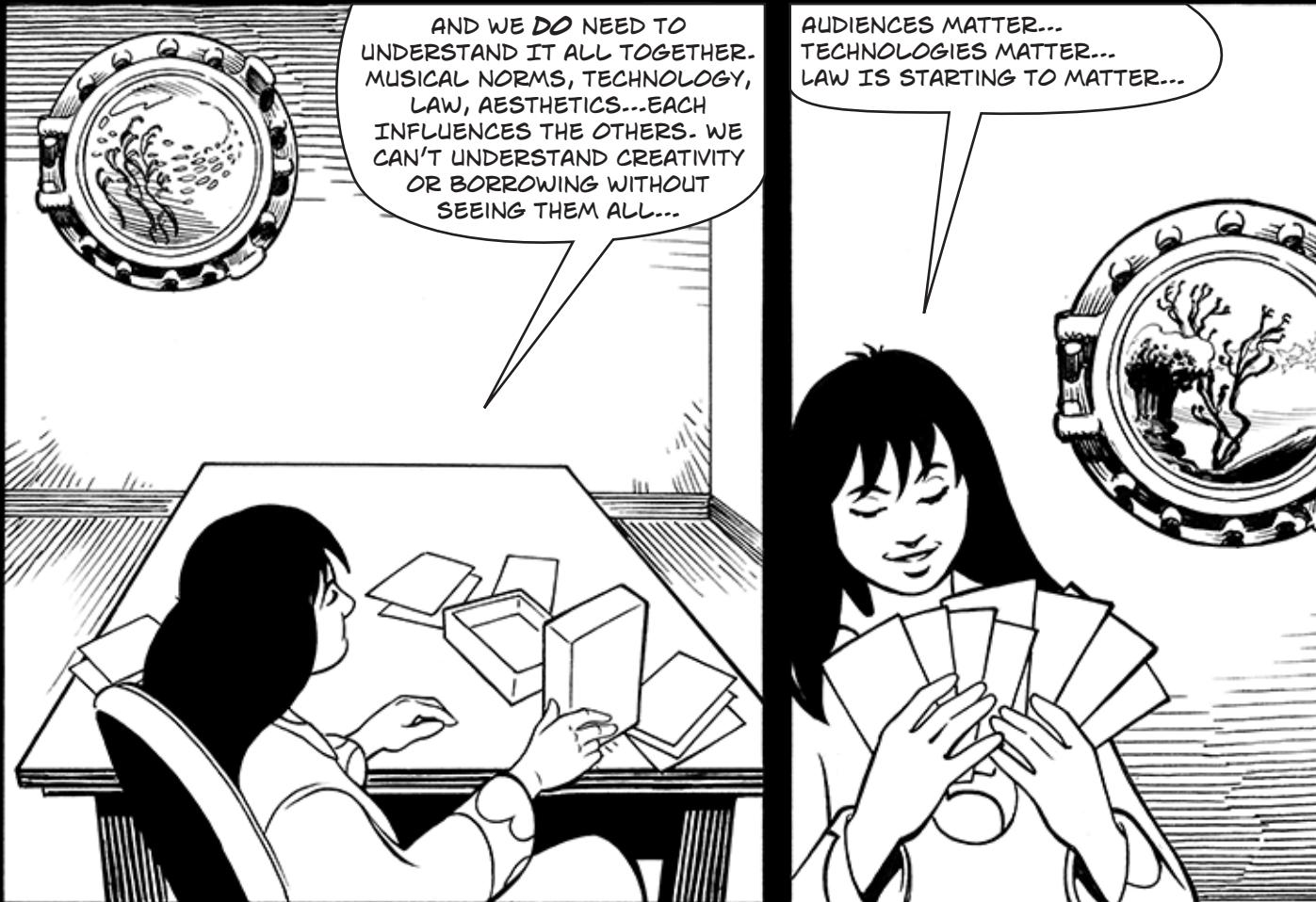
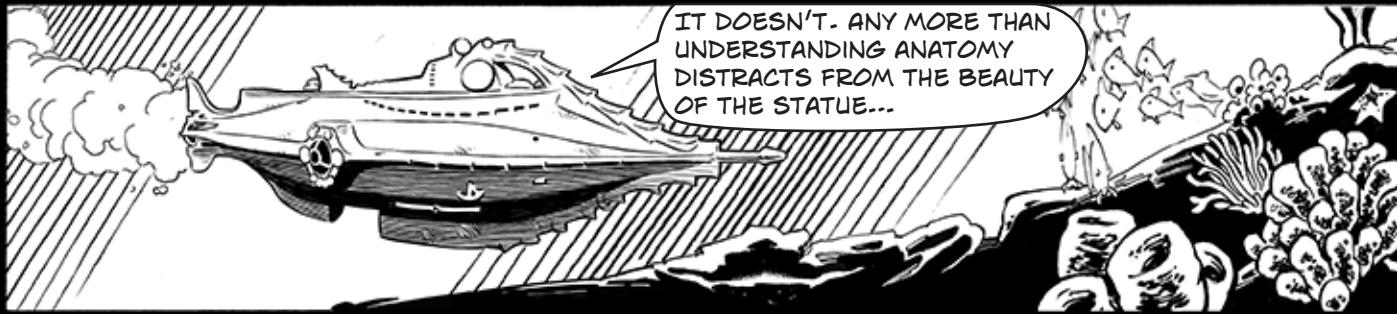
BERNE CONVENTION - THE
FIRST MAJOR INTERNATIONAL
COPYRIGHT AGREEMENT.

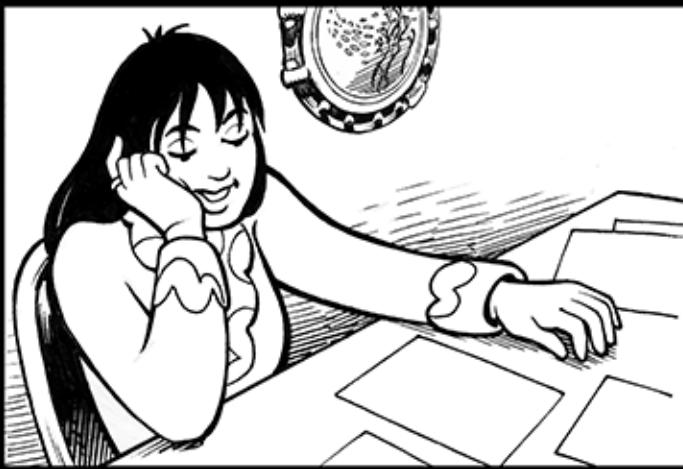
LAW

YOU KNOW, THIS IS FASCINATING, I MUST ADMIT...



YOU WERE RIGHT. AT FIRST I THOUGHT THAT LOOKING AT THESE THINGS WOULD DISTRACT FROM THE BEAUTY OF MUSIC.





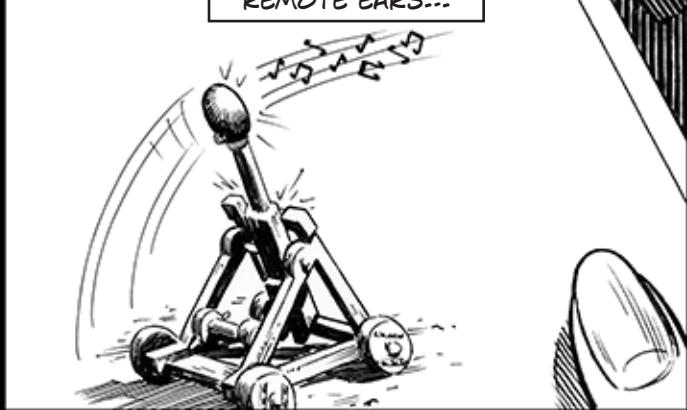
PATRONAGE PRODUCED ONE KIND OF MUSIC...



AIMED AT THE EARS, AND PRIDE, OF ARISTOCRATIC LISTENERS.



TECHNOLOGY ALLOWED MUSIC TO REACH REMOTE EARS...



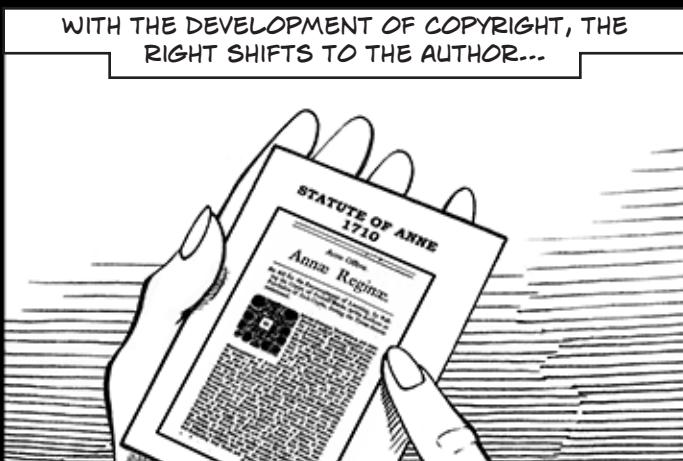
PRINTERS WERE THE FIRST TECHNOLOGICAL INTERMEDIARIES...



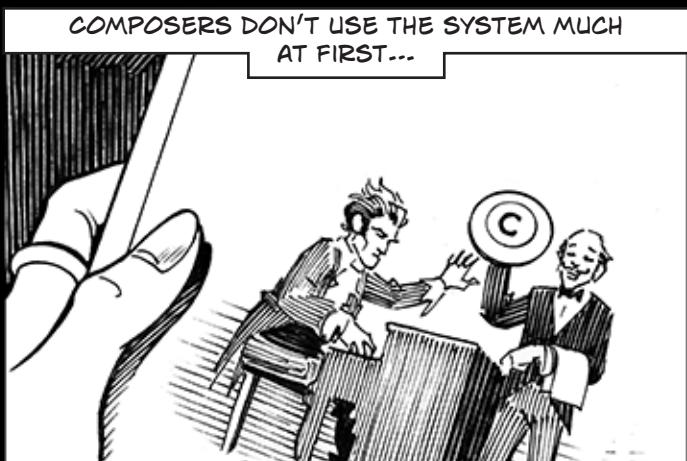
SOME RECEIVED LEGAL RIGHTS TO PRINT MUSIC...OR THE RIGHTS TO PARTICULAR SONGS...

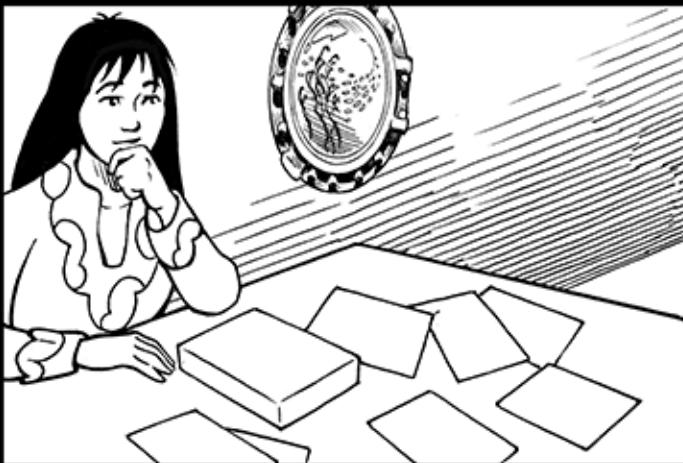


WITH THE DEVELOPMENT OF COPYRIGHT, THE RIGHT SHIFTS TO THE AUTHOR...

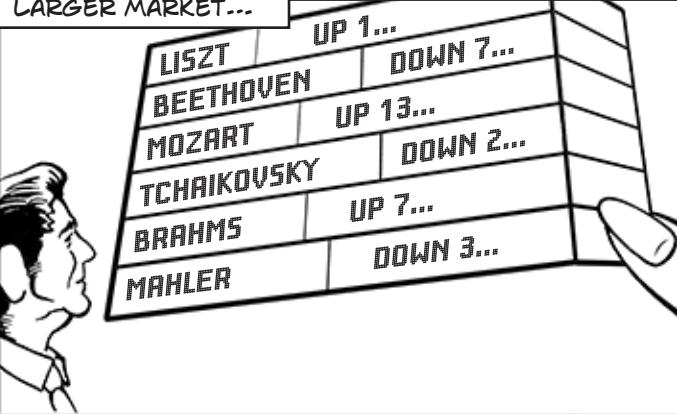


COMPOSERS DON'T USE THE SYSTEM MUCH AT FIRST...

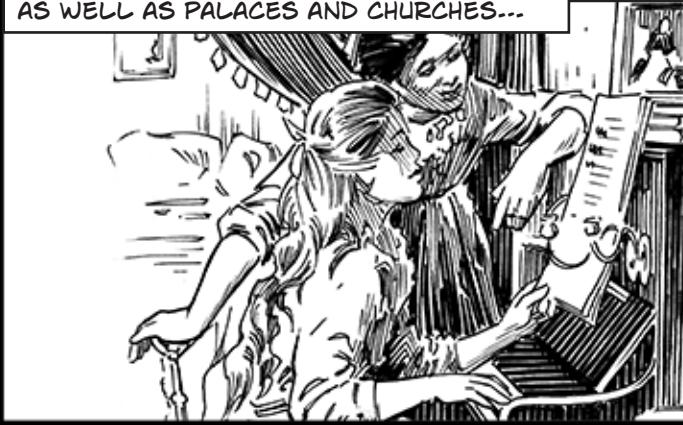




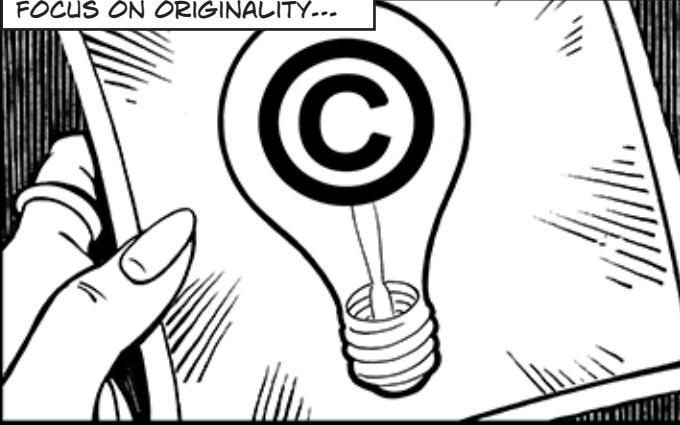
EVEN SO, MUSIC IS NOW DRIVEN BY A MUCH LARGER MARKET...



MUSIC FOR DRAWING ROOMS AND MUSIC HALLS AS WELL AS PALACES AND CHURCHES...



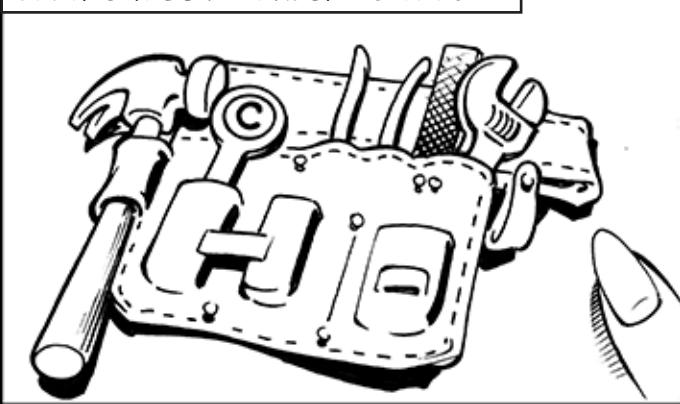
AND THERE'S AN AESTHETIC CHANGE, A NEW FOCUS ON ORIGINALITY...



GRADUALLY COMPOSERS MAKE MORE USE OF COPYRIGHT...



THERE ARE STILL POWER IMBALANCES...BUT COPYRIGHT IS A WONDERFUL TOOL!



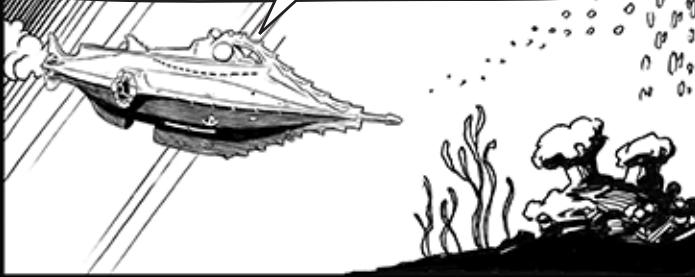
CREATORS CAN DREAM OF GIVING UP WAITING TABLES...CONCENTRATE ON THEIR ART...



AND REACH AN AUDIENCE OF THOUSANDS, MAYBE MILLIONS...



SO I GET THE POINT. THIS REALLY DOES HELP EXPLAIN HOW ATTITUDES TOWARDS CONTROL AND OWNERSHIP CHANGED IN WESTERN MUSIC. BUT ONE THING TICKS ME OFF! EVEN IF WE ARE ONLY LOOKING AT THE WESTERN TRADITION, WHAT ABOUT THE U.S.!!???

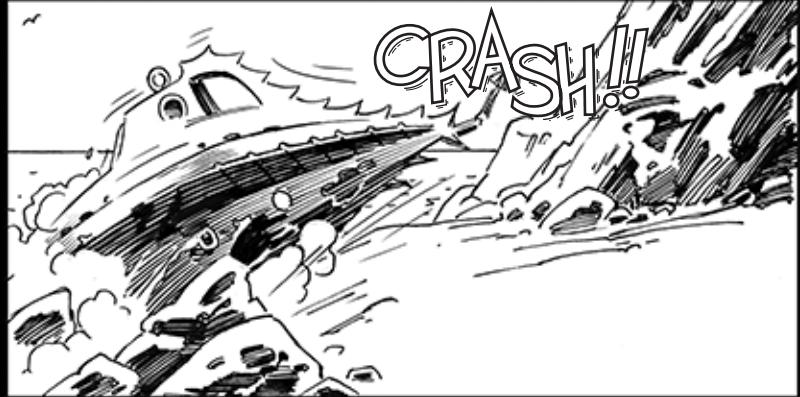


SURE MOST OF MUSICAL HISTORY HAPPENED BEFORE 1776, BUT NOW WE ARE IN THE ROMANTIC PERIOD!



THE U.S. WAS COMING INTO ITS OWN TECHNOLOGICALLY AS WELL AS MUSICALLY!

ACTUALLY...



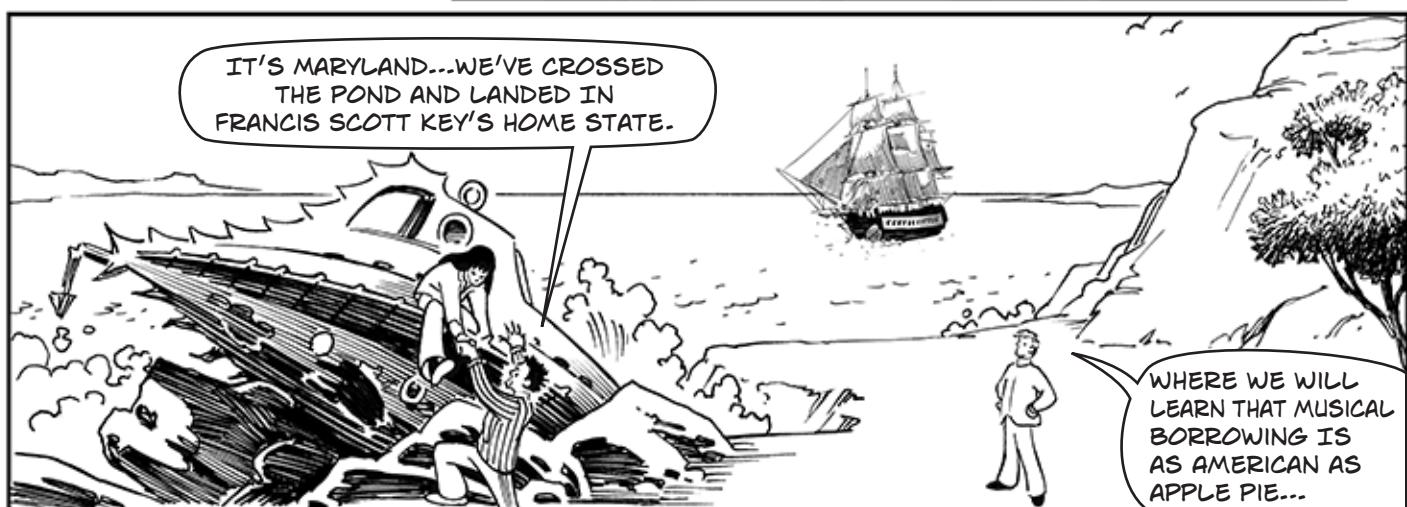
AAAH! WHAT DID WE HIT NOW? MORE PRECIOUS
EUROCENTRIC METAPHORS?? THE ISLAND OF
PRETENTIOUS AESTHETES? THE UNDERWATER
VOLCANO OF ROMANTICISM?!???

MARYLAND.

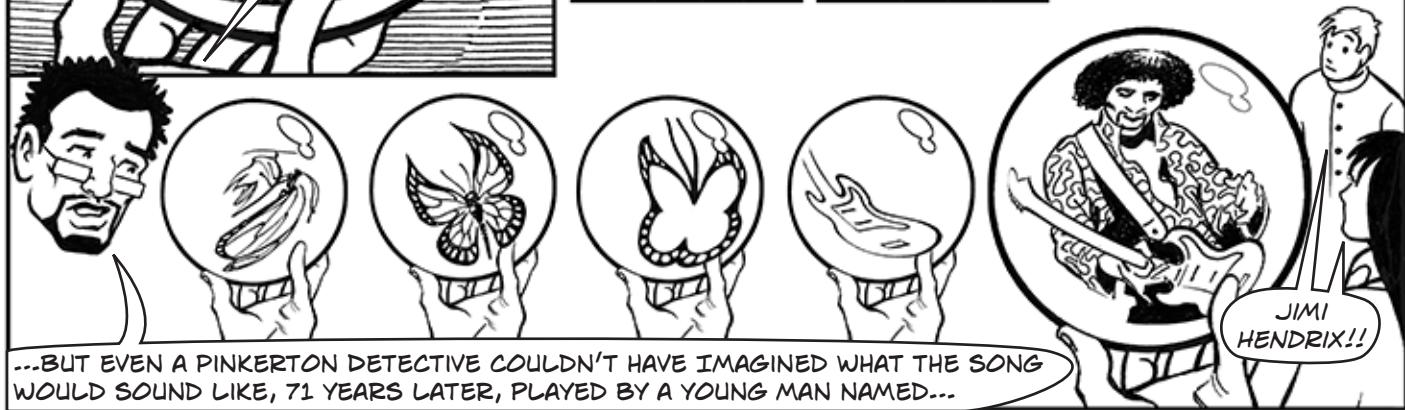
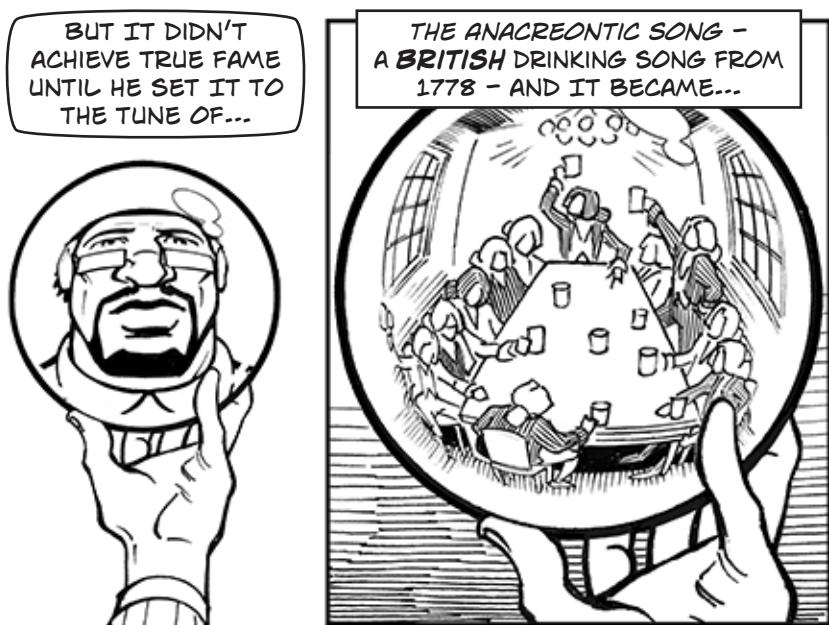
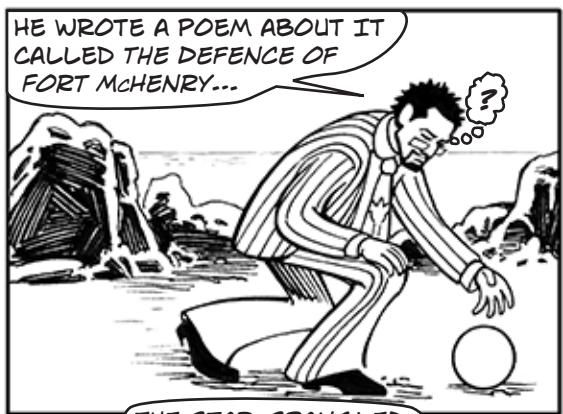
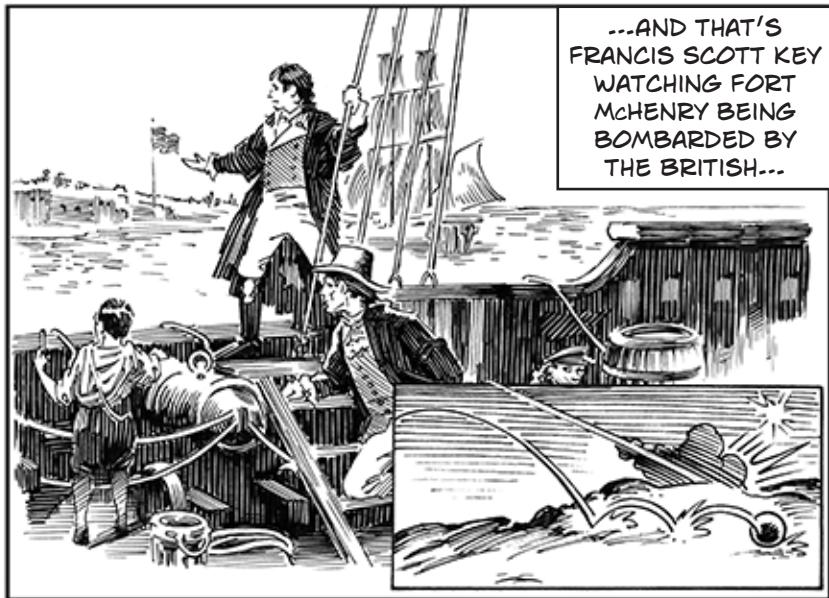
WHAT?



IT'S MARYLAND...WE'VE CROSSED
THE POND AND LANDED IN
FRANCIS SCOTT KEY'S HOME STATE.



WHERE WE WILL
LEARN THAT MUSICAL
BORROWING IS
AS AMERICAN AS
APPLE PIE...



WAIT, WE BORROWED OUR NATIONAL ANTHEM FROM THE COUNTRY WE REVOLTED AGAINST? THAT'S CHEEKY. AT LEAST WE STILL HAVE MY COUNTRY, 'TIS OF THEE.



ACTUALLY, THAT'S THE BRITISH NATIONAL ANTHEM - WORDS BY SAMUEL FRANCIS SMITH SET TO THE TUNE FROM GOD SAVE THE QUEEN.



THE MUSIC IS BORROWED FROM WILLIAM STEFFE'S CANAAN'S HAPPY SHORE, THE SONG THAT BECAME JOHN BROWN'S BODY.

THE BORROWING DIDN'T STOP THERE. THE BATTLE HYMN OF THE REPUBLIC'S LYRICS WERE WRITTEN BY THE ABOLITIONIST JULIA WARD HOWE...

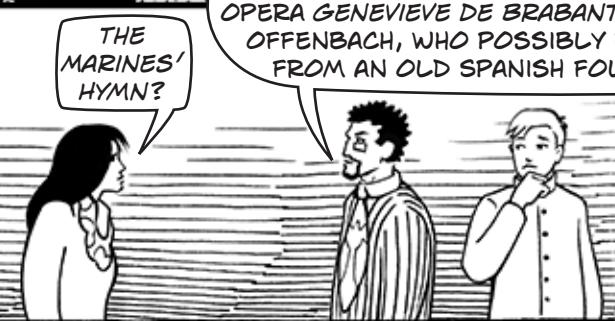
...BUT A BRITISH FOLK SONG COLLECTOR NAMED CECIL SHARP PUT HIS NAME ON THE COPYRIGHT.

THE BATTLE HYMN OF THE REPUBLIC?

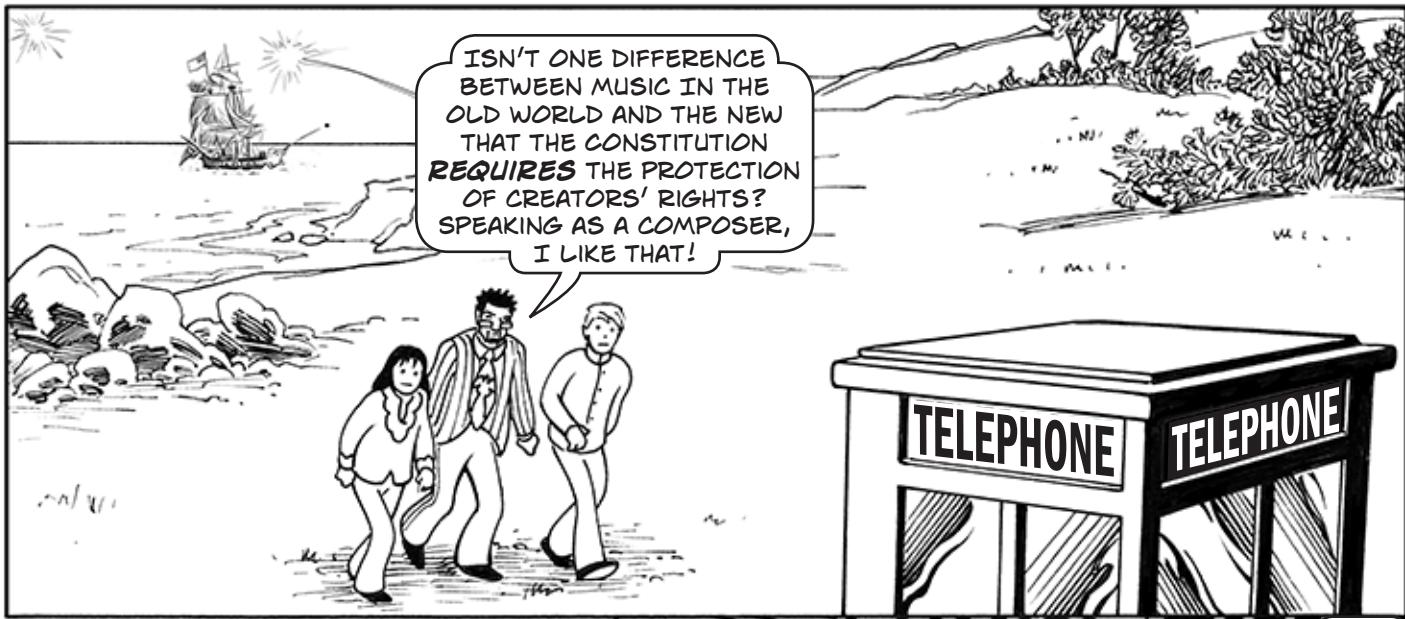


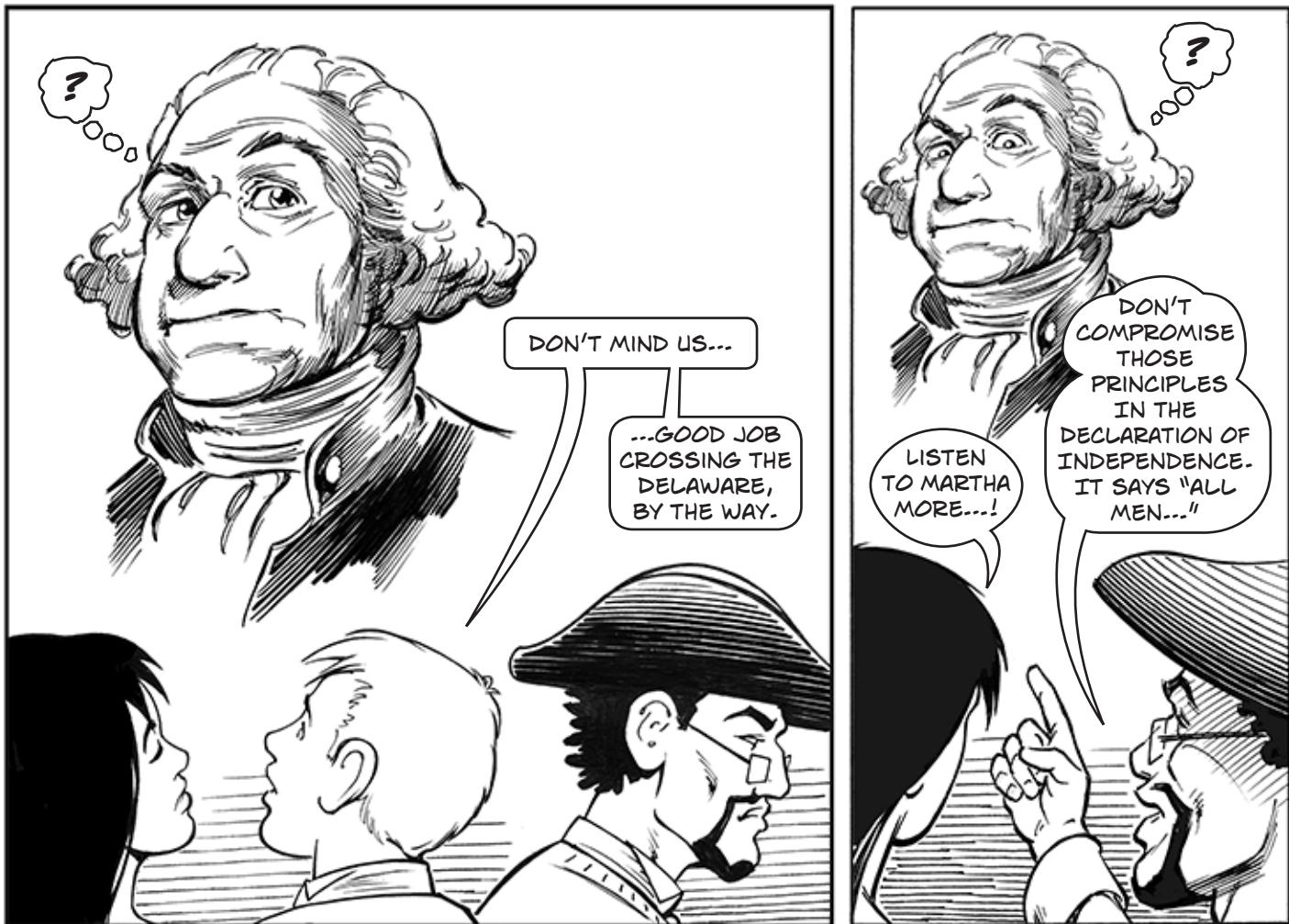
MINE EYES HAVE SEEN THE GLORY OF THE STEALING OF MY WORDS...

NOPE. SET TO A MELODY FROM THE OPERA GENEVIEVE DE BRABANT BY JACQUES OFFENBACH, WHO POSSIBLY BORROWED FROM AN OLD SPANISH FOLK SONG.



REMIX ISN'T OUR FUTURE... IT'S OUR PAST.





Secton. 8. The Congress shall have Power To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

SOME OF THE FRAMERS OF THE CONSTITUTION HAD CORRESPONDED ABOUT DIFFERENT WAYS TO ENCOURAGE INNOVATION AND THE SPREAD OF LEARNING...

LAND GRANTS...
PRIZES...

THEY SETTLED ON COPYRIGHTS AND PATENTS. CONGRESS IS GIVEN THE POWER TO "PROMOTE THE PROGRESS OF SCIENCE AND USEFUL ARTS" BY GIVING EXCLUSIVE RIGHTS FOR LIMITED TIMES TO AUTHORS AND INVENTORS.

HOW LONG IS THE "LIMITED TIME"?

IN THE FIRST COPYRIGHT ACT IT WAS 14 YEARS... RENEWABLE FOR ANOTHER 14...

SO IF THE ANACREONTIC SONG HAD BEEN COPYRIGHTED BACK THEN IT WOULD HAVE BEEN IN THE PUBLIC DOMAIN BY THE TIME FRANCIS SCOTT KEY USED IT FOR THE NATIONAL ANTHEM!

HOW LONG DOES COPYRIGHT LAST NOW?

BUT THAT ACT DIDN'T MENTION MUSIC. CONGRESS WAS MORE CONCERNED ABOUT MAPS AND BOOKS. IT WASN'T UNTIL 1831 THAT MUSIC WAS EXPLICITLY INCLUDED. THE COPYRIGHT LASTED 28 YEARS, RENEWABLE FOR ANOTHER 14.

NOW IT IS THE LIFE OF THE AUTHOR...

...PLUS 70 YEARS.

IN ABOUT 120 YEARS.

SO A SONG WRITTEN BY A 25 YEAR OLD TODAY WILL BE ENTERING THE PUBLIC DOMAIN...

...FOR THE FRANCIS SCOTT KEYS OF THE MODERN WORLD TO REMIX...

IF YOU WANT A SYMBOL OF WHY EARLY AMERICAN COMPOSERS WANTED COPYRIGHT PROTECTION, LOOK AT STEPHEN FOSTER.



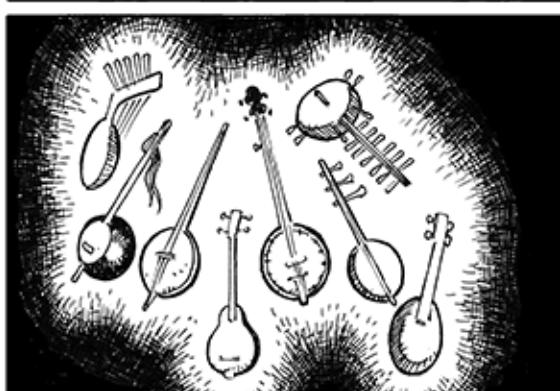
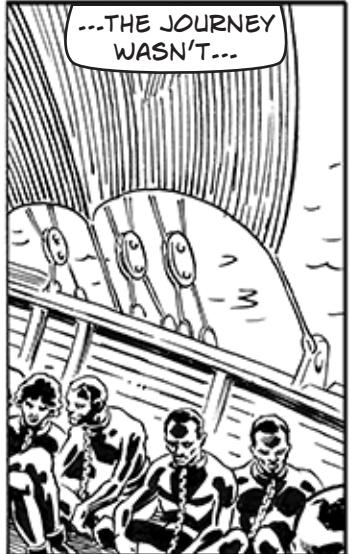
FOSTER WAS TRYING TO MAKE A LIVING AS A PROFESSIONAL SONGWRITER - NOT DEPENDING ON PATRONAGE OR PERFORMANCE.



HIS SONGS WERE INCREDIBLY POPULAR BUT NOT MUCH OF THAT MONEY CAME TO HIM. HE DIED AT AGE 37 AND LEGEND HAS IT HE HAD ONLY 37 CENTS TO HIS NAME.



THE PEOPLE WHO CAME TO THE U.S.
ALL BROUGHT THEIR OWN MUSIC...FOR
SOME OF THEM THE JOURNEY WAS A GREAT
ADVENTURE INTO FREEDOM...AND THEIR
MUSIC CARRIED MEMORIES OF THEIR HOME.



SLAVES DIDN'T JUST BRING
THEIR MUSICAL TRADITIONS, THEY
BROUGHT MEMORIES OF HOW
TO MAKE THEIR INSTRUMENTS...
STRINGED INSTRUMENTS THAT
USED A GOURD AS A SOUND BOX...
THE AKONTING SPIKE LUTES FROM
SENEGAL...COMBINED...THEY BECAME
A CLASSICALLY AMERICAN
INSTRUMENT, THE BANJO.



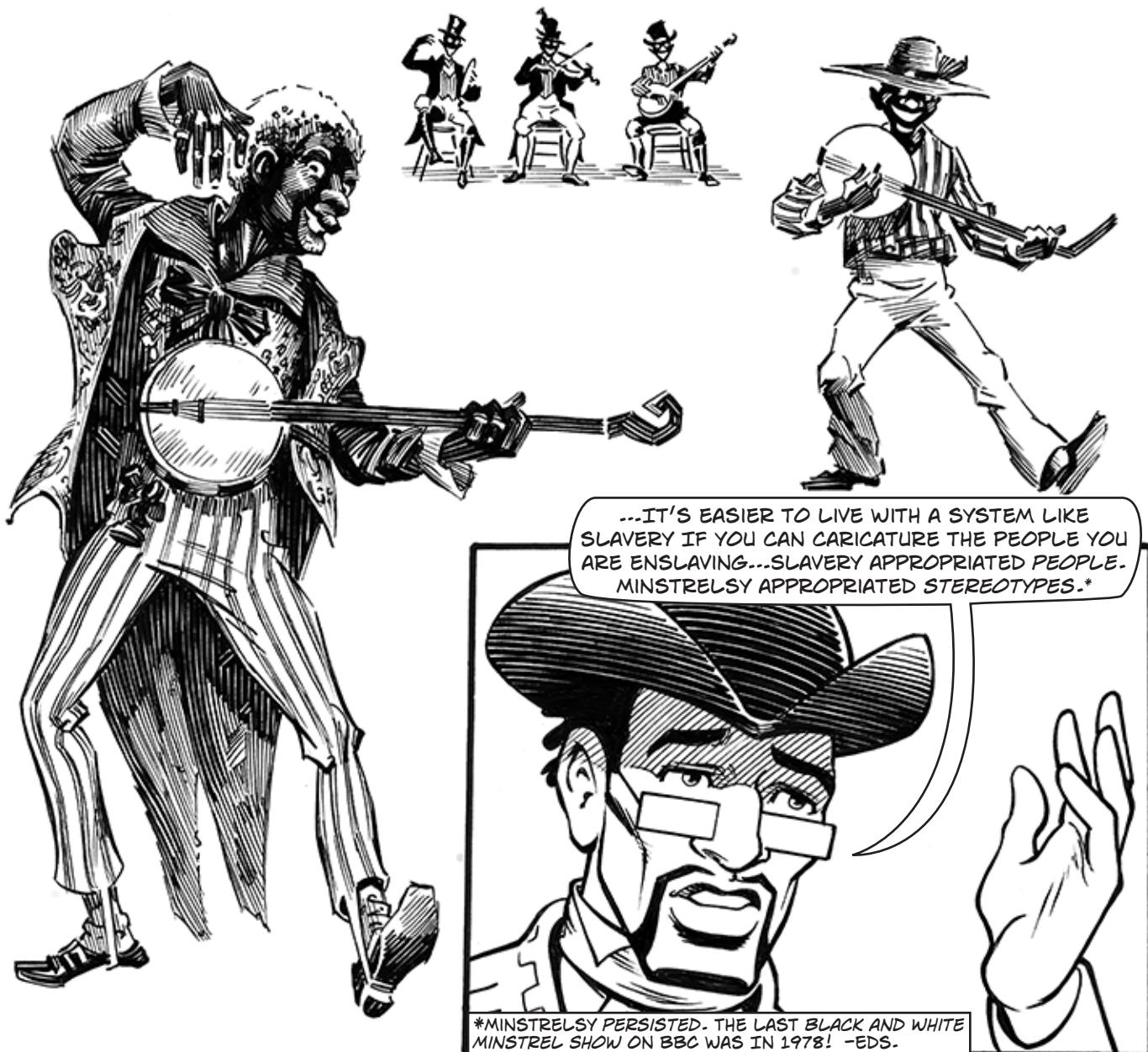
WASN'T BANJO MUSIC A KEY
TO FOSTER'S SUCCESS?



YES. THERE'S EVIDENCE THAT FOSTER HAD SOME CLASSICAL
MUSICAL TRAINING FROM A GERMAN IMMIGRANT CALLED HENRY
KLEBER, BUT WE KNOW HE WAS FASCINATED BY MINSTRELSY...
THE SONGS THAT WERE CALLED "ETHIOPIAN" AT THE TIME.

ARE YOU TALKING ABOUT THOSE AWFUL, DemeANING MINSTREL SHOWS?

YES. THE MINSTREL SONGS WERE SUNG BY WHITE PERFORMERS WHO DRESSED UP IN "BLACKFACE" AND THE LYRICS WERE FULL OF RACIST STEREOTYPES...



*MINSTRELSY PERSISTED. THE LAST BLACK AND WHITE MINSTREL SHOW ON BBC WAS IN 1978! -EDS.

FOSTER'S SONGS HAVE THOSE SAME CARICATURES. BUT HE WAS COMPLICATED.

HE USED THE MINSTREL TRADITION, BUT HE ALSO TRIED TO GET HIS AUDIENCE TO EMPATHIZE WITH THE PEOPLE HE WROTE ABOUT...

A SONG LIKE NELLY WAS A LADY SOUNDS CONDESCENDING TO US...



...BUT, IN 1849, DESCRIBING AN AFRICAN-AMERICAN WOMAN AS A "LADY" MOURNED BY HER WIDOWER HUSBAND WAS PROBABLY SHOCKING IN A WORLD WHERE "NELLY" COULD ALSO BE BOUGHT AND SOLD.



AND PEOPLE RESPONDED.

FOSTER'S SONGS WERE WILDLY POPULAR.

THEY STILL ARE! SO WHY WASN'T HE A COMMERCIAL SUCCESS?

HE GOT CHEATED! ABOUT 20 PUBLISHERS PRINTED OH! SUSANNA AND ONLY ONE OF THEM PAID HIM - A MEASLY \$100.



THAT WAS PART OF IT. BUT YOU ALSO HAVE TO REMEMBER THIS WAS A DIFFERENT WORLD. AT FIRST COPYRIGHT ONLY COVERED THE RIGHT TO PRINT. NO ONE THOUGHT THERE WAS A RIGHT TO KEEP PEOPLE FROM PERFORMING THE SONG.

NO PEOPLE MONITORING THE MUSIC HALLS AND DEMANDING PAYMENT FOR EACH PERFORMANCE?

EXACTLY! AND FRANKLY, THE PUBLISHERS HAD THE POWER.

MMH...



2314

OUR DIGITAL DETECTORS REVEAL OVER 150 PERFORMANCES OF CAMPTOWN RACES THIS MONTH ALONE!



RECORDING CONTRACTS...

AND THAT HASN'T CHANGED! I COULD SHOW YOU RECORDING CONTRACTS...!

FOSTER DID MAKE A LIVING FROM HIS MUSIC - HE AVERAGED ABOUT \$1300 A YEAR - ABOUT \$38,000 TODAY. HE JUST DIDN'T EARN WHAT HE COULD NOW. AND SOME OF THAT HAD TO DO WITH THE RELATIVE POWER OF THE ARTISTS AS OPPOSED TO THE INTERMEDIARIES - THE PRINTERS.



RECORDING CONTRACTS...



Label shall be the exclusive, perpetual owner of all copyrights throughout the universe ... "Work for hire" ... "Controlled composition" ... No royalties shall be payable to you for the following ... Label may recoup "advances" from your royalties ...



SO WHEN THEY CALL FOSTER "THE FATHER OF AMERICAN POPULAR MUSIC" IT'S TRUE IN MORE THAN ONE WAY.



HE'S AN EARLY EXAMPLE OF A PROFESSIONAL POPULAR SONGWRITER - NOT A PERFORMER - WHOSE ROYALTIES COME FROM A LARGE MARKET REACHED THROUGH MECHANICAL DISTRIBUTION, A MARKET BUILT AROUND COPYRIGHTED MUSIC.



AND TO ATTRACT THAT MARKET FOSTER TOOK FRAGMENTS OF THE MUSICAL TRADITIONS THAT AMERICA HAD MINGLED TOGETHER - PLANTATION CHANTS, BANJO MUSIC AND MINSTRELSY, BUT ALSO CELTIC AND GERMAN FOLK TUNES, EVEN SNIPPETS OF OPERA.



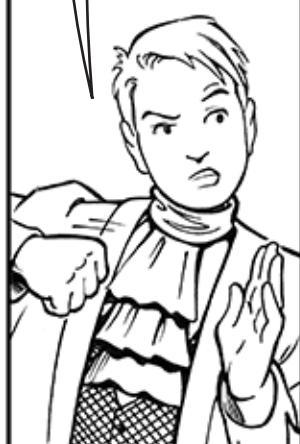
I CAN SEE A HINT OF CONFLICT BETWEEN THE WAY COMPOSERS ARE BEGINNING TO GET PAID AND THE WAY MUSIC GETS MADE.



...THE MARKET IS BUILT AROUND PROPERTY RIGHTS OVER MUSIC. BUT IN THE PROCESS OF MUSICAL CREATION, COMPOSERS HAD TREATED THEIR MUSICAL HERITAGE AS A COMMONS - BORROWING AND REMIXING TO MAKE NEW STYLES AND SONGS.



WHAT'S GOING TO HAPPEN WHEN THE TWO...



COLLIDE?



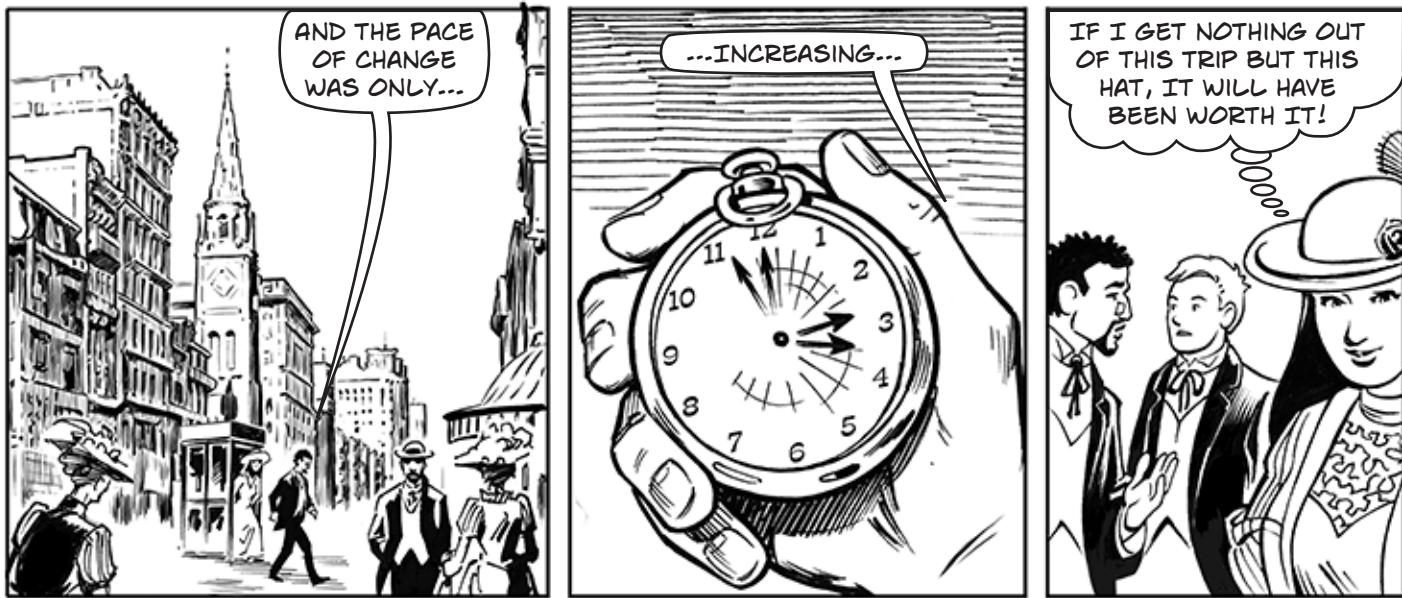


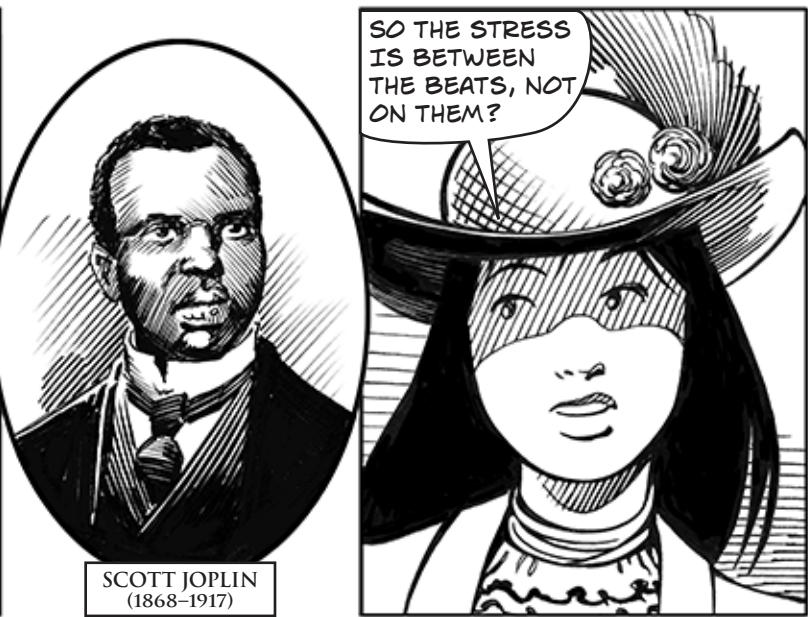
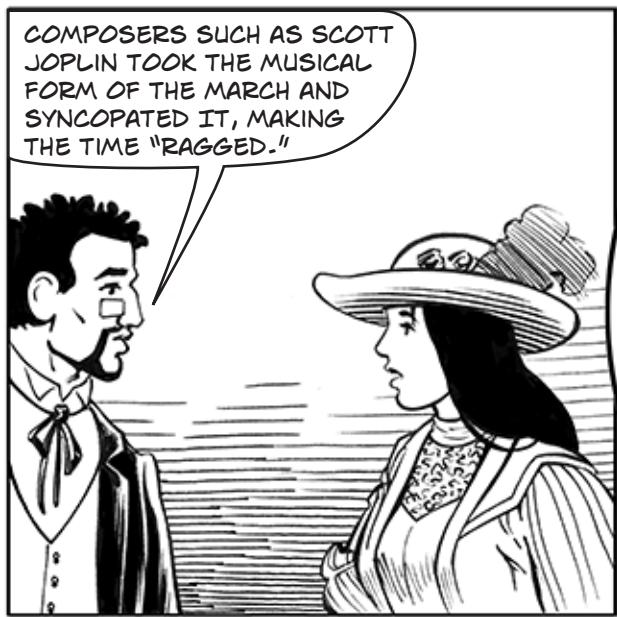
IN REED V. CARUSI, SAMUEL CARUSI WAS ORDERED TO PAY \$200 FOR PRODUCING A MUSICAL VERSION OF A POEM CALLED THE OLD ARM CHAIR. THE JURY THOUGHT CARUSI'S VERSION WAS TOO SIMILAR TO HENRY RUSSELL'S VERSION OF THE SONG. CARUSI CLAIMED THAT RUSSELL'S SONG ITSELF WAS BUILT ON TWO EARLIER SONGS, THE BLUE BELLS OF SCOTLAND AND THE SOLDIER'S TEAR, WHILE HIS OWN WAS BUILT ON A SONG CALLED NEW ENGLAND. THE COURT DISAGREED!

BORROWING FOR ME BUT NOT FOR THEE!

WE'VE COME QUITE SOME WAY FROM THE GREEKS, WHEN THE CUTTING EDGE TECHNOLOGY WAS "NOTATION" AND THE REASON TO RESIST REMIX WAS BECAUSE PLATO THOUGHT IT WOULD UNDERMINE PHILOSOPHY AND THE STATE!



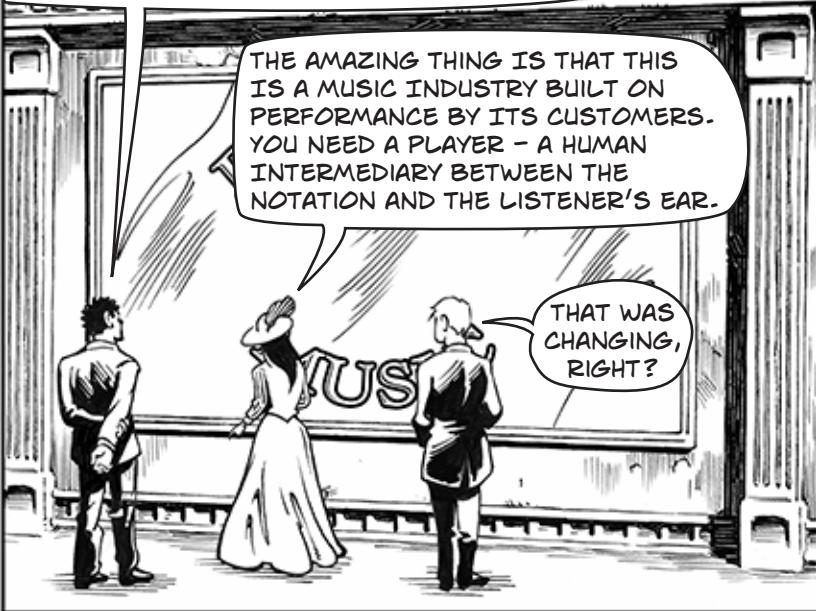




DIDN'T THE MUSIC PUBLISHERS HIRE MUSICIANS WHO WENT AROUND TO PROMOTE THEIR MUSIC TO STORES AND TO THE PUBLIC?



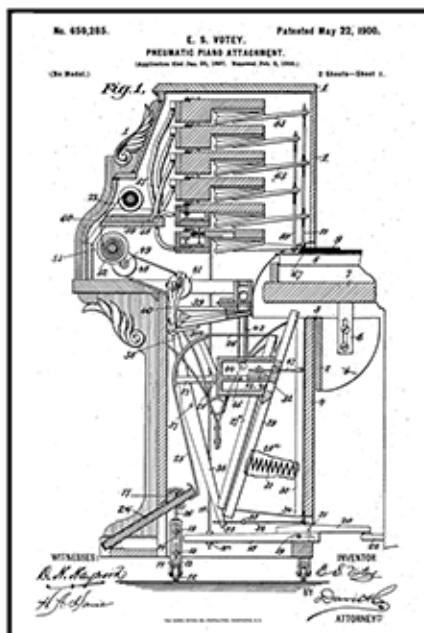
YES, THEY WERE CALLED "SONG PLUGGERS." SOME PEOPLE SAY THE TINNY PIANOS THEY USED GAVE TIN PAN ALLEY ITS NAME.



OH, YES. INVENTORS WERE HARD AT WORK ON TURNING THE "SCORE" DIRECTLY INTO MUSIC...



...EDWIN VOTEY'S "PIANOLA" WAS ONE OF THE BREAKTHROUGHS. A PAPER ROLL DIRECTED PNEUMATICALLY POWERED PIANOS HOW TO PLAY EVERY NOTE. THAT'S A 1900 PATENT ON ONE OF THE KEY DESIGNS.



SO "NOTATION" BECOMES "PROGRAMMING" - INSTRUCTING THE INSTRUMENT WITHOUT A HUMAN IN BETWEEN. THAT'S BRILLIANT.



AT FIRST THE COSTS WERE HIGH.)

AND THERE WERE "FORMAT WARS," RIGHT? DIFFERENT NUMBERS OF KEYS AND SIZES OF PIANO ROLLS?

I THOUGHT THAT WAS ONLY A PROBLEM OF OUR GENERATION.
I BOUGHT HD DVD INSTEAD OF BLU-RAY!

BUT THEY STANDARDIZED AND PRICES KEPT DROPPING.

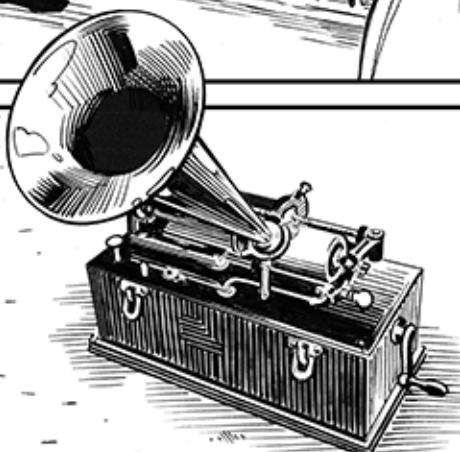
BY THE 1920S MOST PIANOS MANUFACTURED IN THE U.S. HAD A "PLAYER PIANO" INSIDE...MIMICKING EXACTLY THE STYLE OF THE PIANIST WHO HAD "RECORDED" THE TRACK.

BUT THERE WAS A COMPETITIVE TECHNOLOGY...

WHEN DID EDISON INVENT THE PHONOGRAPH?

EDISON'S PHONOGRAPH WAS INVENTED IN 1877. EMILE BERLINER'S GRAMOPHONE, WHICH LOOKED MORE LIKE A RECORD PLAYER, CAME ALONG TEN YEARS LATER.

WITHIN TWO YEARS, THE FIRST PHONOGRAPH PARLOR OPENED. YOU YELLED YOUR SELECTION INTO A SPEAKING TUBE AND THEN LISTENED THROUGH A HORN TO THE MUSIC PLAYING FROM A GRAMOPHONE DOWNSTAIRS.



IN 1901 BERLINER JOINED FORCES WITH E.R. JOHNSON, WHO HAD SOLVED THE PROBLEM OF THE GRAMOPHONE'S MOTOR, DOING BUSINESS AS THE VICTOR TALKING MACHINE COMPANY. YOU MAY RECOGNIZE THE TRADEMARK...

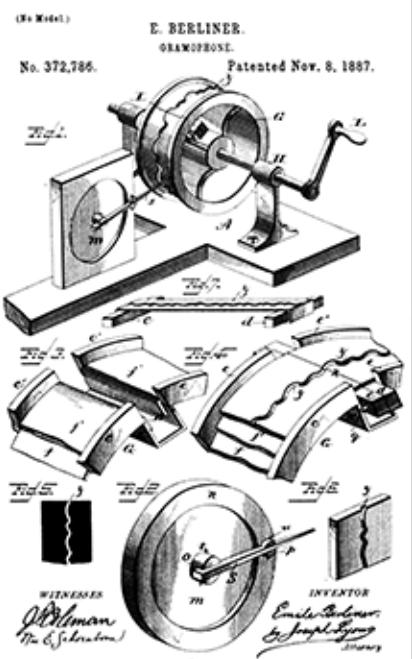
GADZOOKS! THIS DEVICE WILL UNSETTLE THE POLITICAL ECONOMY OF MUSIC MAKING...! ALSO, I THINK THE TECHNICIAN DROPPED SOME BACON DOWN THAT HORN...



THE RECORDING INDUSTRY EXPANDED FAST. CARUSO MADE HIS FIRST RECORDING IN 1902...

THAT EARLY! THE COMPOSERS AND PUBLISHERS MUST HAVE WELCOMED THIS NEW MARKET FOR THEIR WORK.

NOT EXACTLY.



REMEMBER COPYRIGHT LAW IS A STATUTORY MONOPOLY - YOU ONLY HAVE THE RIGHTS THE STATUTE GIVES YOU. AND THE STATUTE SAID NOTHING ABOUT PIANO ROLLS OR RECORDINGS.

WHAT DO YOU MEAN?



COPYRIGHT ISN'T A RIGHT TO CONTROL EVERY ASPECT OF THE WORK... JUST SELECTED ONES SUCH AS REPRODUCTION OR PUBLIC PERFORMANCE.

IF YOU ARE IN A BOOKSTORE AND YOU READ A BOOK JUST STANDING THERE, THAT DOESN'T VIOLATE COPYRIGHT. IF YOU SING IN THE SHOWER, THAT DOESN'T VIOLATE COPYRIGHT.

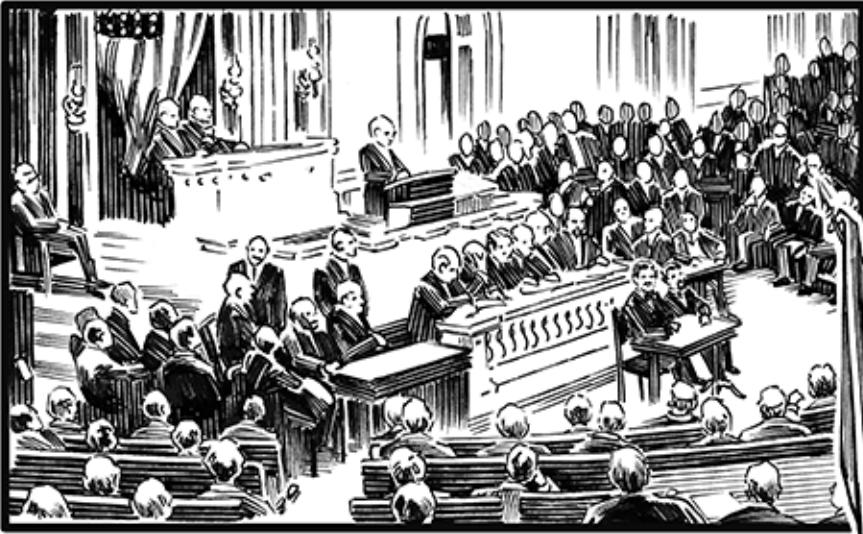
GOOD TASTE BUT NOT COPYRIGHT?

BACK THEN THE RIGHTS WERE MUCH "THINNER." THEY JUST COVERED PRINTING AND PUBLIC PERFORMANCE. THE PIANO ROLL MAKERS AND RECORD MAKERS WEREN'T DOING EITHER.

THE RECORDING INDUSTRY IS SO CONCERNED ABOUT THE EFFECTS OF TECHNOLOGICAL "PIRACY" ON ARTISTS TODAY. I'M SURE THEY FELT THE SAME WAY BACK THEN!

SURELY THEY WANTED COMPOSERS TO GET PAID FOR USES OF THEIR WORKS IN NEW TECHNOLOGIES?

YOU ARE A CYNICAL MAN. LET'S HAVE THEM SPEAK FOR THEMSELVES. HERE ARE THE REPRESENTATIVES OF THE RECORDING AND PIANO ROLL INDUSTRIES TESTIFYING IN CONGRESS IN 1906!



"ALL TALK ABOUT 'DISHONESTY' AND 'THEFT' IN THIS CONNECTION, FROM HOWEVER HIGH A SOURCE, IS THE MEREST CLAPTRAP, FOR THERE EXISTS NO PROPERTY IN IDEAS, MUSICAL, LITERARY OR ARTISTIC, EXCEPT AS DEFINED BY STATUTE."



"IT IS THEREFORE PERFECTLY DEMONSTRABLE THAT THE INTRODUCTION OF AUTOMATIC MUSIC PLAYERS HAS NOT DEPRIVED ANY COMPOSER OF ANYTHING HE HAD BEFORE THEIR INTRODUCTION."



"WE HAVE A RIGHT UNDER THE LAW OF THE LAND AS IT STANDS TODAY TO REPRODUCE---MUSIC: PAST, PRESENT OR FUTURE. THIS BILL SAYS TO US THAT WE CANNOT REPRODUCE THAT IF SOME FELLOW TELLS US WE CANNOT."

PHILIP MAURO
AMERICAN GRAPHOPHONE COMP.

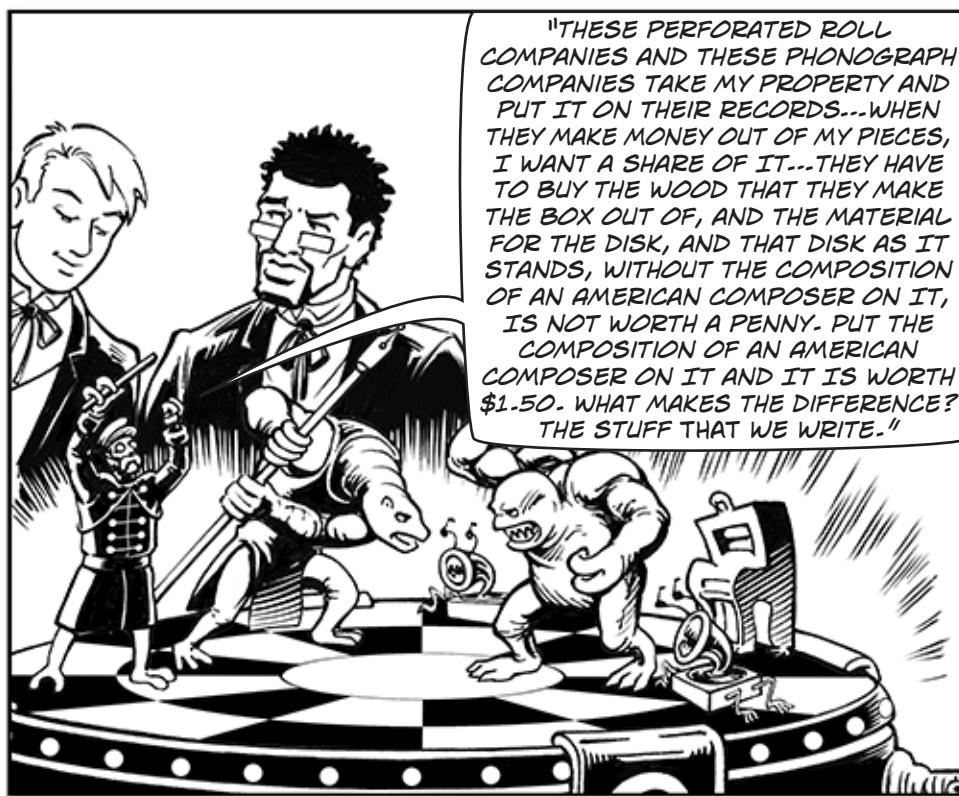
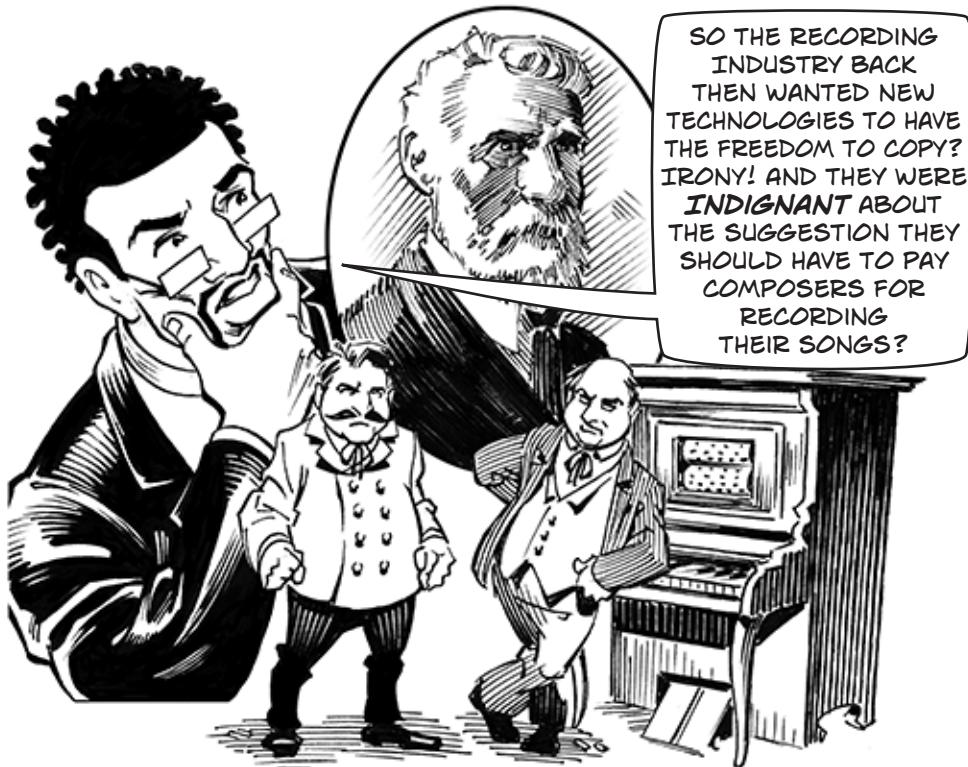


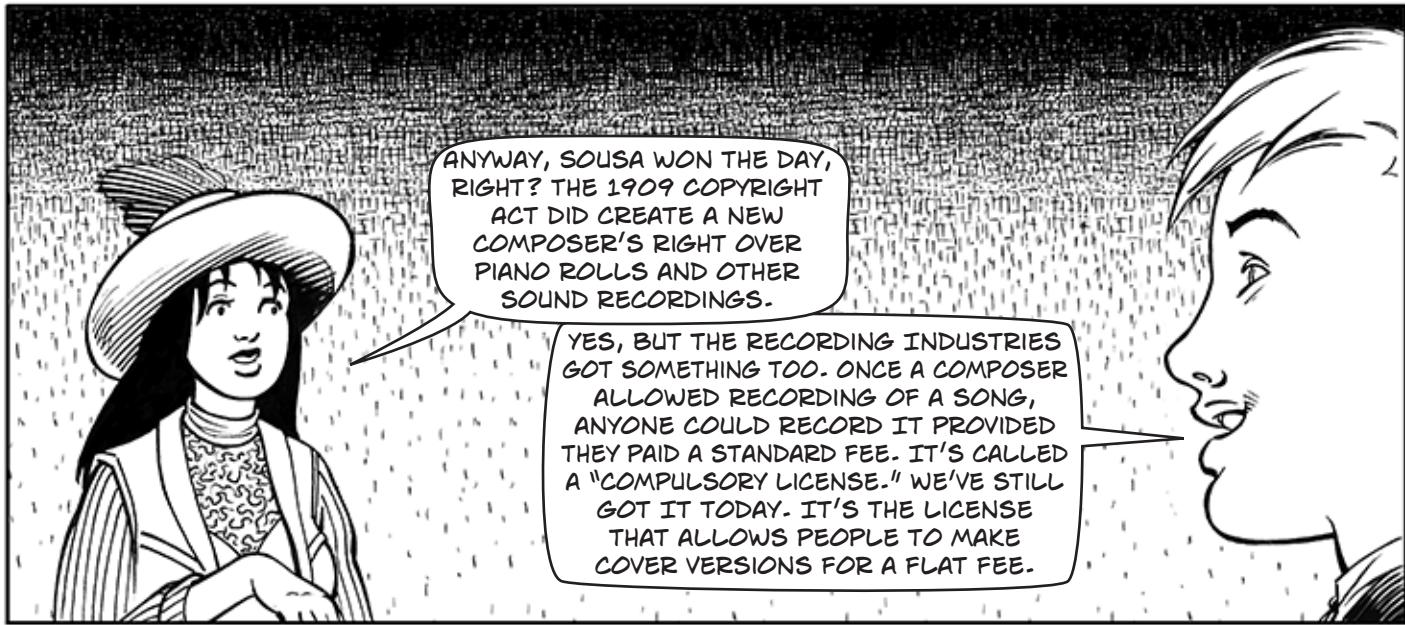
"THE COMPOSERS AND THE PUBLIC ALIKE WERE DEPENDENT A FEW YEARS AGO FOR THE RENDITION OF THESE COMPOSITIONS... ENTIRELY UPON THE HUMAN VOICE OR UPON INSTRUMENTS MANIPULATED BY HUMAN FINGERS. HENCE THERE WAS A VERY NARROW LIMIT TO THE AUDIBLE RENDITION OF MUSICAL COMPOSITIONS, AND THE AVERAGE QUALITY THEREOF WAS VERY LOW, BEING DETERMINED BY THE SKILL OF THE HUMAN PERFORMER---IN A FEW YEARS THE GENIUS OF THE INVENTOR HAS BROUGHT ABOUT A MARVELOUS CHANGE---THE COMPOSERS AND PUBLISHERS HAVE NOT CONTRIBUTED IN THE SLIGHTEST DEGREE TO THIS CHANGE---YET THE PUBLISHER DOES NOT SCRUPLE TO DEMAND RADICAL CHANGE OF LEGISLATION IN ORDER TO GIVE HIM THE ENTIRE MONOPOLY OF THE BENEFITS---AND HAS THE EFFRONTERY TO APPLY VITUPERATIVE EPITHETS TO THOSE WHO VENTURE TO OPPOSE HIS SCHEME OF GREED."

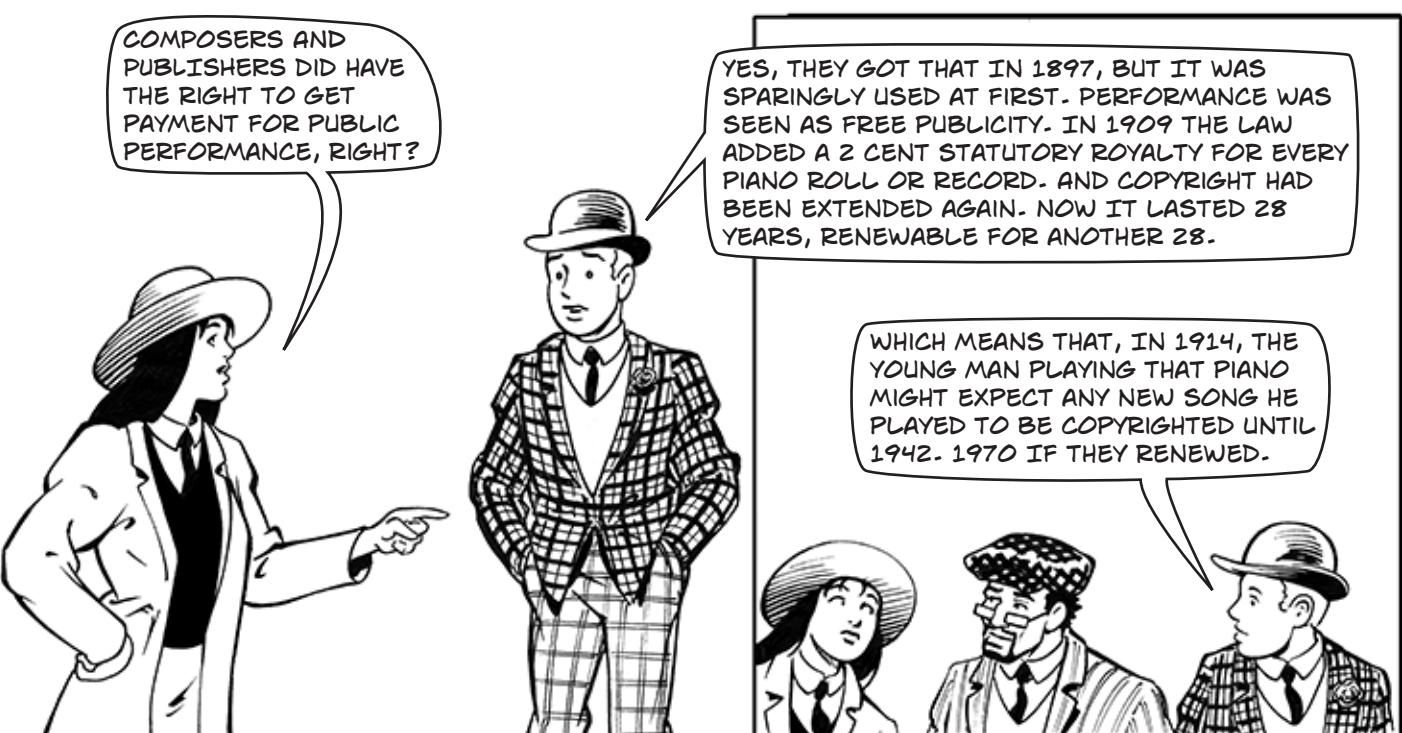
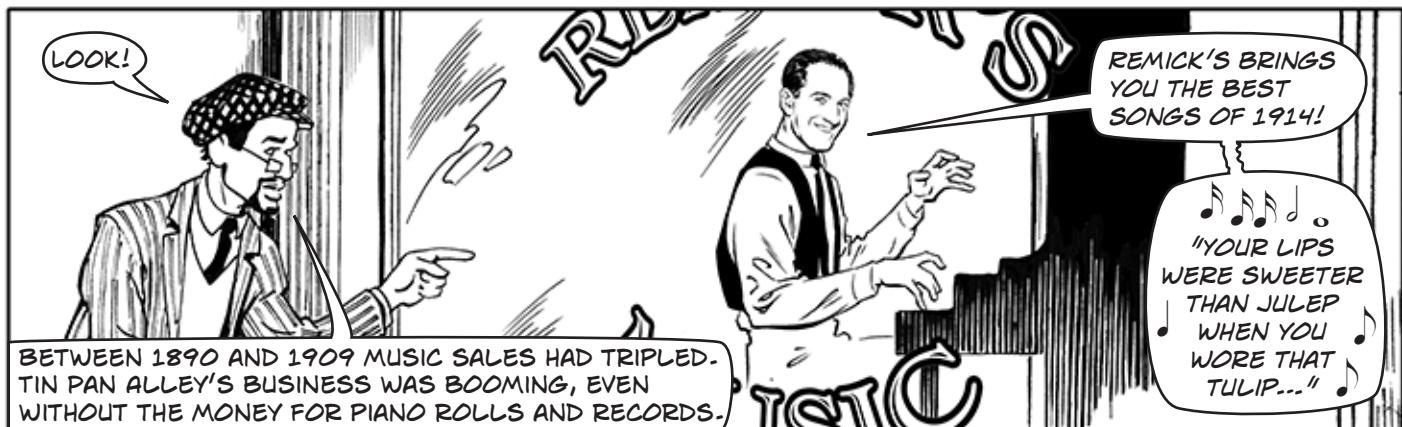
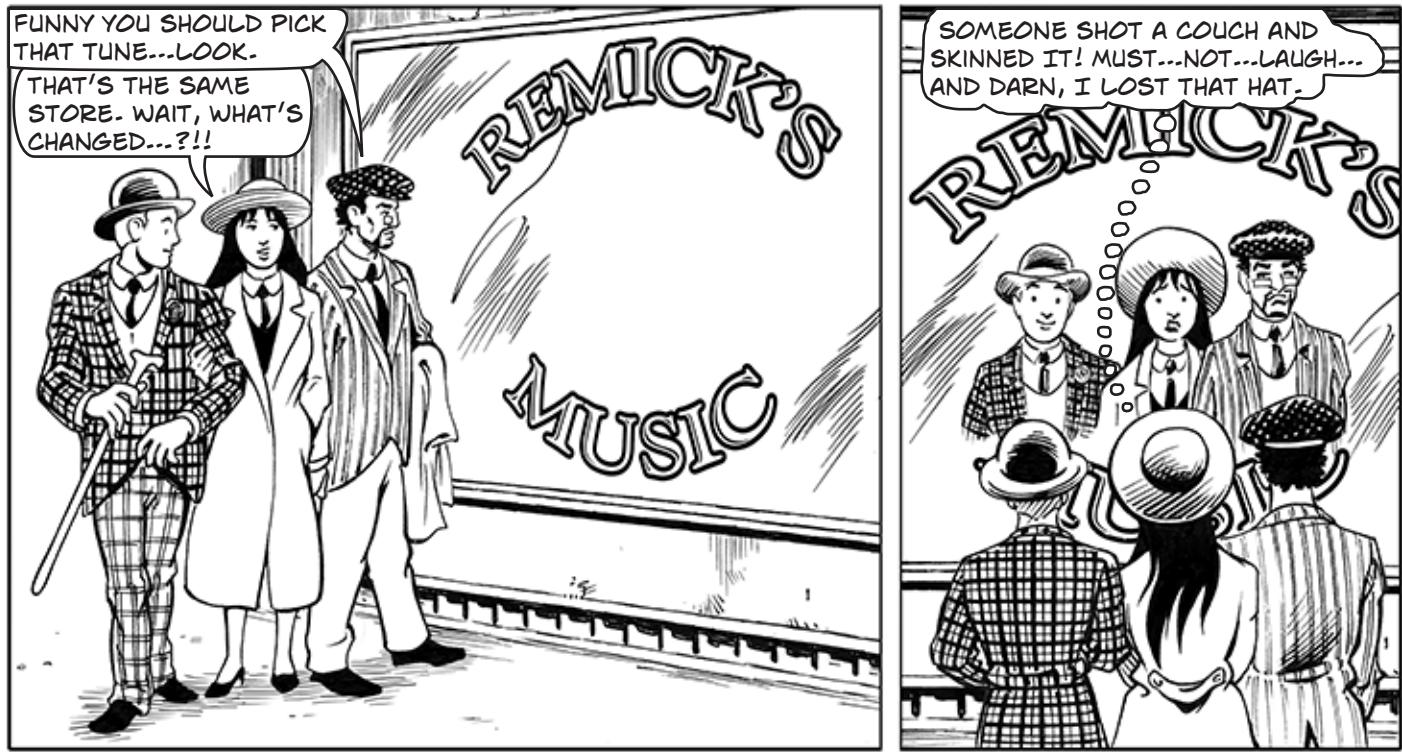


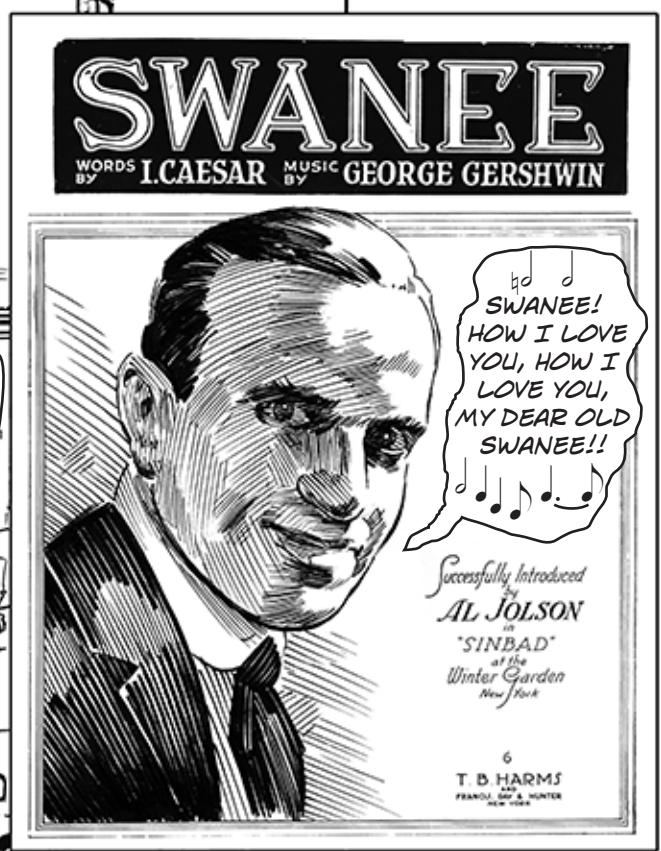
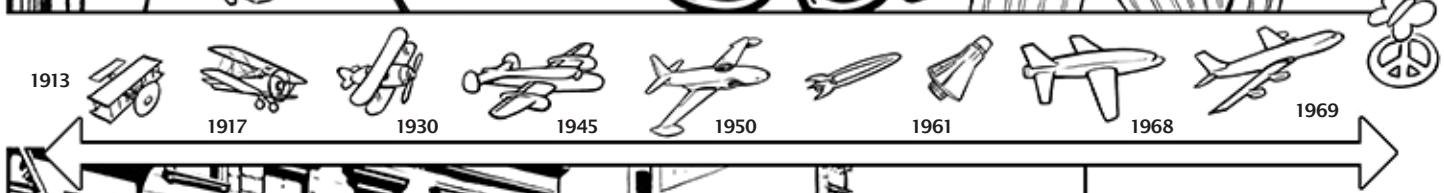
ALBERT WALKER
AUTO-MUSIC
PERFORATING COMPANY
OF NEW YORK

GEORGE POUND
DE KLEIST MUSICAL INSTRUMENT
MANUFACTURING COMPANY &
RUDOLPH WURLITZER COMPANY









GERSHWIN HAD LOTS OF HITS AFTER THAT - EVER HEAR OF LADY BE GOOD OR FASCINATING RHYTHM?



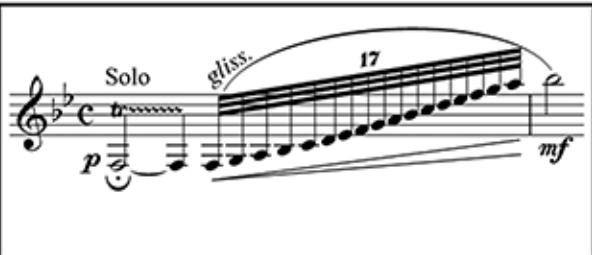
BUT HIS FIRST MAJOR PIECE WAS RHAPSODY IN BLUE IN 1924.



IT DREW ON EVERYTHING - JAZZ, FOXTROT, "BLUE" NOTES, MODERNIST MUSIC, THE SYNCOPATION OF RAGTIME - MANY HAVE CALLED IT "A MELTING POT."



...AND I WROTE IT IN THREE WEEKS!



I LOVE THAT PIECE. EVEN THOUGH I HAD TO PLAY IT A MILLION TIMES AT PIANO RECITALS AS A KID.



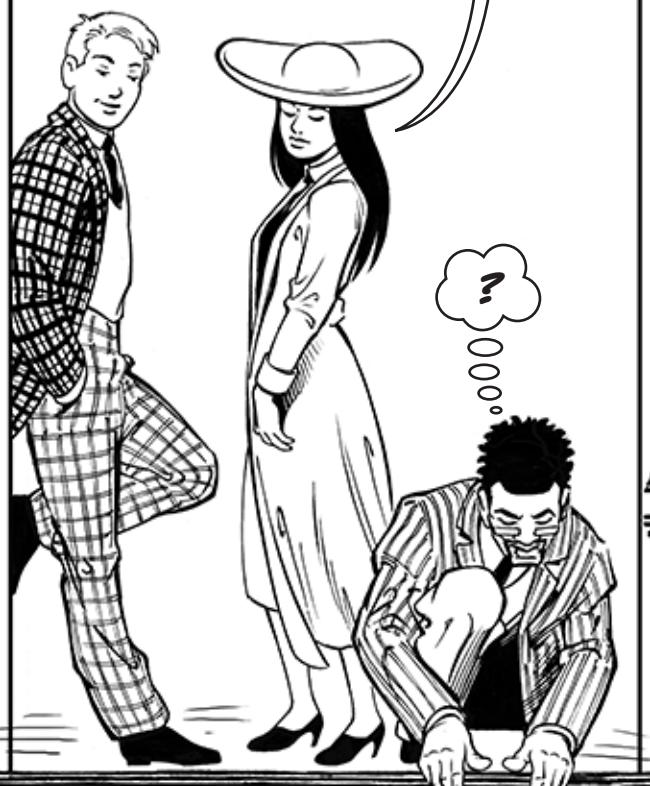
YEAH - THE CHILD PIANO PRODIGY, WITH BIG HAIR, BRACES AND TWO VERY PROUD PARENTS. IT'S A PERIOD OF MY LIFE I'D RATHER FORGET.



THE PUBLIC DOMAIN

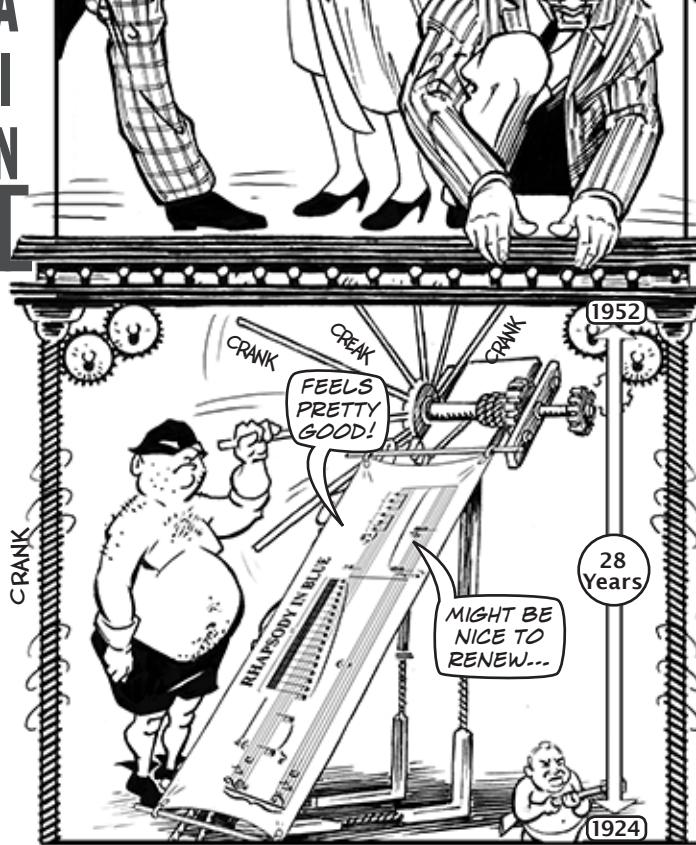
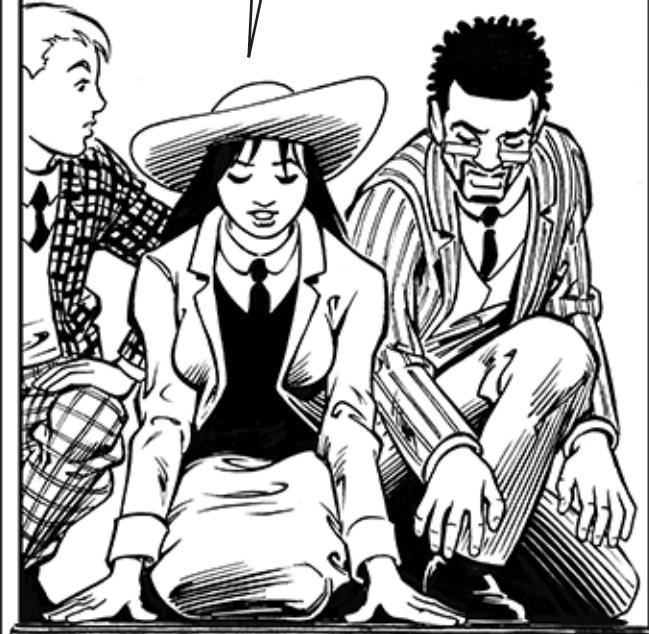
IT'S FUNNY THAT YOU SHOULD MENTION RHAPSODY IN BLUE AND 1924. SONGS PUBLISHED BEFORE 1923 - INCLUDING SWANEE - ARE ALL IN THE PUBLIC DOMAIN. YOU CAN SING THEM, REPRINT THEM, ADAPT THEM, INCORPORATE THEM INTO NEW PLAYS AND MOVIES.

WHEN GERSHWIN WROTE RHAPSODY IN BLUE THE "DEAL" COPYRIGHT GAVE HIM WAS SIMPLE. THE COPYRIGHT TERM LASTED 28 YEARS...UNTIL 1952.



...UNLESS HE RENEWED THE COPYRIGHT.

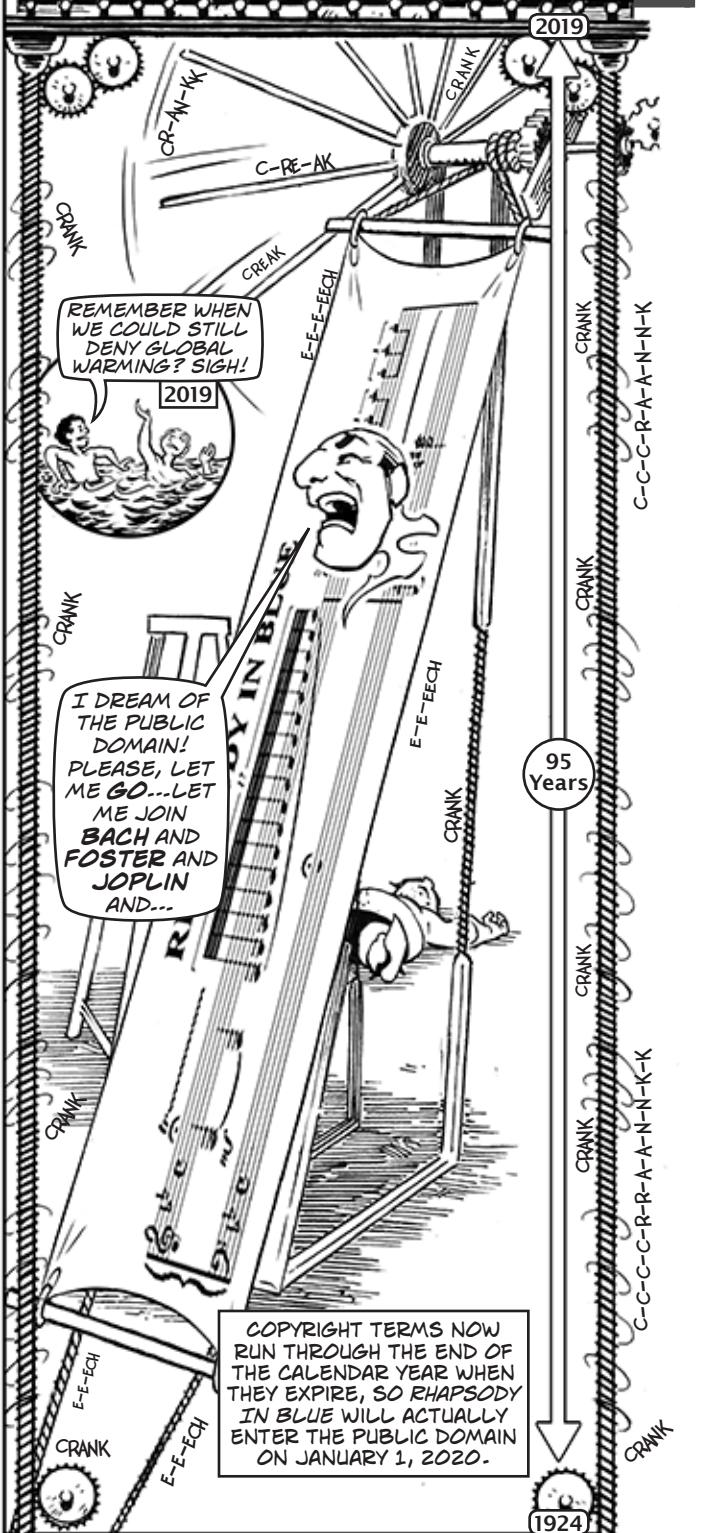
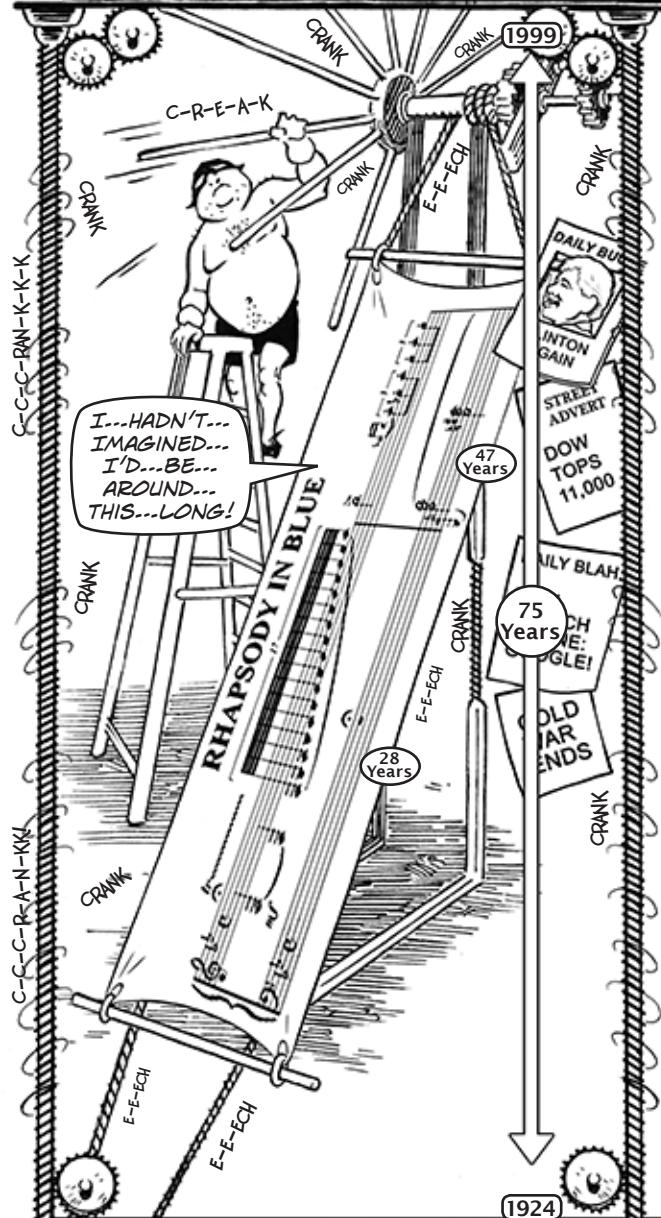
IN WHICH CASE IT WOULD LAST FOR ANOTHER 28 YEARS, UNTIL 1980...



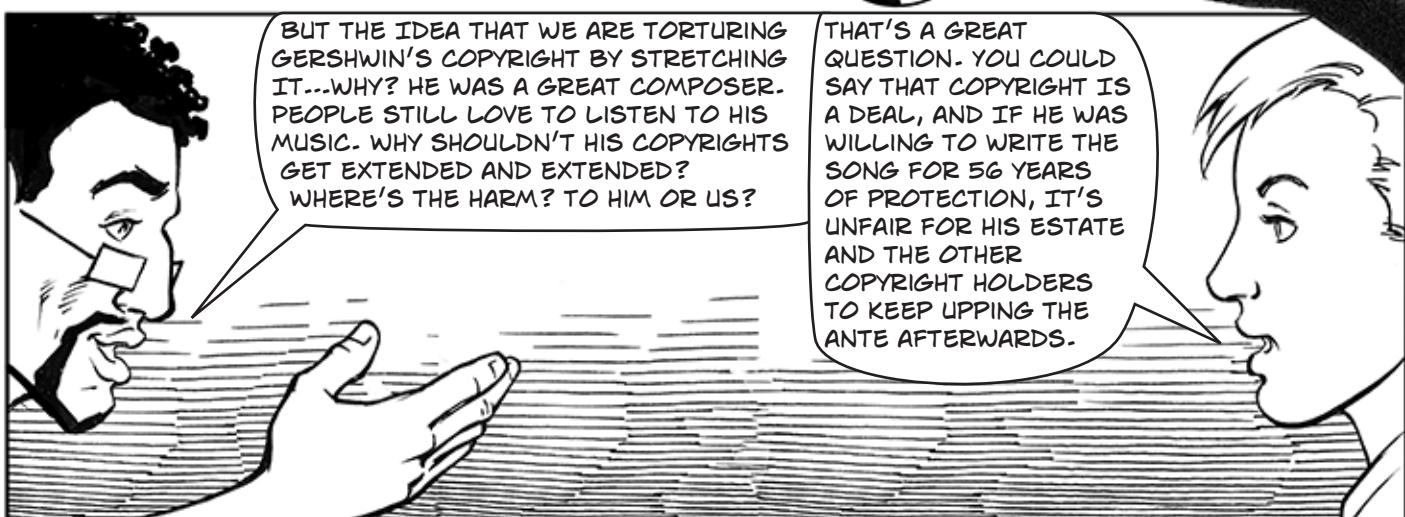
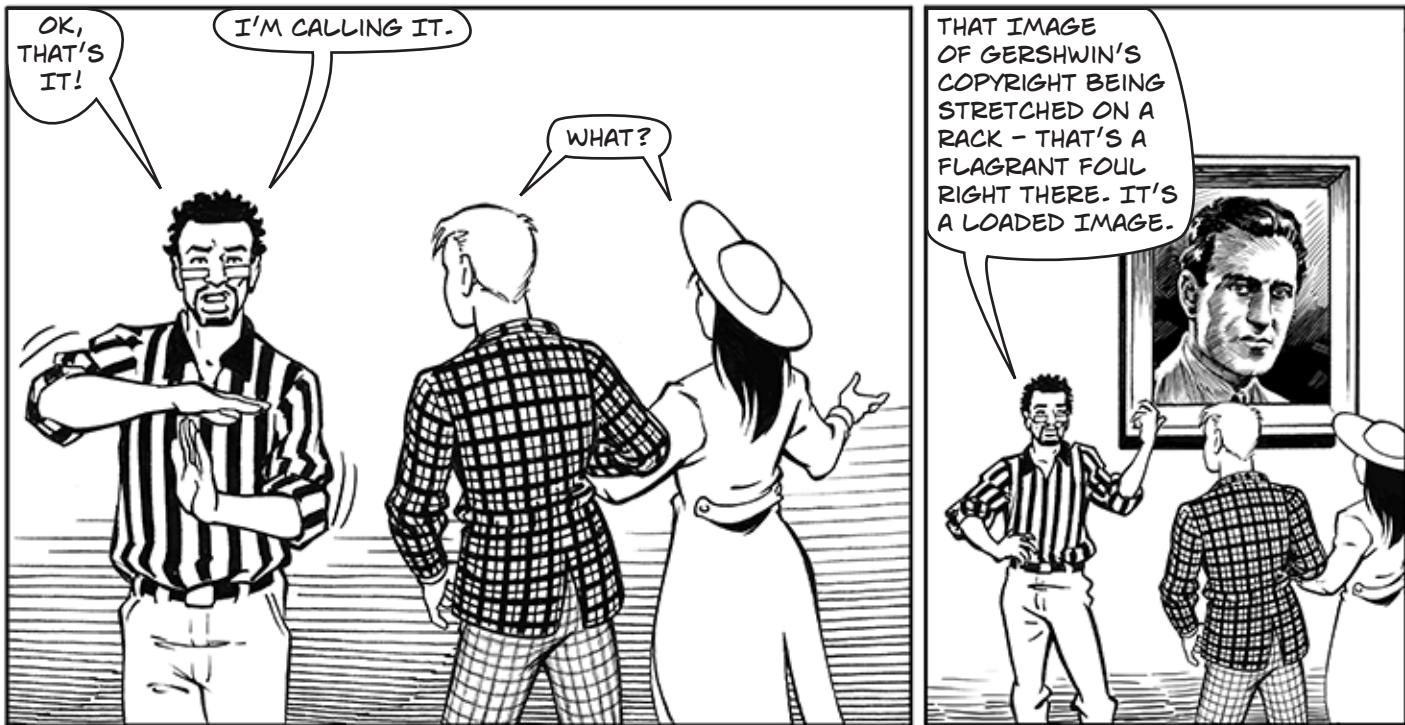
C-C-CRANK

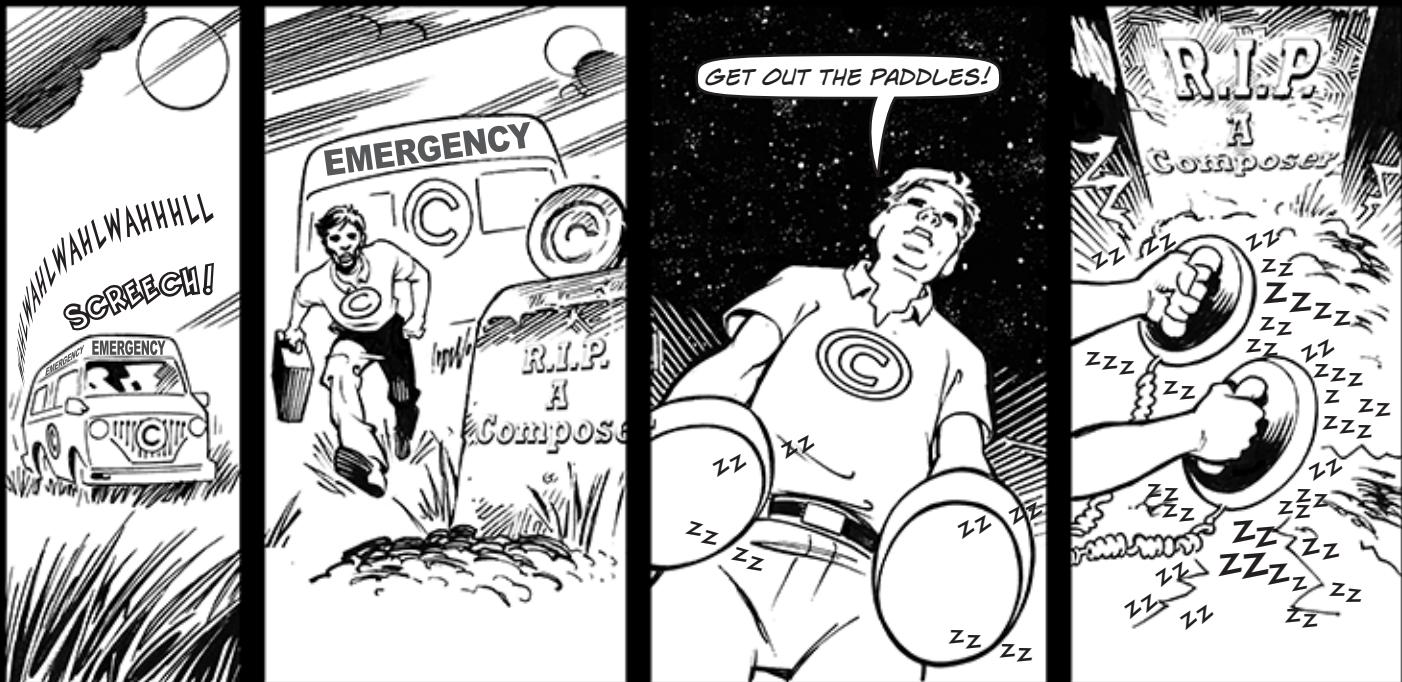
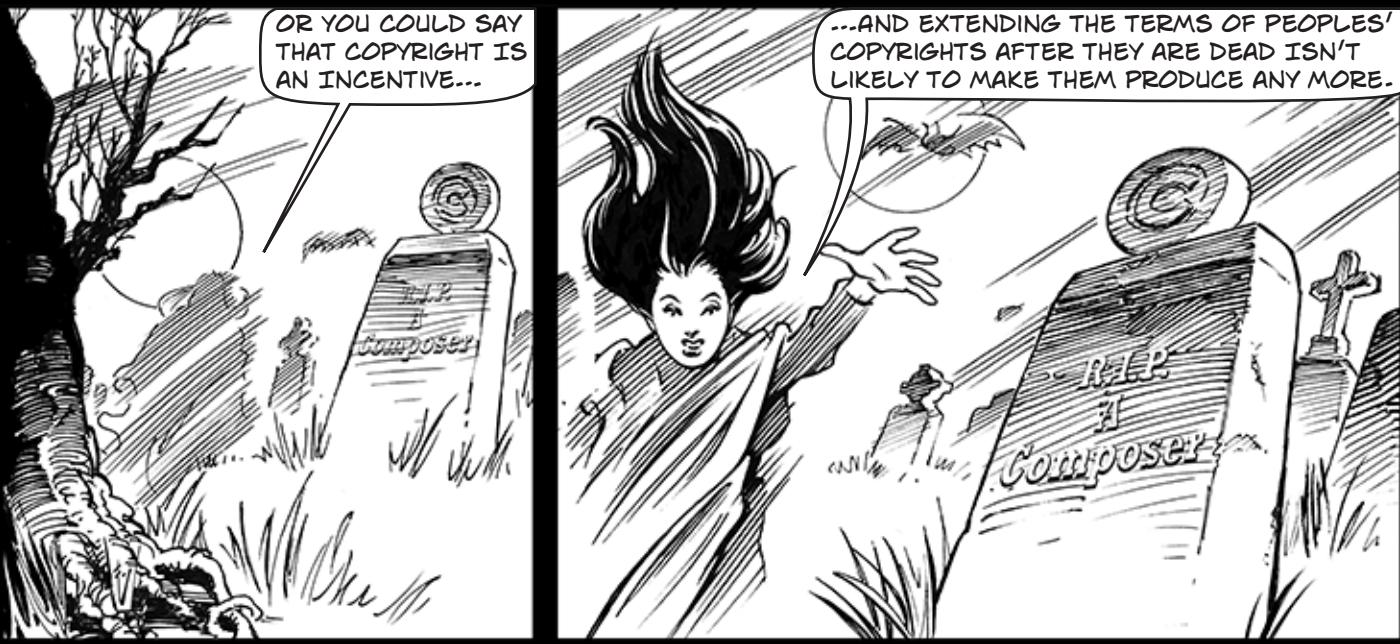
C-C-C-R-A-N-K

THE PUBLIC DOMAIN



*OR 95 YEARS FOR NEW WORKS MADE FOR HIRE.





PUT THAT WAY,
IT DOES SEEM
PRETTY SILLY.

YES BUT ITS
EFFECTS WERE
SERIOUS.

IMAGINE THE 20TH
CENTURY HOLDINGS
OF THE LIBRARY OF
CONGRESS...

LIBRARY OF
CONGRESS

NOW THESE ARE
THE SONGS,
POEMS, MOVIES
AND BOOKS...

THAT WERE
PUBLISHED
BEFORE
1923...

PRE-1923 WORKS



THAT'S ABSURD!!!
THAT'S COPYRIGHT.

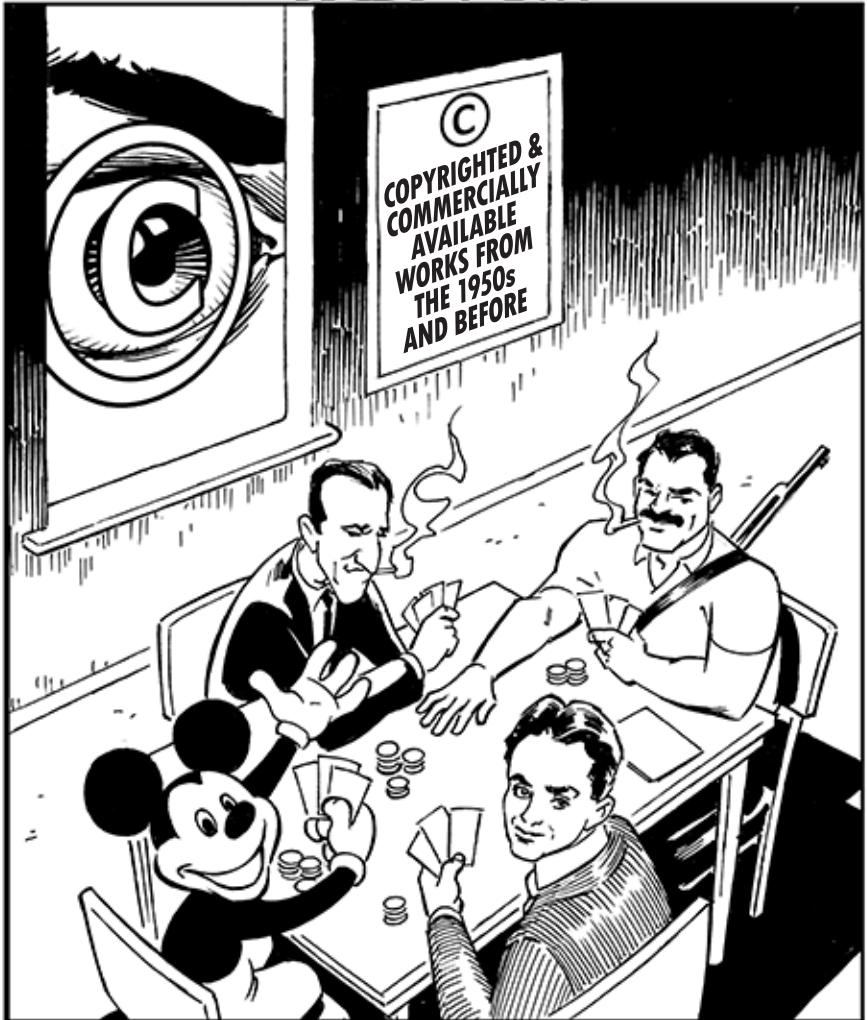
NOW EVEN IF THE WORKS AREN'T ORPHANED, THE VAST MAJORITY OF THE OLDER ONES ARE COMMERCIALLY UNAVAILABLE. THEIR COPYRIGHT TERM GOT EXTENDED, BUT THEY GOT NO BENEFIT FROM IT.

404
OUT OF STOCK

THAT'S BECAUSE MOST WORKS HAVE A SHORT COMMERCIAL LIFESPAN AND ONLY NEED A SHORT COPYRIGHT TERM. WHEN COPYRIGHT LASTED 28 YEARS, ONLY 15% BOthered TO RENEW FOR A SECOND TERM.

THESE ARE THE WORKS THAT ARE COPYRIGHTED AND STILL COMMERCIALLY AVAILABLE.

GUESS HOW MANY OF THEM ARE MORE THAN 56 YEARS OLD...? REMEMBER, THAT USED TO BE THE COPYRIGHT TERM.



COPYRIGHT TERM EXTENSION ACT BENEFICIARIES

RARE BOOKS COLLECTION

MY GOODNESS, THERE ARE HARDLY ANY!

YES...BUT WHEN THE COPYRIGHT GOT EXTENDED FOR THESE WORKS...

IT WAS ALSO EXTENDED FOR ALL OF THOSE OTHERS.

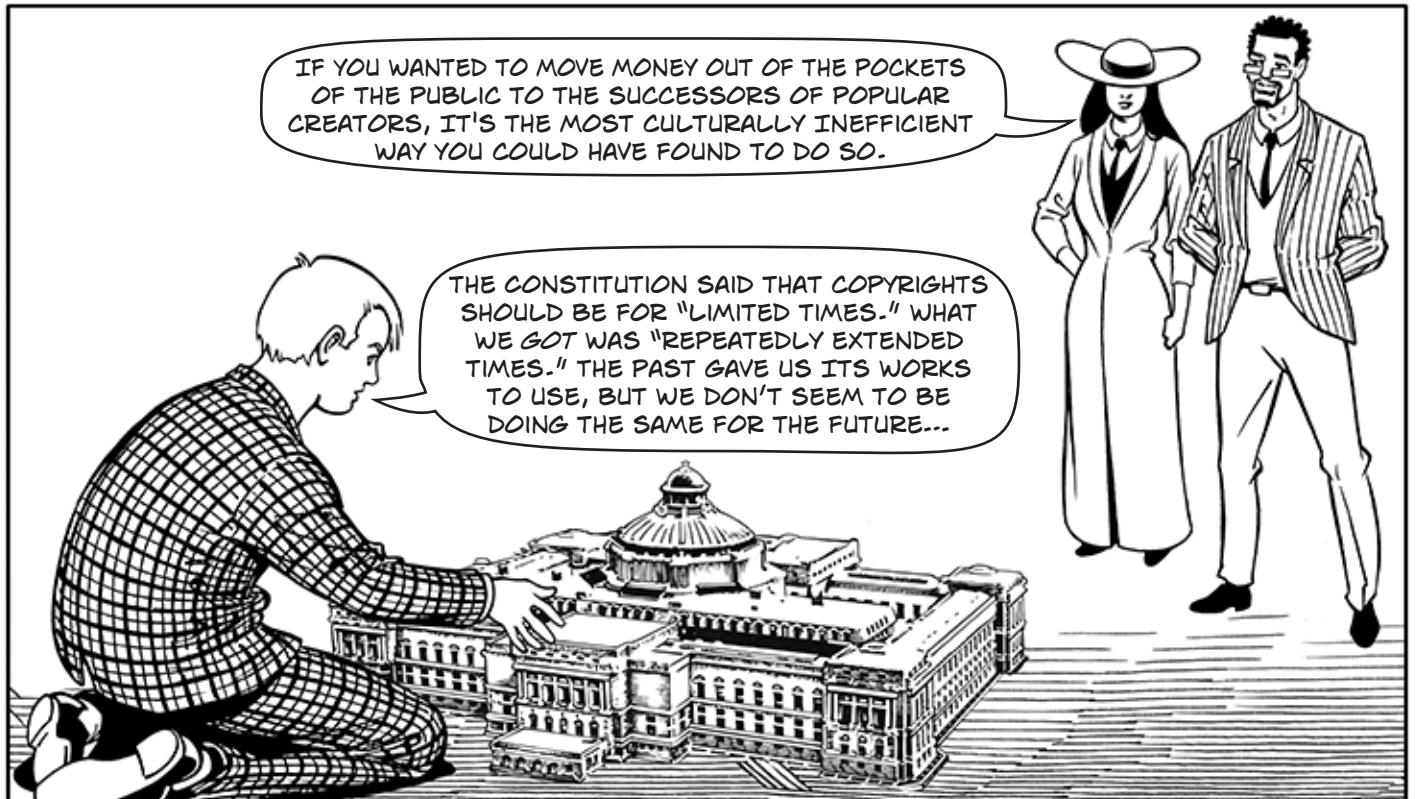


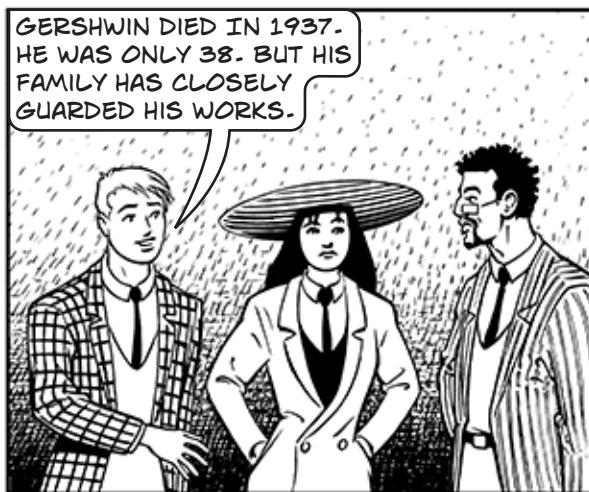
WHICH MEANS WE CAN'T PRINT NEW EDITIONS, ADAPT THE SONGS, DIGITIZE THE MOVIES...EXTENDING THE TERM CERTAINLY BENEFITTED A FEW PEOPLE, OCCASIONALLY EVEN PEOPLE RELATED TO THE ARTIST. GERSHWIN IS ACTUALLY UNUSUAL IN THAT HIS RELATIVES STILL OWN THE COPYRIGHTS.

NATURALLY ENOUGH GERSHWIN'S ESTATE LOBBED STRONGLY FOR COPYRIGHT TO BE EXTENDED.

THE ESTATE HAS EARNED MILLIONS OF DOLLARS SINCE 1998 - THE LAST TIME CONGRESS EXTENDED THEIR COPYRIGHT.

BUT THE PRICE THE PUBLIC PAID WAS RATHER HIGHER. EFFECTIVELY, WE LOCKED UP MOST OF 20TH CENTURY CULTURE TO BENEFIT A VERY SMALL PROPORTION OF WORKS THAT WERE STILL COMMERCIALY VIABLE AFTER 28 OR 56 YEARS...OR EVEN "LIFE PLUS 50."





The Telegraph

By Maureen Paton

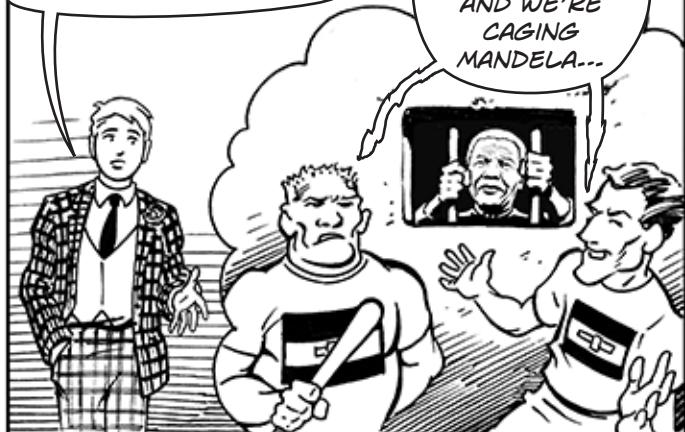
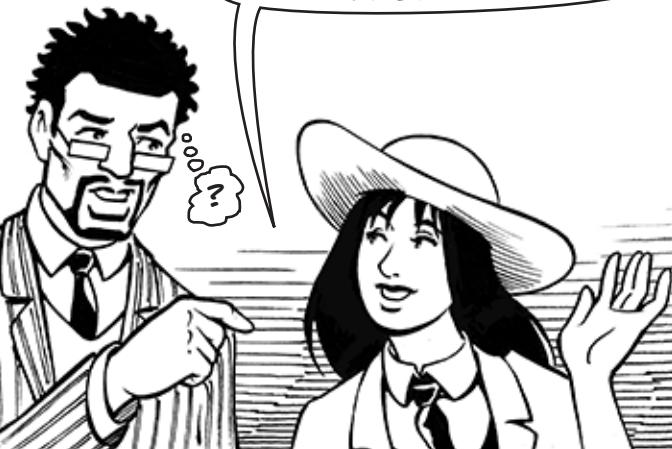
... Marc Gershwin, the 58-year-old stockbroker son of the overlooked third Gershwin brother Arthur, and the 63-year-old Leopold Godowsky III, the classical composer and pianist son of the only Gershwin sister Frances (Frankie), jealously guard their artistic heritage and carefully vet all revivals of the Gershwin shows...

WHAT DO THEY MEAN "VET"?

THE GERSHWIN HEIRS DECIDE WHO GETS TO PLAY GERSHWIN'S MUSIC AND EVEN HOW THEY DO IT.

TAKE THE MUSICAL PORGY AND BESS. THE GERSHWINS REFUSED ON PRINCIPLE TO ALLOW A VERSION IN SOUTH AFRICA DURING APARTHEID.

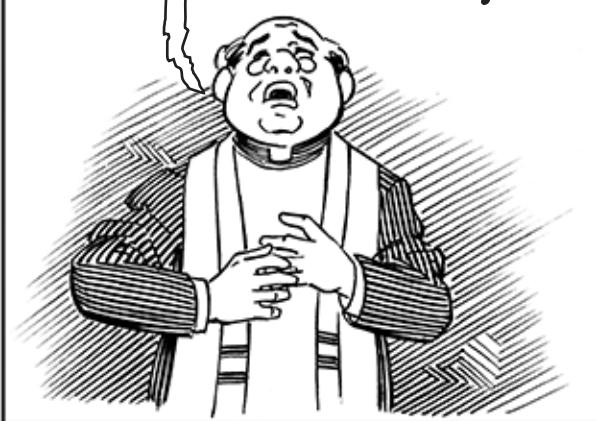
SUMMERTIME
AND WE'RE
CAGING
MANDELA...



GOOD FOR THEM!

AGREED! AND THEY STOPPED A KARAOKE VERSION BY AN ENGLISH VICAR WHO WANTED TO CHANGE THE WORDS...

♪ ♪ ♪ ♪ ♪ ♪, I'VE GOT PLENTY OF MUFFINS,
AND MUFFINS GOT PLENTY OF ME! ♪ ♪ ♪ ♪



THEY ONLY ALLOW PORGY TO BE STAGED WITH A BLACK CAST...

WELL, I GUESS THAT IS FAIR...CERTAINLY BETTER THAN A MINSTREL VERSION.

WHICH MEANT THAT WHEN A FINNISH COMPANY WANTED TO PERFORM PORGY THEY WERE OUT OF LUCK...



Koekuvaukset



20 Afrikkalainen-Suomen laulu toimijat

Avaa Koelaulut

Keskiviikko 10

Torstai 11

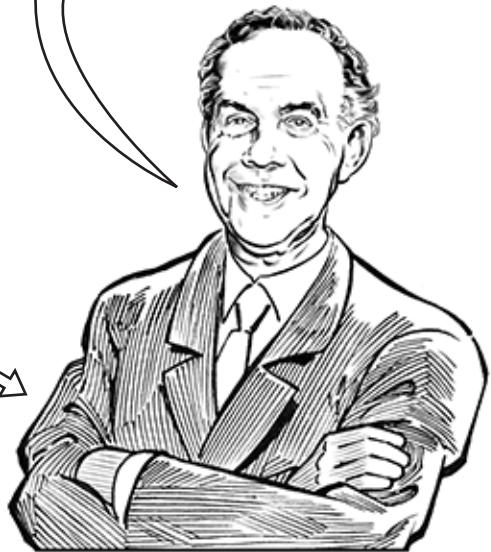
Laajennettu
jälleen

THEY WROTE,
"BUT MR. GERSHWIN,
THE PROBLEM IS
WE HAVE NO BLACK
ACTORS IN FINLAND."



"THE MONETARY PART IS IMPORTANT, BUT IF WORKS OF ART ARE IN THE PUBLIC DOMAIN, YOU CAN TAKE THEM AND DO WHATEVER YOU WANT WITH THEM. FOR INSTANCE, WE'VE ALWAYS LICENSED 'PORGY AND BESS' FOR STAGE PERFORMANCES ONLY WITH A BLACK CAST AND CHORUS. THAT COULD BE DEBASED. OR SOMEONE COULD TURN 'PORGY AND BESS' INTO RAP MUSIC."

MARC GERSHWIN



ABOUT LOVE, MURDER, DRUG DEALING AND REDEMPTION! THAT'S NOT EXACTLY ALIEN TERRITORY FOR RAP, YOU KNOW.

SHOULD THE GERSHWINS REALLY GET TO DECIDE THAT QUESTION? DO YOU THINK SHAKESPEARE WOULD HAVE LIKED WHAT BERNSTEIN DID TO ROMEO AND JULIET?

I'M CONVINCING MYSELF HERE!



MR. BERNSTEIN, HERE'S AN INJUNCTION FORBIDDING YOU FROM WRITING WEST SIDE STORY. IT INFRINGES OUR RIGHTS IN ROMEO AND JULIET.

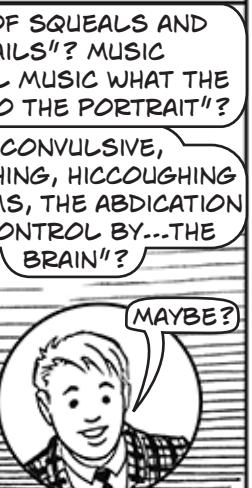


BUT BERNSTEIN WAS A GENIUS AND JAZZ IS A GREAT AMERICAN ART FORM. RAP IS JUST, JUST...

"A COLLECTION OF SQUEALS AND SQUAWKS AND WAILS"? MUSIC "THAT IS TO REAL MUSIC WHAT THE CARICATURE IS TO THE PORTRAIT"?

"CONVULSIVE, TWITCHING, HICCoughING RHYTHMS, THE ABDICATION OF CONTROL BY...THE BRAIN"?

MAYBE?



A RAP PORGY! THAT WOULD BE SACRILEGE.

WHY? RAP AND HIP HOP ARE TODAY'S STYLES - LIKE JAZZ WHEN GERSHWIN WAS WRITING. WHO SAYS THE COMMUNITY CAN'T TAKE WORKS ABOUT AFRICAN-AMERICAN LIFE AND RETELL THEM IN TODAY'S MUSICAL MODE?



BUT IT'S AN OPERA!!



I FEEL LIKE I WALKED INTO A TRAP. WHO SAID THOSE THINGS?



THEY ARE FROM THE AUGUST 1924 EDITION OF ETUDE MUSIC MAGAZINE... IT WAS ON..."THE JAZZ PROBLEM"!



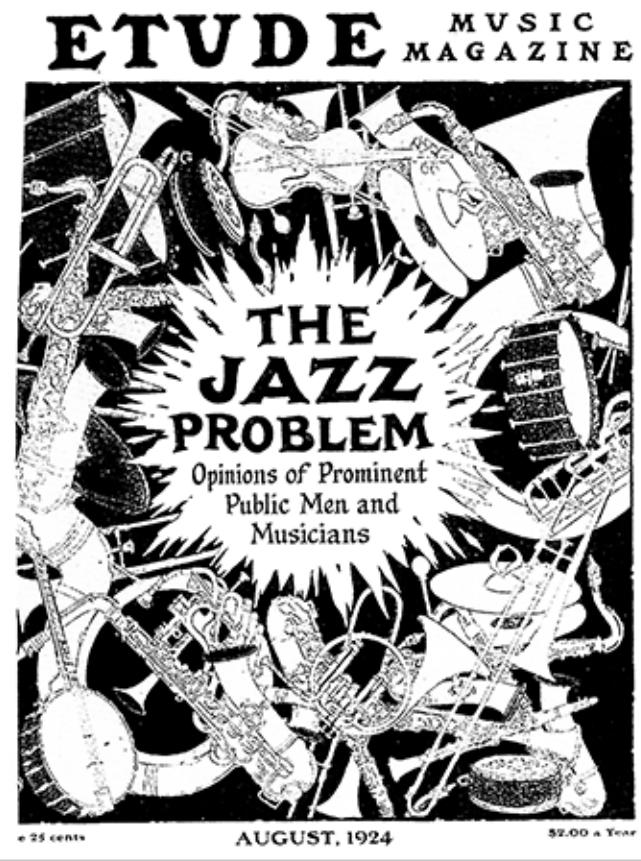
SOME SAW JAZZ AS THREATENING AND DEBASED MUSIC...

TAKE GEORGE ADE, FOR EXAMPLE...



GEORGE ADE

THE CRUDER FORM OF "JAZZ," A COLLECTION OF SQUEALS AND SQUAWKS AND WAILS AGAINST A CONCEALED BACK-STRUCTURE OF MELODY, BECAME UNBEARABLE TO ME SOON AFTER I BEGAN TO HEAR IT.



MRS. H.H.A. BEACH

IN ASSOCIATION WITH SOME OF THE MODERN DANCING AND THE SENTIMENT OF THE VERSES ON WHICH MANY OF THE "JAZZ" SONGS ARE FOUNDED, IT WOULD BE DIFFICULT TO FIND A COMBINATION MORE VULGAR OR DEBASING.

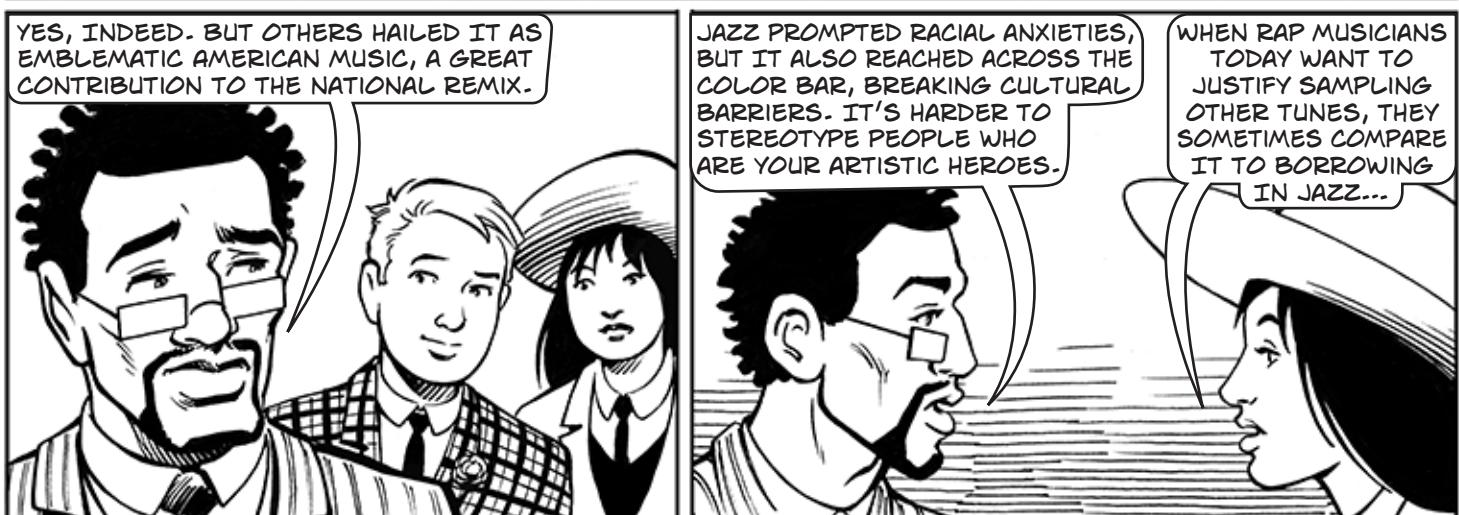
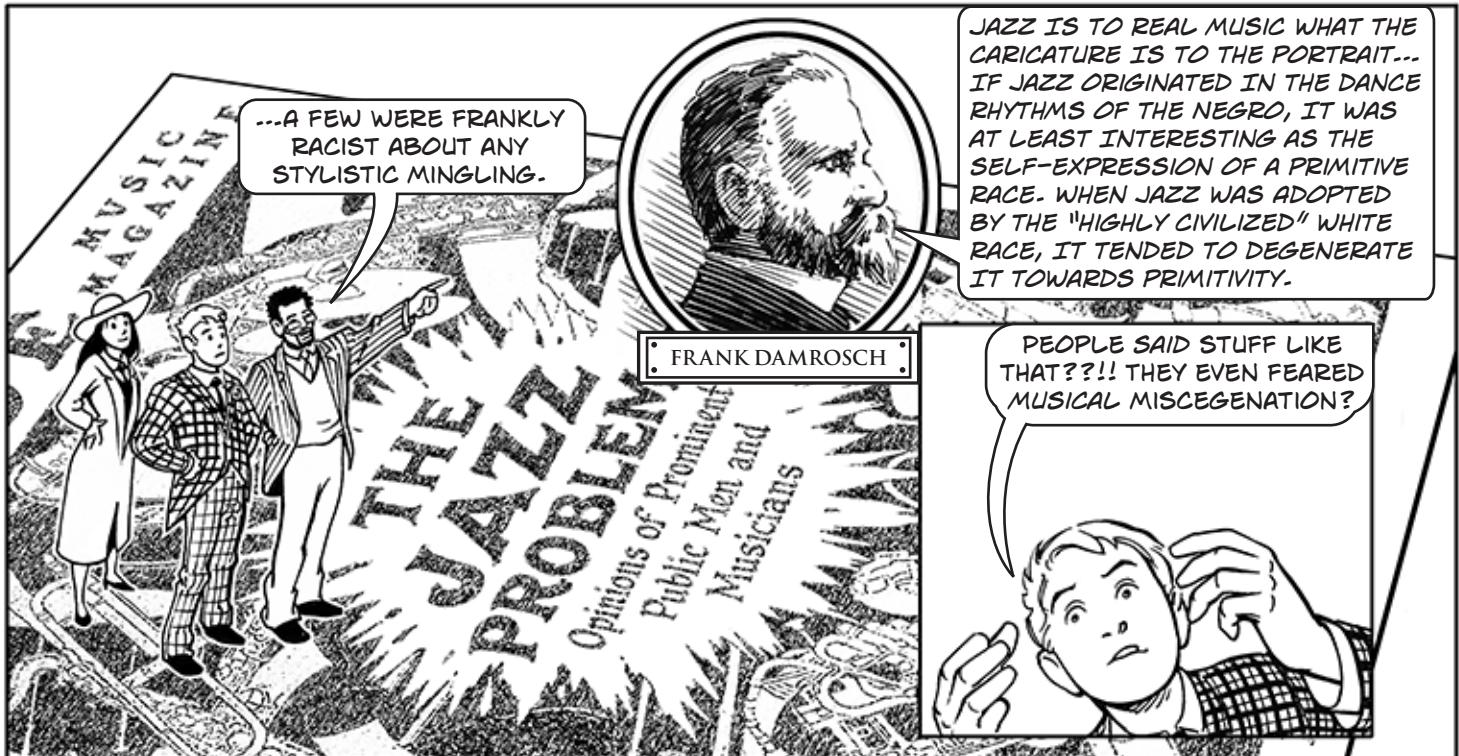
TAKE MRS. H.H.A. BEACH AS ANOTHER...

Sousa DEFENDED IT, THOUGH...



LT. COM.
JOHN PHILIP SOUSA

THERE IS NO REASON, WITH ITS EXHILARATING RHYTHM, ITS MELODIC INGENUITIES, WHY IT SHOULD NOT BECOME ONE OF THE ACCEPTED FORMS OF COMPOSITION.



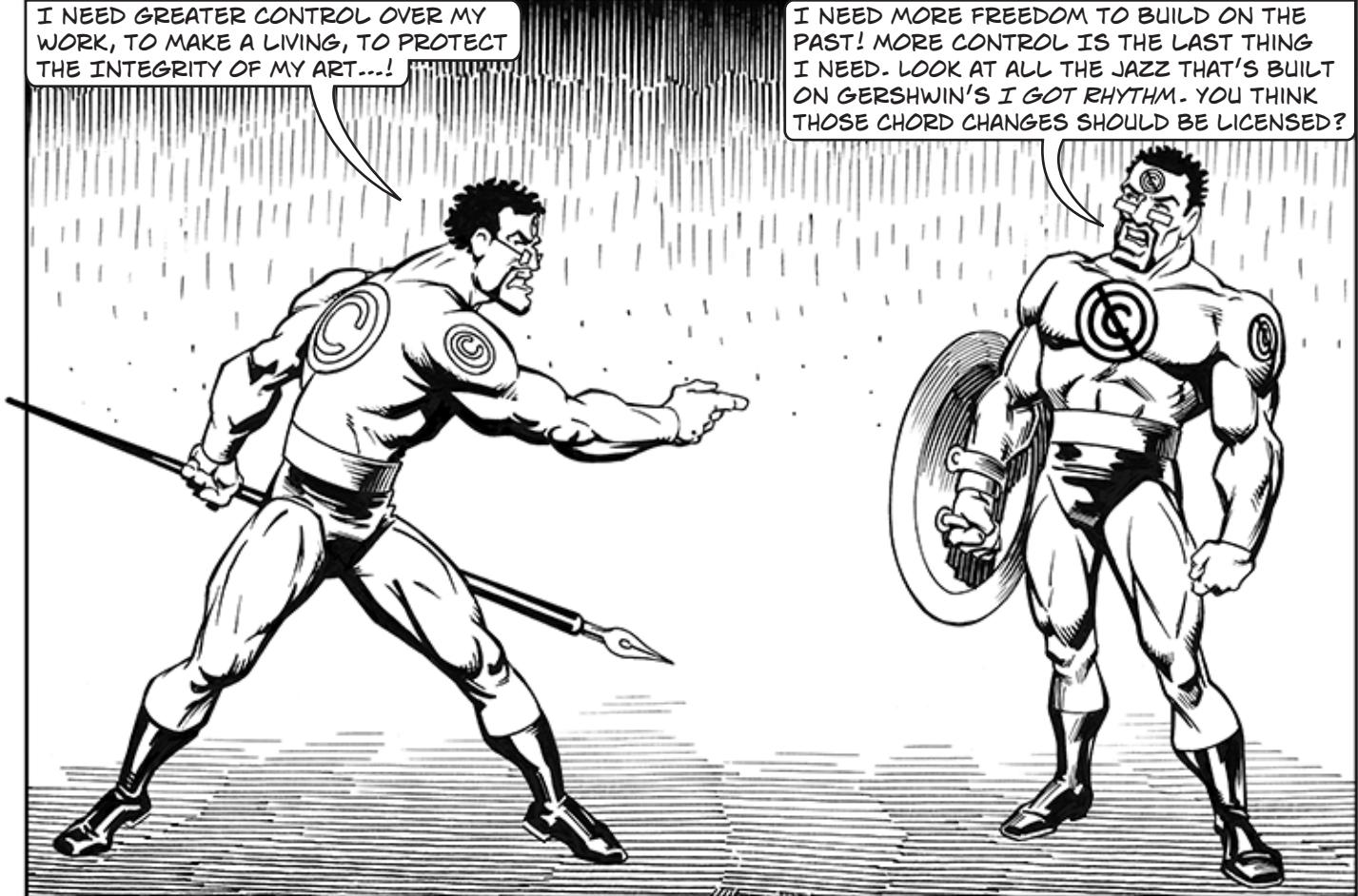
WAIT, ALL THIS STARTED BECAUSE WE WERE TALKING ABOUT A RAP GERSHWIN. SO YOUR POINT IS THAT THESE LONG COPYRIGHTS GIVE THE OWNERS A VETO OVER NEW WORKS BUILT ON THEIR MUSIC.

BUT YOU ARE A COMPOSER. DON'T YOU WANT ARTISTS TO HAVE GREATER CONTROL OVER THEIR WORK?



I NEED GREATER CONTROL OVER MY WORK, TO MAKE A LIVING, TO PROTECT THE INTEGRITY OF MY ART...!

I NEED MORE FREEDOM TO BUILD ON THE PAST! MORE CONTROL IS THE LAST THING I NEED. LOOK AT ALL THE JAZZ THAT'S BUILT ON GERSHWIN'S I GOT RHYTHM. YOU THINK THOSE CHORD CHANGES SHOULD BE LICENSED?



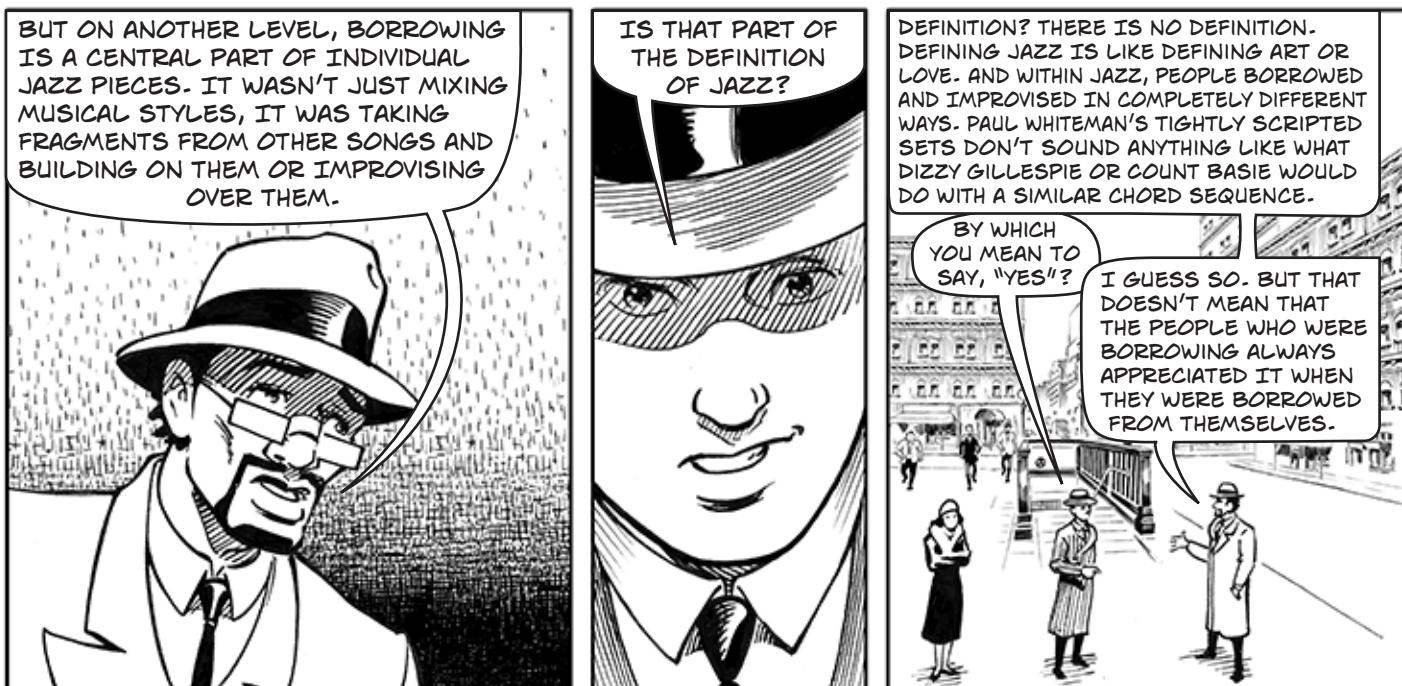
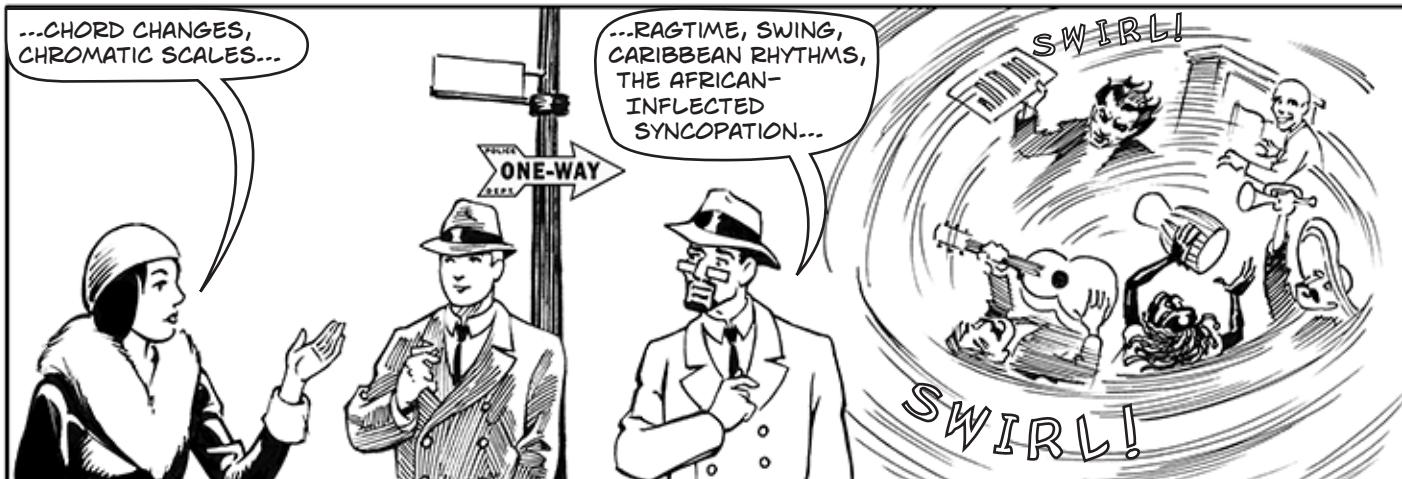
YOU JUST DON'T WANT TO MAKE THE EFFORT TO CREATE ORIGINAL MUSIC!

YOU JUST WANT TO DENY EVERYONE ELSE THE FREEDOMS YOU HAD YOURSELF!











THAT'S GERSHWIN'S I GOT RHYTHM. THE CHORD SEQUENCE BECAME SUCH A STANDARD PROGRESSION IN JAZZ THAT IT'S CALLED "THE RHYTHM CHANGES."

WHO DIDN'T? THERE'S DIZZY GILLESPIE, CHARLIE PARKER AND DUKE ELLINGTON...THE CHORDS WERE THE BASE. AND NO ONE THOUGHT THAT GERSHWIN WAS ENTITLED TO ROYALTIES...

WHO WROTE SONGS BASED ON THOSE CHORDS?

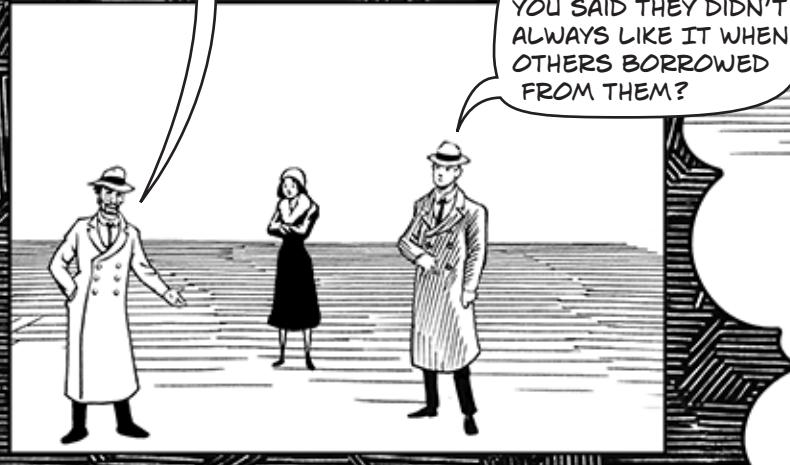
...OR CONTROL...



SEE WHAT THEY ARE BUILDING...? A NEW TUNE WOULD BE PUT ON TOP - CONTRAFACT, WE CALL IT - AND THEN THE MUSICIANS WOULD LAYER IMPROVISATION ON THAT...QUOTING FRAGMENTS FROM OTHER SONGS IN SOLOS, REFERRING BACK TO OTHER MUSICIANS...

HENRY LOUIS GATES CALLS IT "SIGNIFYIN'" - SHOWING YOU KNOW YOUR PLACE IN THE TRADITION, BUT SHOWING YOUR VIRTUOSITY, TOO.

BUT I THOUGHT YOU SAID THEY DIDN'T ALWAYS LIKE IT WHEN OTHERS BORROWED FROM THEM?



SOMETIMES THEY DIDN'T! WHEN DIZZY GILLESPIE'S DIZZY CRAWL WAS RECORDED BY COUNT BASIE AS ROCK-A-BYE BASIE, DIZZY WAS QUITE UPSET.

"I DIDN'T COPYRIGHT IT; IT WAS A HEAD ARRANGEMENT... ANYTIME YOU WRITE SOMETHING, COPYRIGHT IT OR LOOK OUT... A LOTTA TUNES GOT STOLEN BY THE BANDLEADERS TOO THAT WAY. I PROBABLY DID IT MYSELF A COUPLE OF TIMES, BUT NOT COMPLETELY...."

NOWADAYS IF DIZZY RECORDED IT, OR WROTE IT DOWN, IT WOULD BE COPYRIGHTED AUTOMATICALLY.

THAT'S GREAT!

AND WOULD YOU SAY THE SAME IF ALL THOSE MUSICIANS STARTED CLAIMING COPYRIGHT INFRINGEMENT FOR EACH SOLO...?

"...BUT AT THE SAME TIME, 'YOU CAN'T STEAL A GIFT!'"

LET'S CHANGE THE SUBJECT! WHAT WAS THE AUDIENCE LIKE FOR THESE SONGS?



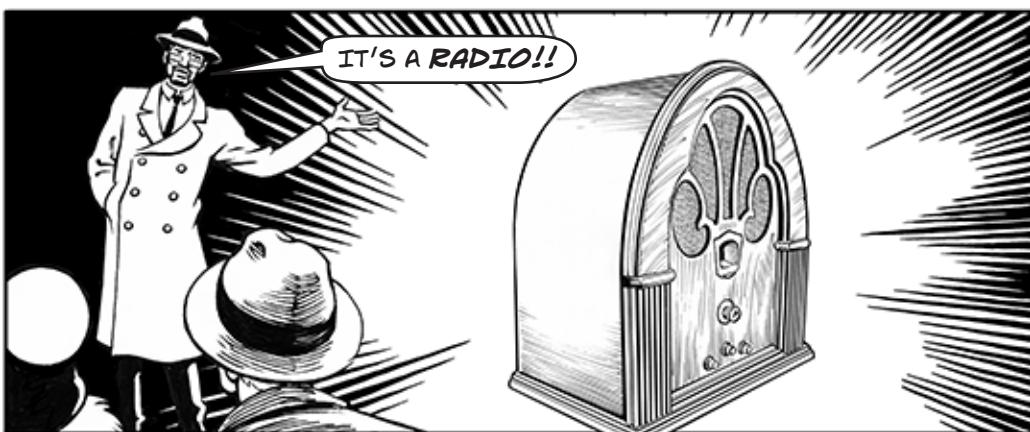
THAT WAS THE OTHER ENORMOUS CHANGE. PATRONAGE GAVE US MUSIC DESIGNED FOR THE CATHEDRAL AND THE COURT...



AND THEN WE SAW THE RISE OF THE MASS MARKET. SHEET MUSIC FILLED THE DRAWING ROOMS WITH MELODY BUT THE "PLAYER" WAS THE CUSTOMER. THAT GAVE US MUSIC DESIGNED FOR A LAY AUDIENCE, BUT ALSO FOR AMATEUR PERFORMERS.

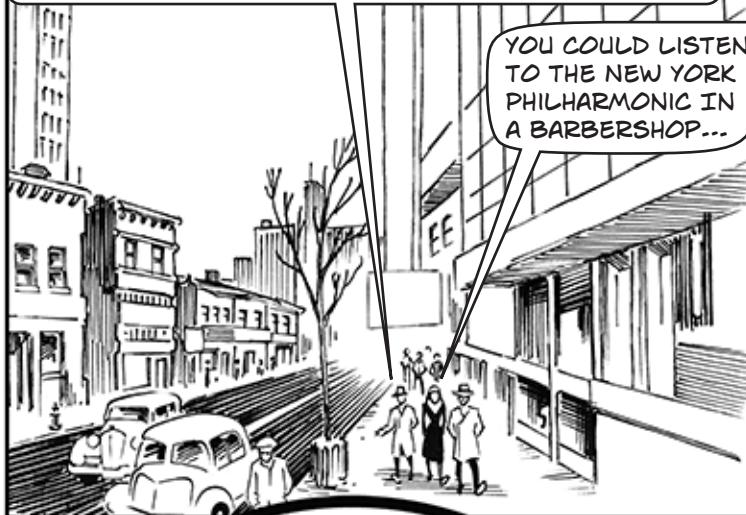


BUT, STARTING AROUND 1900, THE PLAYER PIANO AND THE GRAMOPHONE BROUGHT THE SOUND OF PROFESSIONAL MUSICIANS INTO MIDDLE CLASS LIVING ROOMS. SO WHY ARE WE STILL LOOKING AT A CATHEDRAL?





WHICH MEANT THAT, SUDDENLY, PEOPLE MIGHT BE EXPOSED TO DIFFERENT KINDS OF MUSIC - WITHOUT REGARD TO GEOGRAPHY - AS ADVERTISERS TRIED TO REACH THEIR TARGET AUDIENCE.



YOU COULD LISTEN TO THE NEW YORK PHILHARMONIC IN A BARBERSHOP...



OR JAZZ IN A PENTHOUSE OVERLOOKING CENTRAL PARK....



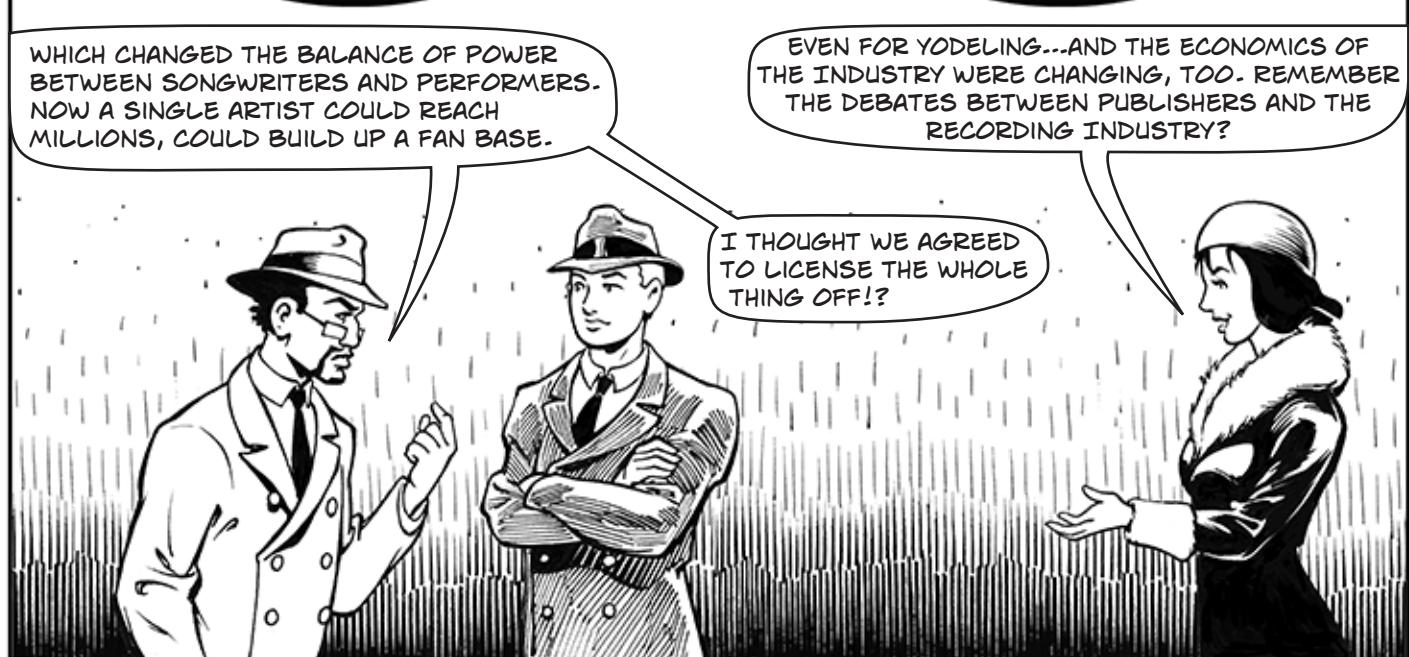
WHEN THEY GET TO THE "RONDO" IN THE PATHETIQUE I SOB LIKE A BABY, YOU KNOW...MY HAND JUST SHAKES...

SHAVE FASTER, THEN! ALLEGRO! MOLTO ALLEGRO!

AND NOW, FROM PAUL WHITEMAN AND HIS BOYS, IT'S "MISSISSIPPI MUD"!

WHICH CHANGED THE BALANCE OF POWER BETWEEN SONGWRITERS AND PERFORMERS. NOW A SINGLE ARTIST COULD REACH MILLIONS, COULD BUILD UP A FAN BASE.

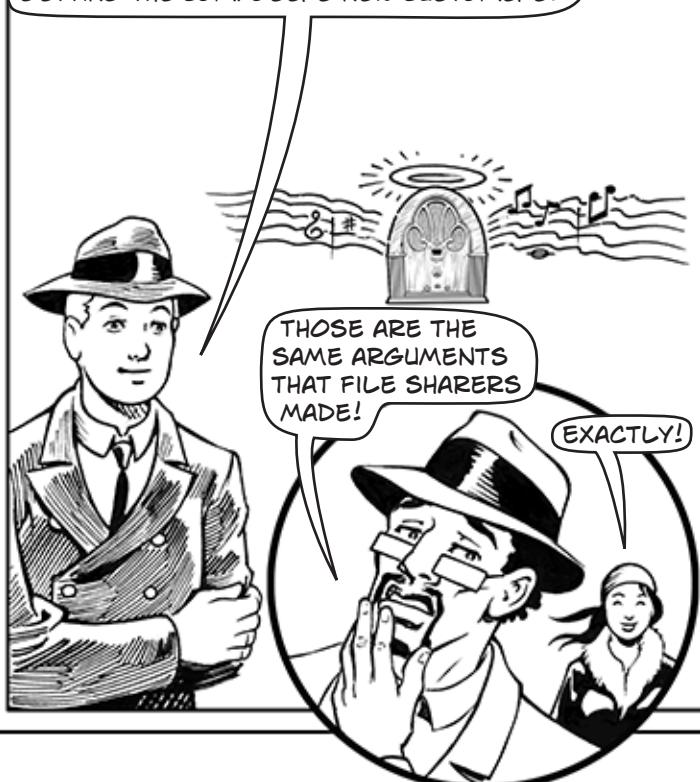
EVEN FOR YODELING...AND THE ECONOMICS OF THE INDUSTRY WERE CHANGING, TOO. REMEMBER THE DEBATES BETWEEN PUBLISHERS AND THE RECORDING INDUSTRY?



RIGHT, BUT THIS WAS A NEW MARKET - BROADCASTERS HAD TO PAY THEIR LIVE PERFORMERS. DID THEY HAVE TO PAY COMPOSERS? WAS THIS A "PUBLIC PERFORMANCE"?

WELL, DUH!

NOT REALLY. THE COMPOSERS' GROUP - ASCAP - COLLECTED MONEY FOR "FOR PROFIT" PUBLIC PERFORMANCES. BROADCASTERS POINTED OUT THAT THEY WERE GIVING THE MUSIC AWAY FOR FREE AND MIGHT EVEN BE GETTING THE COMPOSERS NEW CUSTOMERS!



BUT THE BROADCASTERS LOST. IN 1923 A COURT RULED THAT RADIO PERFORMANCES WERE "FOR PROFIT" SO THEY HAD TO PAY FEES.

"THE DEFENDANT IS NOT AN 'ELEEMOSYNARY INSTITUTION'...COPYRIGHT OWNERS AND THE MUSIC PUBLISHERS THEMSELVES ARE PERHAPS THE BEST JUDGES OF THE METHOD OF POPULARIZING MUSICAL SELECTIONS..."

THE NEGOTIATIONS WERE SO STORMY, THE BROADCASTERS FORMED THEIR OWN GROUP - BMI - AS AN ALTERNATIVE FOR COMPOSERS TO JOIN. THOSE ARE THE MAIN OPTIONS TO THIS DAY. I'M STILL TRYING TO WORK OUT WHICH ONE TO JOIN.



ASCAP WAS PRETTY EXCLUSIONARY.

DOESN'T LOOK LIKE A VERY DIVERSE GROUP!



STYLISTICALLY, TOO. NEW KINDS OF MUSIC DIDN'T GET EASY ACCEPTANCE. LOUIS ARMSTRONG DIDN'T GET MEMBERSHIP UNTIL 1939, YEARS AFTER HE HAD BECOME FAMOUS.

"I SEE SHEAVES OF GREEN, LARGE CHECKBOOKS TOO, BUT THEY'RE NOT FOR ME, THEY'RE JUST FOR YOU---AND I SAY TO MYSELF, WHAT AN UNDERHAND WORLD!"



DIDN'T JELLY ROLL MORTON MAKE IT A CRUSADE TO GET MEMBERSHIP?

"I'M GOING TO THE RIVER, BY AND BY---BECAUSE THE RIVER'S WET BUT ASCAP'S RUN DRY..."

YES, HE GOT IN THE SAME YEAR, BUT STILL DIDN'T GET MUCH. BUT ASCAP WASN'T DOING ITSELF ANY FAVORS BY KEEPING THE DOORS LOCKED. MUSICIANS WHO WROTE JAZZ, COUNTRY, GOSPEL, FOLK AND BLUES FLOCKED TO BMI...



SO, TALKING OF BLUES...

I HAVE A QUESTION...

YE-E-S-S-S??





SO WASN'T ROBERT JOHNSON THE ONE WHO WENT TO THE CROSSROADS AND SOLD HIS SOUL TO THE DEVIL FOR THE ABILITY TO PLAY THE GUITAR...?

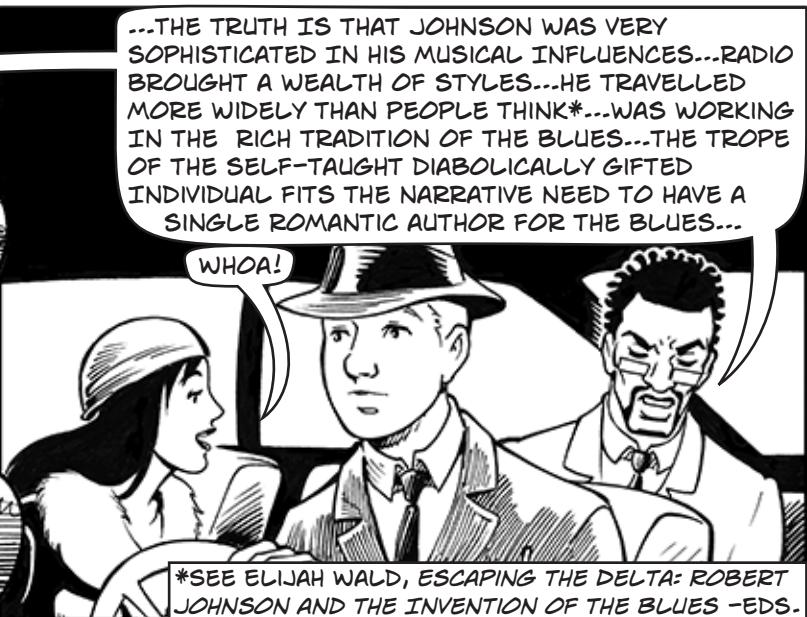
THAT STORY AGAIN!!

W-H-A-T?!?



OH, THERE IS A LEGEND THAT ROBERT JOHNSON DISAPPEARED FOR A WHILE AND WHEN HE CAME BACK, THE OTHER MUSICIANS WERE AMAZED BY HIS SKILL ON THE GUITAR...

...THE TRUTH IS THAT JOHNSON WAS VERY SOPHISTICATED IN HIS MUSICAL INFLUENCES...RADIO BROUGHT A WEALTH OF STYLES...HE TRAVELED MORE WIDELY THAN PEOPLE THINK*...WAS WORKING IN THE RICH TRADITION OF THE BLUES...THE TROPE OF THE SELF-TAUGHT DIABOLICALLY GIFTED INDIVIDUAL FITS THE NARRATIVE NEED TO HAVE A SINGLE ROMANTIC AUTHOR FOR THE BLUES...



ERIC CLAPTON



I THINK HE'S THE GREATEST FOLK BLUES GUITAR PLAYER, WRITER, AND SINGER THAT EVER LIVED.

ROBERT PLANT



A LOT OF ENGLISH MUSICIANS WERE VERY FIRED UP BY ROBERT JOHNSON, TO WHOM WE ALL OWE, MORE OR LESS, OUR VERY EXISTENCE, I GUESS.

ROBERT JOHNSON



HE WAS LIKE A COMET OR A METEOR THAT CAME ALONG, AND, BOOM, SUDDENLY HE RAISED THE ANTE, SUDDENLY YOU JUST HAD TO AIM THAT MUCH HIGHER....

ROBERT JOHNSON WAS ABLE TO PLAY GUITAR LIKE NOBODY ELSE HAS BEEN ABLE TO. NOBODY CAN FIGURE IT OUT. ALL THAT STUFF ABOUT HIM MAKING A DEAL WITH THE DEVIL MAY BE TRUE, BECAUSE NOBODY CAN PLAY THAT WAY.

KEITH RICHARDS

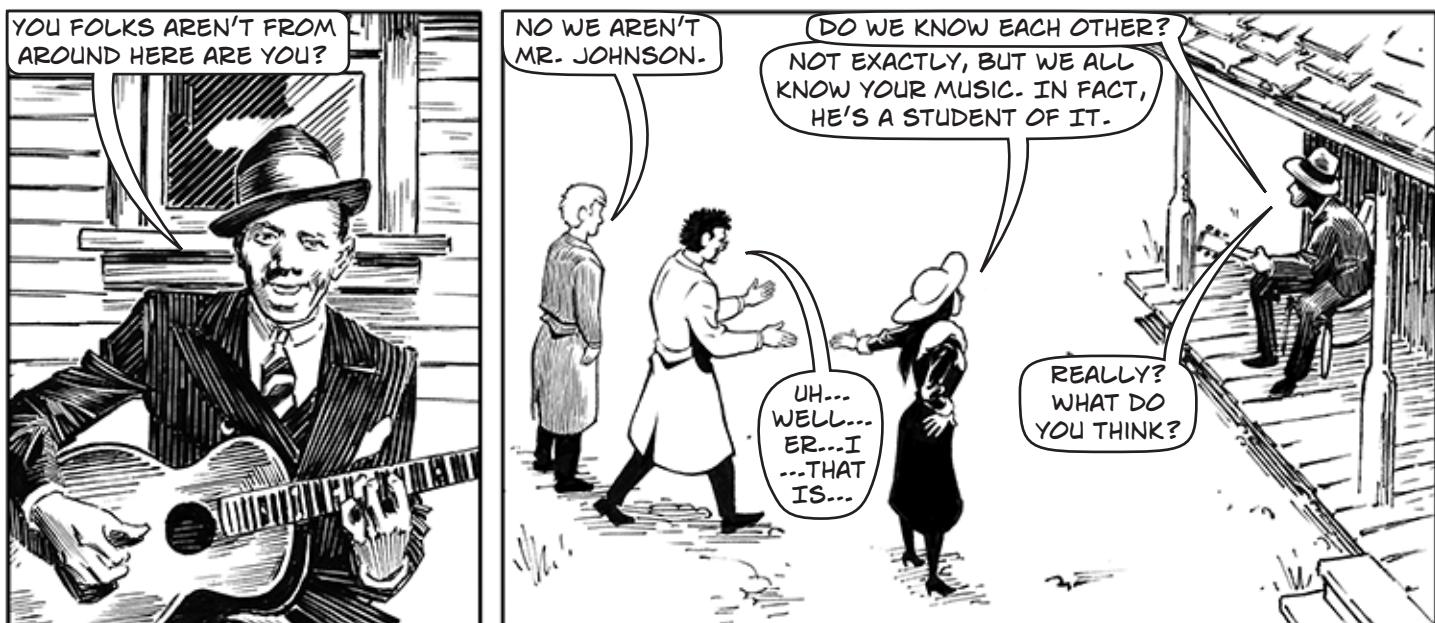
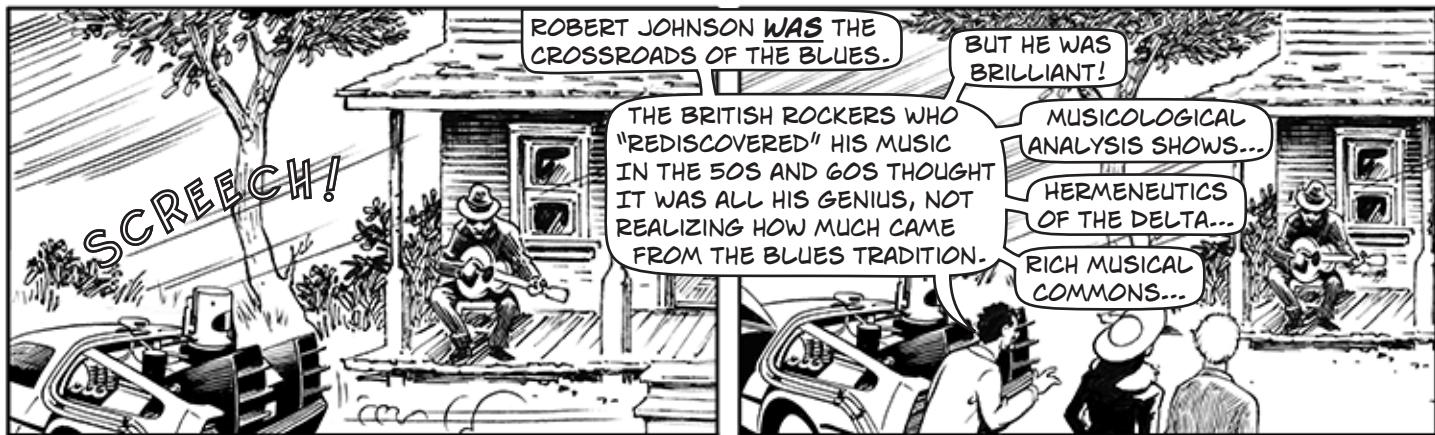
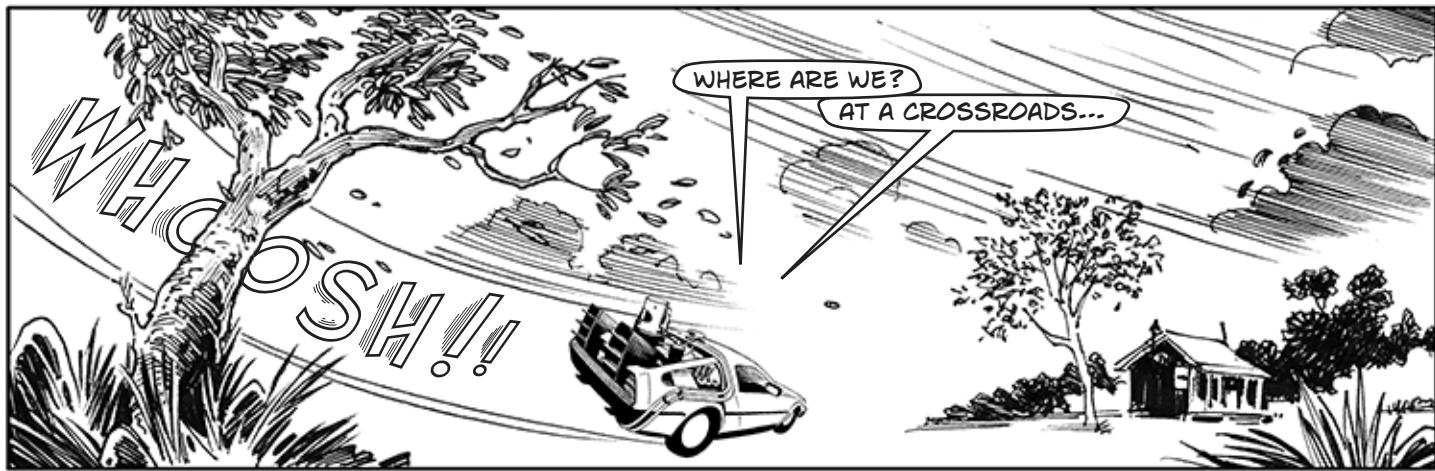


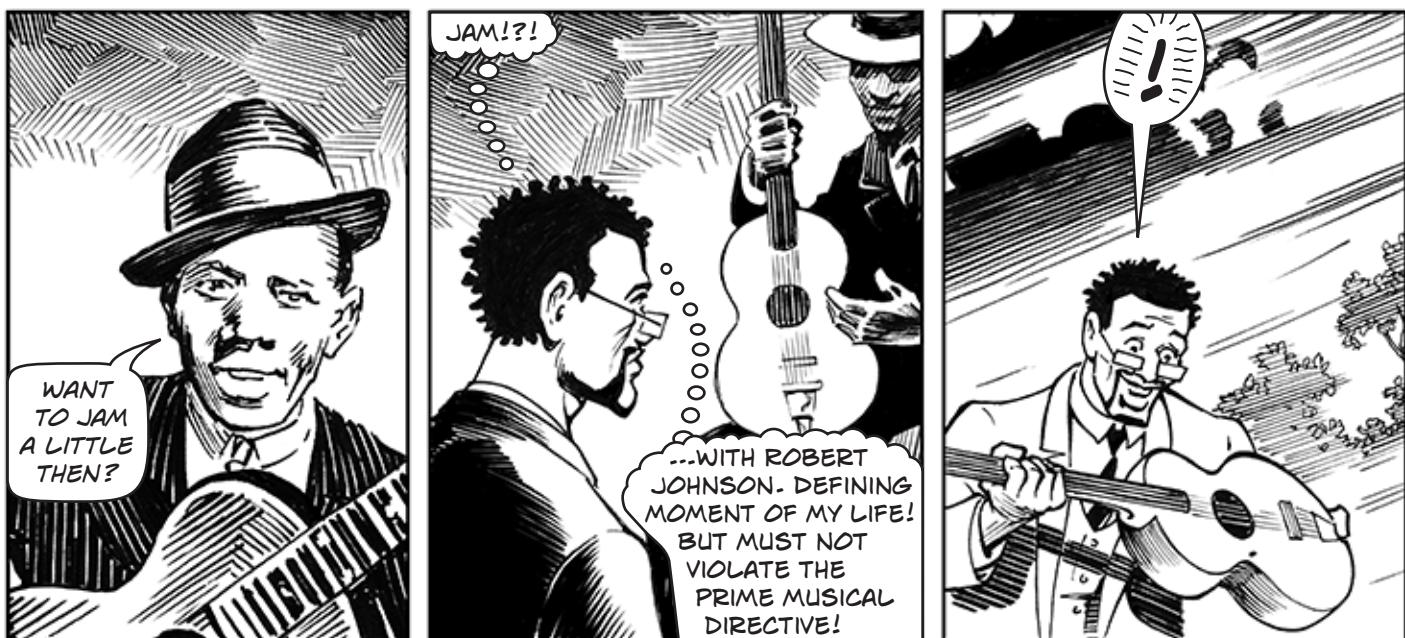
RAVI SHANKAR AND ROBERT JOHNSON ARE THE ONLY GUITAR PLAYERS I LISTEN TO.

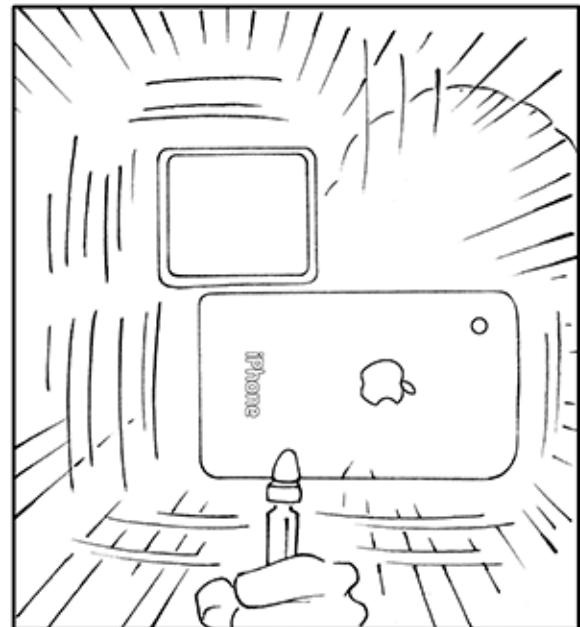
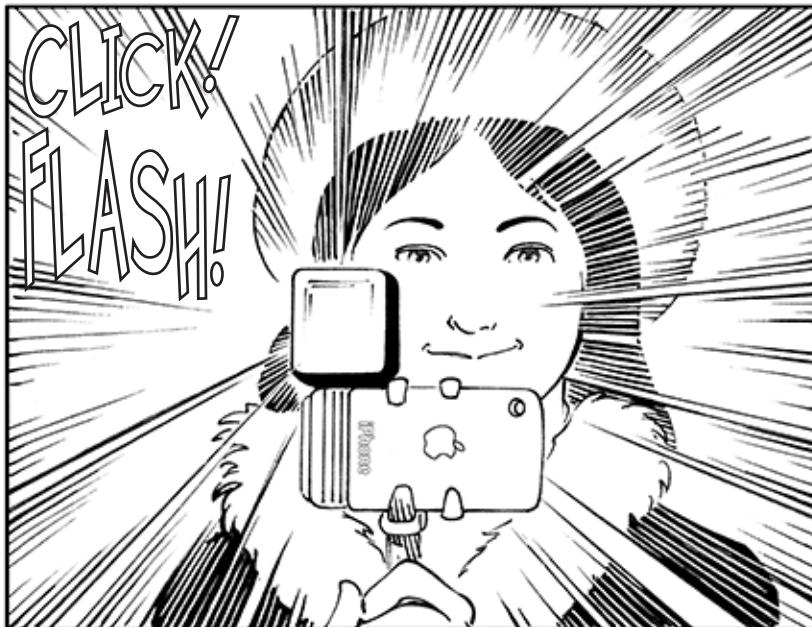
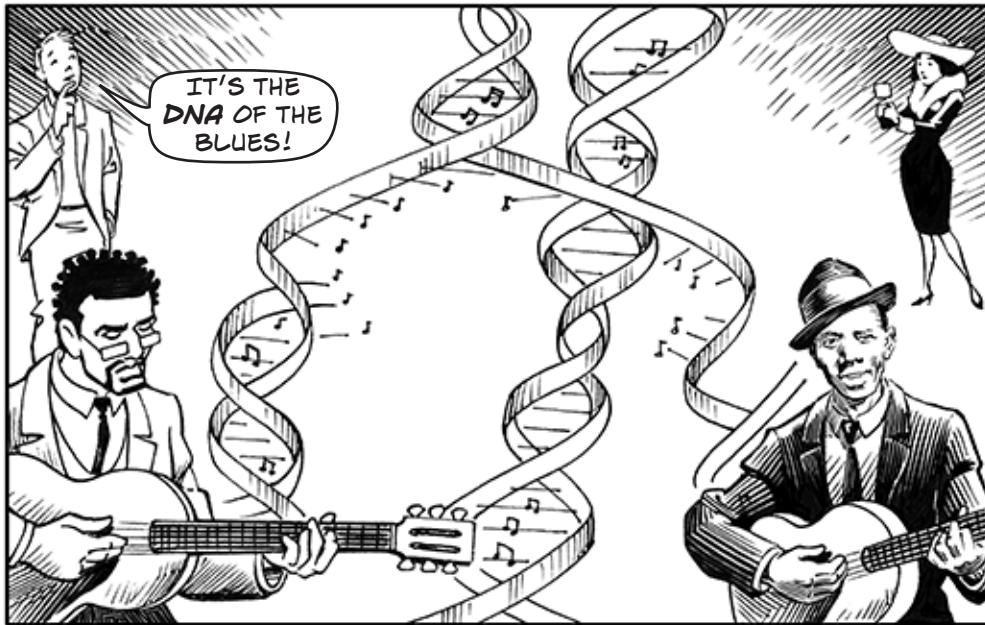
GEORGE HARRISON



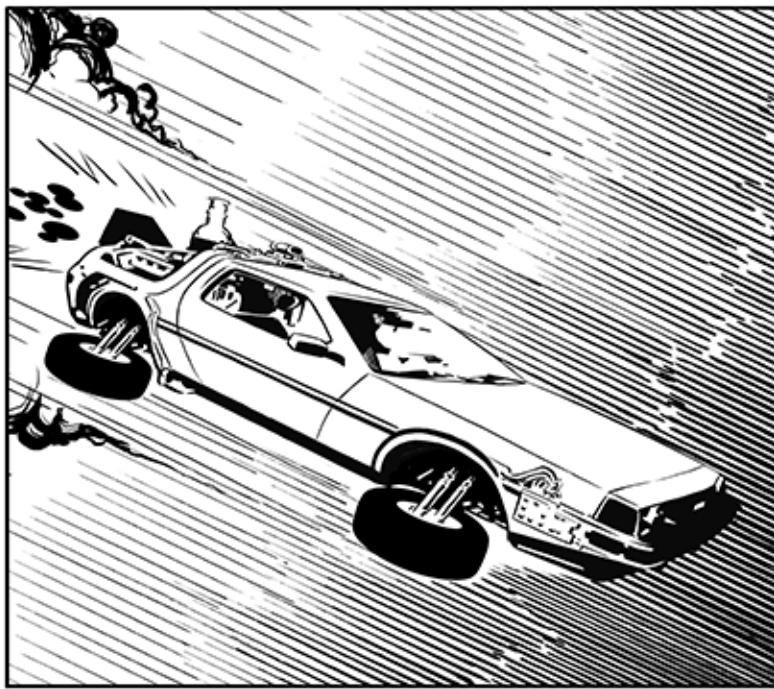
JOHN MELLENCAMP

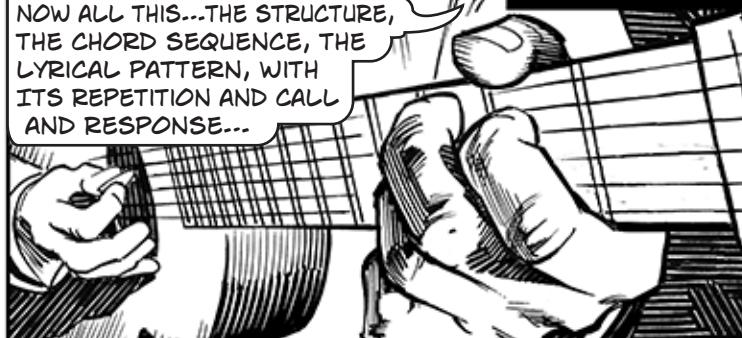
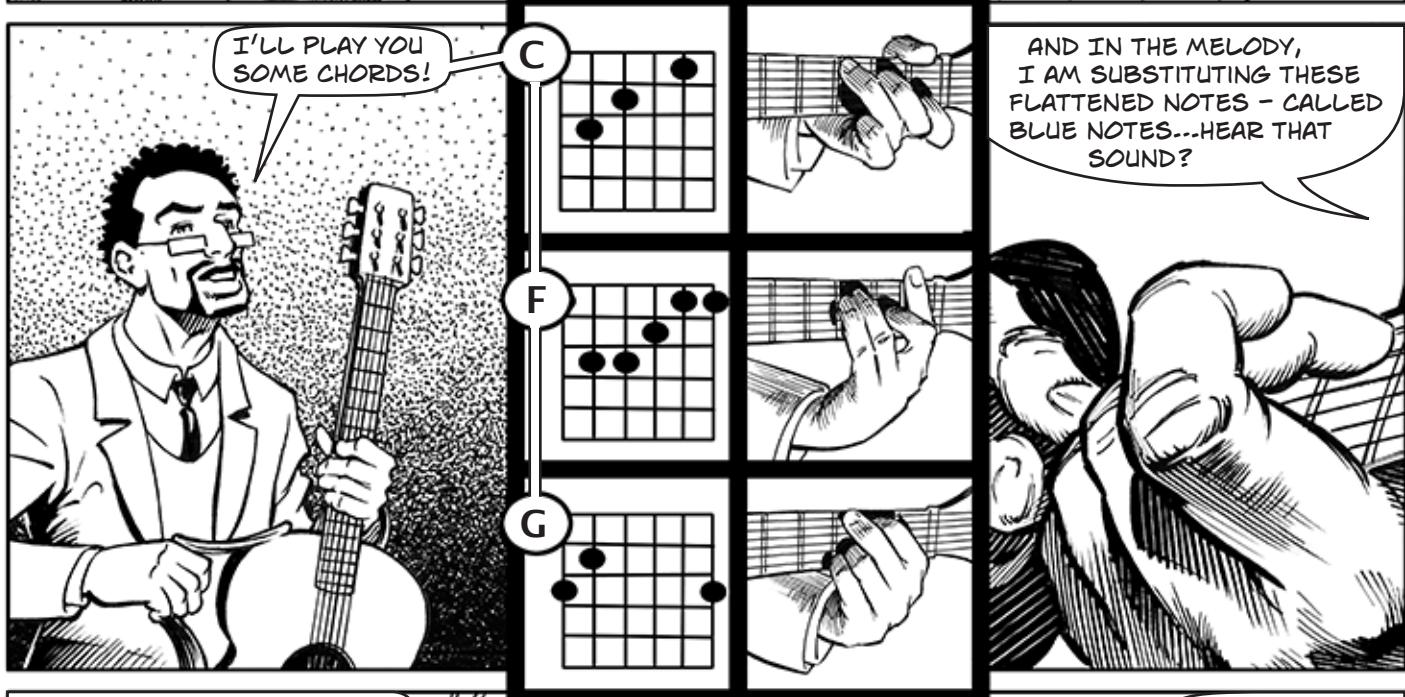


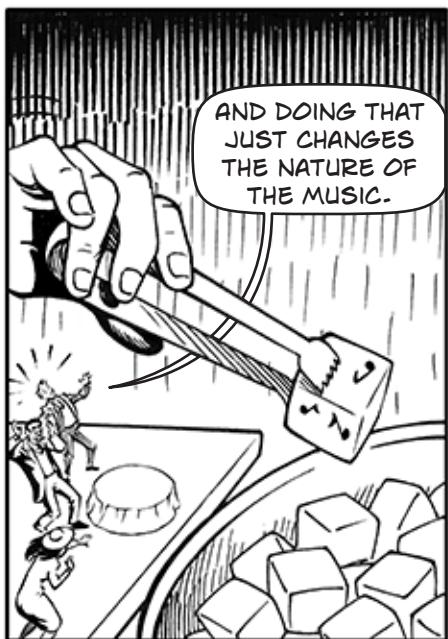


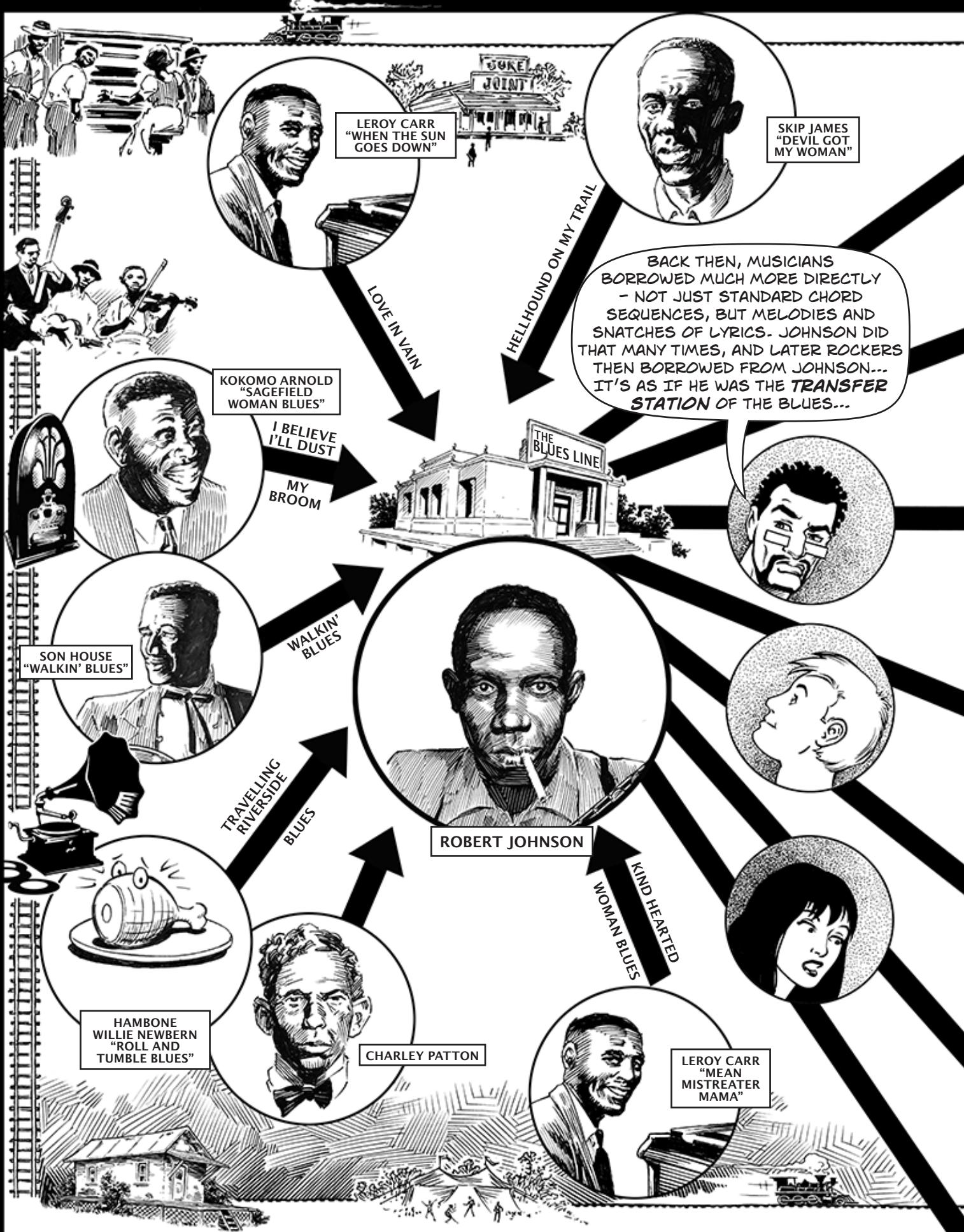


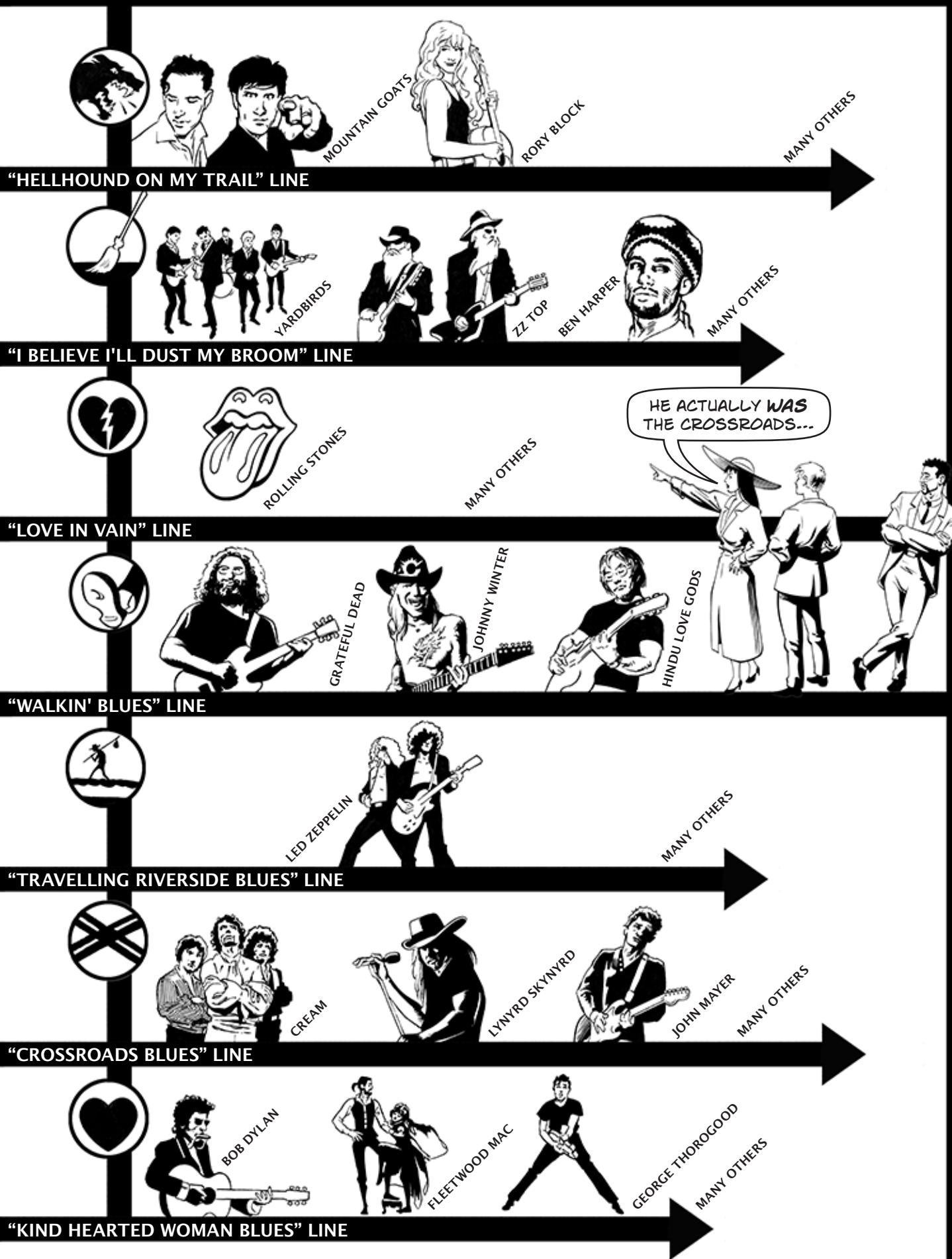














AND MEANWHILE, FEARS WERE GROWING OVER A DIFFERENT KIND OF REMIX...

CHUCK BERRY IS THE STEPHEN FOSTER OF ROCK AND ROLL. HE'S MIXING COUNTRY, RHYTHM AND BLUES...INVENTING A NEW GUITAR STYLE...AND CHANGING THE WORLD. SOME MUSICIANS WERE FRANK ABOUT THEIR DEBTS TO HIM.



IT'S VERY DIFFICULT FOR ME TO TALK ABOUT CHUCK BERRY 'CAUSE I'VE LIFTED EVERY LICK HE EVER PLAYED... THIS IS THE GENTLEMAN WHO STARTED IT ALL!

AYE KEITH,
IF YOU TRIED TO
GIVE ROCK AND ROLL
ANOTHER NAME, YOU
MIGHT CALL IT
CHUCK BERRY!



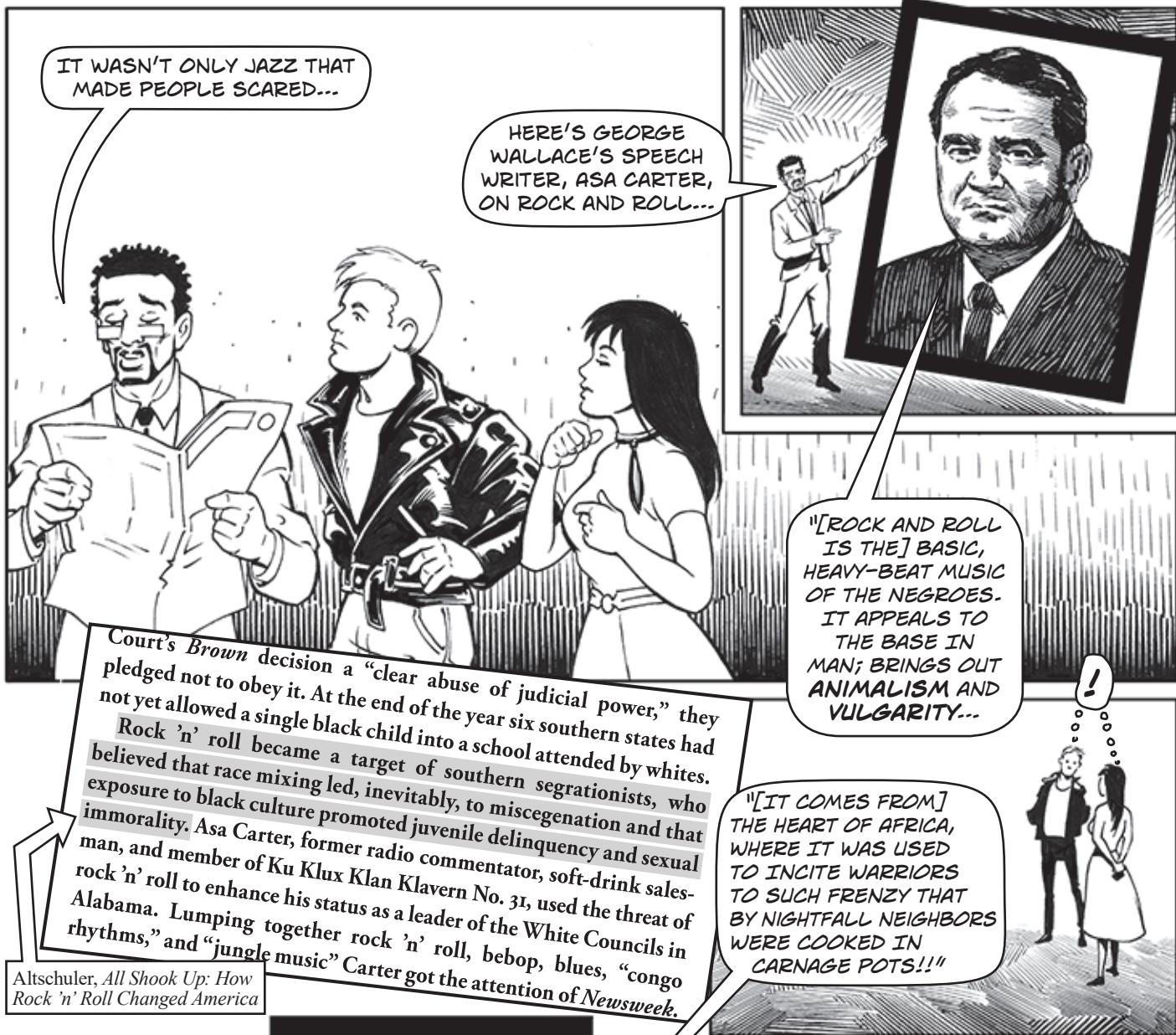
JOHN LENNON

BUT SOME ARTISTS JUST TOOK BERRY'S MUSIC FOR THE WHITE MUSIC MARKET OF THE TIME...THE BEACH BOYS WERE THREATENED WITH SUIT FOR COPYING SWEET LITTLE SIXTEEN AND CALLING IT SURFIN' USA.

YOU'D SEE 'EM WEARIN' THEIR BAGGIES. HUARACHE SANDALS TOO.



KEITH RICHARDS



THAT WASN'T ALL. CARTER WANTED ROCK AND ROLL BANNED BY THE STATE.

HIS FELLOW SEGREGATIONISTS CLAIMED ROCK WAS PART OF AN NAACP PLAN TO "MONGRELIZE AMERICA." IT WASN'T JUST MUSICAL MIXING THEY WERE WORRIED ABOUT. IT WAS AN ACTUAL BREACH OF THE COLOR LINE...

Segregationist Wants Ban on 'Rock and Roll'

BIRMINGHAM, Ala., March 29 (UP)—A segregation leader charged today that the National Association for the Advancement of Colored People had "infiltrated" Southern white teen-agers with "rock and roll music."

REMEMBER PLATO TALKING ABOUT HOW DANGEROUS MUSIC WAS? HOW IT COULD BYPASS RATIONAL THOUGHT? SAYING MIXING MODES SHOULD BE BANNED? 2400 YEARS LATER NOTHING HAD CHANGED. ROCK WAS MIXING MUSIC, CULTURES, RACES. IT MADE SOME PEOPLE NERVOUS...



WHAT DID THE NAACP SAY TO THAT?

"SOME PEOPLE IN THE SOUTH ARE BLAMING US FOR EVERYTHING FROM MEASLES TO ATOMIC FALL-OUT."

ROY WILKINS, NAACP

BUT APART FROM TOTAL LOONIES, DID ANYONE BELIEVE THIS STUFF?



I TOLD YOU IT WOULD LEAD TO DANCING!



UNFORTUNATELY, THESE "LOONIES" WERE RUNNING A BIG CHUNK OF THE COUNTRY! BUT, YES, OTHERS ACTUALLY DID AGREE. AT LEAST THE PART ABOUT "PRIMITIVE" MUSIC BEING ABLE TO BYPASS RATIONAL THOUGHT...

THEY WERE TALKING AS IF ROCK WERE A VIRUS, TAKING OVER ITS HOSTS!



ROCK and ROLL INFLAMES

...AND PEDDLING PARANOIA WAS A BIG BUSINESS...



AND EXCITES
YOUTH LIKE
JUNGLE
TOM-TOMS

HERE'S WHAT LAIT AND MORTIMER, JOURNALISTS WHO WROTE THE POPULAR CONFIDENTIAL SERIES, HAD TO SAY ABOUT THE "ROCK SCENE."

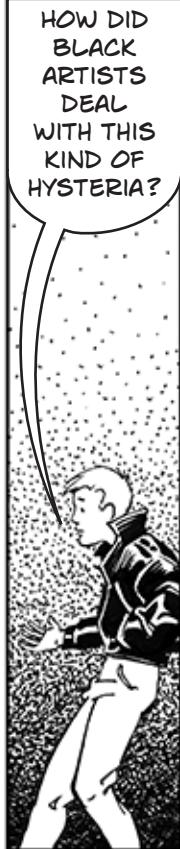


"...Tom-toms and hot jive and ritualistic orgies of erotic dancing, weed smoking and mass mania with African jungle background. Many music shops purvey dope; assignations are made in them. White girls are recruited for colored lovers... we know that many platter-spinners are hop heads. Many others are Reds, left-wingers or hecklers of social convention."

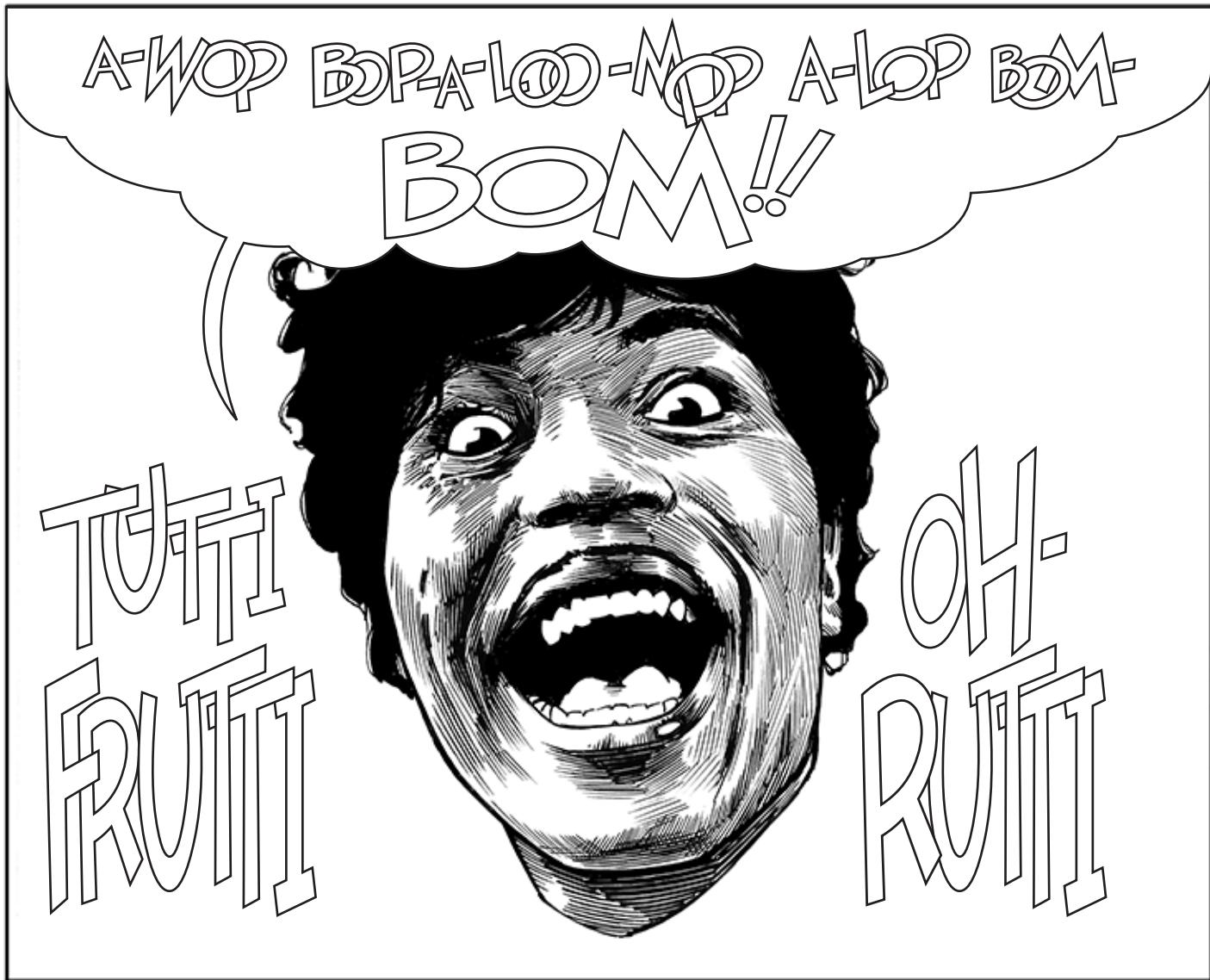
WELL! I CERTAINLY WOULDN'T WANT TO CONSORT WITH "HECKLERS OF SOCIAL CONVENTION."



HOW DID BLACK ARTISTS DEAL WITH THIS KIND OF HYSTERIA?







...AND NOW A SECOND ROUND OF BORROWING WENT ON. WHITE MUSICIANS WOULD RELEASE "CLEANED UP" VERSIONS OF BLACK HITS.....



BUT WHY ALL THESE COVER VERSIONS? WHY WOULDN'T PEOPLE JUST LISTEN TO THE ORIGINALS?

SEGREGATION AFFECTED CONCERT HALLS, RADIO STATIONS, RECORD STORES...AND LISTENING HABITS. THAT MEANT THERE WAS A PREMIUM ON HAVING WHITE ARTISTS.

LET'S HEAR FROM SAM PHILLIPS, THE GUY WHO FIRST DISCOVERED AND PRODUCED ELVIS...

"IF I COULD FIND A WHITE MAN WHO SINGS WITH THE NEGRO FEEL, I'D MAKE A MILLION DOLLARS."



SO PEOPLE LIKE ELVIS JUST RIPPED OFF BLACK ARTISTS, TAKING THEIR TUNES AND "WHITE-WASHING" THEM?

SEGREGATION MEANT THAT A LOT OF BLACK ARTISTS COULDN'T REACH THE AUDIENCE THAT THEIR TALENT DESERVED. BUT THINGS WERE MORE COMPLEX THAN THAT.



LITTLE RICHARD SAID OF ELVIS: "HE WAS AN INTEGRATOR. ELVIS WAS A BLESSING. THEY WOULDN'T LET BLACK MUSIC THROUGH. HE OPENED THE DOOR FOR BLACK MUSIC...."

"HE BROKE THE ICE FOR ALL OF US."



THE REV.
AL GREEN



SOME DID. HERE'S WHAT WALTER WHITE, EXECUTIVE SECRETARY OF THE NAACP, SAID ABOUT ROCK AND ROLL.



"[IT'S] A GREAT RACE LEVELER... A TREMENDOUS INSTRUMENT FOR BRINGING ABOUT A COMMON GROUND FOR INTEGRATION OF THE WHITE AND COLORED YOUTH."

STILL, ELVIS WAS REALLY FREE-RIDING
ON THE SONGS OF OTHERS, WASN'T HE?

OF COURSE. BUT THERE'S MORE NUANCE
TO IT. FIRST OF ALL, ELVIS ALWAYS
GAVE CREDIT TO RHYTHM AND BLUES...

LAWDY MISS
CLAAAANDY!



ROCK 'N' ROLL HAS BEEN AROUND FOR MANY YEARS.



IT USED TO BE CALLED RHYTHM & BLUES.



AND HE WASN'T JUST COPYING...HE WAS ONE OF
THE FOUNDERS OF ROCKABILLY, FUSING COUNTRY
WITH RHYTHM AND BLUES.



AH DON'T SOUND LIKE
NOBODY!



AND THE BORROWING WENT TWO WAYS.
TAKE HOUND DOG. IT WAS WRITTEN
BY JERRY LEIBER AND MIKE STOLLER,
TWO WHITE SONG WRITERS WHO
LOVED BLACK MUSIC...



THE MUSICIAN AND PRODUCER
JOHNNY OTIS HAD ASKED
THEM TO WRITE A SONG FOR
BIG MAMA THORNTON.



AFTER MEETING HER, THEY
WERE INSPIRED, AND WROTE
HOUND DOG IN MINUTES.
SHE RECORDED IT...



...AND THEN THAT SONG
WAS COVERED BY ELVIS WHO
MADE CHANGES TO BOTH THE
TEMPO AND THE LYRICS...

SO THE SONG CROSSED
BACK AND FORTH ACROSS
THE COLOR LINE...



WOW! STEPHEN FOSTER WASN'T AN
ISOLATED INCIDENT! THIS REALLY IS
THE REMIX NATION!



BUT I AM BETTING THAT BLACK ARTISTS DIDN'T GET A SHARE OF THE MONEY ALL THOSE COVER VERSIONS WERE MAKING...

AIN'T THAT THE TRUTH! BLACK ARTISTS WERE ROUTINELY EXPLOITED. IF BLACK COMPOSERS GOT COPYRIGHT AT ALL, THEY FREQUENTLY HAD TO SHARE IT WITH OTHERS LIKE DJS.

DJS!? THEY GOT COPYRIGHT FOR PLAYING A SONG!?

APPARENTLY. CHUCK BERRY HAD TO SHARE COPYRIGHT ON MAYBELLENE WITH THE DJ ALAN FREED AND ALSO WITH RUSS FRATTO....

DID THAT HAPPEN TO WHITE ARTISTS, TOO?

IT DID. REMEMBER DICK CLARK?

AMERICAN BANDSTAND!!

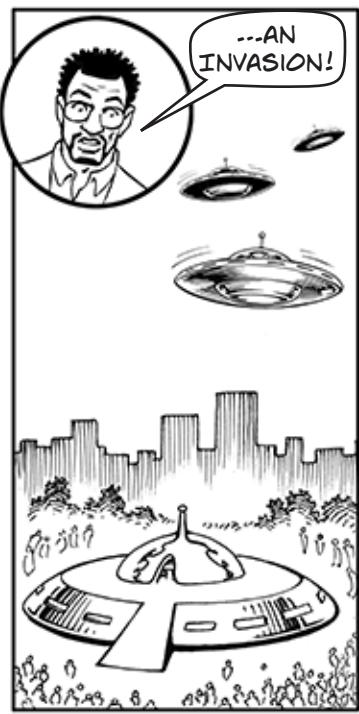


THIS SONG IS GOING TO BE A HIT! IT'S GOT A GOOD BEAT AND I CAN COPYRIGHT IT!

THE BOTTOM LINE IS THAT MUSICIANS IN GENERAL HAD LITTLE BARGAINING POWER...

THEY STILL DON'T!





NEW ACTS LIKE THE ROLLING STONES AND THE BEATLES WERE RAVENOUS FOR AMERICAN BLUES RECORDINGS. THEY WERE LISTENING TO MUDDY WATERS, JOHN LEE HOOKER, WILLIE DIXON, AND HOWLIN' WOLF...

I STILL FEEL BAD ABOUT TAKING THEIR NATIONAL ANTHEM...



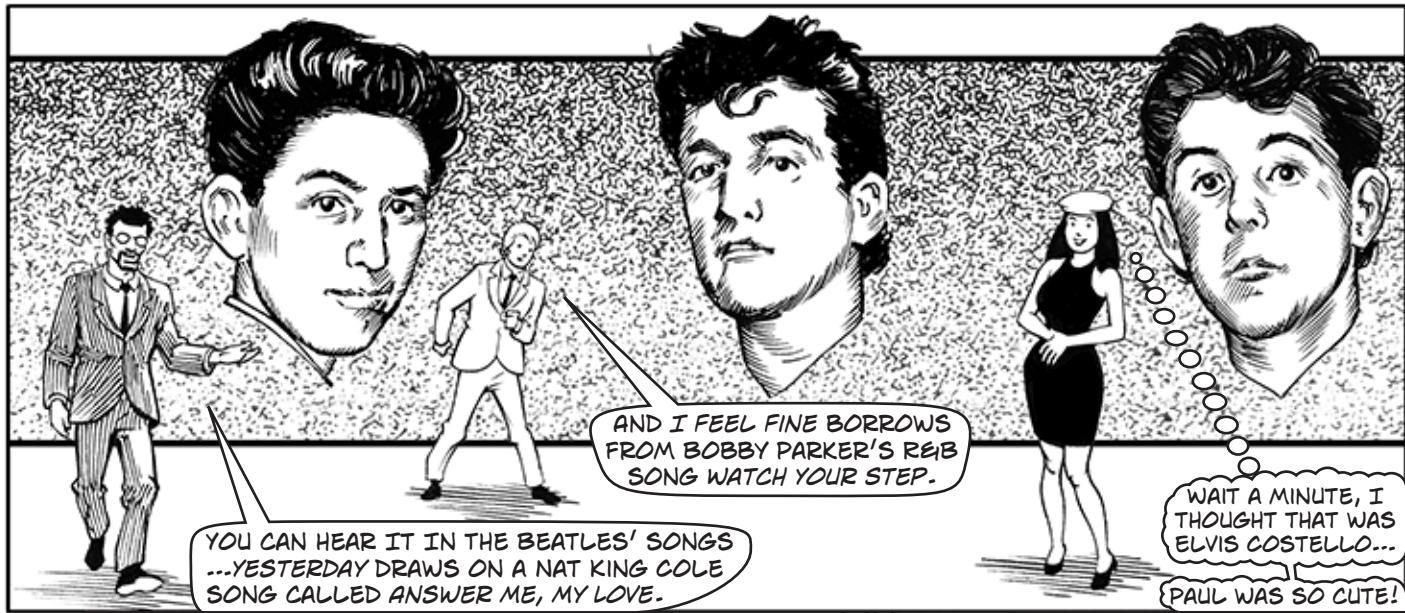
I READ SOMEWHERE THAT THE STONES ACTUALLY CALLED THEMSELVES A BAND THAT PLAYS "AUTHENTIC CHICAGO RHYTHM AND BLUES MUSIC" IN A LETTER TO THE BBC...

YES, AND IRONICALLY THE BBC TURNED THEM DOWN BECAUSE THEY THOUGHT MICK JAGGER SOUNDED "TOO BLACK.."

SAY IT LOUD!
I'M BLACK AND I'M PROUD!!!!

WAIT!
I'M WHITE
AND FROM KENT...





IN FACT, THE BEATLES EVOLVED
FROM A "SKIFFLE" BAND CALLED
THE QUARRYMEN. SKIFFLE HAD
LINKS TO THE BLUES, TO JAZZ
AND TO COUNTRY MUSIC.

IT'S HARD TO BELIEVE JUST
HOW MUCH ATTENTION THE
BEATLES GOT. WHEN THEY
WENT ON THE ED SULLIVAN
SHOW IN '64, 75% OF TV
WATCHERS TUNED IN!



AND SOME OF THAT ATTENTION
GOT FOCUSED BACK ON THE
BLACK - AND WHITE - AMERICAN
ARTISTS THEY HAD BORROWED
FROM, SOMETIMES TO THE
MYSTIFICATION OF THE MUSIC
PRESS.



IS THERE ANYBODY BESIDES
DYLAN YOU'VE GOTTEN
SOMETHING FROM MUSICALLY?



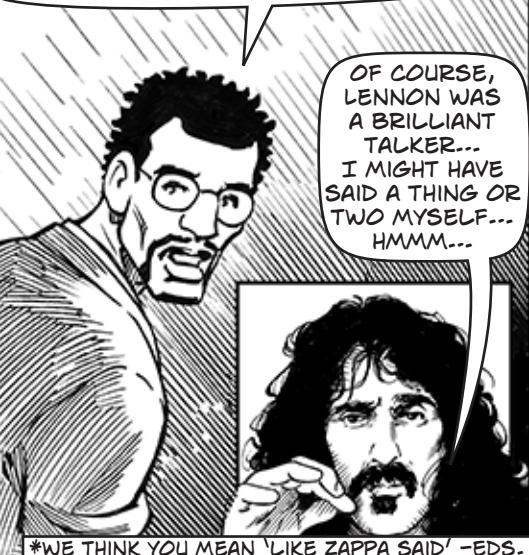
OH, MILLIONS...LITTLE
RICHARD, PRESLEY...

ANYONE CONTEMPORARY?



ARE THEY DEAD?

LIKE I* ALWAYS SAID ABOUT MUSIC
JOURNALISM: PEOPLE WHO CAN'T WRITE,
INTERVIEWING PEOPLE WHO CAN'T TALK,
FOR PEOPLE WHO CAN'T READ...



OF COURSE,
LENNON WAS
A BRILLIANT
TALKER...
I MIGHT HAVE
SAID A THING OR
TWO MYSELF...
HMM...

*WE THINK YOU MEAN 'LIKE ZAPPA SAID' -EDS.

BUT THE BEATLES WEREN'T JUST
BORROWING FROM RHYTHM & BLUES, RIGHT?



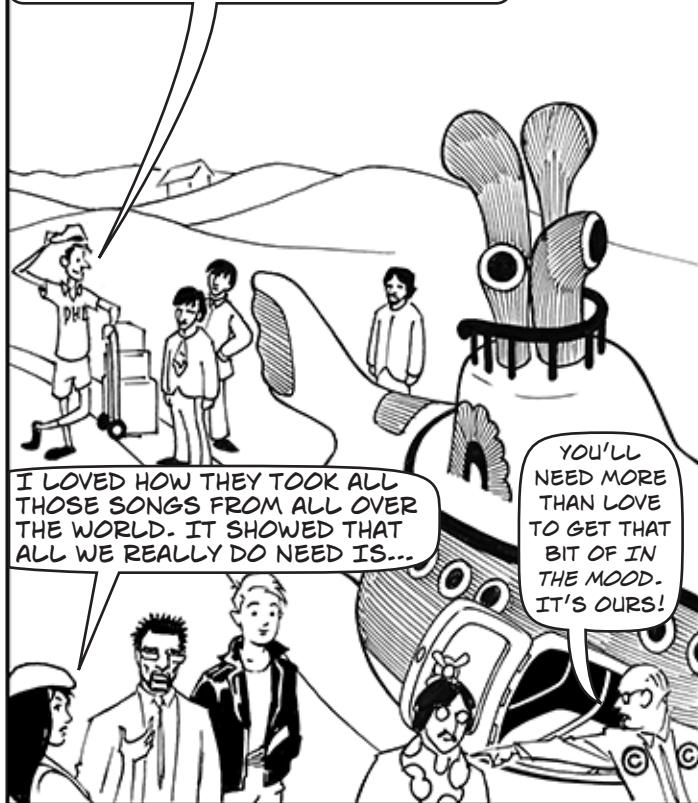
RIGHT. THIS IS SOME OF THAT
BACH BOURÉE IN E MINOR FOR
BLACKBIRD, INNIT? CAREFUL
YOU LOT, IT'S FRAGILE...



20S' MUSIC HALL FOR YER
HONEY PIE, SOME JOHN CAGE
FOR YER REVOLUTION 9...

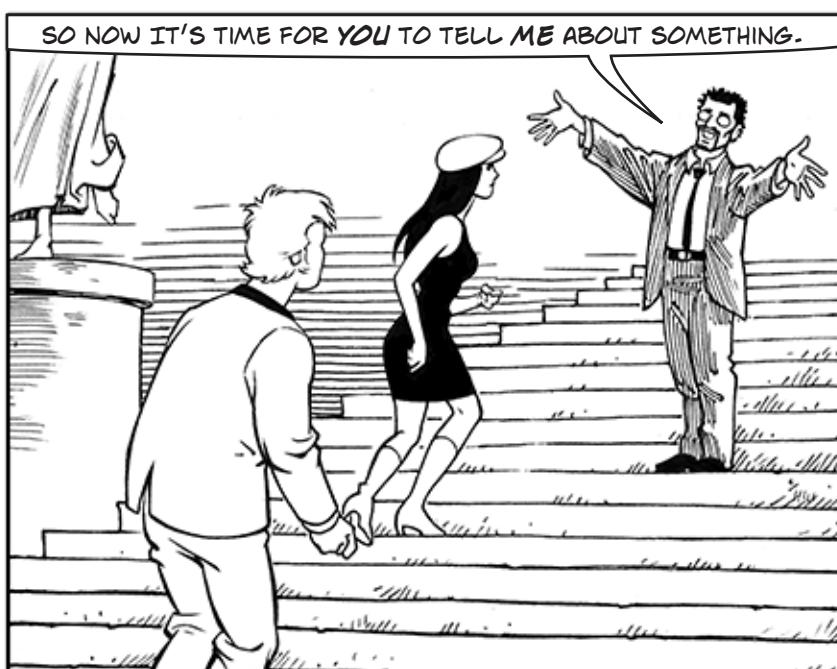
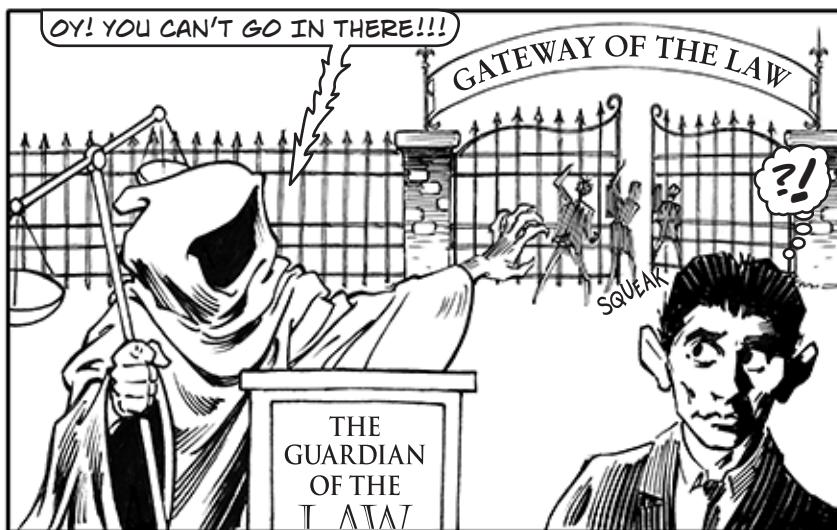


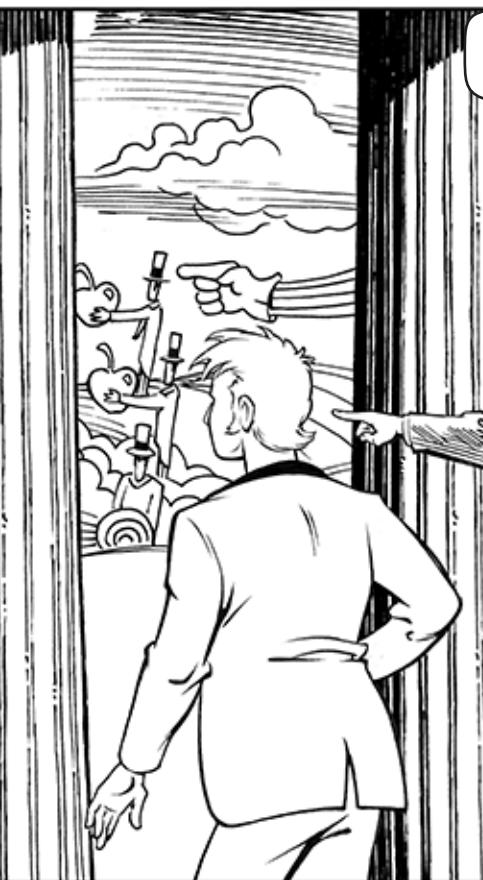
BIG INTERNATIONAL DELIVERY HERE FOR ALL YOU
NEED IS LOVE - LET'S SEE, LA MARSEILLAISE,
SOME OF BACH'S TWO-PART INVENTION IN F,
GREENSLEEVES, SPOT OF IN THE MOOD...



SOME LINES FROM CHUCK BERRY FOR
COME TOGETHER...AND I'VE GOT SOME
OF CREAM'S BADGE BY MR. HARRISON
FOR HIS HERE COMES THE SUN.







THAT'S A GREAT QUESTION. BUT FIRST WE NEED TO CLEAR UP SOME BASICS...

NEVER EXPECT A STRAIGHT ANSWER FROM A LAWYER, DUH!

BOOKS, MOVIES, MUSIC, FILMS...ALL THESE THINGS ARE COVERED BY COPYRIGHT.

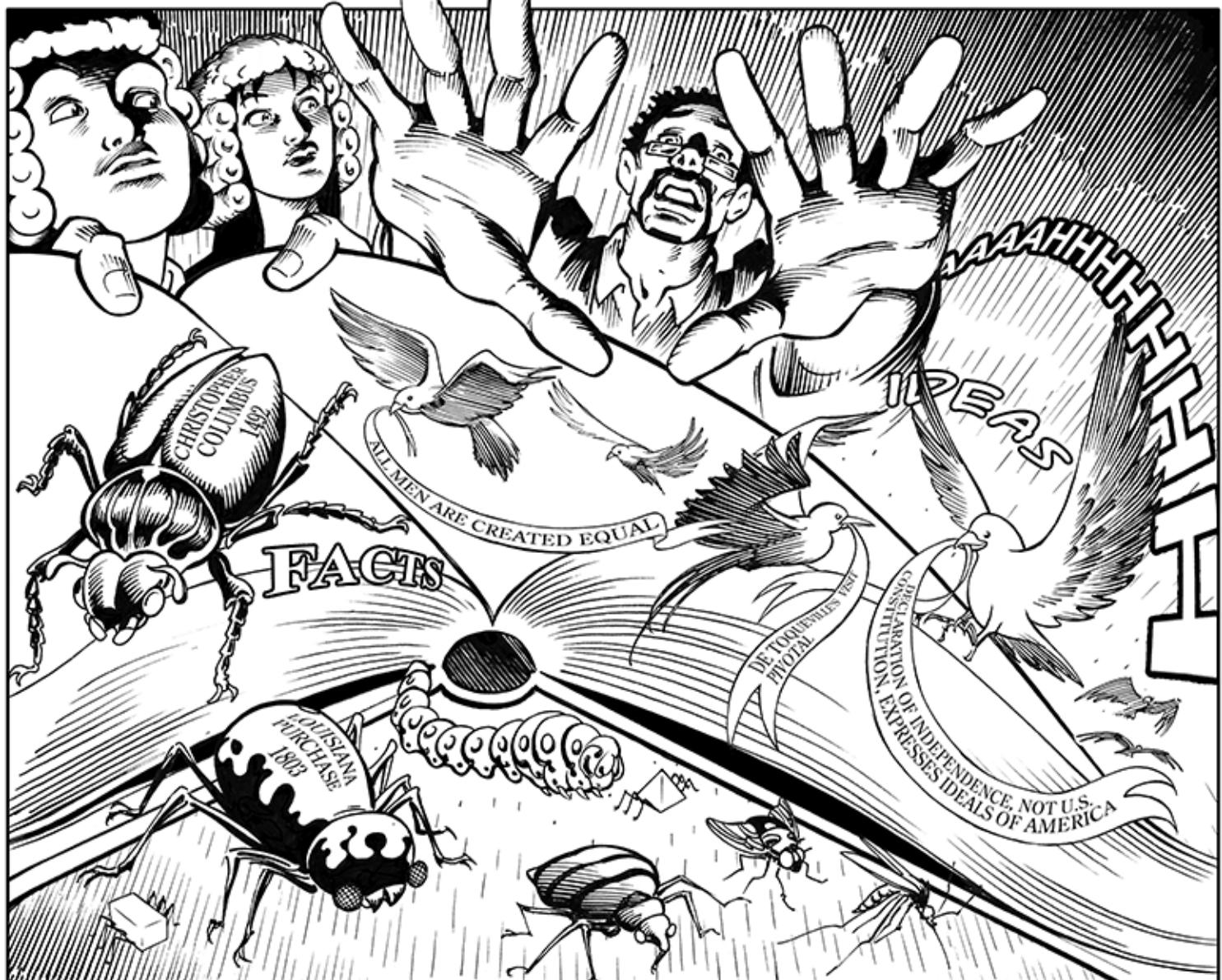


YOU OWN THE PHYSICAL OBJECT...
THESE PIECES OF PAPER...THIS
BINDING. YOU COULD BURN IT, OR
SELL IT, OR GIVE IT AWAY...

AND THE AUTHOR
HAS NO RIGHT TO
STOP YOU...

THAT DIDN'T LAST LONG.)

...AND EVEN INSIDE THE
BOOK THERE ARE LOTS
OF THINGS THE AUTHOR
DOESN'T OWN...

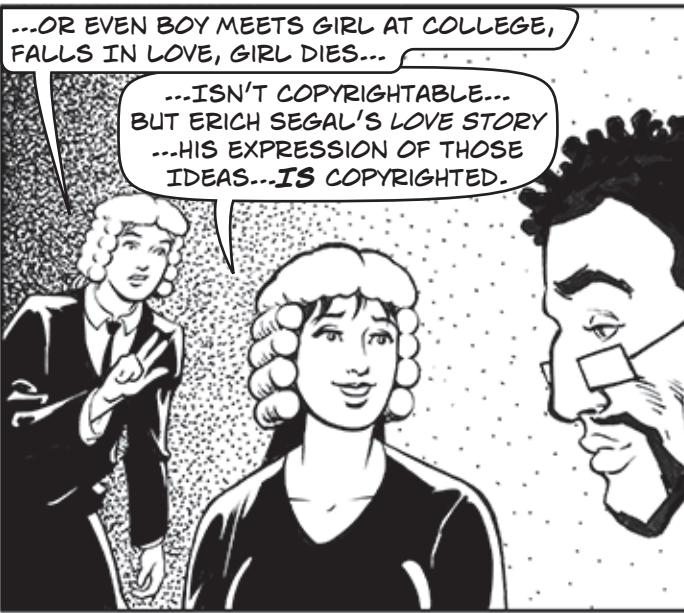


WHAT WAS THAT!!??! AND IS THAT THING GOING TO DO IT AGAIN?

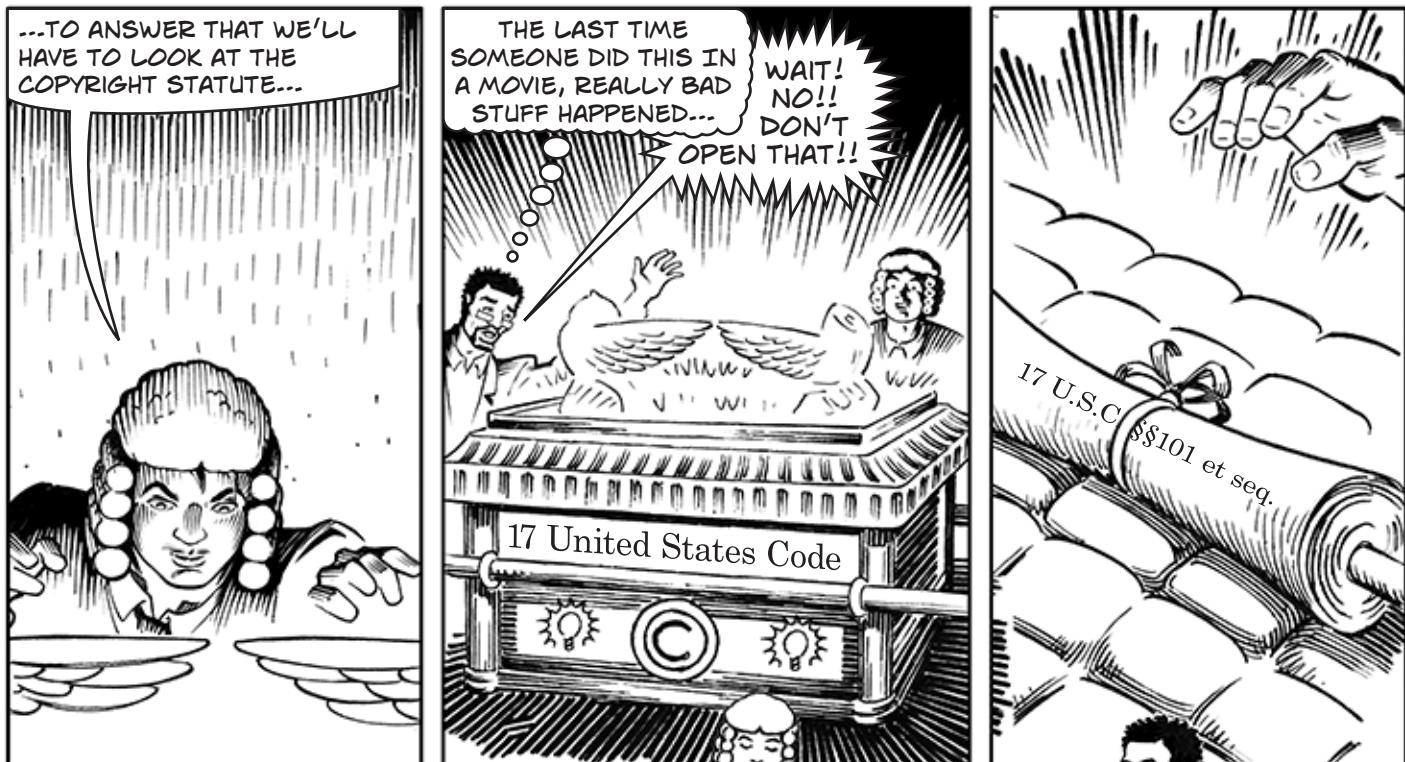
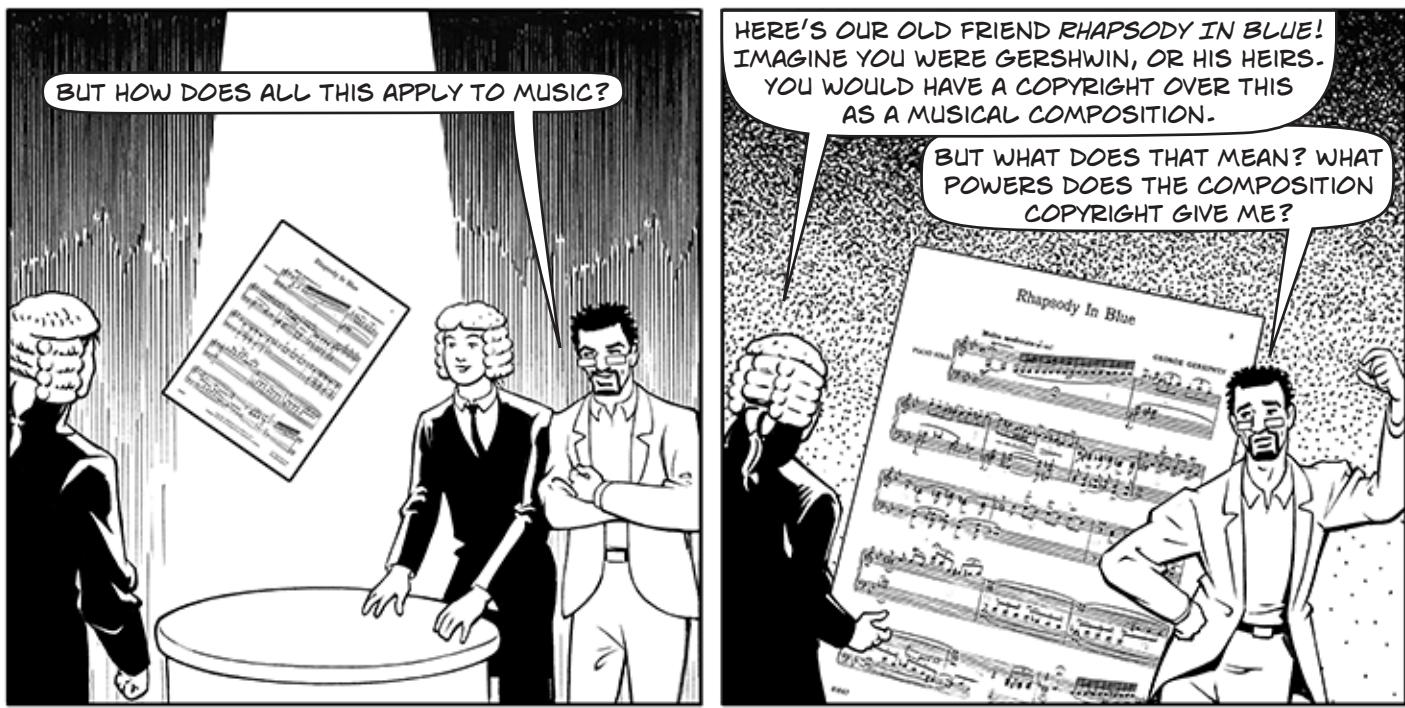
THOSE WERE THE FACTS AND IDEAS IN THAT BOOK, THEY AREN'T COPYRIGHTABLE ...THEY GO IMMEDIATELY INTO THE PUBLIC DOMAIN.

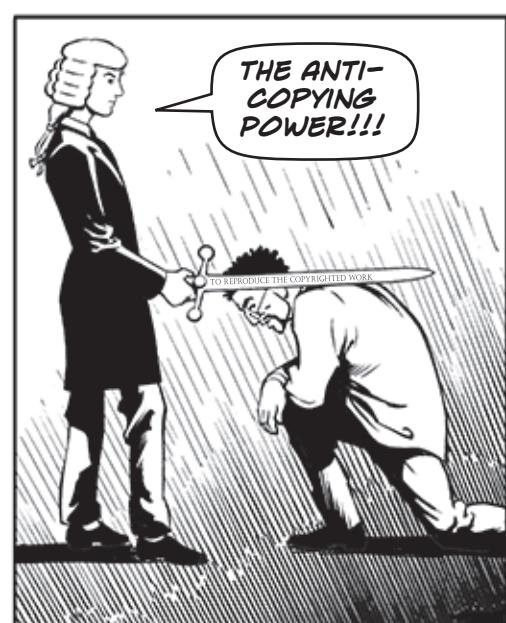
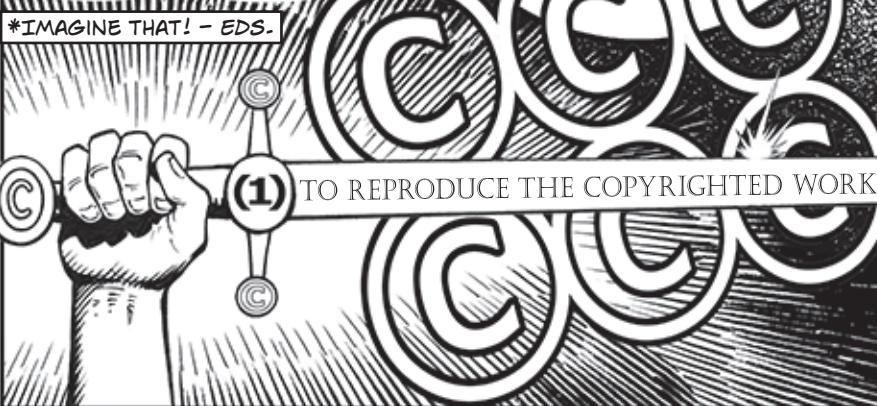
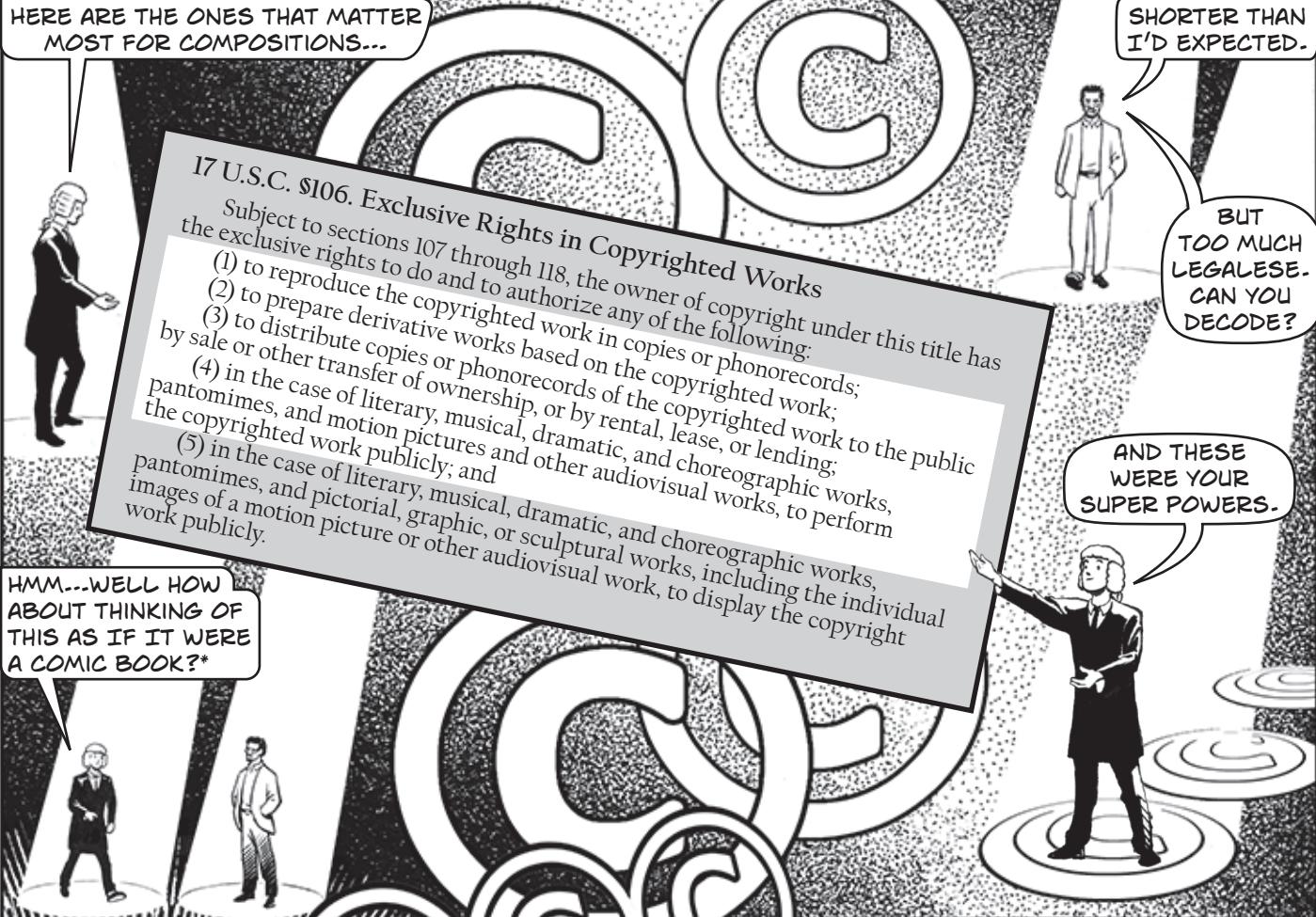
COPYRIGHT COVERS THE AUTHOR'S EXPRESSION, NOT THE IDEAS OR FACTS THEMSELVES.

SO, BOY MEETS GIRL....

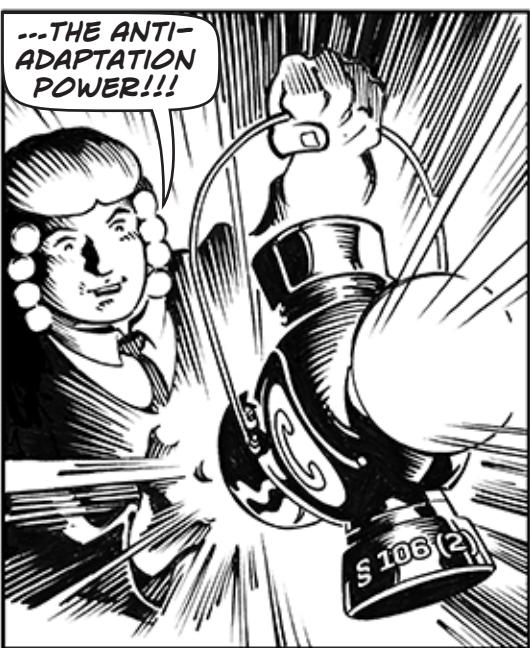


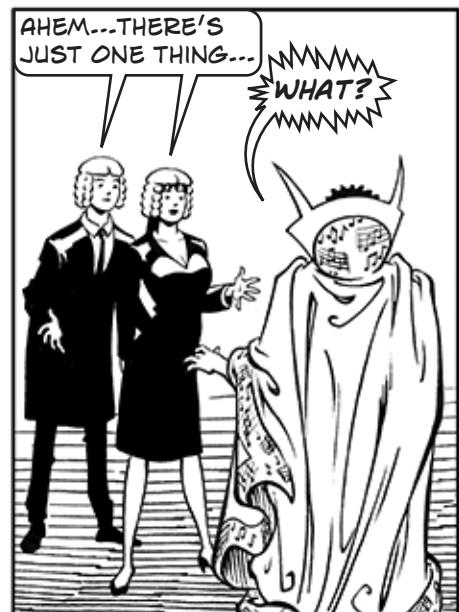
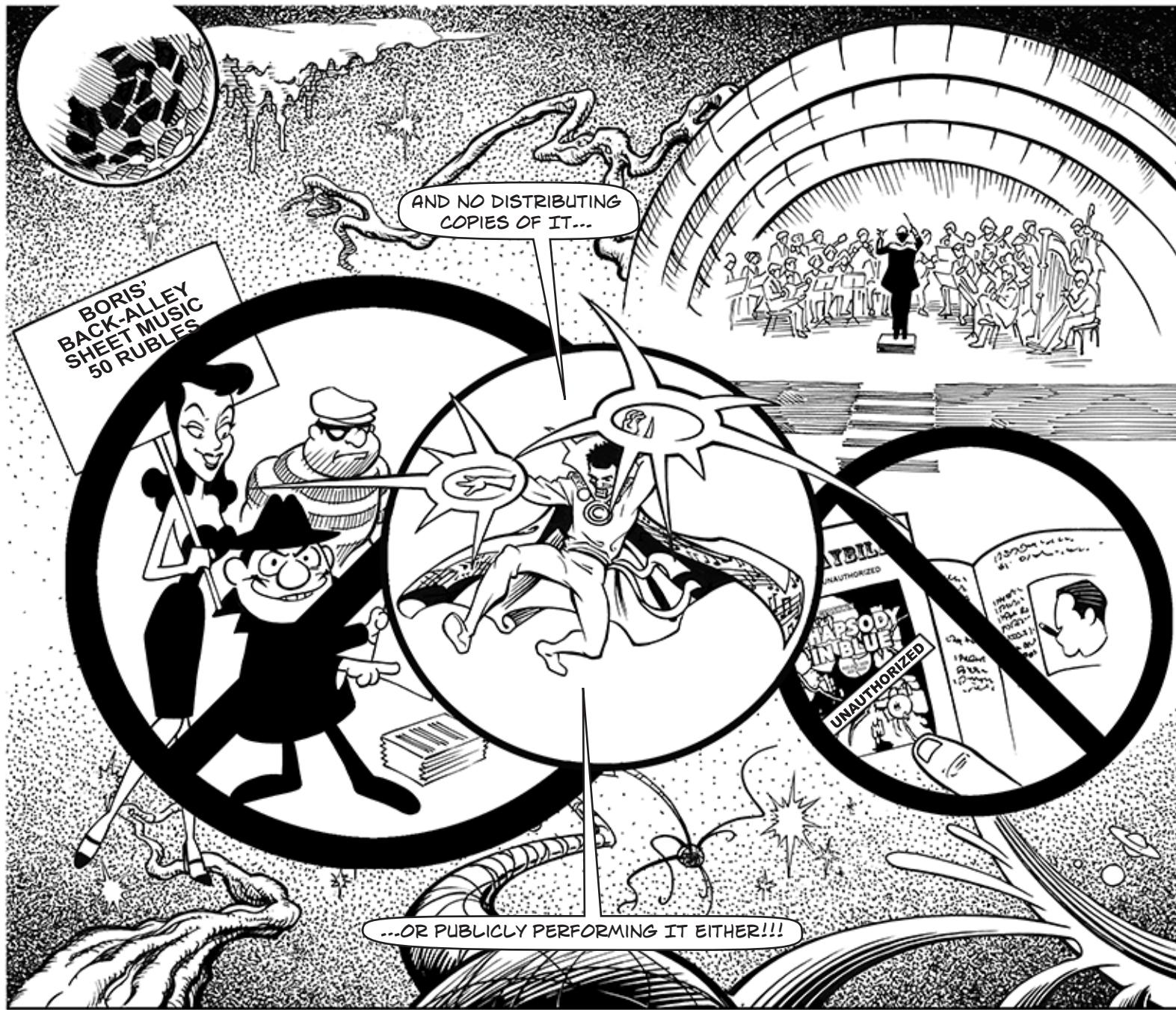
*FOR MORE ON FAIR USE, SEE BOUND BY LAW? - EDS.





I DECIDE WHO MAKES COPIES OF MY WORK!

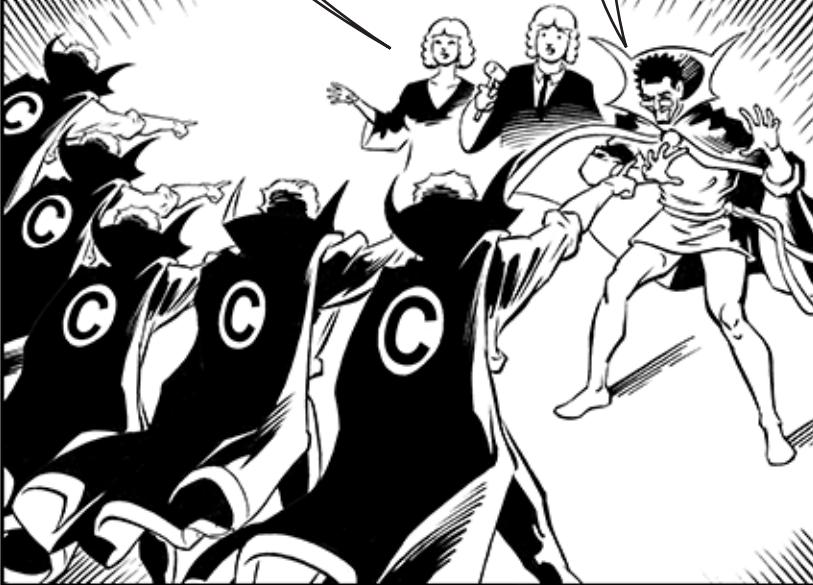




ALL OTHER COPYRIGHT HOLDERS HAVE
THE SAME POWERS OVER YOU!

SO THEY CAN STOP ME FROM
MAKING ANY KIND OF ADAPTATION?
ANY REFERENCE, QUOTATION,
PARODY? IS THIS TOTAL CONTROL?

NOT AT ALL. SOMETIMES
PEOPLE TALK AS THOUGH
COPYRIGHT WAS AN ABSOLUTE
PROPERTY RIGHT...



...BUT ACTUALLY IT IS POROUS,
FULL OF EXCEPTIONS...

THE FIRST IS TERM LIMITS. BEETHOVEN, MOZART,
BACH - MOST OF THE MUSIC BEFORE 1923 IS FAIR
GAME, EITHER BECAUSE THERE WAS NEVER A
COPYRIGHT OR IT HAS EXPIRED.



SO PAUL McCARTNEY COULD USE BACH'S BOURÉE
IN BLACKBIRD. WHEN BACH WROTE IT, THERE
WASN'T A COPYRIGHT. EVEN IF THERE HAD BEEN,
IT WOULD HAVE EXPIRED LONG AGO.

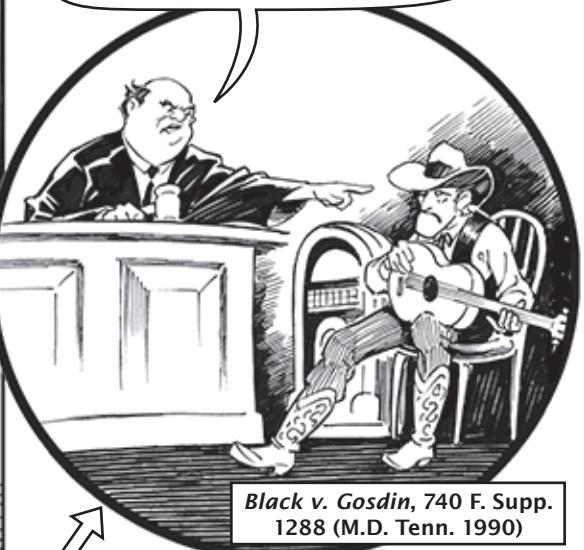
OR PACHELBEL'S CANON. THAT'S BEEN USED
BY EVERYONE FROM CATCH 22 TO COLDIO.



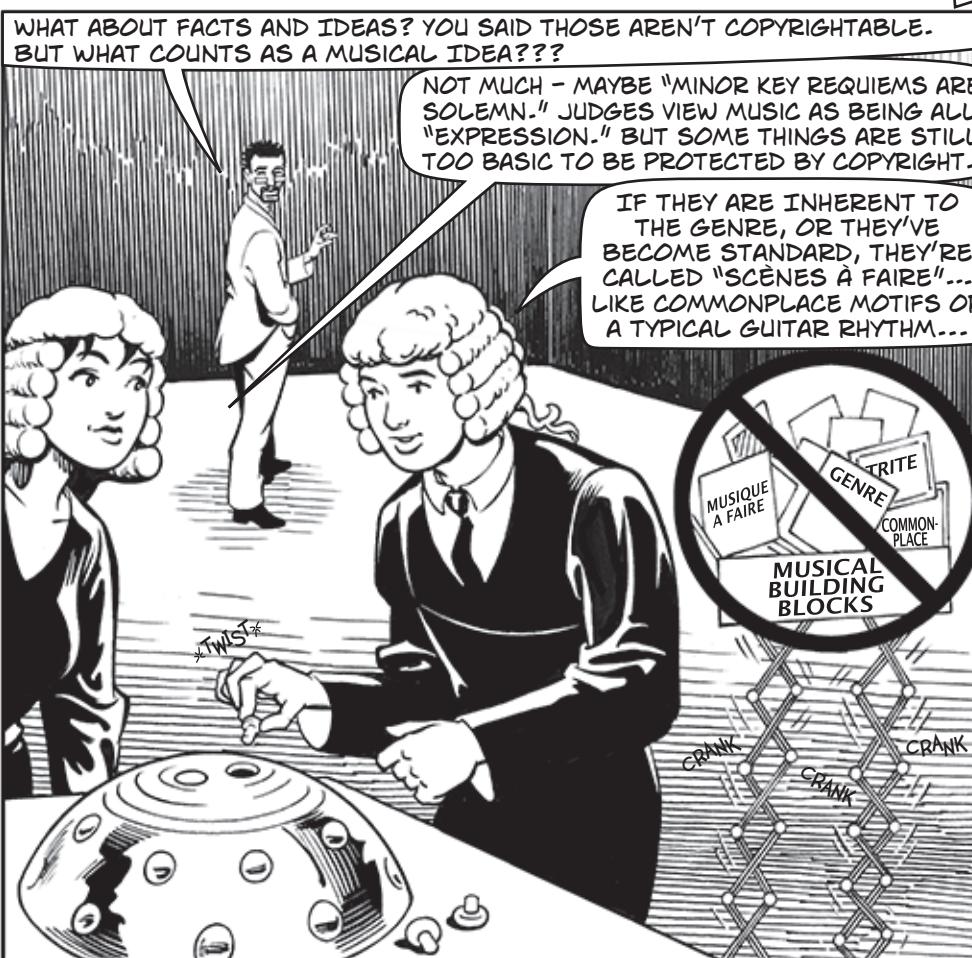
COPYRIGHT ONLY COVERS "ORIGINAL" EXPRESSION---
THERE HAS TO BE SOME CREATIVE CHOICE BY THE AUTHOR---

AND SOME MUSICAL CHOICES - A
PERFECT FIFTH, AN OCTAVE JUMP -
WOULD BE SO BASIC AND OBVIOUS
THAT THEY AREN'T ORIGINAL. THAT
MEANS NO ONE CAN OWN THEM.

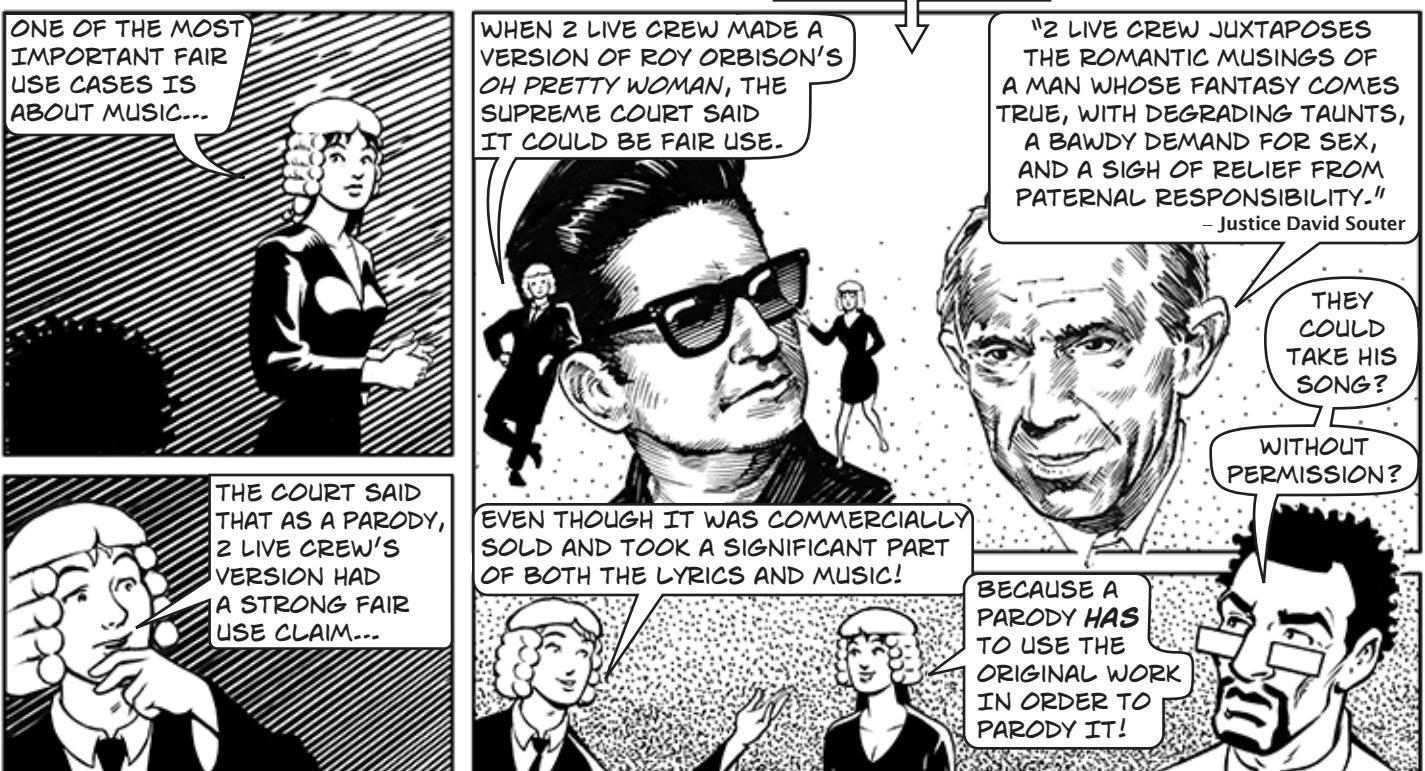
"HAVING CHOSEN THE FAMILIAR
THEME OF A BROKEN-HEARTED
LOVER SEEKING SOLACE IN
COUNTRY MUSIC, THE CHOICE OF
A BARROOM WITH A JUKEBOX
AS THE SETTING IN WHICH TO
UNFOLD THIS IDEA SIMPLY
CANNOT BE ATTRIBUTED TO
ANY UNIQUE CREATIVITY ON THE
PART OF THE SONGWRITER."

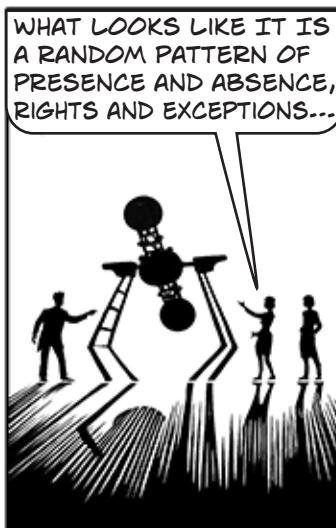
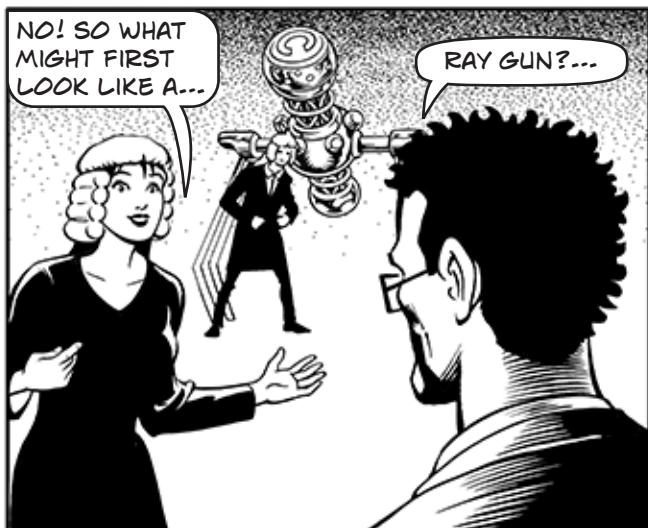
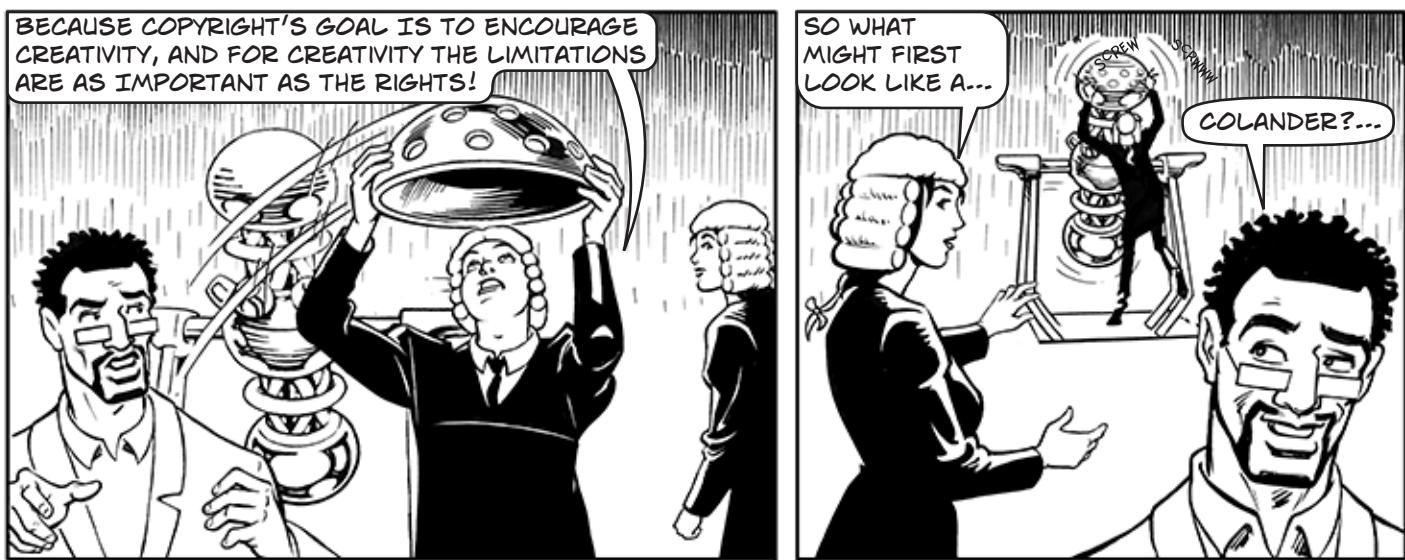
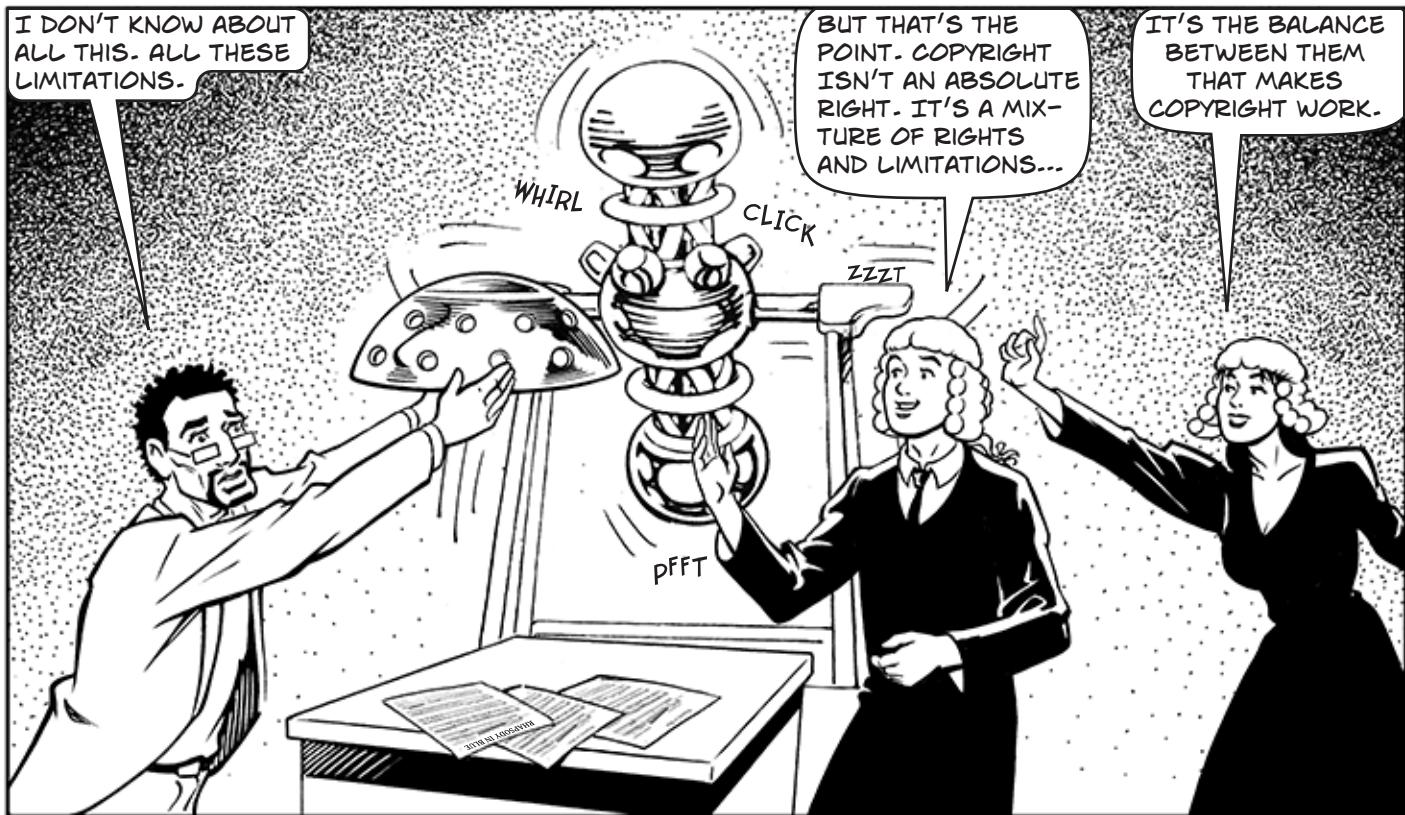


SCÈNES À FAIRE

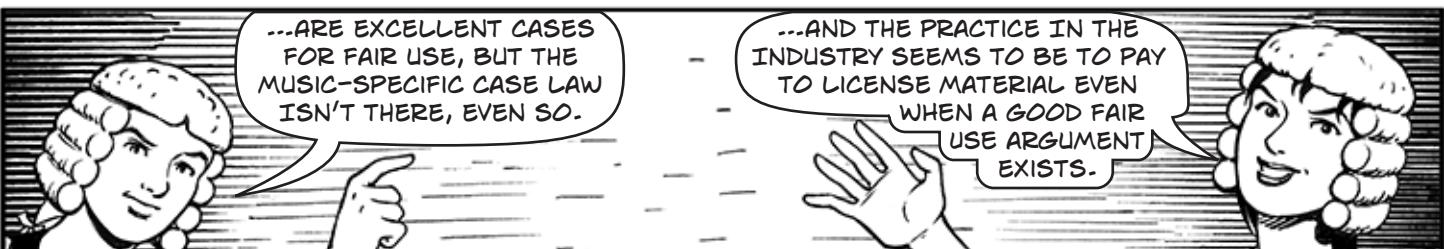
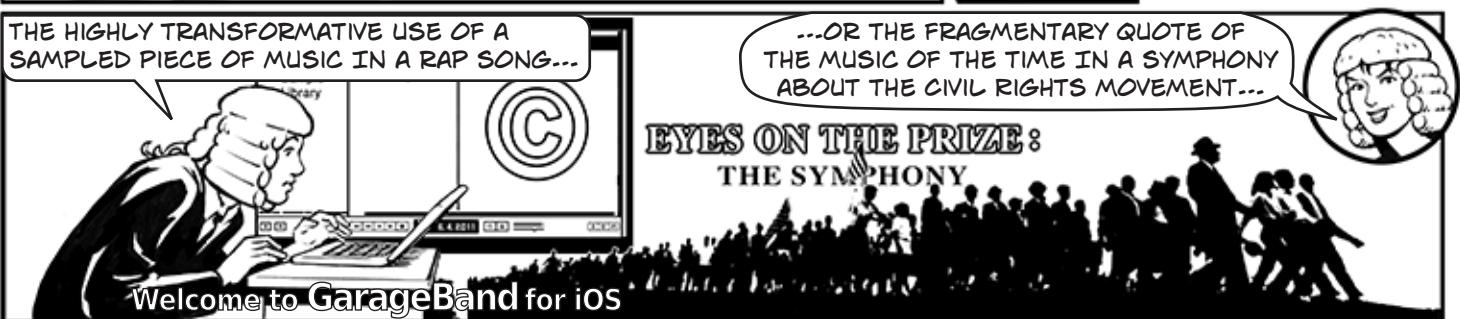
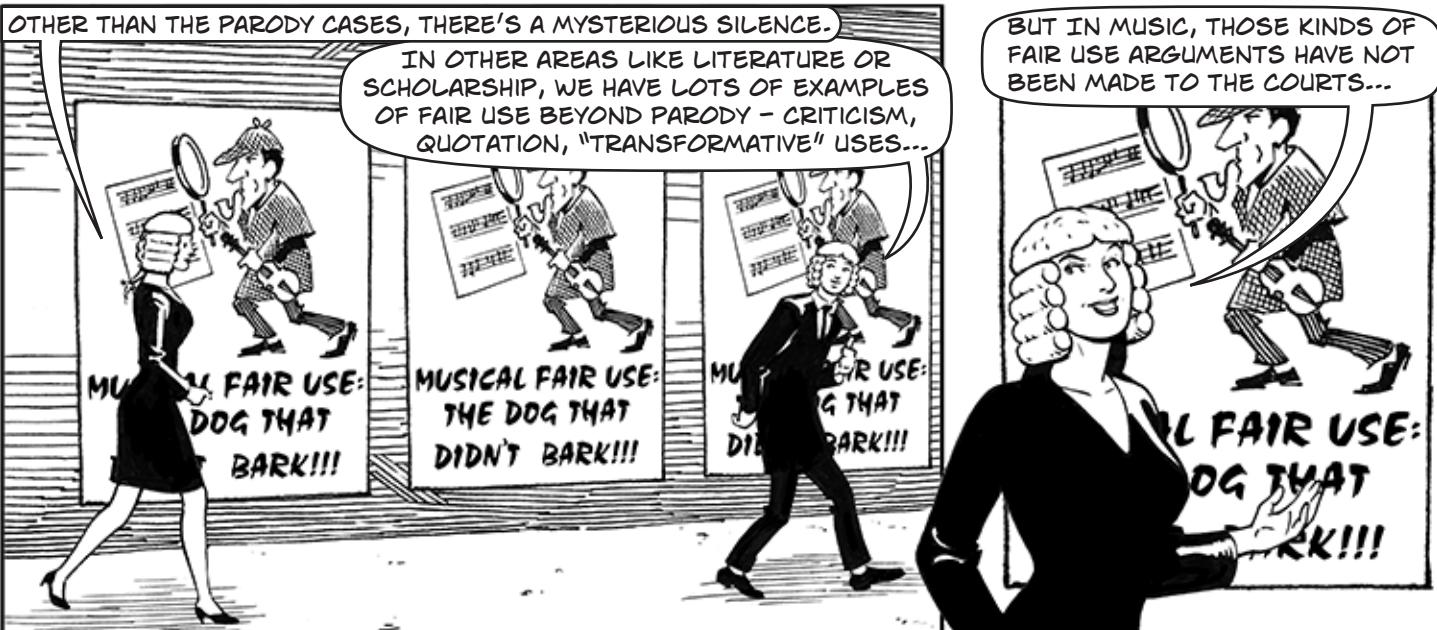












YOU'RE RIGHT. THAT'S RIDICULOUS.
WITHOUT QUOTATION THERE IS
NO JAZZ. REQUIRING LICENSES
WOULD DESTROY THE MUSIC.

COPYRIGHT IS SUPPOSED TO
ENCOURAGE CREATIVITY, NOT
DESTROY IT.

BUT FEDERAL JUDGES LISTEN
TO JAZZ - OR KNOW IT IS
CULTURALLY "RESPECTABLE."

SO...



WOULD THEY HAVE THE SAME
INTUITIONS ABOUT RAP? OR
SOMEONE LIKE GIRL TALK
WHOSE MUSIC IS ENTIRELY
MADE UP OF SAMPLES?

LOVE THE LAYERED REMIXES
IN NIGHT RIPPER...

WE DON'T KNOW, BECAUSE
THE CASES AREN'T BROUGHT
OR FAIR USE ISN'T CLAIMED.



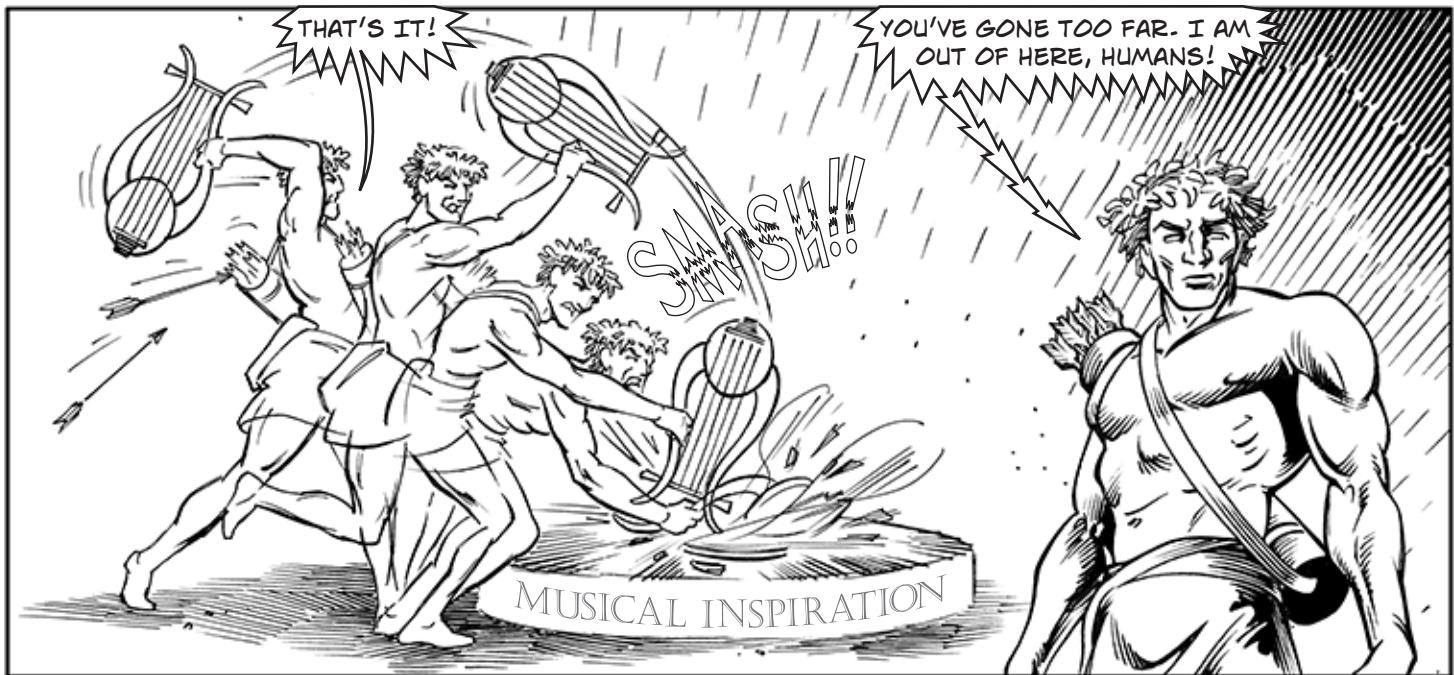
SOME SAY IT'S BECAUSE RECORD LABELS ARE AFRAID OF EXPANSIVE FAIR USE DECISIONS, SO THEY WON'T CLAIM FAIR USE AGAINST EACH OTHER...

FAIR USE: THE MONSTER FROM THE BLACK LAGOON

...OR THAT CLAIMING FAIR USE MEANS ADMITTING YOU COPIED IN THE FIRST PLACE. HIGH RISK! THE MUSIC BUSINESS ACTS AS THOUGH PERMISSION WERE ALWAYS NEEDED...



END RESULT? EVEN THOUGH LOTS OF MUSICAL BORROWING COULD BE FAIR USE, IN PRACTICE, LICENSES ARE GENERALLY DEMANDED.



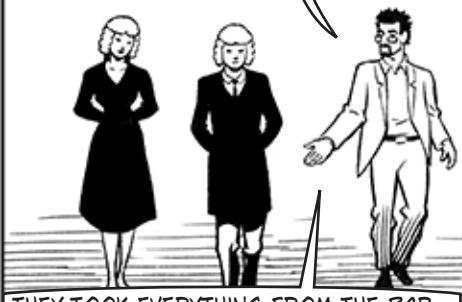
LOOK, I AM SORRY BUT ALL THIS CAN'T BE TRUE.



LOOK AT THE HISTORY OF HIP HOP...



PUBLIC ENEMY PUT HUNDREDS OF SAMPLES ON THEIR ALBUMS.



THEY TOOK EVERYTHING FROM THE BAR-KAYS TO MALCOLM X TO RUFUS THOMAS, PLAYED WITH IT, DISTORTED IT. THAT'S HOW YOU GET THAT AMAZING "WALL OF SOUND" IN '80S RAP.

PUBLIC ENEMY



SOUNDSCAPE IT TAKES A NATION OF MILLIONS TO MAKE OUR SOUND

"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."



BITS AND PIECES STRUNG TOGETHER ON MACHINES LIKE THIS, WHICH COULD ONLY RECORD SAMPLES A FEW SECONDS LONG!



ARE YOU TELLING ME ALL OF THOSE SAMPLES WERE LICENSED?! THAT'S IMPOSSIBLE.



WHEN SAMPLERS STARTED TAKING FRAGMENTS OF PRIOR SONGS, THE PRACTICE WAS IN LEGAL LIMBO. THEY ONLY CLEARED RIGHTS TO REALLY LARGE SAMPLES.

"THE ONLY TIME COPYRIGHT WAS AN ISSUE WAS IF YOU ACTUALLY TOOK THE ENTIRE RHYTHM OF A SONG..."

BUT THEN HIP HOP STARTED TO GET PROFITABLE AND THE CLAIMS OF COPYRIGHT INFRINGEMENT BEGAN.



THE BEASTIE BOYS GOT SUED FOR TAKING THE PHRASE "YO LEROY" AND SOME BACKBEAT FROM A 1977 SONG BY THE JIMMY CASTOR BUNCH AND USING IT IN HOLD IT NOW, HIT IT.

BUT WE DIDN'T GET A COURT DECISION UNTIL A CASE CALLED GRAND UPRIGHT.



BIZ MARKIE HAD SAMPLED A LOT OF GILBERT O'SULLIVAN'S ALONE AGAIN (NATURALLY) - TAKING MOST OF THE PIANO INTRODUCTION. HE ALSO SANG A FRAGMENT OF THE LYRICS HIMSELF.-

COOL HAT!

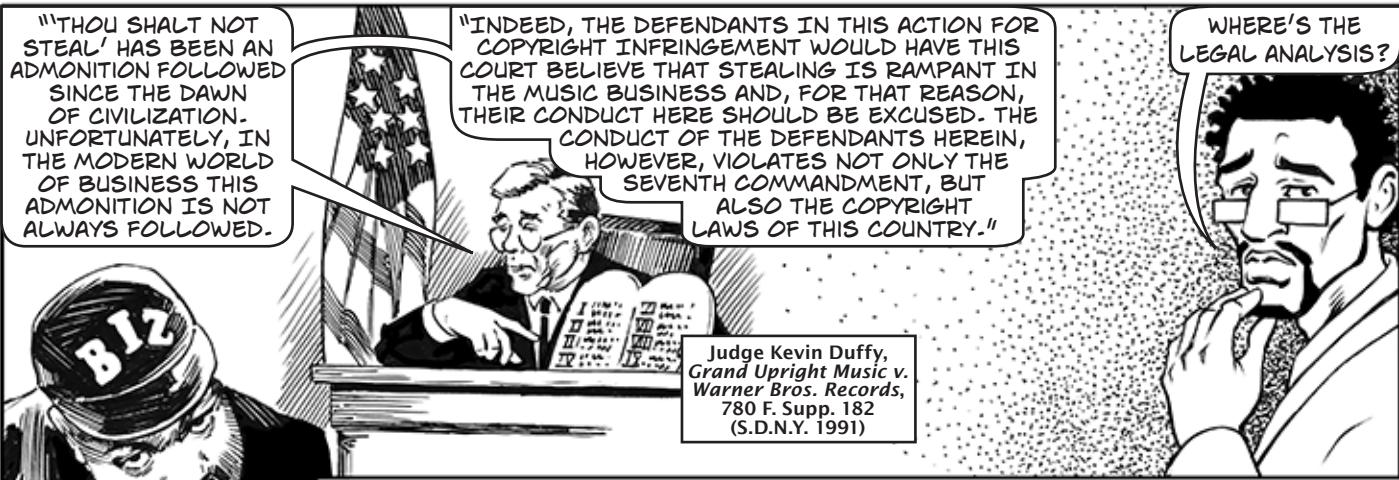
HIS LAWYERS CONTACTED O'SULLIVAN'S AGENT BEFORE THE RELEASE OF THE RECORD, BUT HADN'T OBTAINED THE RIGHTS BEFORE RELEASE. O'SULLIVAN SUED, AND WON.



NOW THAT YOU'VE TAUGHT ME ALL ABOUT COPYRIGHT, THAT STRIKES ME AS AN INTERESTING CASE! WHAT DID THE JUDGE SAY ABOUT FAIR USE - THE ARGUMENT THAT SAMPLING WAS JUST LIKE JAZZ QUOTATION? OR DEMINIMIS? WERE THE BITS TAKEN JUST STANDARD - SCÈNES À FAIRE? AND HOW ABOUT...

ER...ACTUALLY, THE JUDGE'S OPINION WAS A LITTLE MORE LIMITED THAN THAT.





BIZ MARKIE HAD SAMPLED QUITE A BIT, AND HE ALSO SANG THE KEY PART OF THE MELODY, THE "GOLDEN NUGGET" AT THE HEART OF THE SONG.



"THE QUESTION, THEREFORE, IS WHETHER DEFENDANT TOOK FROM PLAINTIFF'S WORKS SO MUCH OF WHAT IS PLEASING TO THE EARS OF LAY LISTENERS... THAT DEFENDANT WRONGFULLY APPROPRIATED SOMETHING WHICH BELONGS TO THE PLAINTIFF."

Judge Jerome Frank, *Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946)

YOU COULD CLAIM IT'S A PARODY AND THEREFORE FAIR USE AS IN THE Z LIVE CREW CASE.

THE WORLD BIZ IS DESCRIBING IS VERY DIFFERENT FROM O'SULLIVAN'S. BUT IT IS A WEAK FAIR USE CLAIM.

THE PROBLEM WAS THE JUDGE SUGGESTING ANY SAMPLING WAS ILLEGAL. HE ISSUED AN INJUNCTION AND EVEN SUGGESTED CRIMINAL PROSECUTION!



LICENSE EVERYTHING!



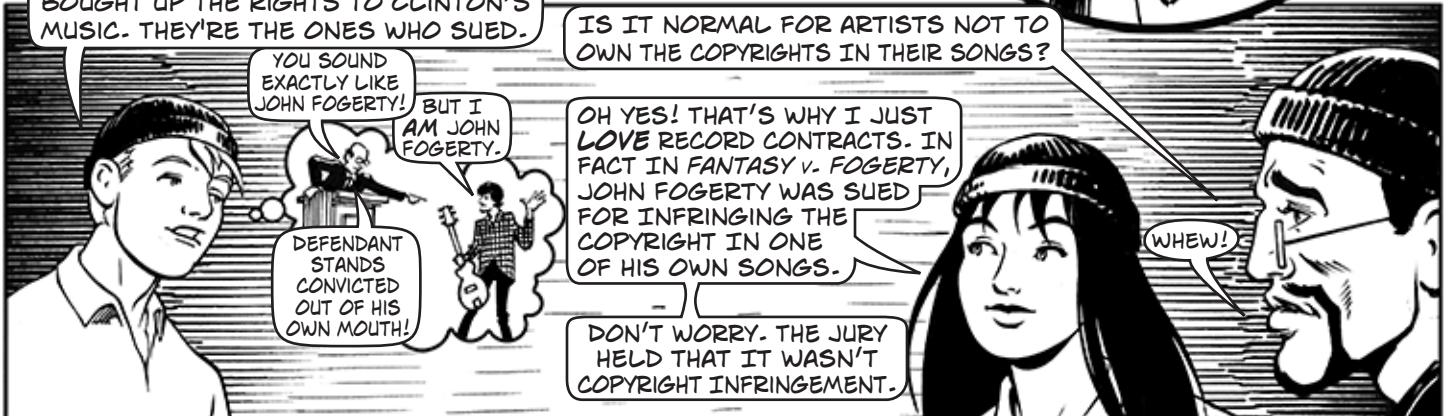
SO EVEN THOUGH THE CASE WAS AN EXTREME EXAMPLE, THE MESSAGE THE RECORD COMPANIES HEARD WAS "LICENSE EVERYTHING"!!







*CAUGHT: CAN WE GET A WITNESS?, FROM "IT TAKES A NATION OF MILLIONS TO HOLD US BACK"



SO N.W.A. HAD TAKEN 3 NOTES AND 2 SECONDS OF GEORGE CLINTON AND SAMPLED IT IN 100 MILES AND RUNNIN'?

THEY ACTUALLY CHANGED IT QUITE A BIT. THEY LOWERED THE PITCH AND LOOPED IT SO IT SOUNDED LIKE A POLICE SIREN IN THE BACKGROUND OF THE TRACK.



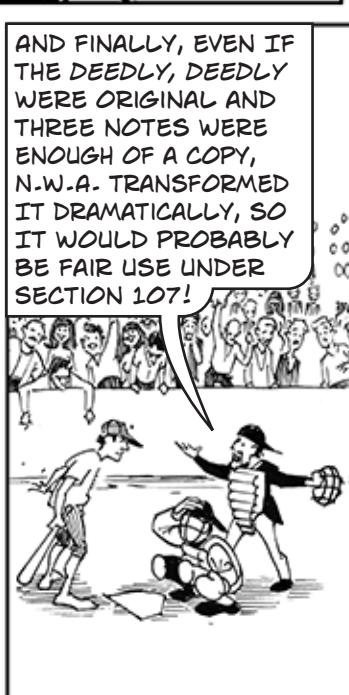
OK. I AM GOING TO SHOW OFF MY COPYRIGHT KNOWLEDGE. THE CHIEF JUSTICE OF THE SUPREME COURT SAYS JUDGES SHOULD BE LIKE UMPIRES AND JUST CALL BALLS AND STRIKES. SO, I AM GOING TO BE A COPYRIGHT UMPIRE AND CALL THIS ONE.

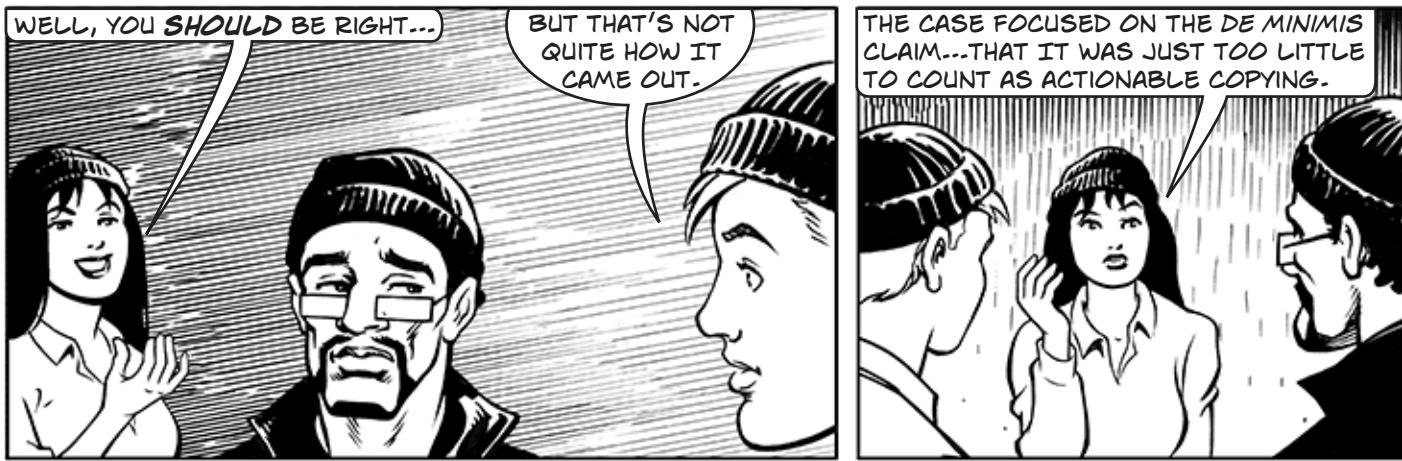
THE ARPEGGIATED CHORD IS A STANDARD PART OF SO MANY ROCK SONGS, SO IT IS EITHER NOT ORIGINAL, OR AN UN-PROTECTABLE STOCK PHRASE. IT WOULD NOT BE COPYRIGHTABLE IN THE FIRST PLACE!



THREE NOTES IS DE MINIMIS - TOO SMALL TO COUNT AS COPYING. THIS IS JUST LIKE THE CASE OF THE BEASTIES TAKING A TINY SAMPLE OF NEWTON'S FLUTE!

AND FINALLY, EVEN IF THE DEADLY, DEADLY WERE ORIGINAL AND THREE NOTES WERE ENOUGH OF A COPY, N.W.A. TRANSFORMED IT DRAMATICALLY, SO IT WOULD PROBABLY BE FAIR USE UNDER SECTION 107!





Bridgeport Music v. Dimension Films,

410 F.3d 792 (6th Cir. 2005) (Judge Ralph B. Guy, Jr.)

"THAT LEADS US DIRECTLY TO THE ISSUE IN THIS CASE. IF YOU CANNOT PIRATE THE WHOLE SOUND RECORDING, CAN YOU 'LIFT' OR 'SAMPLE' SOMETHING LESS THAN THE WHOLE. OUR ANSWER TO THAT QUESTION IS IN THE NEGATIVE...."

"GET A LICENSE OR DO NOT SAMPLE. WE DO NOT SEE THIS AS STIFLING CREATIVITY IN ANY SIGNIFICANT WAY...."

"FOR THE SOUND RECORDING COPYRIGHT HOLDER, IT IS NOT THE 'SONG' BUT THE SOUNDS THAT ARE FIXED IN THE MEDIUM OF HIS CHOICE. WHEN THOSE SOUNDS ARE SAMPLED THEY ARE TAKEN DIRECTLY FROM THAT FIXED MEDIUM. IT IS A PHYSICAL TAKING RATHER THAN AN INTELLECTUAL ONE."

SERIES, SERIES

SERIES

NO SERIES!

PHYSICAL TAKING!!? IF YOU TAKE MY SHOES, I DON'T HAVE MY SHOES. IF YOU TAKE THE BEAT OF MY SONG, I DON'T LOSE THE SONG!!

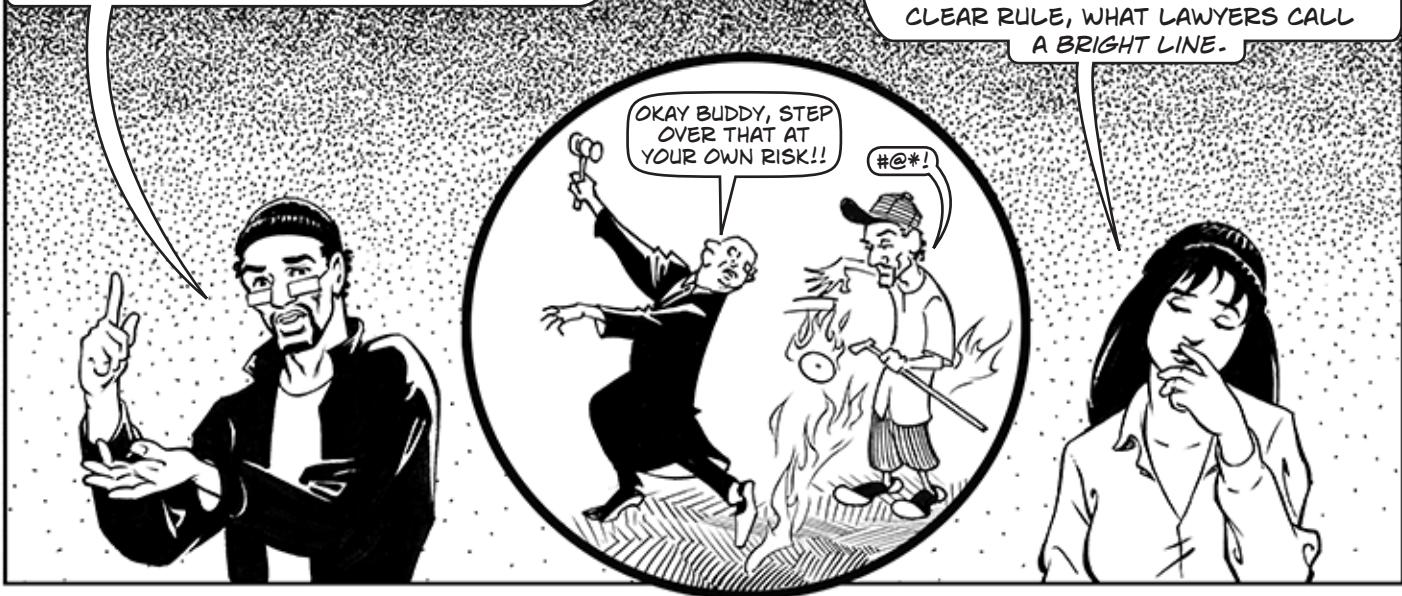
SO TAKING ANY AMOUNT OF A SOUND RECORDING COULD BE A COPYRIGHT INFRINGEMENT!!!!

WELL, THE COURT DID SAY THAT THERE WOULD PROBABLY HAVE TO BE TWO NOTES, OTHERWISE IT WOULD NOT BE A "SERIES."

KIND OF THEM..

BUT WHY? WHY MAKE THE RULES SO DIFFERENT FOR BORROWING FROM A RECORDING AND BORROWING FROM A COMPOSITION? IF THEY SAID "GET A LICENSE OR DO NOT SOLO," EVERYONE WOULD THINK IT WAS CRAZY!!

PART OF THE REASON WAS THAT THE COURT READ THE STATUTE IN A WAY THAT NO COURT HAD EVER DONE BEFORE. BUT THE OTHER REASON WAS THAT THEY THOUGHT THIS WOULD BE A REALLY CLEAR RULE, WHAT LAWYERS CALL A BRIGHT LINE. !



"GET A LICENSE OR DO NOT SAMPLE!!"
WELL, IT IS CERTAINLY CLEAR...

...THOUGH NOT
VERY BRIGHT!

THE COURT INITIALLY SUGGESTED THERE WAS NO FAIR USE EITHER. THEN AFTER A STORM OF PROTEST, THEY ISSUED A NEW OPINION SAYING THEY TOOK NO POSITION ON FAIR USE.



BUT IF WE STILL HAVE TO JUDGE FAIR USE, THEN WHERE IS THE BRIGHT LINE?

FAIR USE?
I NEVER
MENTIONED
FAIR USE...

THAT WILL STILL
HAVE TO BE DONE
CASE BY CASE...

EXACTLY...



VMG Salsoul v. Madonna Louise Ciccone,
824 F.3d 871 (9th Cir. 2016) (Judge Susan P. Graber)

IN 2016, A FEDERAL APPEALS COURT IN CALIFORNIA REJECTED THIS "BRIGHT LINE" RULE AND SAID THAT THE "DE MINIMIS" EXCEPTION DOES APPLY TO SAMPLING.

STRIKE A CHORD!

MADONNA'S SONG VOGUE SAMPLED A .23 SECOND "HORN HIT" FROM A SONG KNOWN AS LOVE BREAK, AND CHANGED IT TO CREATE A DIFFERENT SOUND.

THE COURT SAID THIS WAS DE MINIMIS - NO ONE WOULD HAVE RECOGNIZED THE SAMPLE'S SOURCE.

DUH? LESS THAN A QUARTER SECOND OF MUSIC?! OF COURSE! BUT I GUESS BRIDGEPORT WOULD STILL HAVE SAID "GET A LICENSE OR DO NOT SAMPLE"?

SO...NOW SAMPLING A TINY AMOUNT IS CLEARLY LEGAL?

YES...AND THE JUDGE WENT SOME LENGTHS TO REFUTE BRIDGEPORT'S REASONING.

"[MY] COMMON-SENSE CONCLUSION IS BORNE OUT BY DRY ANALYSIS...."

NO. AS OF 2016, WE HAVE TWO APPEALS COURTS DISAGREEING. THERE IS NO CLEAR NATIONAL RULE.

"Get a license or do not sample."
(6th Cir. 2005)

The 'de minimis' exception applies to infringement actions concerning copyrighted sound recordings, just as it applies to all other copyright infringement actions.
(9th Cir. 2016)

BRIDGEPORT ONLY REINFORCED AN INDUSTRY PRACTICE OF LICENSING EVERYTHING. WILL THIS DECISION CHANGE THAT? TOO SOON TO TELL.



SO THE MUSIC THAT BEGAN WITH DJ KOOL HERC, WEAVING SONGS TOGETHER...

COME ON NOW
B-BOYS AND
B-GIRLS!!

...AND GOT EVEN MORE
COMPLEX WITH SAMPLERS LIKE
DE LA SOUL AND PUBLIC ENEMY...

...THAT MUSIC IS
MUCH SIMPLER NOW...

THINK OF A SONG LIKE PUFF DADDY'S
I'LL BE MISSING YOU. IT'S ONE
HUGE SAMPLE OF THE POLICE'S
EVERY BREATH YOU TAKE...

AND IT'S NOT
JUST CREATIVITY, IT'S
ACCESS - YOU CAN'T
STREAM OR BUY DE LA
SOUL'S EARLY ALBUMS
ONLINE BECAUSE OF
SAMPLE CLEARANCE
PROBLEMS.

WE'RE IN THE LIBRARY
OF CONGRESS, BUT
WE'RE NOT ON iTUNES.
PEOPLE KEEP ASKING
"YO, WHERE'S THE
OLD STUFF?"

EMU SYSTEMS

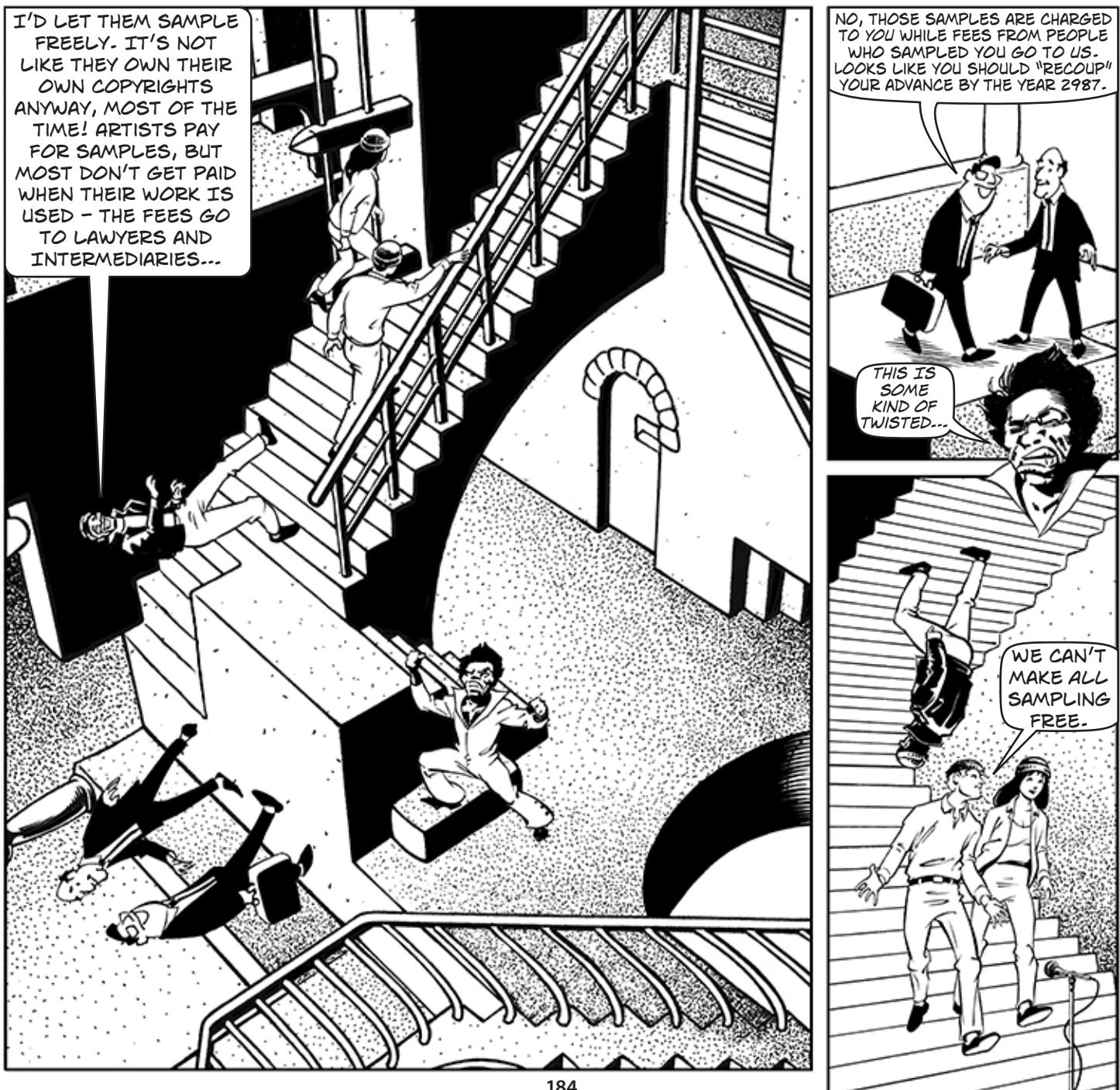
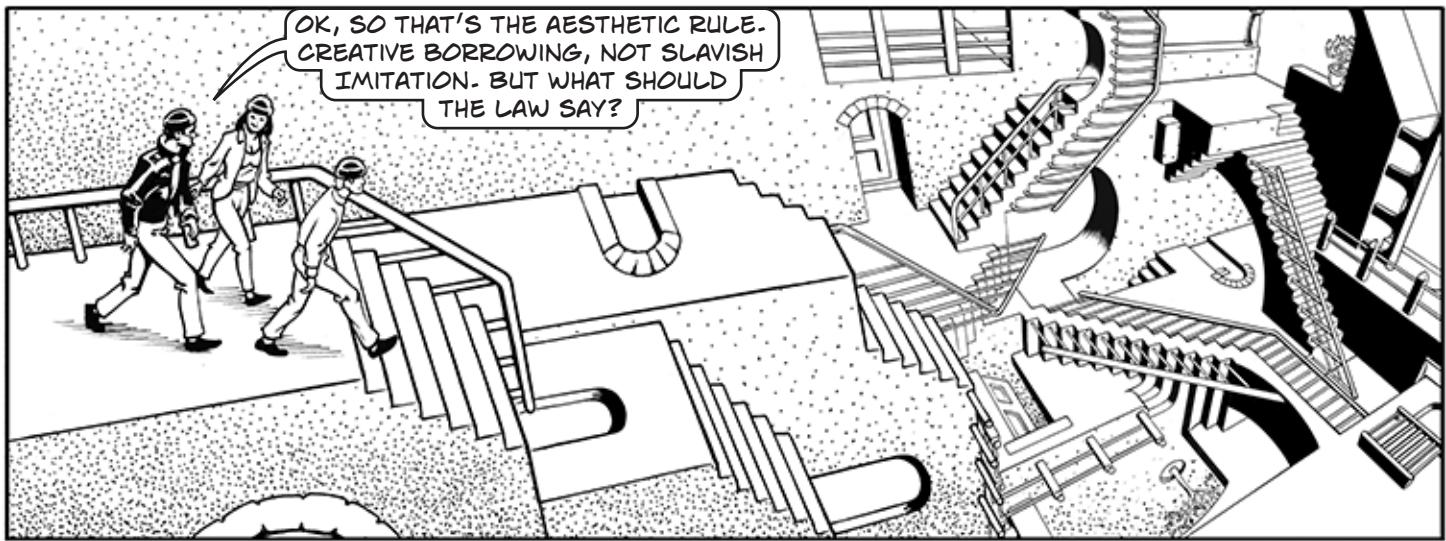


THAT'S JUST NONSENSE. HAVE YOU LISTENED TO THIS STUFF? AUTOTUNED SINGING BY PEOPLE WHO CAN'T SING, ON TOP OF TUNES THEY DIDN'T WRITE, ALL OVER A BEAT STOLEN FROM SOME GREAT BLACK ARTIST FROM THE PAST WHO DIDN'T GET PAID.

"STOLEN?" THEN WHY ISN'T JAZZ STEALING? YOU'RE ONE OF THOSE PEOPLE WHO NEVER LOVES AN ART FORM UNTIL IT'S DEAD.



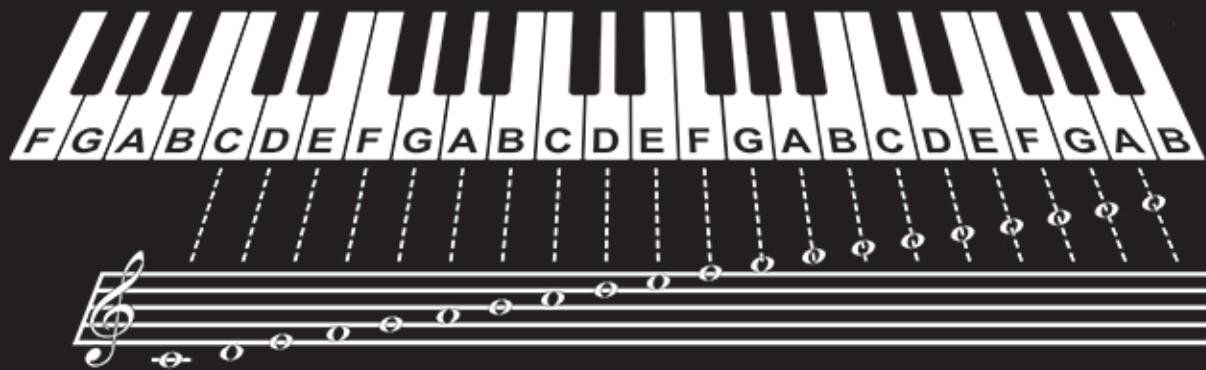




WHEN BIZ MARKIE OR MR. COMBS TAKES A LARGE CHUNK OF A SONG TO MAKE A NEW COMMERCIAL PRODUCT THEY SHOULD PAY FOR THE PRIVILEGE.

YES, BUT EVERY JAZZ MUSICIAN WHO USES CHORDS FROM I GOT RHYTHM DOESN'T NEED A LICENSE...





MIX AND MATCH AS YOU WILL!

OK, FAIR POINT. BUT WHAT ABOUT THE TIMES WHEN THE MUSIC WASN'T COPIED? OR THE MUSICIAN **SAYS** IT WASN'T? LOTS OF TUNES SOUND LIKE EACH OTHER...



AFTER ALL, IN WESTERN MUSIC THERE ARE ONLY TWELVE NOTES AND THEN YOU REPEAT...



"WHILE THERE ARE AN ENORMOUS NUMBER OF POSSIBLE PERMUTATIONS OF THE MUSICAL NOTES OF THE SCALE, ONLY A FEW ARE PLEASING; AND MUCH FEWER STILL SUIT THE INFANTILE DEMANDS OF THE POPULAR EAR."



Darrell v. Joe Morris Music, 113 F.2d 80 (2d Cir. 1940)

A GUY WHOSE NAME IS LEARNED HAND WAS DISSING POPULAR TASTE!?? WHAT ABOUT PARENTS' TASTE IN KIDS' NAMES?

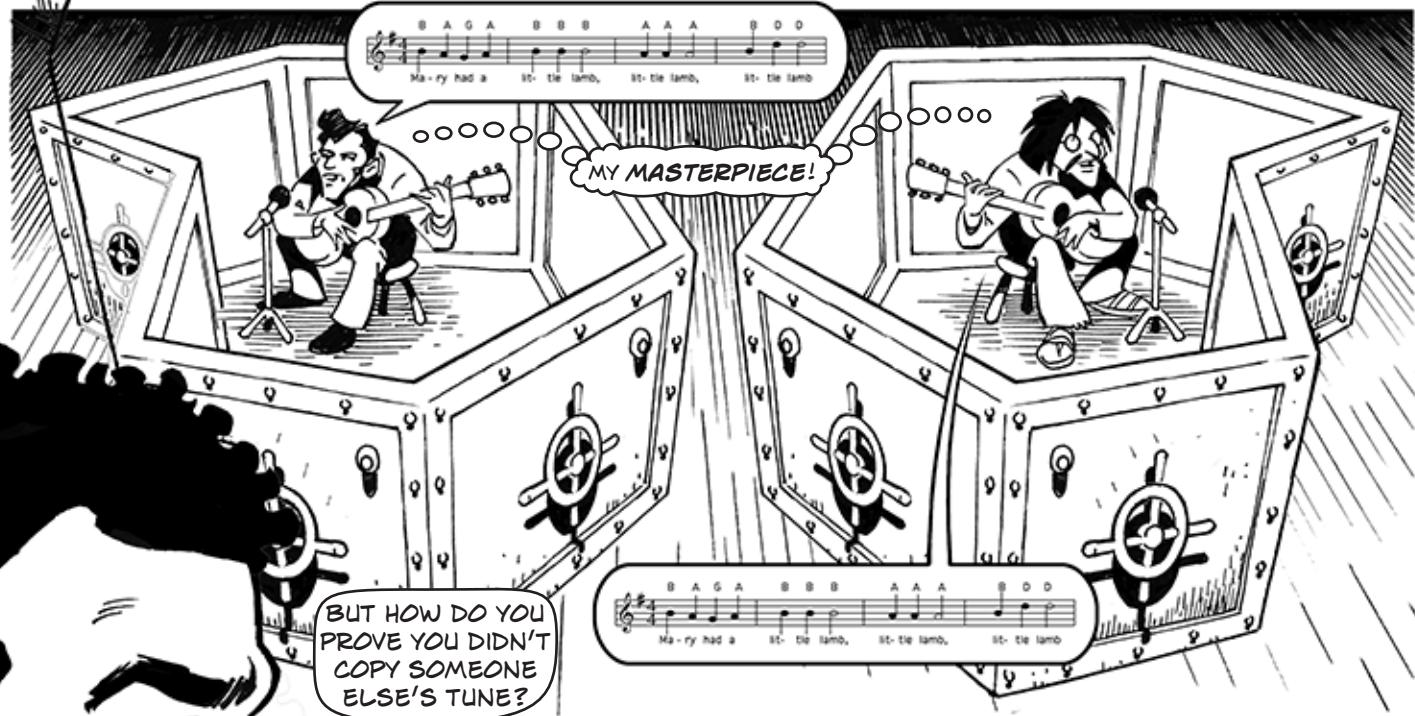


LEARNED WAS HIS MOTHER'S MAIDEN NAME, ACTUALLY...AND HIS REAL FIRST NAME WAS BILLINGS. BUT WE DIGRESS...



SO WHAT HAPPENS WHEN THE MUSICIAN CREATES THE MELODY HIMSELF? THAT'S NOT COPYRIGHT INFRINGEMENT, RIGHT? EVEN IF THE TUNES ARE IDENTICAL?

RIGHT - LAWYERS CALL THAT "INDEPENDENT CREATION" AND IT'S A DEFENSE.



BUT HOW DO YOU PROVE YOU DIDN'T COPY SOMEONE ELSE'S TUNE?

THAT TURNS OUT TO BE HARD...BASICALLY THE COURTS LOOK TO WHETHER YOU HAD ACCESS TO THE OTHER PERSON'S SONG, AND WHETHER YOUR SONG IS "SUBSTANTIALLY SIMILAR."

WHICH TAKES US BACK TO THE QUESTION YOU ASKED ABOUT THE BEATLES. SPECIFICALLY, GEORGE HARRISON.

THAT WAS PAGES AGO!



REMEMBER THE SONG BY
THE CHIFFONS, HE'S SO FINE?

HE'S SO FINE
[DO-LANG-DO-
LANG-DO-LANG]

I SO WANTED TO BE "THE BOY
WITH THE WAVY HAIR" THEY
WERE TALKING ABOUT.



[DO-LANG-DO-LANG-DO-LANG]
---I DON'T KNOW HOW I'M GOING TO DO IT,
BUT I'M GONNA MAKE HIM MINE---

AND REMEMBER GEORGE
HARRISON'S MY SWEET LORD?

MY SWEET LORD, MMM MY LORD.
---I REALLY WANT TO SEE YOU, ♫
REALLY WANT TO BE WITH YOU...



WELL, I ADMIT THEY SOUND
PRETTY SIMILAR...BUT I DON'T
THINK GEORGE HARRISON
WOULD HAVE DELIBERATELY
COPIED THE CHIFFONS...

THE JUDGE AGREED
WITH YOU!



SO
HARRISON
WON?

NOT
EXACTLY...



Bright Tunes Music v. Harrisongs Music,
420 F. Supp. 177 (S.D.N.Y. 1976)

A court ruled George Harrison infringed copyright by subconsciously copying The Chiffons' song *He's So Fine* in *My Sweet Lord*.

"HIS SUBCONSCIOUS KNEW IT ALREADY HAD WORKED IN A SONG HIS CONSCIOUS MIND DID NOT REMEMBER.... DID HARRISON DELIBERATELY USE THE MUSIC OF HE'S SO FINE? I DO NOT BELIEVE HE DID SO DELIBERATELY. NEVERTHELESS, IT IS CLEAR THAT MY SWEET LORD IS THE VERY SAME SONG AS HE'S SO FINE WITH DIFFERENT WORDS, AND HARRISON HAD ACCESS TO HE'S SO FINE. THIS IS, UNDER THE LAW, INFRINGEMENT OF COPYRIGHT, AND IS NO LESS SO EVEN THOUGH SUBCONSCIOUSLY ACCOMPLISHED."

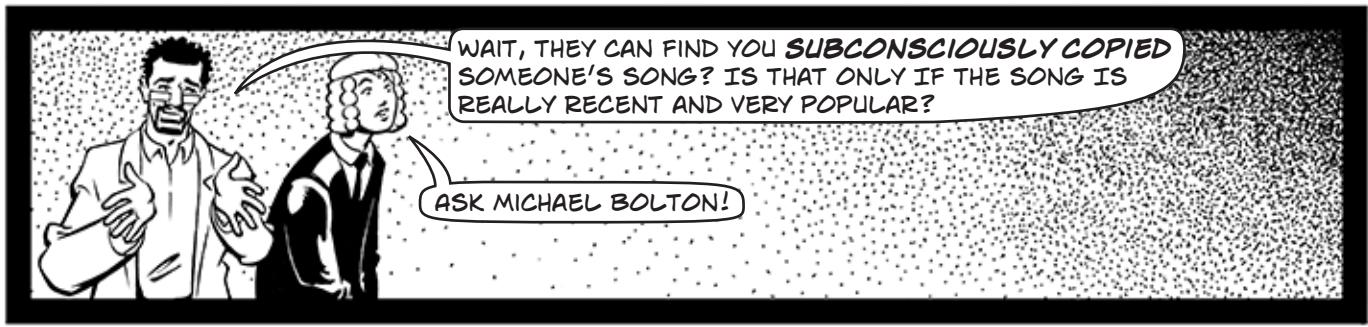
JUDGE RICHARD OWEN

MY LITTLE SUBCONSCIOUS IS ALL GROWN UP AND INFRINGING COPYRIGHT!

SOMETIMES A DO-LANG IS ONLY A DO-LANG.

THAT SOUNDS SO FINE
BUT I THINK IT'S MINE...
DO-LANG-DO-LANG-DO-LANG...

I WAS JUST VAMPING
SOME CHORDS AND NEXT
THING YOU KNOW...
HAL-LE-SUE-YA!



Three Boys Music v. Michael Bolton, 212 F.3d 477 (9th Cir. 2000)

A court upheld a \$5.4 million jury verdict against singer Michael Bolton for subconsciously copying an Isley Brothers' song that he might have heard in his youth.



SO IF I WRITE A SONG THAT SOUNDS LIKE ANOTHER SONG, I CAN BE ACCUSED OF COPYRIGHT INFRINGEMENT IF I COULD HAVE HEARD IT AND COULD HAVE SUBCONSCIOUSLY COPIED IT?

NOT QUITE. COURTS DON'T PRESUME YOU HEARD THE OTHER SONG UNLESS THE TWO ARE "STRIKINGLY" SIMILAR. BUT EVIDENCE OF ACCESS CAN BE PRETTY REMOTE. THINK OF MICHAEL BOLTON!

SO I AM SUPPOSED TO LIVE IN A MUSICAL "CLEAN ROOM"...?!

AND MUSICIANS ARE SUPPOSED TO FLEE ANY POSSIBLE MUSICAL INSPIRATION?!

LOOK OUT!
HE'S GOT A
BOOMBOX!
RUN!!!!

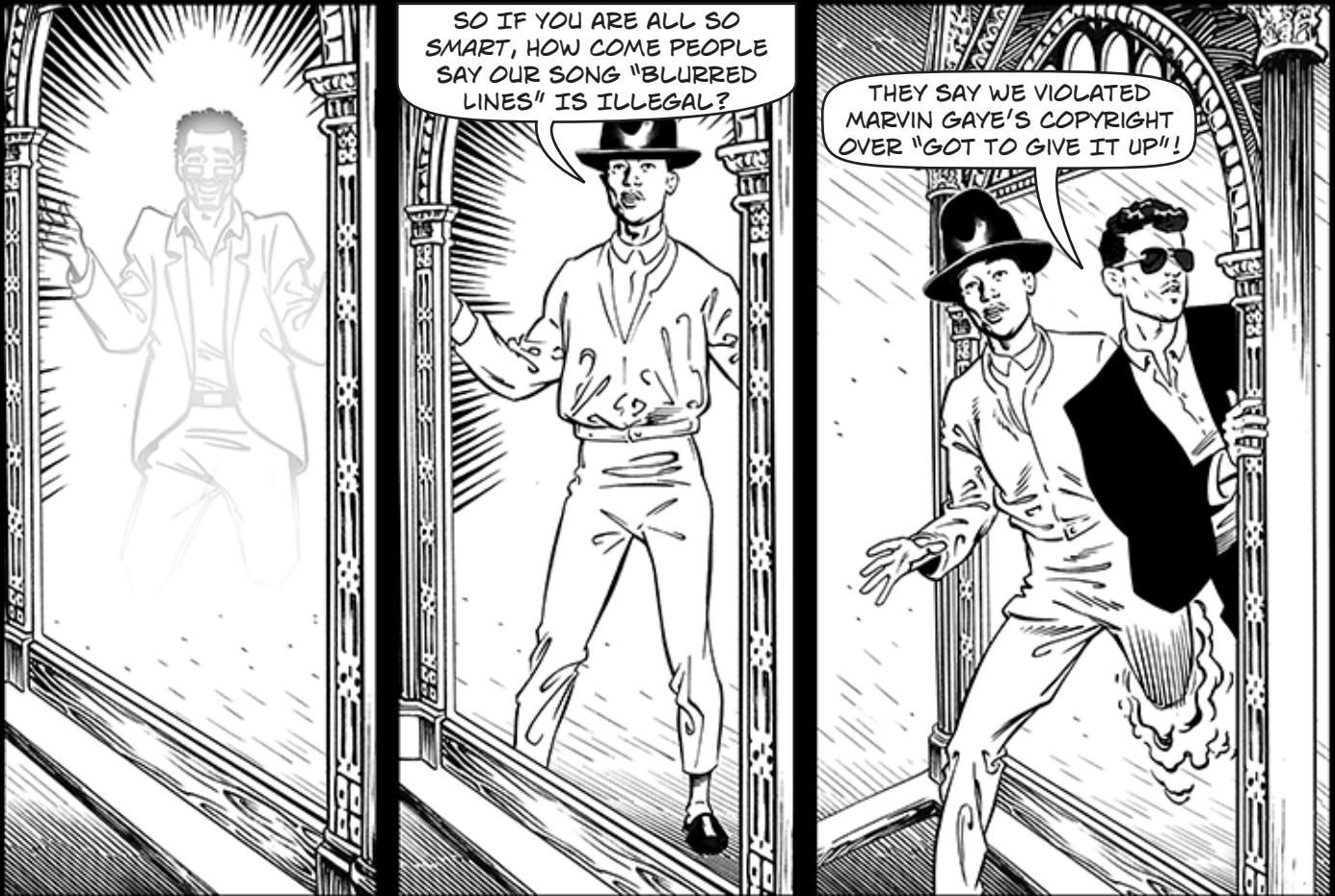


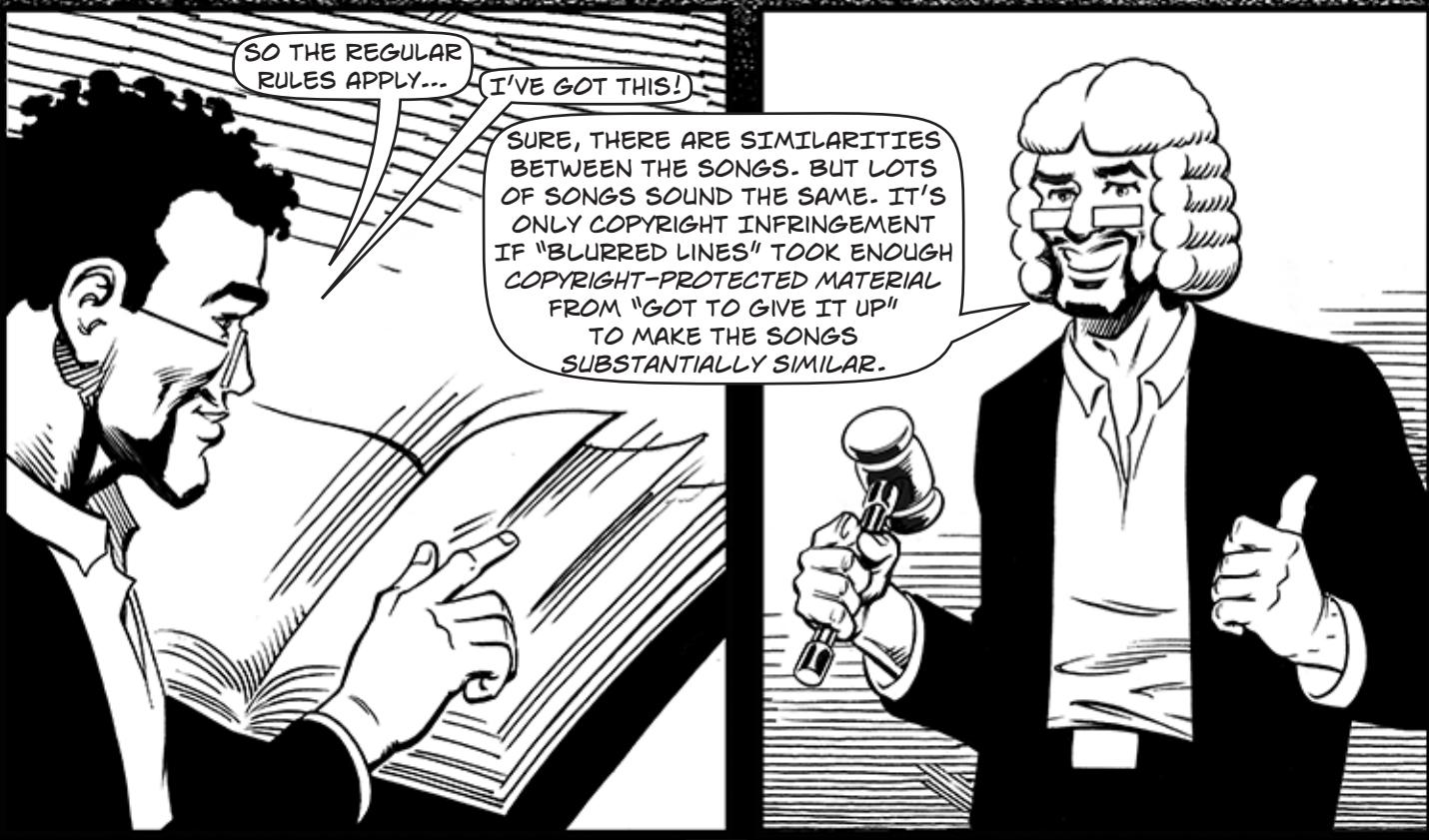
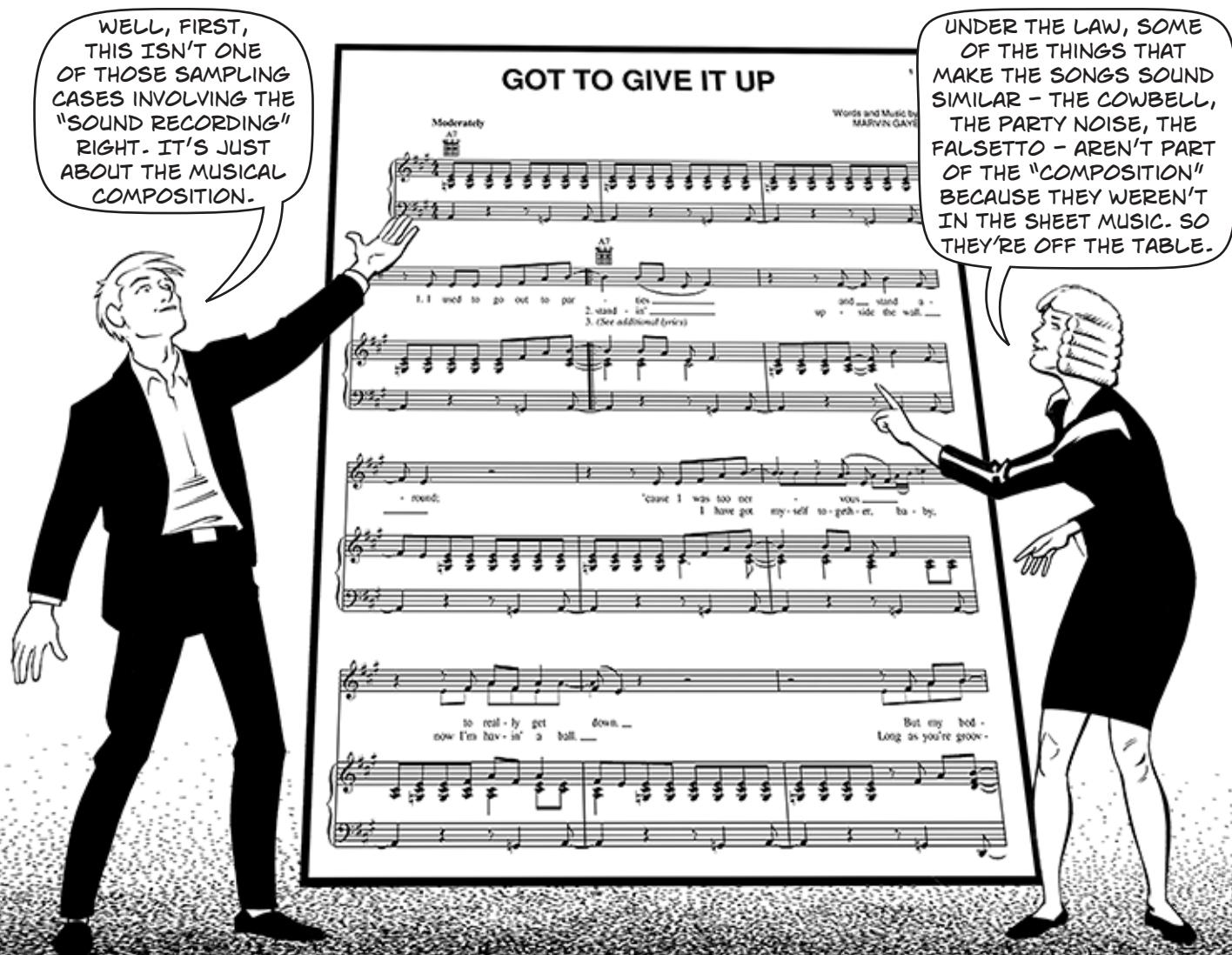
OH, OH, IT'S HAPPENING AGAIN...

THAT'S ABSURD!

NO IT'S NOT!









COPYRIGHT DOESN'T COVER ANYTHING THAT ISN'T "ORIGINAL" - MARVIN GAYE GOT A COPYRIGHT OVER WHAT HE CREATED. NOT THE STUFF HE BORROWED FROM OTHER SONGS.

YEAH, LIKE THE STUFF FROM JOHNNIE TAYLOR'S "DISCO LADY" - GAYE USED THAT!

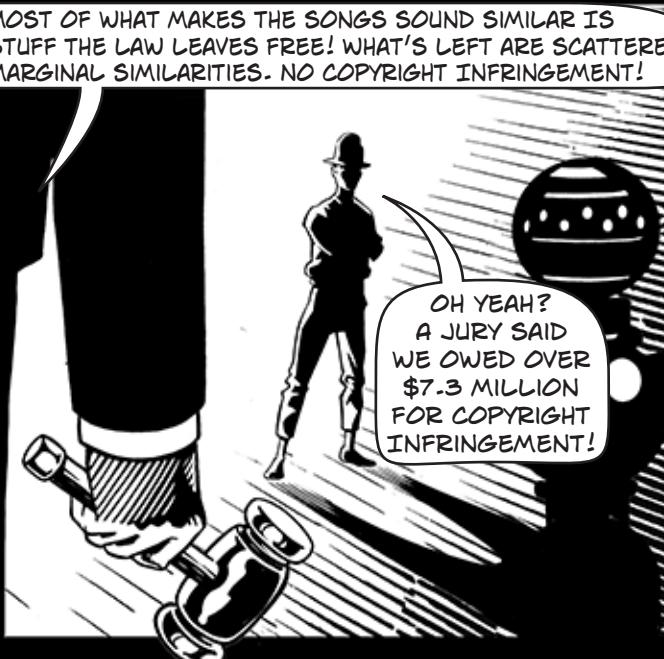
AND COPYRIGHT DOESN'T COVER "SCÈNES À FAIRE." ALL OF THOSE DEFINING STOCK ELEMENTS OF FUNK, DISCO, OR MOTOWN...MARVIN GAYE, PHARRELL WILLIAMS, MARK RONSON, EVEN MILEY CYRUS WOULD BE FREE TO BUILD UPON THEM.



MOST OF WHAT MAKES THE SONGS SOUND SIMILAR IS STUFF THE LAW LEAVES FREE! WHAT'S LEFT ARE SCATTERED, MARGINAL SIMILARITIES. NO COPYRIGHT INFRINGEMENT!

OH YEAH?
A JURY SAID
WE OWED OVER
\$7.3 MILLION
FOR COPYRIGHT
INFRINGEMENT!

OK, WHAT
HAPPENED
THIS TIME?



WELL THIS WAS
A JURY VERDICT...

THOUGH A JUDGE DID DECIDE
THE CASE WAS WORTH
SENDING TO THE JURY.

THE JURY WAS TOLD TO LOOK FOR
"INTRINSIC SIMILARITY," AND TO
BASE THEIR DECISION ON
THE "TOTAL CONCEPT
AND FEEL" OF
THE SONGS.

JURY INSTRUCTION NO. 43

Intrinsic similarity is shown if an ordinary, reasonable listener would consider that the total concept and feel of the Gaye Parties' work and the Thicke Parties' work are substantially similar ...

WAIT. HOW CAN YOU COMPARE "TOTAL
CONCEPT AND FEEL" WITHOUT INCLUDING
ALL OF THE UN-PROTECTABLE MATERIAL
I JUST MENTIONED? THAT'S WHACK!

IT IS,
INDUBITABLY,
"WHACK!!!

"YOUR HONOR, I WOULD SUBMIT
THAT THE 9TH CIRCUIT'S APPLICATION
OF THE INTRINSIC SIMILARITY TEST
IS WHACK! ALSO, POSSIBLY BOGUS."

YEAH. WE SAY WE ARE FILTERING
OUT ALL THE UNPROTECTED
STUFF, AND THEN LET IT ALL
BACK IN BY ASKING ABOUT
"TOTAL CONCEPT AND FEEL."

THICKE'S TESTIMONY DIDN'T
HELP. PARTICULARLY THE STUFF
ABOUT BOOZE AND VICODIN.

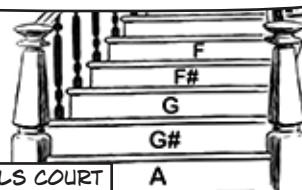
IT WAS A TOUGH TIME! AND
FEEL FREE TO CUT SONGS
WRITTEN UNDER THE INFLUENCE
OUT OF YOUR MUSIC LIBRARY.
PLAYLISTS WILL BE SHORT!

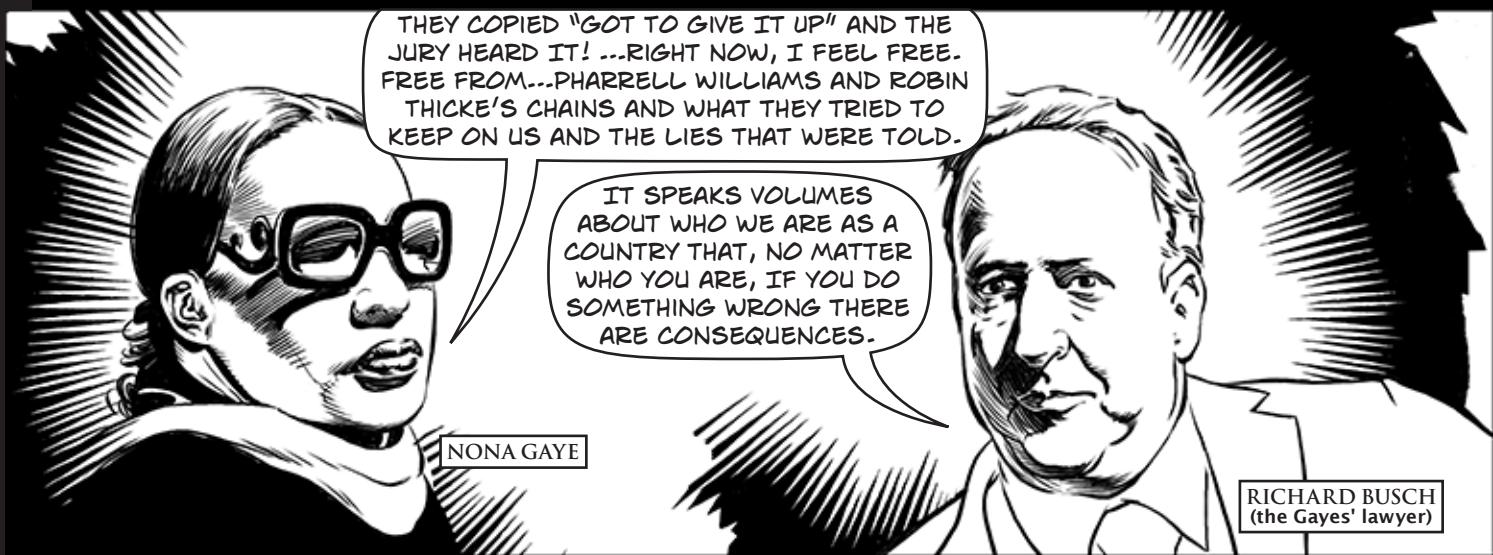
THE JUDGE DID REDUCE THE \$7.3 MILLION
TO AROUND \$5.3 MILLION, PLUS 50% OF
FUTURE PUBLISHING REVENUE.

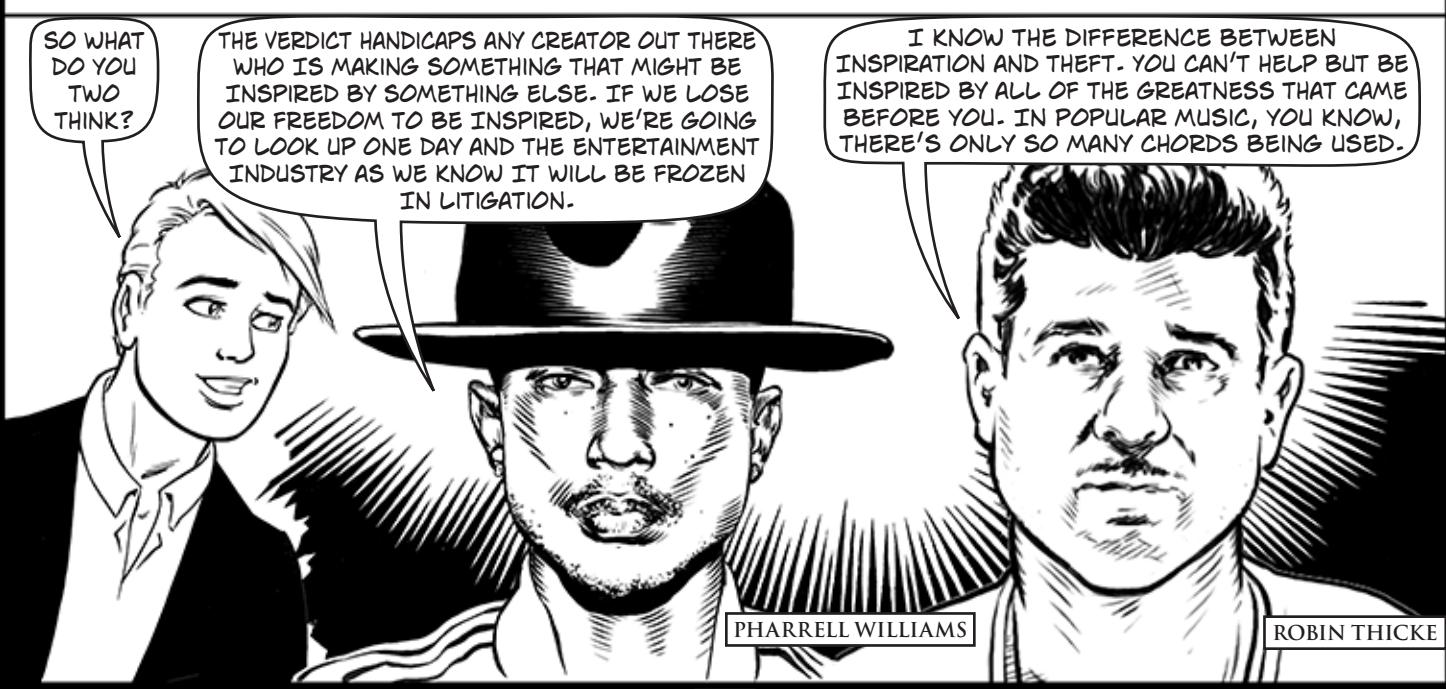
JURIES SOMETIMES COME OUT THE
OTHER WAY. A JURY FOUND LED ZEPPELIN'S
STAIRWAY TO HEAVEN WASN'T SUBSTANTIALLY
SIMILAR TO SPIRIT'S TAURUS. THERE, THE
JUDGE CAREFULLY LIMITED THE EVIDENCE TO
SIMILARITIES IN THE COMPOSITIONS, NOT THE
RECORDINGS, AND THE JURY INSTRUCTIONS
EXCLUDED "UNORIGINAL" MATERIAL.

POCKET
CHANGE!

UPDATE: IN MARCH 2018, A FEDERAL APPEALS COURT
UPHELD THE VERDICT AGAINST THICKE AND WILLIAMS.







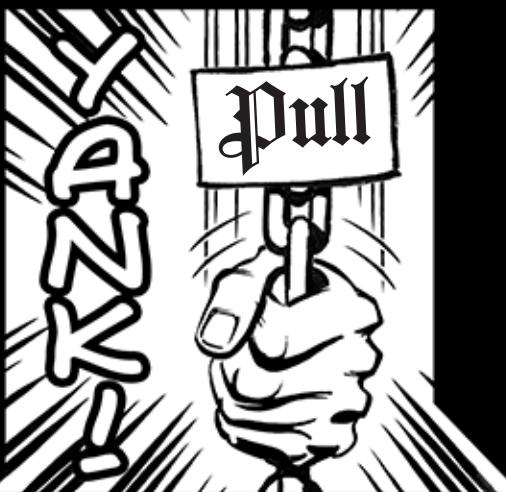
COPYRIGHT IS SUPPOSED TO LEAVE ROOM FOR MUSICIANS TO BUILD ON THEIR INSPIRATIONS. I'M FEELING LESS CONFIDENT ABOUT THAT NOW.

ME TOO. WHAT'S BORROWED HERE IS A FEEL. LIKE I SAID BEFORE, NO INFRINGEMENT!

COPYRIGHT'S RULES - SUCH AS "SCÈNES À FAIRE" - TRY TO DRAW A LINE BETWEEN CREATIVE FREEDOM AND INFRINGEMENT.

BUT VERDICTS LIKE THIS COULD LEAD TO...

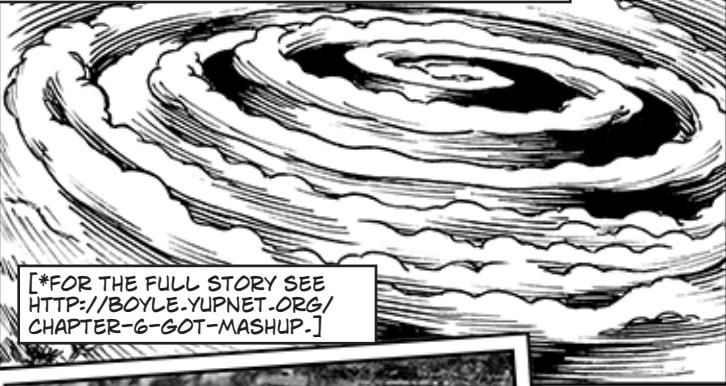
BLURRED LINES!



I GOT A MASHUP
~ A SONG'S TALE ~



IN 2005 A HURRICANE MADE LANDFALL IN NEW ORLEANS. ITS NAME WAS KATRINA.*



Doppler Radar 600-Mile



DAMIEN RANDLE AND MICAH NICKERSON WERE TWO HOUSTON HIP HOP ARTISTS. THE DUO WAS CALLED THE "LEGENDARY K.O."...



AFTER HURRICANE KATRINA, THEY WERE VOLUNTEERING IN THE HOUSTON ASTRODOME...



THEY DIDN'T LIKE WHAT THEY SAW. BOTH THE SLOWNESS OF THE RESPONSE AND THE WAY THE DISASTER WAS COVERED MADE THEM PROFOUNDLY UNHAPPY.



ONE NIGHT, THE RAPPER KANYE WEST APPEARED ON A TELETHON FOR VICTIMS OF KATRINA.

OVERCOME BY EMOTION, WEST UTTERED THE WORDS THAT WOULD IGNITE A CONTROVERSY AROUND THE COUNTRY.

I HATE THE WAY THEY PORTRAY US IN THE MEDIA.

OO

IF YOU SEE A BLACK FAMILY, IT SAYS "THEY'RE LOOTING"...

YOU SEE A WHITE FAMILY, IT SAYS "THEY'RE LOOKING FOR FOOD."

AND YOU KNOW, IT'S BEEN FIVE DAYS BECAUSE MOST OF THE PEOPLE ARE BLACK.

...THEY'VE GIVEN THEM PERMISSION TO GO DOWN AND SHOOT US...

GEORGE BUSH DOESN'T CARE ABOUT BLACK PEOPLE.

IN 2016, MR. WEST SAID HE WOULD HAVE VOTED FOR DONALD TRUMP FOR PRESIDENT, HAD HE VOTED. MR. BUSH MIGHT FIND HIS CONCERN FOR RACIAL JUSTICE STRANGELY EPISODIC. -EDS.



THE LEGENDARY K.O. SHARED WEST'S OUTRAGE.



AND THEY WEREN'T JUST VOLUNTEERS,
THEY WERE ALSO HIP HOP ARTISTS.

SO THEY DECIDED TO
WRITE A SONG ABOUT IT.

A SONG CALLED...

GEORGE BUSH
DOESN'T CARE ABOUT
BLACK PEOPLE



WANTING TO REFERENCE WEST'S WORDS, THE LEGENDARY K.O. REMIXED GOLD DIGGER...



CUTIE DA BOMB
MET HER AT A BEAUTY SALON
WITH A BABY LOUIS VUITTON
UNDER HER UNDER ARM

CAN'T USE THE CELL PHONE, I KEEP GETTIN' STATIC
DYIN' 'CAUSE THEY LYIN' INSTEAD OF TELLIN' US THE TRUTH
OTHER DAY THE HELICOPTERS GOT MY NEIGHBORS OFF
THE ROOF?

...CHANGED THE WORDS...

...EXCHANGED VERSES
BY INSTANT MESSAGE...

FIFTEEN MINUTES LATER IT
WAS UP ONLINE. WITHIN DAYS,
HUNDREDS OF THOUSANDS
OF PEOPLE HAD HEARD IT.

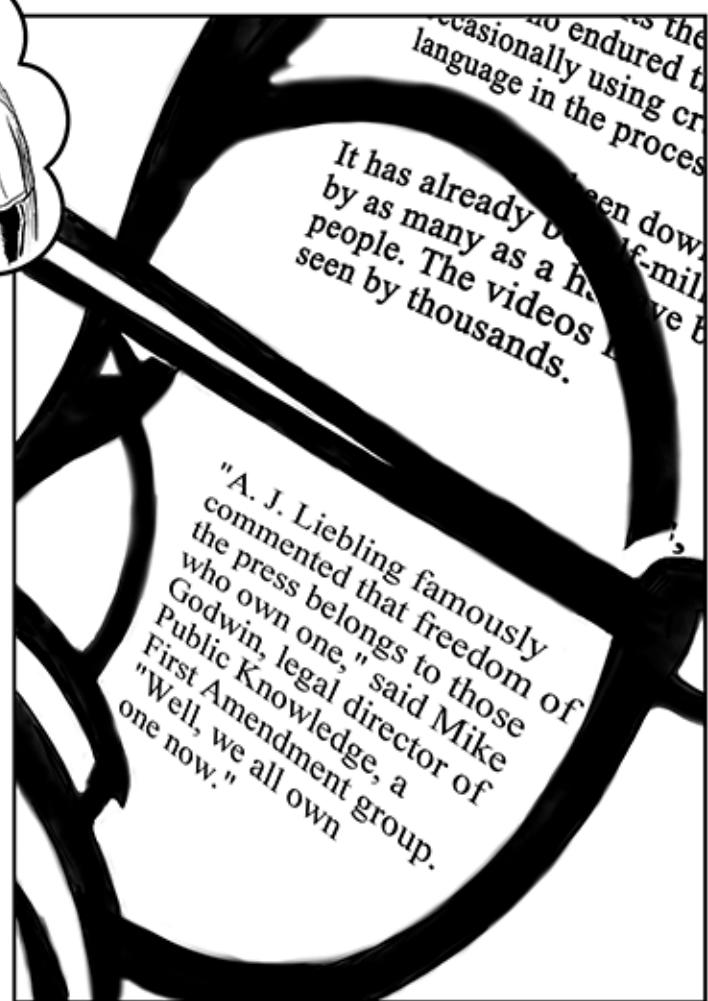
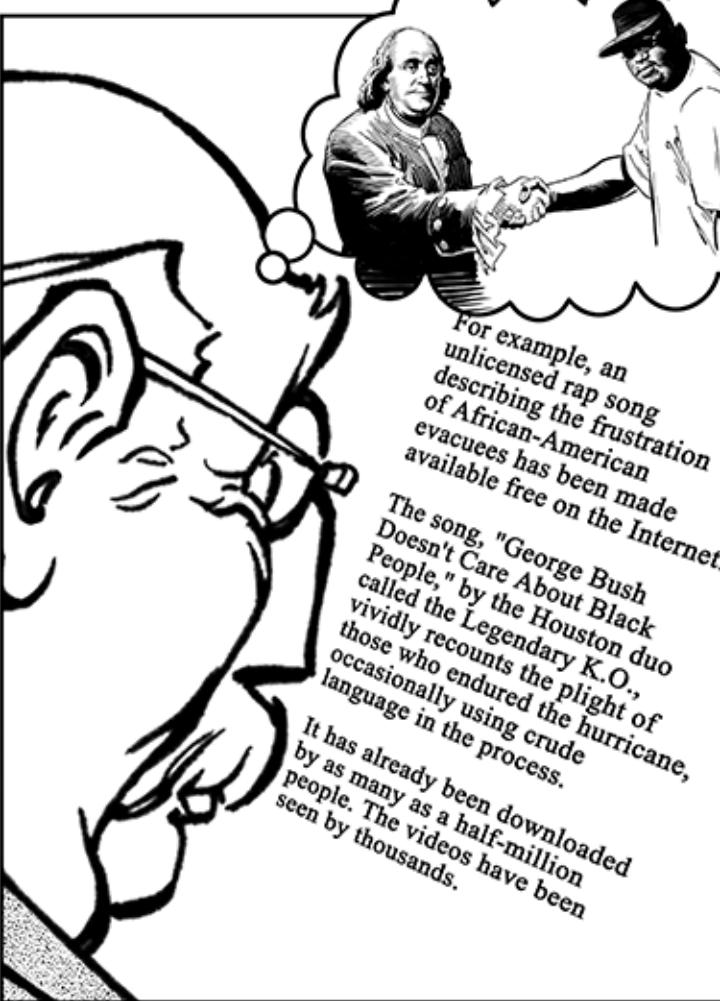
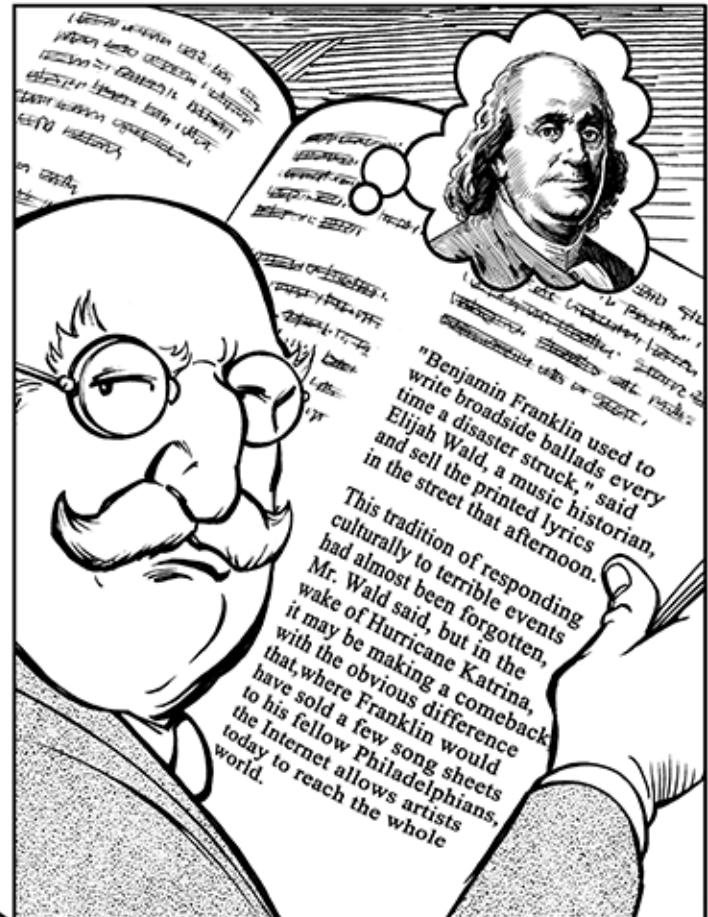
THEN FILMMAKERS MADE
VIDEO VERSIONS OF THE
SONG, TAKING IMAGES FROM
THE NEWS COVERAGE AND
ADDING K.O.'S MUSIC TO IT...

...MANY MORE PEOPLE
SAW THOSE.



A SONG WRITTEN IN MINUTES,
FOR PENNIES, WAS REACHING
A HUGE AUDIENCE.

THE NEW YORK TIMES
PUBLISHED AN ARTICLE
ABOUT IT...







I GOT A WOMAN HAD BEEN HAILED
AS ONE OF THE FIRST SOUL SONGS.



SOUL TAKES THE ECSTATIC
MUSIC OF GOSPEL...



...AND FUSES IT WITH THE
EARTHY SOUNDS OF THE BLUES.

IN PLACE OF
DIVINE PRAISE...



...SOUL SUBSTITUTED A MESSAGE
OF PROFANE DESIRE.





CHARLES HAD ALWAYS BUILT HIS SONGS ON OTHER MUSIC - HE MADE NO BONES ABOUT IT.

AT THE START OF HIS CAREER, HE MODELED HIMSELF ON NAT KING COLE.



...IT WAS SOMETHING LIKE WHEN A YOUNG LAWYER - JUST OUT OF SCHOOL - RESPECTS AN OLDER LAWYER. HE TRIES TO GET INSIDE HIS MIND, HE STUDIES TO SEE HOW HE WRITES UP ALL HIS CASES, AND HE'S GOING TO SOUND A WHOLE LOT LIKE THE OLDER MAN - AT LEAST TILL HE FIGURES OUT HOW TO GET HIS OWN SHIT TOGETHER. TODAY I HEAR SOME SINGERS WHO I THINK SOUND LIKE ME - JOE COCKER, FOR INSTANCE. MAN, I KNOW THAT CAT MUST SLEEP WITH MY RECORDS. BUT I DON'T MIND. I'M FLATTERED; I UNDERSTAND. AFTER ALL, I DID THE SAME THING.

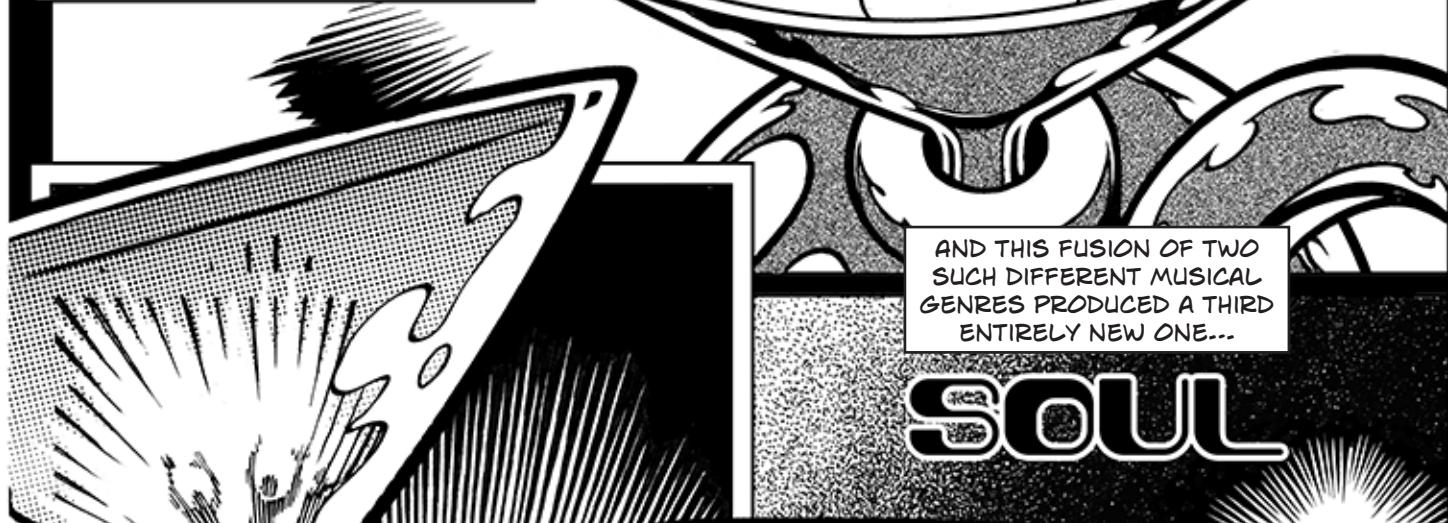
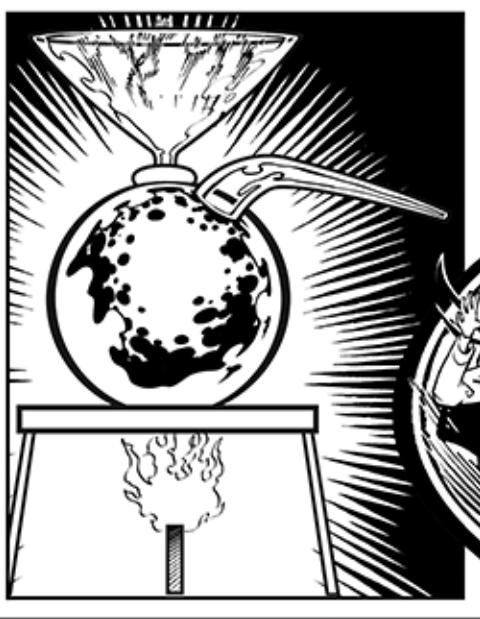


FUNNY THING, BUT DURING ALL THESE YEARS I WAS IMITATING NAT COLE, I NEVER THOUGHT TWICE ABOUT IT, NEVER FELT BAD ABOUT COPYING THE CAT'S LICKS. TO ME IT WAS PRACTICALLY A SCIENCE. I WORKED AT IT, I ENJOYED IT, I WAS PROUD OF IT, AND I LOVED DOING IT...

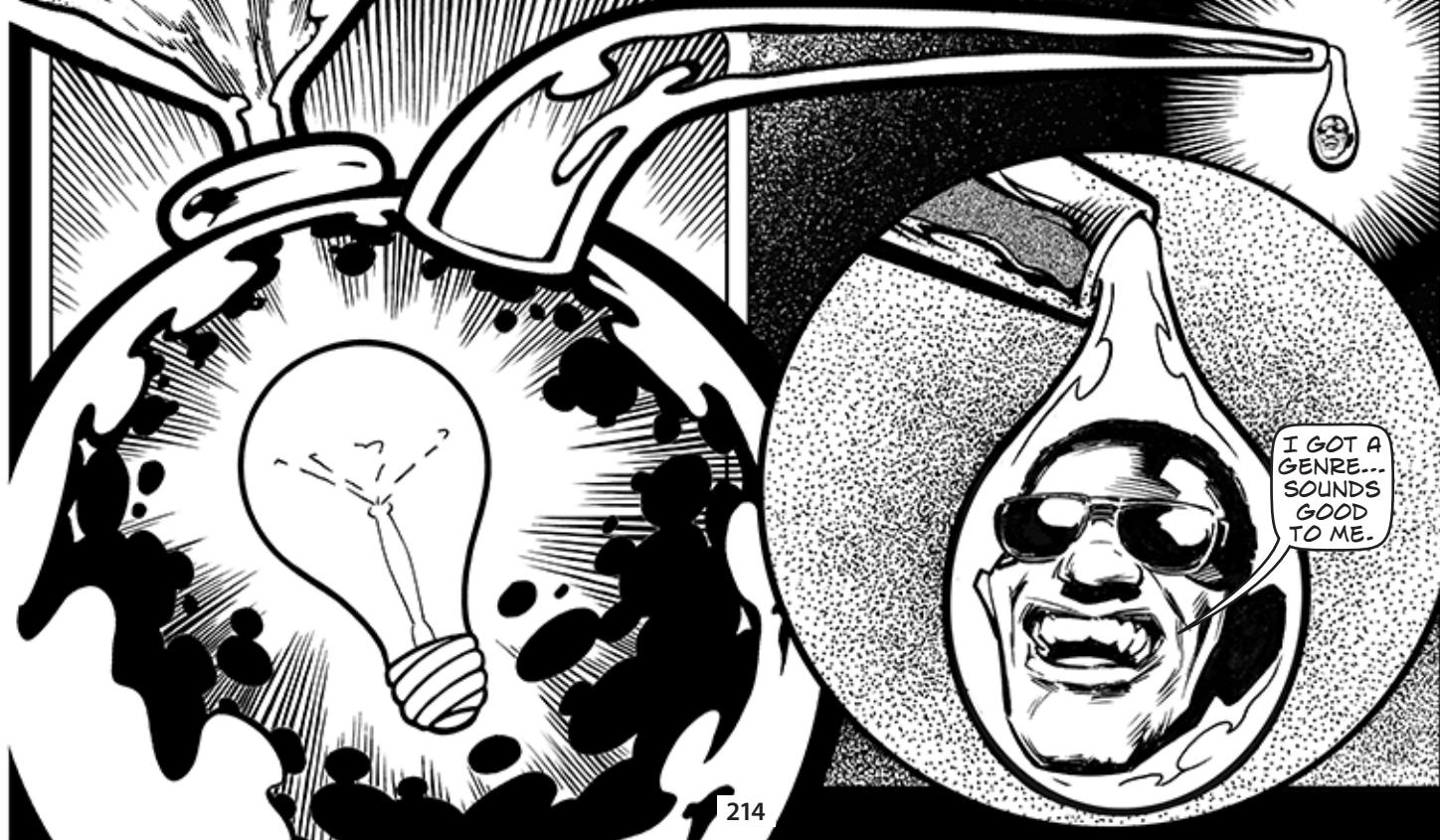


BUT THE PROCESS OF BORROWING WENT FURTHER THAN THAT. CHARLES HAD ALWAYS LIVED IN TWO MUSICAL WORLDS.



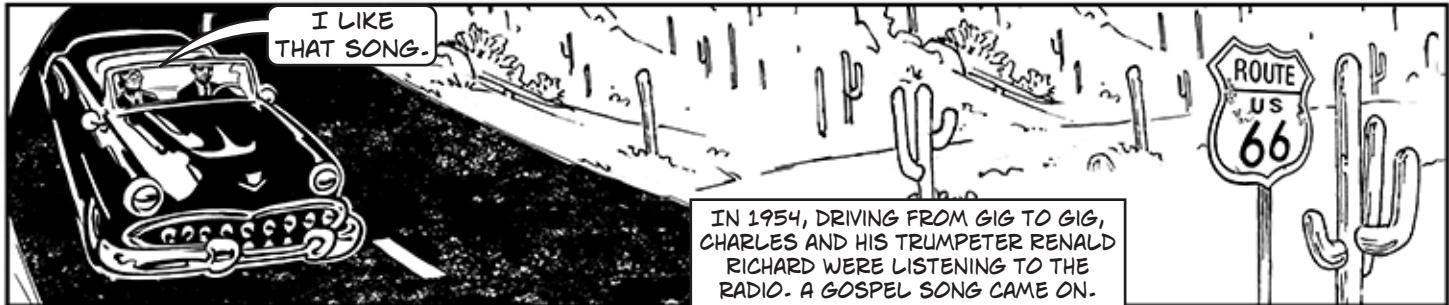


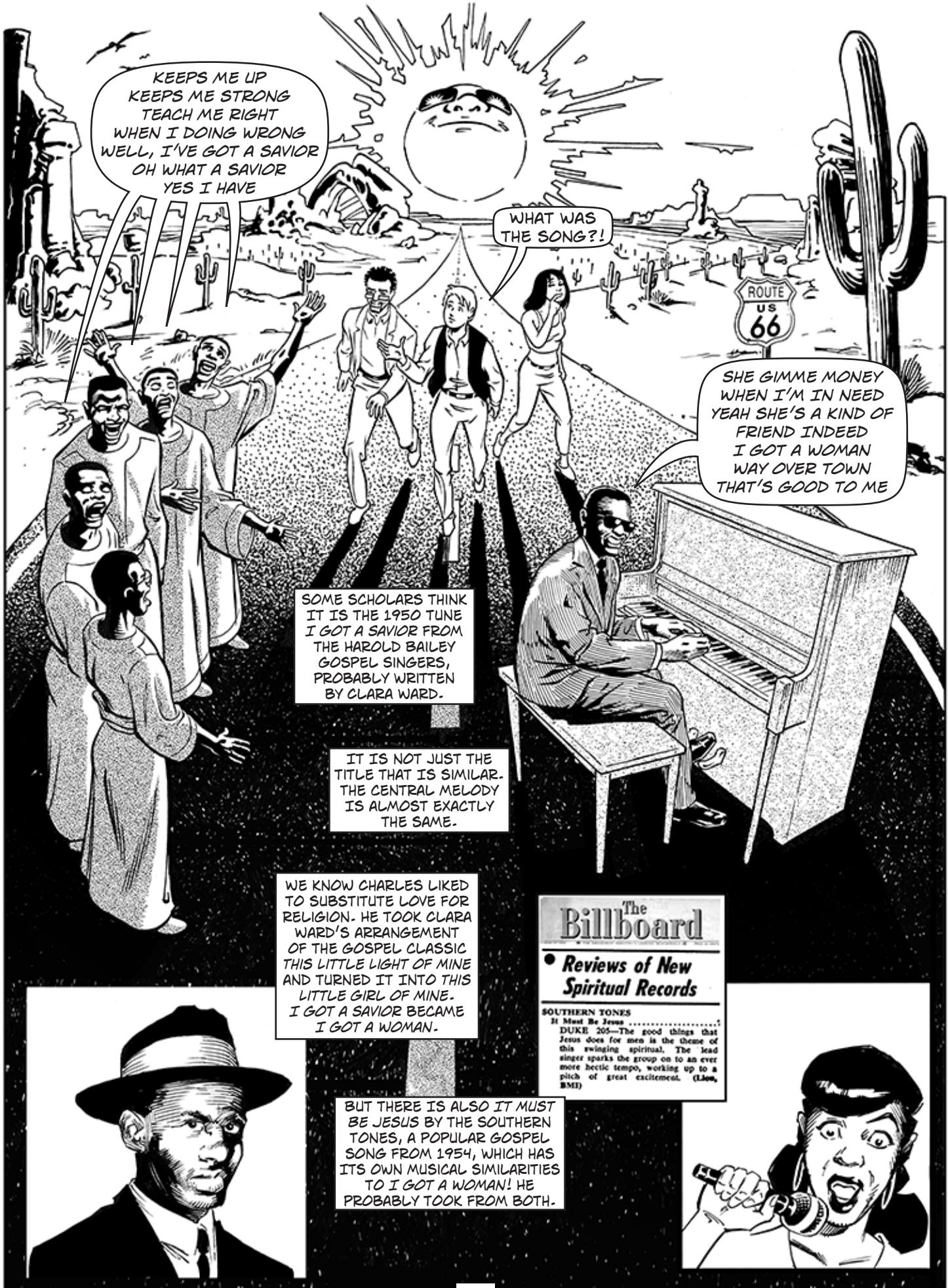
SOUL





THE INFLUENCES THAT CHARLES DREW ON TO CREATE HIS MUSIC WEREN'T JUST GENERAL TRADITIONS. THEY WERE VERY, VERY SPECIFIC.





THIS MERGER OF GOSPEL AND BLUES, SUBSTITUTING THE WOMAN FOR GOD, WAS CONTROVERSIAL... "SEX, SIN, AND SYNCOPATION." SOME GOSPEL SINGERS FOUND IT OFFENSIVE, EVEN SACRILEGIOUS.

CLARA WARD, WHOSE SONGS AND ARRANGEMENTS CHARLES HAD BORROWED FROM, THOUGHT THAT IT WAS A DISRESPECTFUL ATTACK ON GOSPEL MUSIC. BIG BILL BROONZY SPOKE OUT AGAINST IT TOO. FOR CHARLES, THE MUSIC JUST REFLECTED HIS LIFE.

CLARA WARD

BIG BILL BROONZY

HE'S CRYING SANCTIFIED.
HE'S MIXING THE BLUES WITH
THE SPIRITUALS. I KNOW
THAT'S WRONG. HE SHOULD
BE SINGING IN A CHURCH.

I WAS RAISED IN THE CHURCH AND WAS AROUND BLUES AND WOULD HEAR ALL THESE MUSICIANS ON THE JUKEBOXES AND THEN I WOULD GO TO REVIVAL MEETINGS ON SUNDAY MORNING. SO I WOULD GET BOTH SIDES OF MUSIC. A LOT OF PEOPLE AT THE TIME THOUGHT IT WAS SACRILEGIOUS, BUT ALL I WAS DOING WAS SINGING THE WAY I FELT.

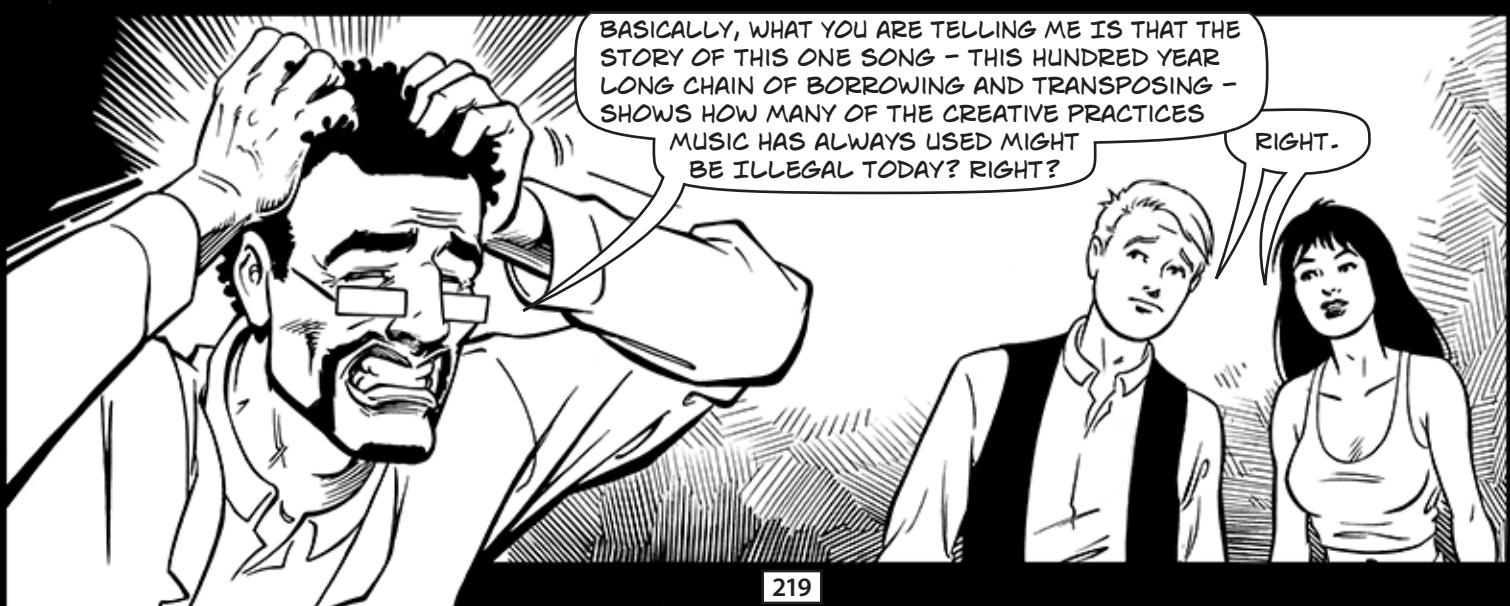
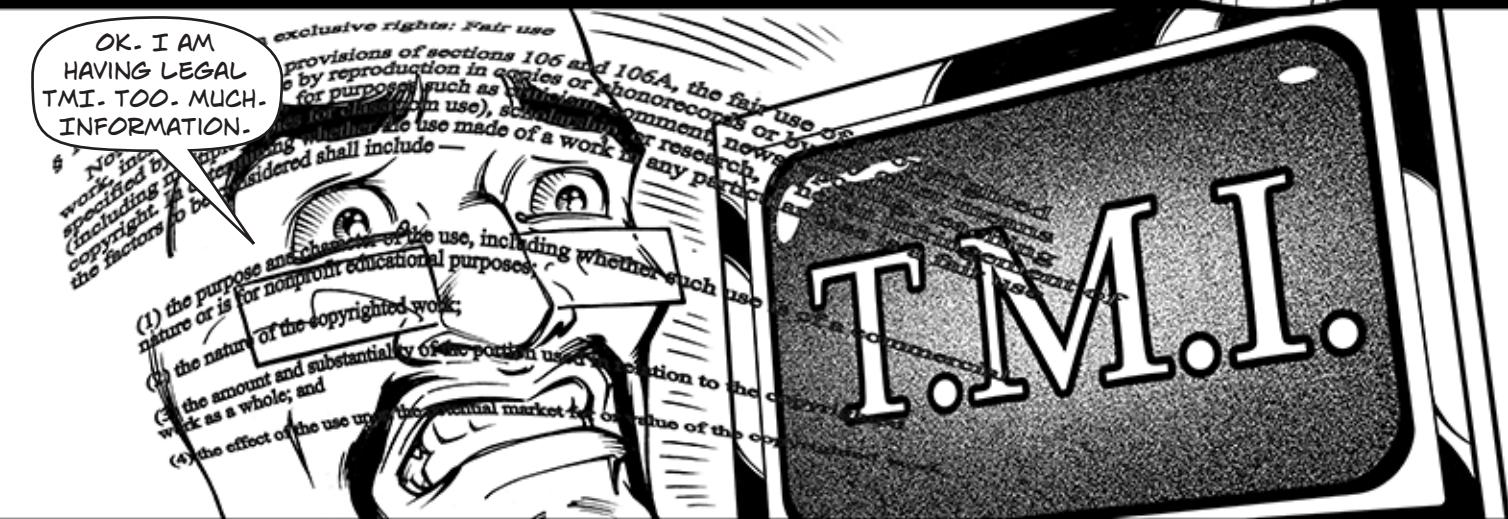
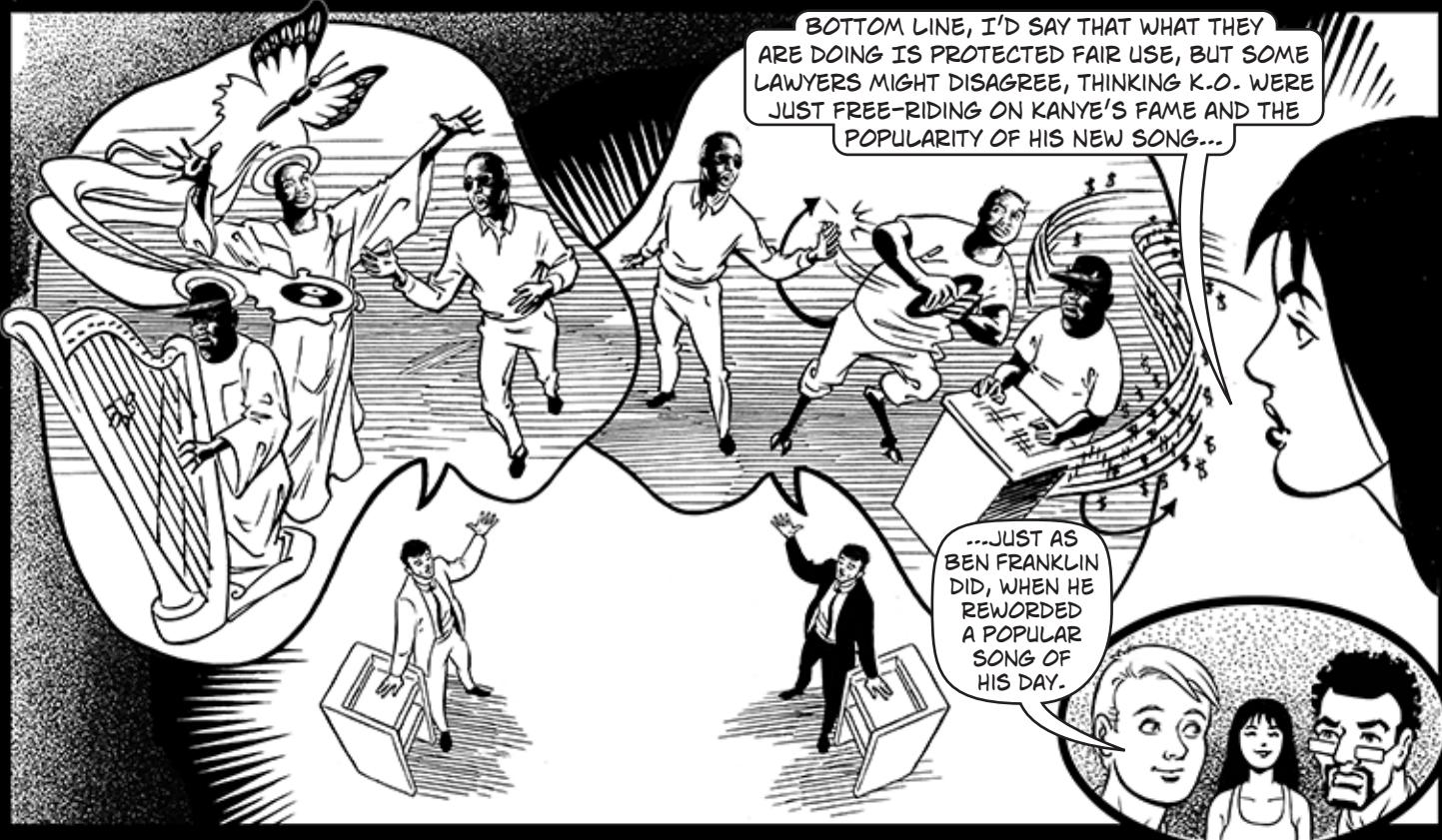
IF I WROTE A SONG ABOUT JESUS AND SOME GUY TURNED IT INTO A SONG ABOUT HIS GIRLFRIEND, I'D BE PRETTY UPSET TOO!

AND YET WITHOUT THAT BACK AND FORTH, FROM THE TROUBADOURS ON FORWARD, THINK HOW MUCH MUSIC WE WOULD LOSE...

AND WHAT RAY CHARLES DID WAS SIMPLY BRILLIANT... HE TOOK GOSPEL AND BLUES, AND CREATED SOUL. IT WASN'T ORIGINAL BUT IT WAS SOMETHING NEW.

MWAHHAHAH!





WAIT THIS ISN'T FORBIDDING IT, JUST SAYING PEOPLE HAVE TO PAY FOR IT. THAT'S LIKE SAYING GROCERY STORES ARE "FORBIDDING" FOOD BY CHARGING FOR IT!

OF COURSE COMPOSERS SHOULD GET PAID! LARGE-SCALE BORROWING GOES OVER THE LINE! BUT PAY FOR EVERY JAZZ SOLO, OR FOLK SONG IN A CLASSICAL COMPOSITION? EVERY TINY SAMPLE? WOULD THAT GET US MORE MUSIC? ACTUALLY IT WOULD BE A GREAT MUSICAL DISAPPEARING ACT!

--AND REMEMBER, THOSE WHO ARE BORROWED FROM, ALSO BORROW THEMSELVES!
WE NEED THE RIGHT BALANCE BETWEEN WHAT'S OWNED AND WHAT'S FREE.

ANY RULE THAT MAKES JAZZ ILLEGAL IS CLEARLY WRONG... HMM...

LOOK BACK AT THE WHOLE COMIC.

THIS IS A COMIC?

IMAGINE WE HAD TODAY'S COPYRIGHT SYSTEM FROM THE BIRTH OF MUSIC. MUCH OF THE MUSIC WE'VE BEEN TALKING ABOUT WOULDN'T EXIST.

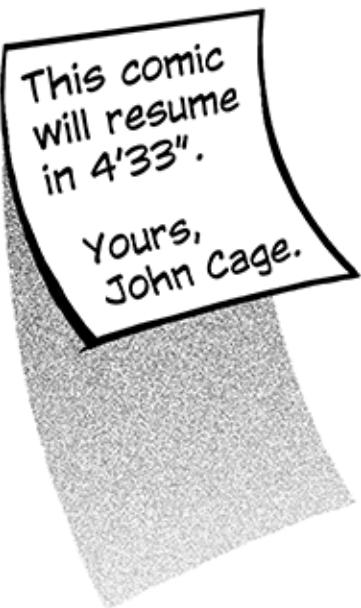
THE SOURCES WOULD STILL HAVE BEEN UNDER COPYRIGHT - TODAY'S COPYRIGHT TERMS ARE SO LONG - AND THE BORROWING WOULD NOT FALL INTO AN EXCEPTION.

SHOULDN'T HAVE WRITTEN ABOUT SWEET AND PLEASANT BRUNETTES.

BUT THE CHURCH COMPOSERS BORROWED FROM US!!

Convicted of Borrowing



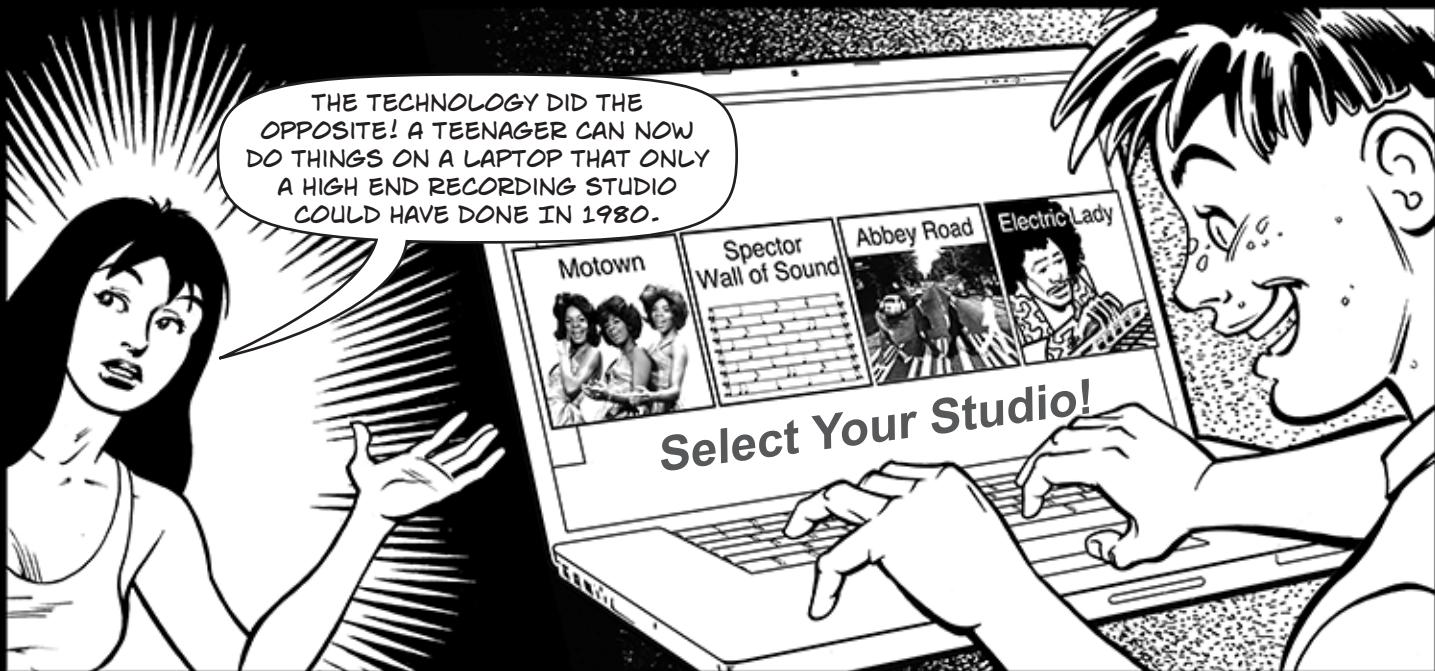
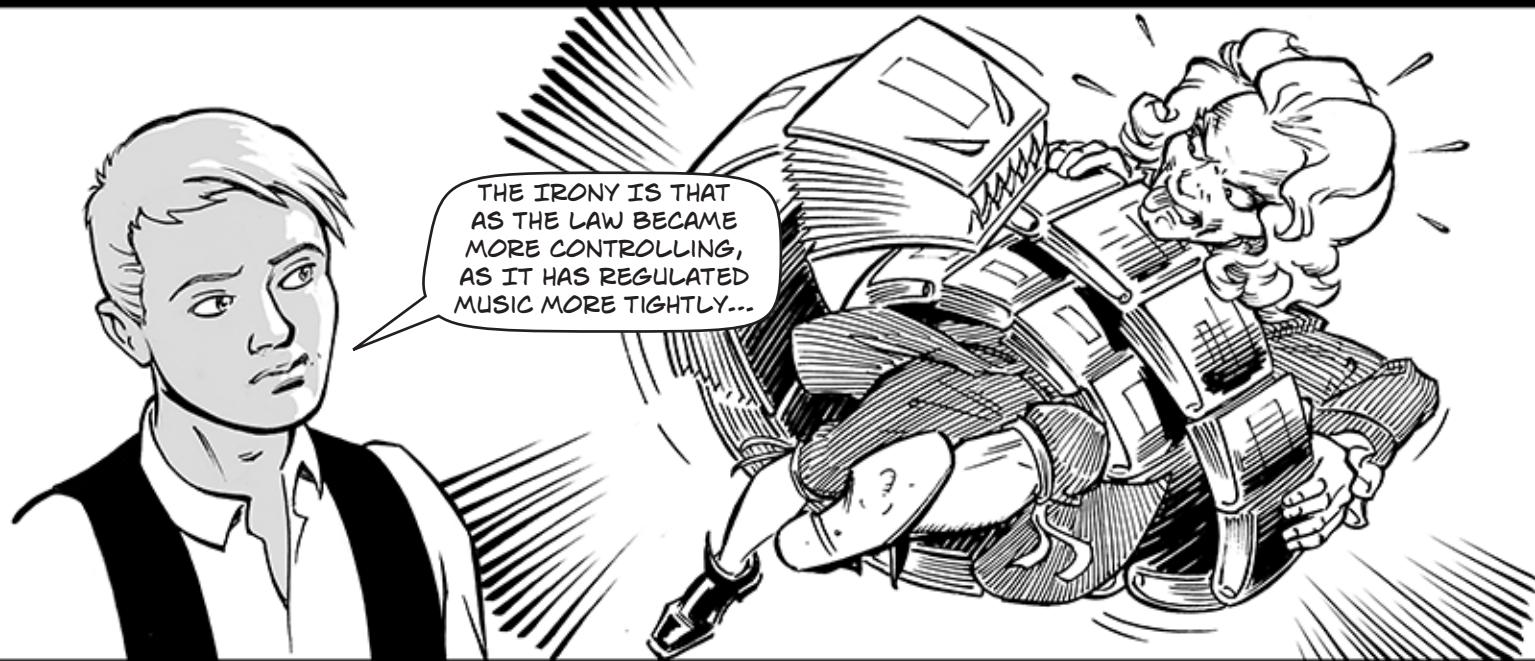


I THINK CAGE'S SILENCE IS A
FLAGRANT RIPOFF OF WE MICE.
EVER HEARD THE PHRASE 'QUIET AS
A MOUSE'? WE SHOULD SUE HIM!









SO WHO CARES WHAT THE LAW SAYS? LOOKING JUST AT REMIX, WE HAVE MORE PRACTICAL CULTURAL FREEDOM THAN EVER.

RIGHT!

EXCEPT IT ISN'T THAT SIMPLE.

REMEMBER THE LEGENDARY K.O.'S SONG?

SURE - AND YOU CAN'T TELL ME MILLIONS OF PEOPLE DIDN'T HEAR IT ONLINE.

YES THEY DID. IF THEY HAD AN INTERNET CONNECTION. BUT ON TV? ON MAINSTREAM RADIO? NO, THE LAW OPERATES LIKE A FILTER, A MEMBRANE, TO KEEP LEGALLY QUESTIONABLE MATERIAL OUT.

WHICH MEANS THAT THE HURRICANE KATRINA REFUGEES, THE PEOPLE EXILED TO THE HOUSTON ASTRODOME...

WERE VERY UNLIKELY TO BE ABLE TO HEAR THE SONG WRITTEN ABOUT THEM...

WE HAVE TWO REALMS OF CULTURE NOW. ONE, INFORMAL, FLEETING, AND ONLINE. THE VIDEO GOES UP AND YOU SEND IT TO YOUR FRIENDS BUT A YEAR LATER ALL YOU FIND IS...

IT'S THE VIDEO FORMERLY KNOWN AS "MASHUP"!!

THE OTHER KIND OF MUSIC IS LEGAL, LICENSED, PERVERSIVE AND PERMANENT. IT LASTS.

GOT A NEW ONE FOR THE COLLECTION. NAME'S BIEBER.

THIS VIDEO HAS BEEN BLOCKED BY THE RIGHTSHOLDER

THE HEAVENS WEEP...

IF ALL YOU CREATE ARE FLEETING LITTLE BUBBLES OF CLEVER REMIX, HOW CAN ANYONE BUILD ON WHAT YOU DO?



RAY CHARLES STARTED BY STRAIGHT COPYING... BUT HE DID MORE THAN THAT, HE BUILT A WHOLE TRADITION AND THEN OTHER ARTISTS BUILT ON WHAT HE'D DONE.

I SHOULD BE THE ONE ON THE BOTTOM!



AND IT WAS LEGAL. PEOPLE COULD HEAR IT ON TV AND THE RADIO. MUSICIANS COULD BUILD THEIR CAREERS AROUND IT WITHOUT WORRYING THEIR SONGS WOULD BE BREAKING THE LAW.

SO YOU ARE SAYING, YOU CAN MAKE AN INDIVIDUAL MASHUP ON YOUTUBE, BUT WHAT ABOUT A WHOLE GENRE LIKE SOUL OR JAZZ?

HE'S RIGHT. AT THE VERY LEAST, IT IS MUCH HARDER.

AND MAYBE WE DON'T WANT ONLY TO ENCOURAGE THE MAGPIE-CLEVER CUT AND PASTE OF THE INTERNET MEME...



"WHITHER VIRTUOSITY...?"

...OR THE AUTO-TUNED POP SONG THAT LICENSES A SINGLE RIFF FROM AN 80'S HIT...

...AND BEATS IT TO DEATH.



PLAY IT AGAIN, SAM.*

...AND AGAIN...

...AND AGAIN...



WAS YOU EVER BIT BY A DEAD B FLAT?

I BET I'VE BEEN BIT A HUNDRED TIMES THAT WAY.



...AND AGAIN...

*YES CLEVER-CLOGS, WE KNOW THEY DIDN'T USE THAT ACTUAL LINE IN THE MOVIE. HAPPY NOW? -EDS.



BUT DOESN'T ALL THIS IGNORE THE 800 POUND GORILLA IN THE ROOM?

DOWNLOADING!



DOWNLOADING!!!

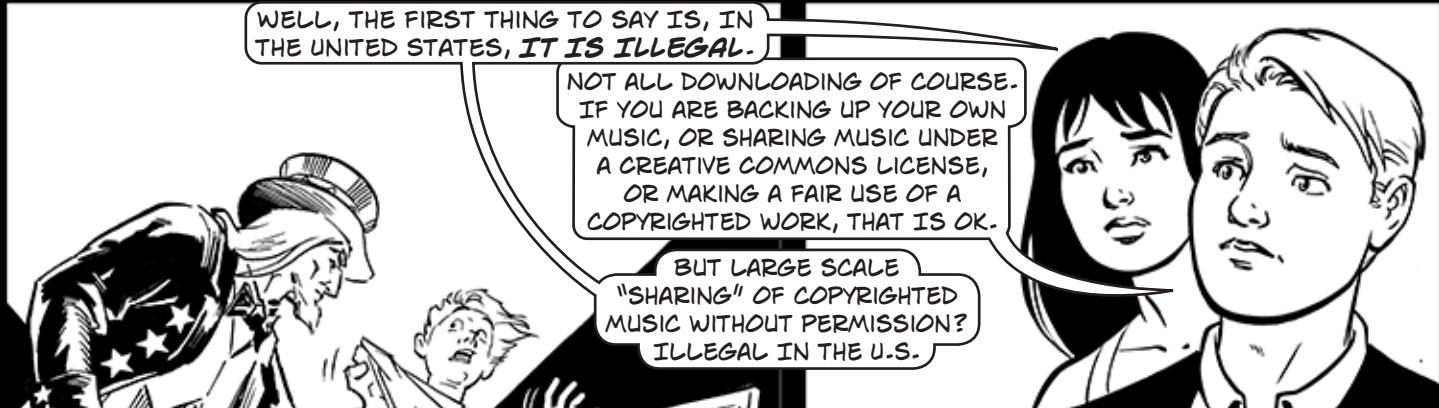
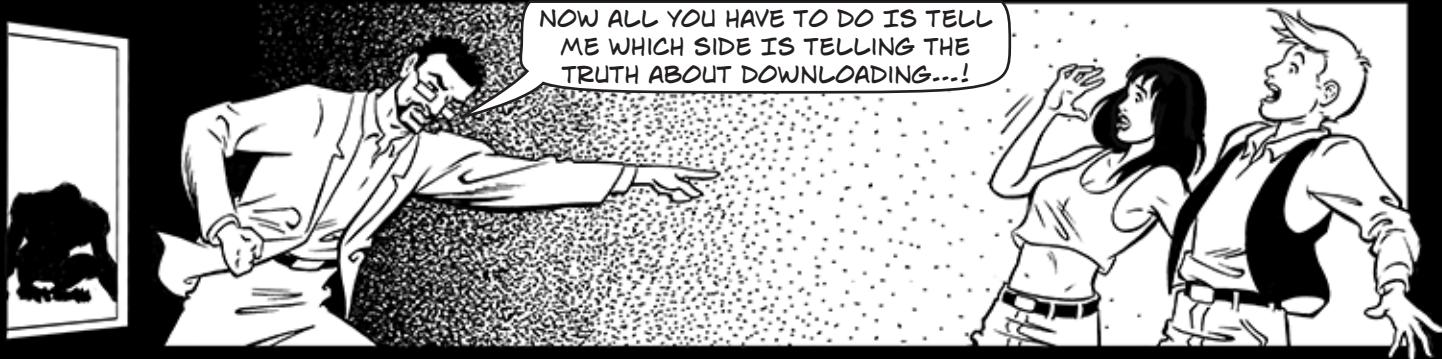
I'VE HEARD THAT DOWNLOADING HAS ALL BUT DESTROYED THE MUSIC INDUSTRY.

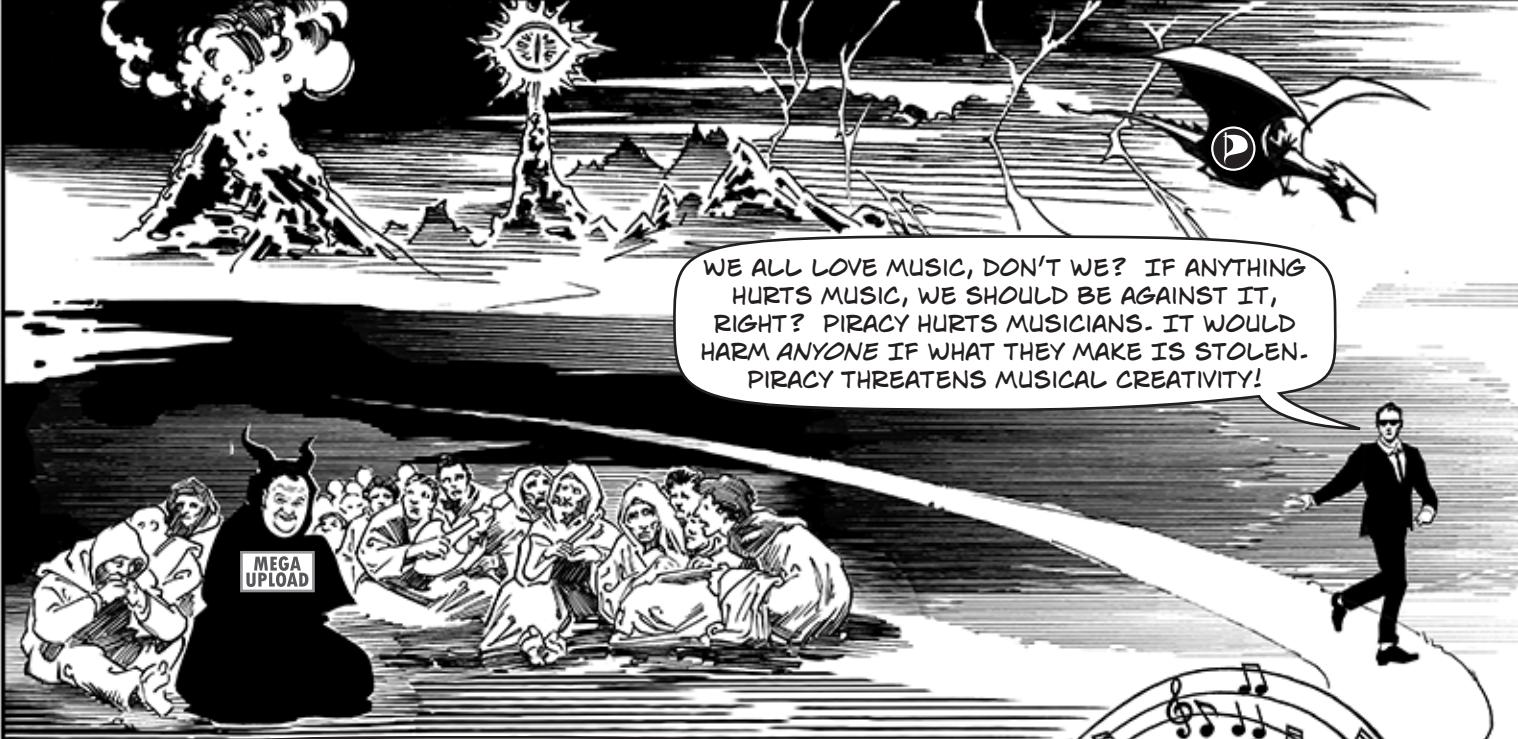
DOWNLOADING IS THE 800 POUND GORILLA AND NO ONE COULD IGNORE IT.

ARE NORMAL GORILLAS EVER ALLOWED IN THE ROOM?

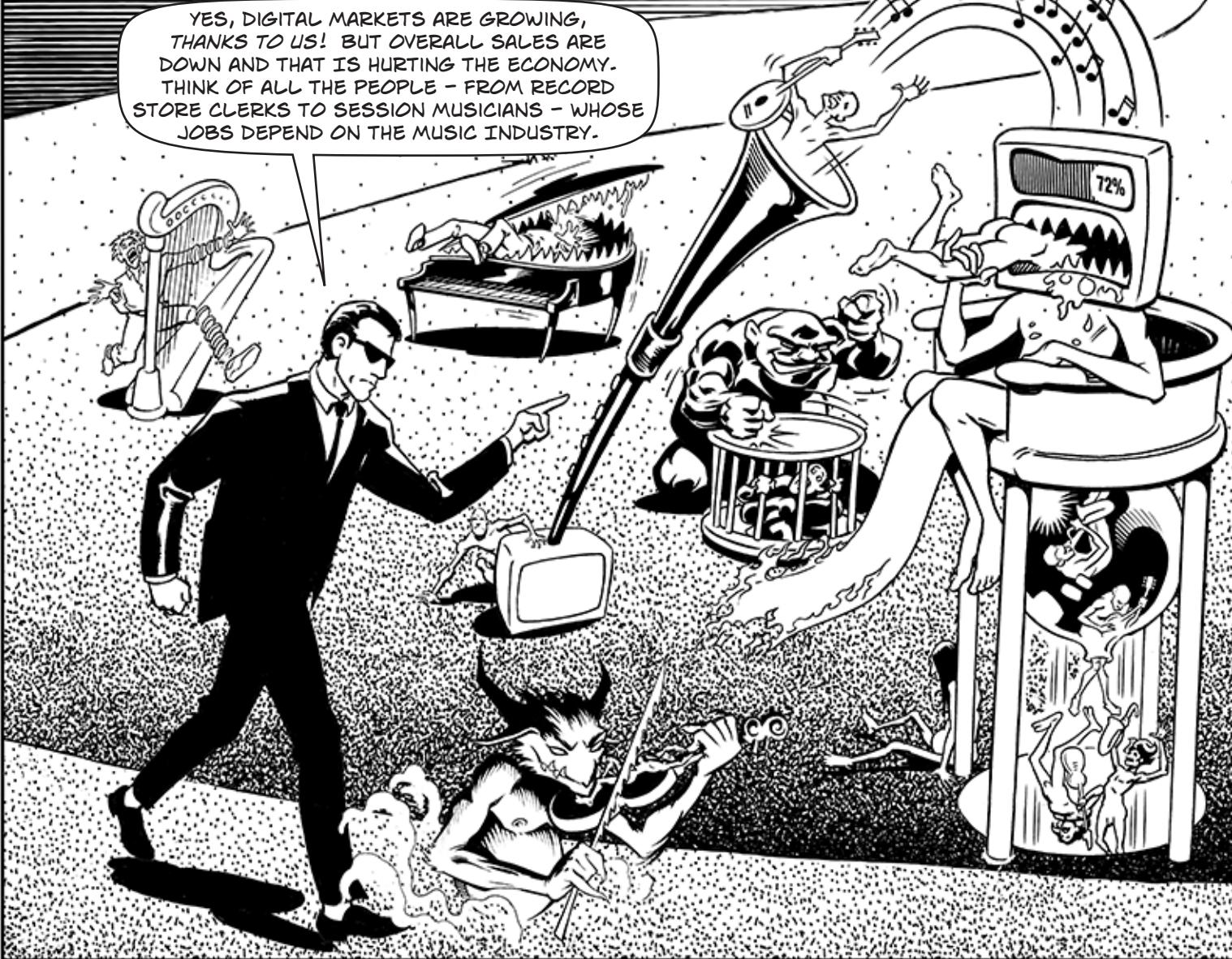
WIKIPEDIA SAYS THE AVERAGE MALE GORILLA WEIGHS 300-400 POUNDS! WHY THIS 800 POUND STANDARD?! I AM THINKING BODY IMAGE PROBLEMS!

HOW CAN YOU FUSS ABOUT A FEW RULES AFFECTING BORROWING LITTLE PIECES OF MUSIC, WHEN MILLIONS OF PEOPLE ARE STEALING WHOLE SONGS!!





WE ALL LOVE MUSIC, DON'T WE? IF ANYTHING HURTS MUSIC, WE SHOULD BE AGAINST IT, RIGHT? PIRACY HURTS MUSICIANS. IT WOULD HARM ANYONE IF WHAT THEY MAKE IS STOLEN. PIRACY THREATENS MUSICAL CREATIVITY!



YES, DIGITAL MARKETS ARE GROWING, THANKS TO US! BUT OVERALL SALES ARE DOWN AND THAT IS HURTING THE ECONOMY. THINK OF ALL THE PEOPLE - FROM RECORD STORE CLERKS TO SESSION MUSICIANS - WHOSE JOBS DEPEND ON THE MUSIC INDUSTRY.

BUT IN THE WORLD OF MUSIC, THE SKY ISN'T FALLING, IT'S RISING!* SURE THERE ARE LOSSES TO THE OLD BUSINESS MODELS, BUT IF YOU FACTOR IN THE EXTRAORDINARY GROWTH OF LIVE PERFORMANCES, THE OVERALL MUSIC BUSINESS IS ACTUALLY BIGGER THAN EVER! MORE PEOPLE ARE MAKING MUSIC AND DIGITAL MARKETS ARE BOOMING!

DON'T CONFUSE YOUR BUSINESS MODEL WITH THE MUSIC BUSINESS! THE MAJORITY OF MUSICIANS HAVE NEVER RECEIVED MUCH FROM THE SALE OF COPYRIGHTED MUSIC. THERE ARE NEW BUSINESS MODELS OUT THERE. WE'VE EVEN USED THE INTERNET TO CROWD SOURCE PATRONAGE!

Alternative Business Models

HEIGH HO, HEIGH HO, IT'S OFF TO KICKSTARTER WE GO!

SO NOW IT'S BACK TO MUSICIANS BEGGING FOR "TIPS" AND FLATTERING PATRONS? AND THIS IS PROGRESS?

AND WHAT'S THE BASELINE
WE ARE MEASURING AGAINST?

PEOPLE DON'T MAKE AS MUCH MONEY OUT OF RECORDS.
BUT I HAVE A TAKE ON THAT - PEOPLE ONLY MADE MONEY
OUT OF RECORDS FOR A VERY, VERY SMALL TIME.

WHEN THE ROLLING STONES STARTED
OUT, WE DIDN'T MAKE ANY MONEY OUT OF
RECORDS BECAUSE RECORD COMPANIES
WON'T PAY YOU! THEY DIDN'T PAY ANYONE!

THEN, THERE WAS A SMALL PERIOD FROM 1970
TO 1997, WHERE PEOPLE DID GET PAID, AND THEY
GOT PAID VERY HANDSOMELY AND EVERYONE
MADE MONEY. BUT
NOW THAT PERIOD
HAS GONE.

SO IF YOU LOOK AT THE
HISTORY OF RECORDED
MUSIC FROM 1900 TO
NOW, THERE WAS A
25 YEAR PERIOD WHERE
ARTISTS DID VERY WELL,
BUT THE REST OF THE
TIME THEY DIDN'T.

AND WHAT'S THE
ALTERNATIVE?

WE'RE BACK IN THE AGE
OF THE TROUBADOUR? 

WE DO HAVE RAMPANT ILLEGAL COPYING. MUST WE DRAMATICALLY INCREASE SURVEILLANCE AND ENFORCEMENT TO STOP IT?

WILL IT BE THE WORLD OF... TOTAL CONTROL

WINSTON SMITH!!

YOU TRIED TO PLAY A SONG ON
SOMEONE ELSE'S TELESCREEN...

YOU SANG A
SONG IN THE
SHOWER...

YOU
THOUGHT
OF A SONG.



THAT'S THREE STRIKES, MR. SMITH.
TO RECEIVE YOUR PUNISHMENT...

PROCEED TO ROOM 1201.

NOT ROOM 1201!!!

ART REQUIRES CONTROL,
TOTAL CONTROL!



ALSO, THAT NEW TREATY DOESN'T CHANGE DOMESTIC LAW AND WE HAVE ALWAYS BEEN AT WAR WITH OCEANIA.



OR DO WE SWING IN THE OTHER DIRECTION, TOWARDS MUSICAL ANARCHY?

WILL IT BE A FUTURE OF DIGITAL REVOLUTION, OF TOTAL LAWLESSNESS??

AUX ARMES, CITOYENS!

RISE UP AND TAKE BACK OUR MUSIC!
AND THEIR MUSIC TOO!!!



LIBERTÉ, ÉGALITÉ,
DOWNLOADING!
STORM THE
FIREWALLS!

I HAVE, LIKE, A
HUMAN RIGHT TO
LISTEN TO STUFF
YOU WROTE!

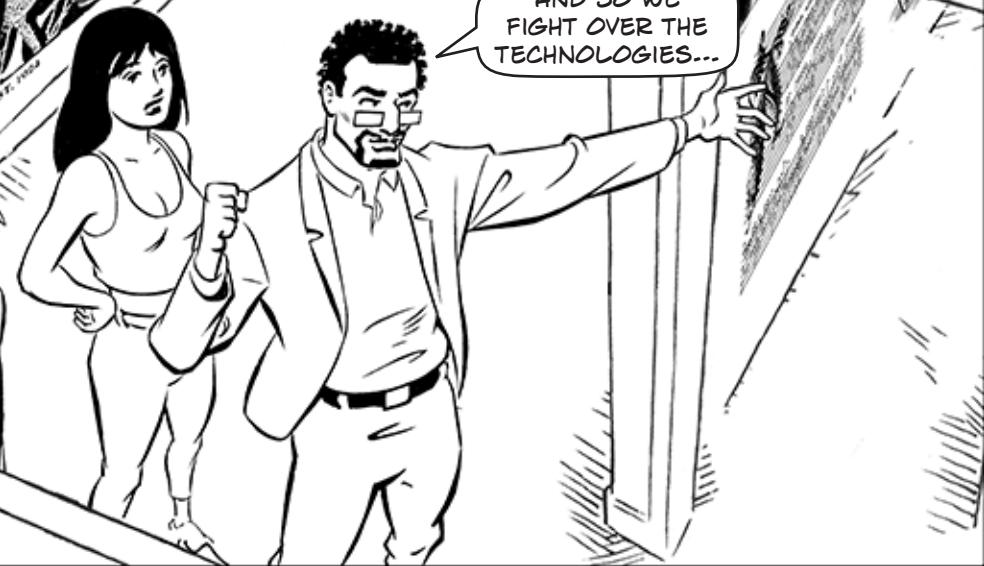


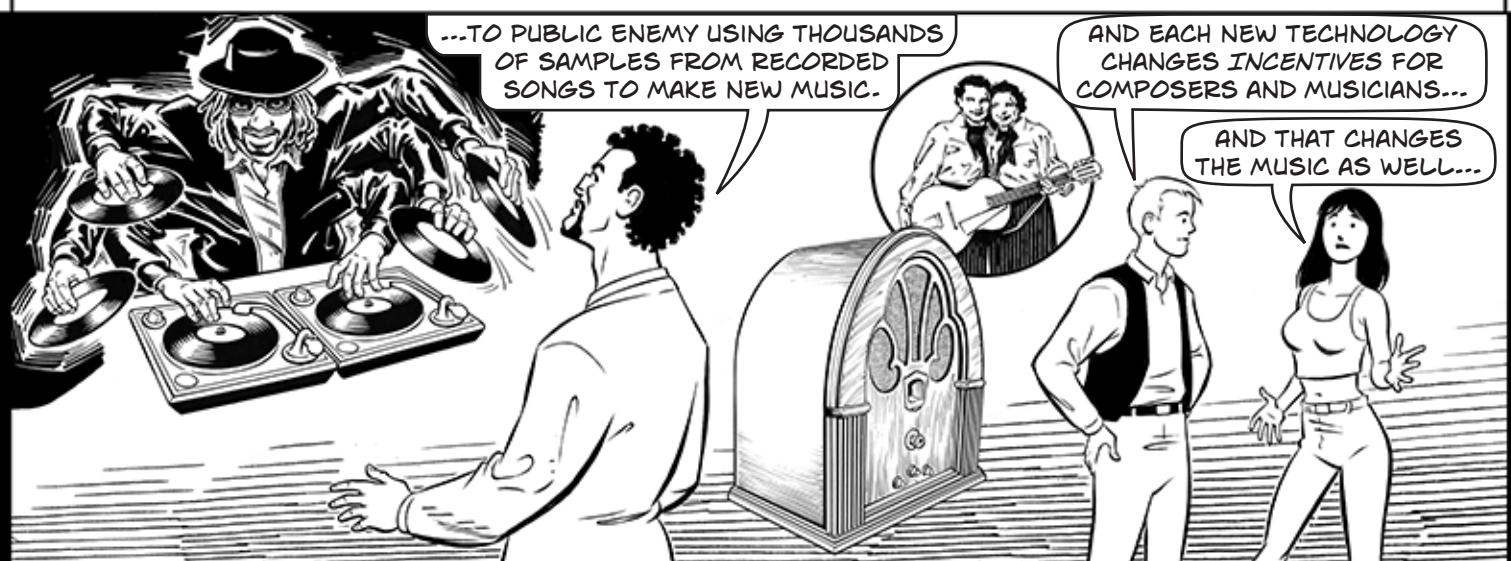
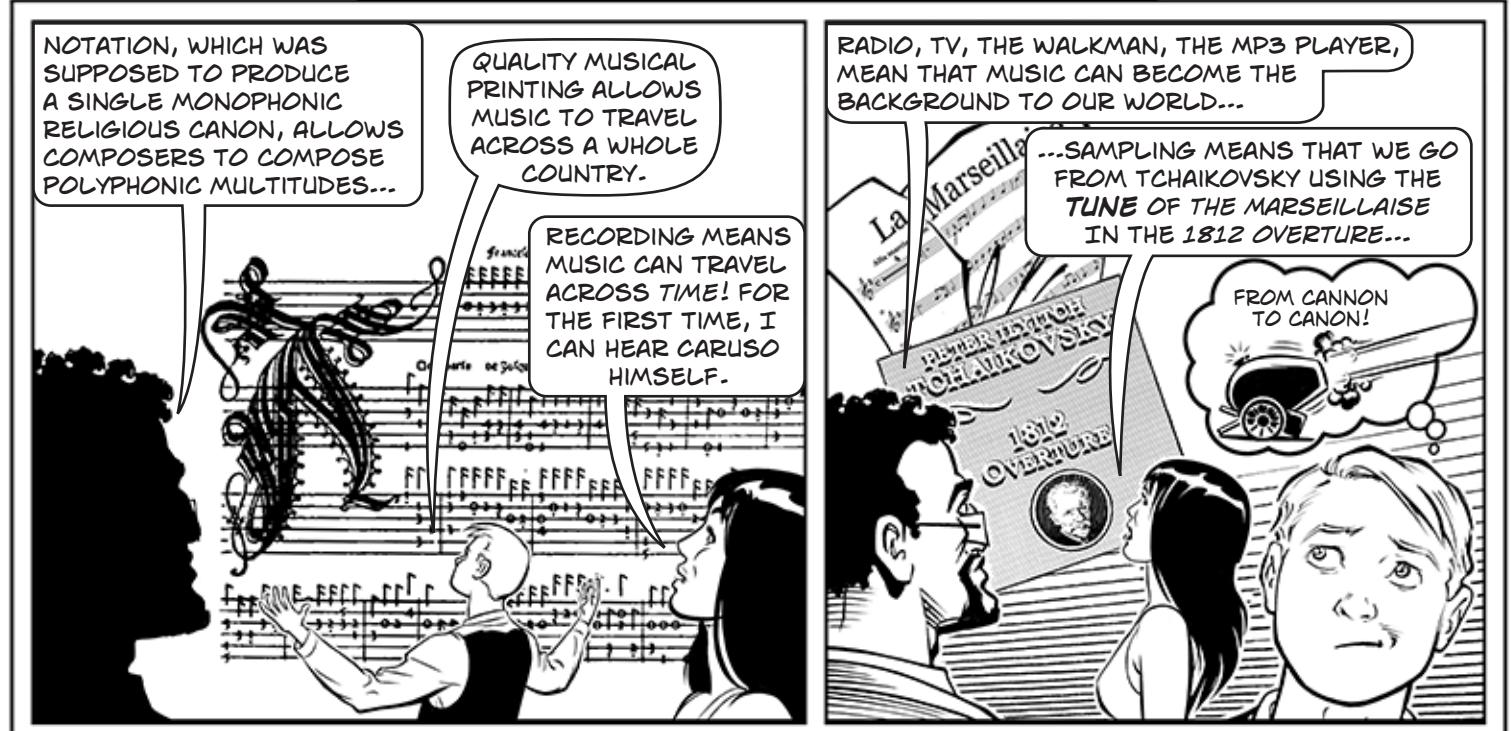
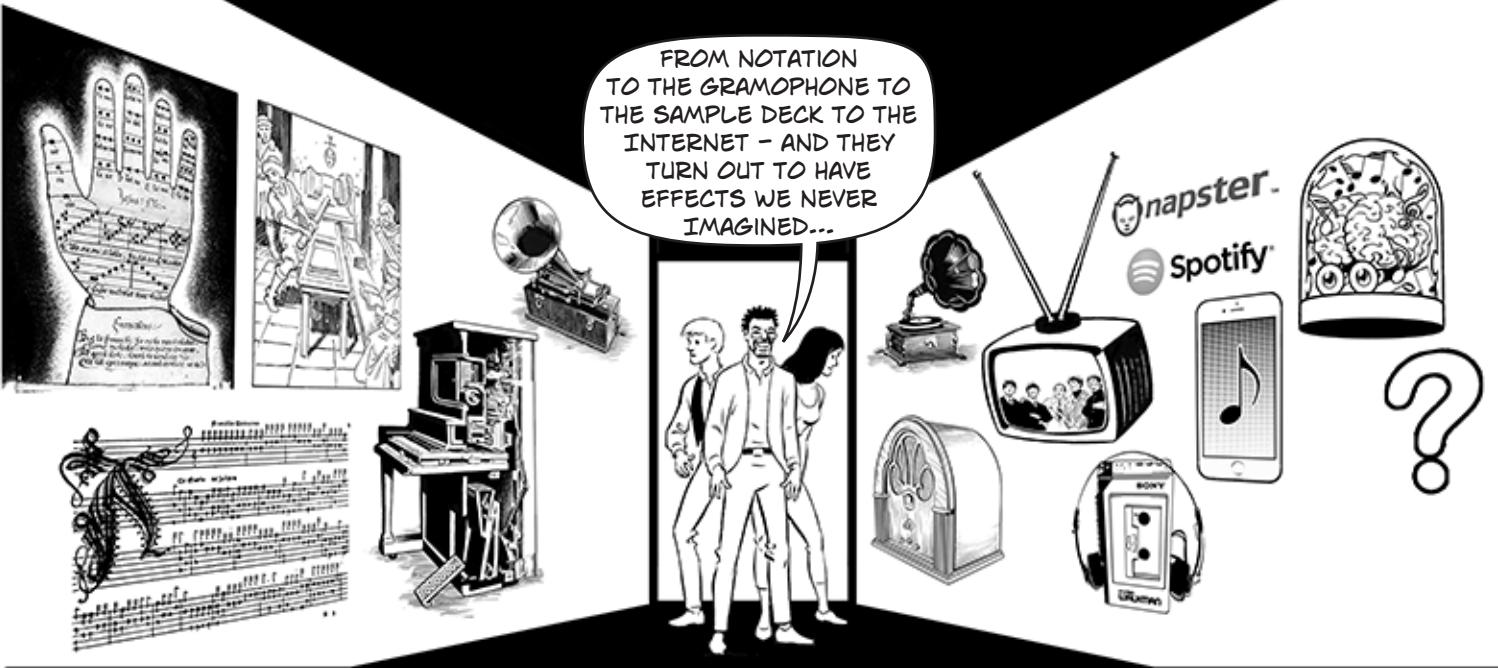




...AND WE POLICE MUSIC,
TRYING TO PREVENT THE
MINGLING OF CULTURES...

...OR THE MINGLING OF AESTHETICS...
HIGH AND LOW, SACRED AND SECULAR,
RELIGIOUS AND PROFANE...





IN A WORLD WHERE MUSIC COULDN'T BE RECORDED, OR SHEET MUSIC SOLD, COMPOSERS DEPENDED ON PATRONAGE...

THE MUSIC WRITTEN TO PLEASE THE KING IS DIFFERENT THAN THE MUSIC ON A RADIO PROGRAM ADVERTISING 'THE KING OF BEERS...!'

TRY PLEASING EMPEROR JOSEPH II!
TALK ABOUT PICKY!!

...OR RECORDED BY THE YOUNG GERSHWIN
ON A PIANO ROLL THAT PLAYED IN 10,000
SUBURBAN LIVING ROOMS.

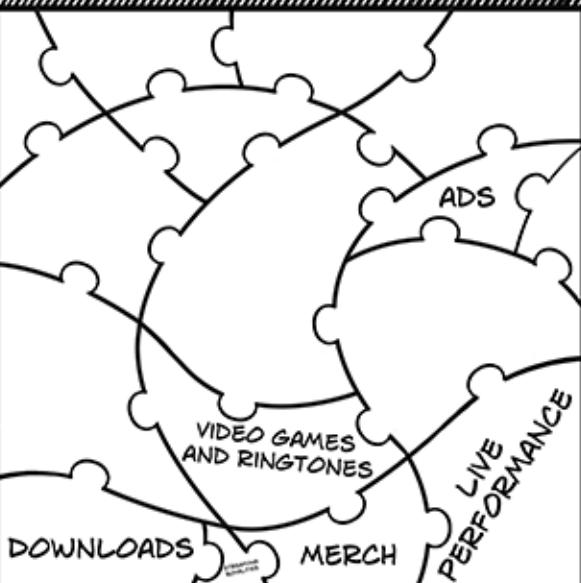
AND THE WAY MUSICIANS
EARN MONEY CHANGES.

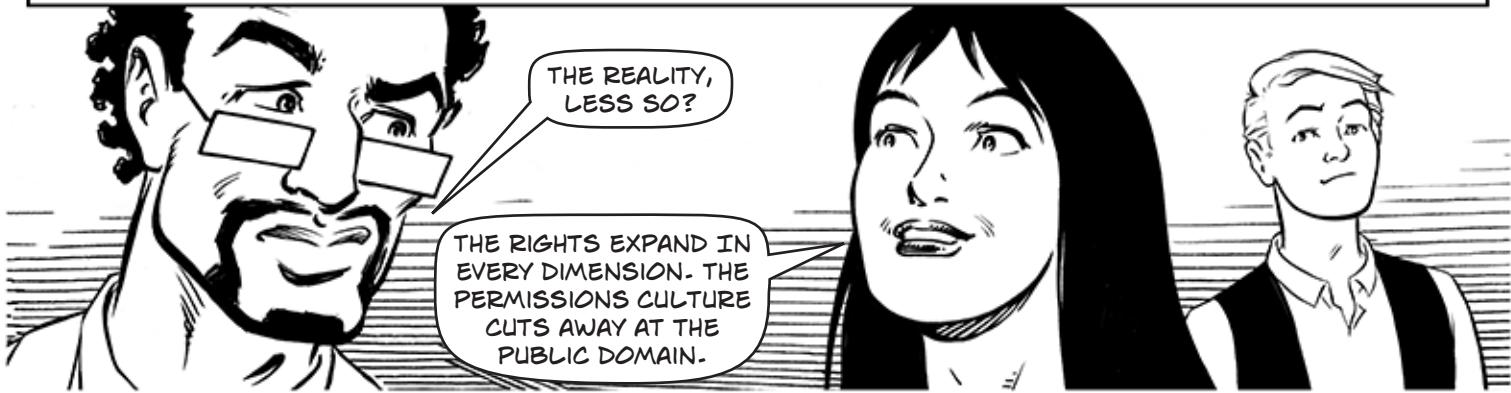
DO I NEED A
GREATER PRESENCE
ON SOCIAL MEDIA?

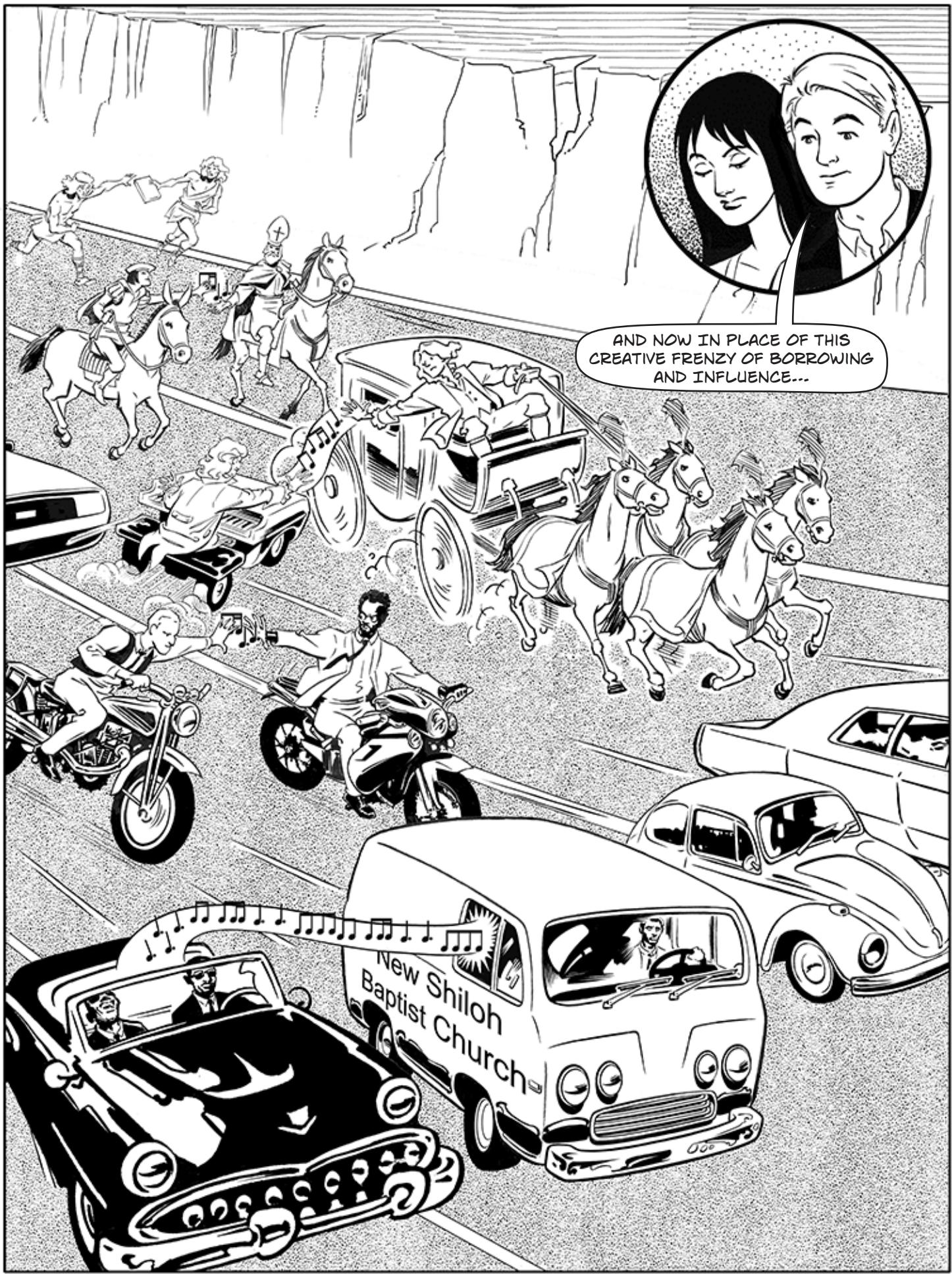
#LUTELUST
@TROUBADOURFORHIRE

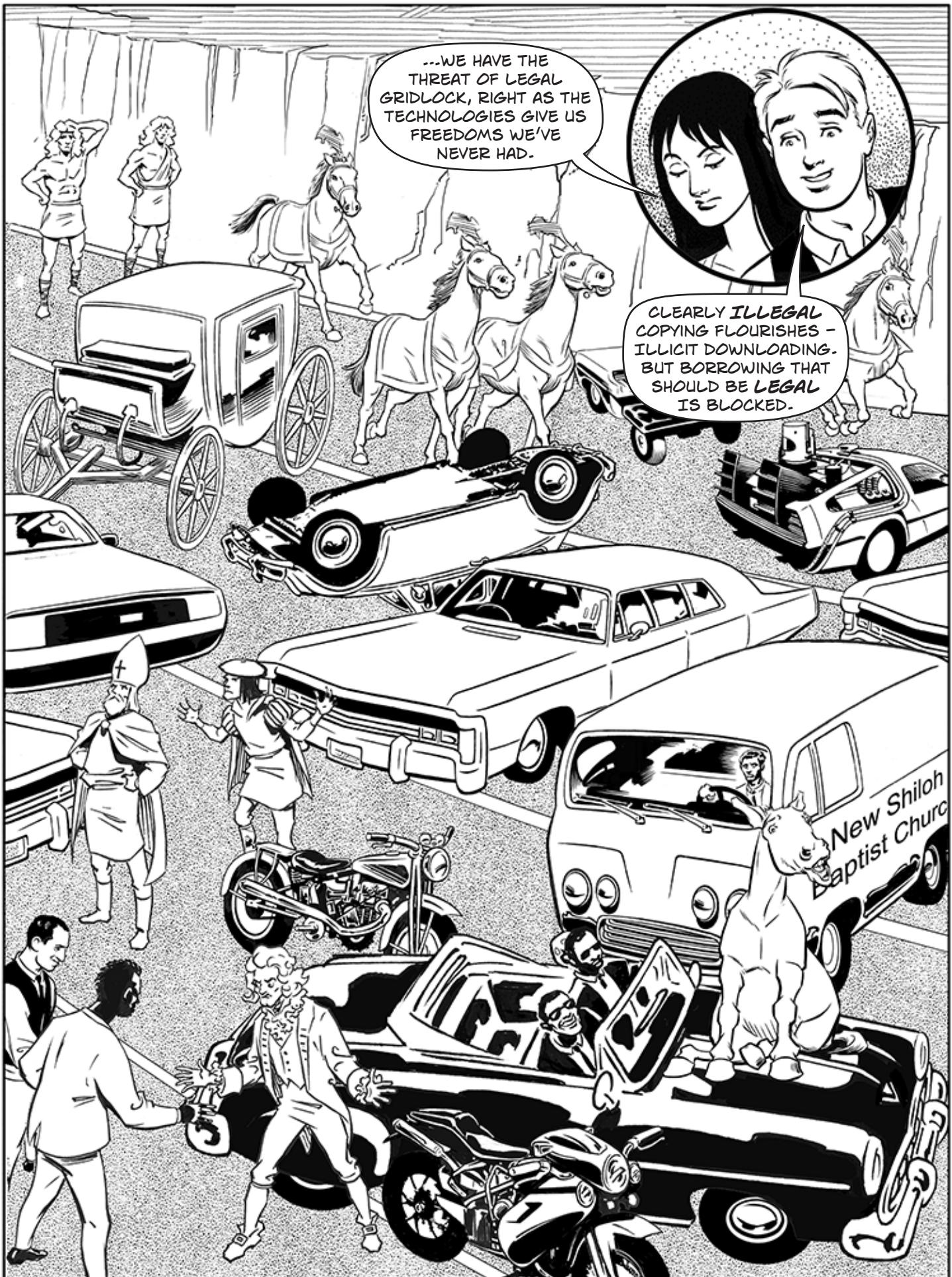
**ROYALTY
STATEMENT**

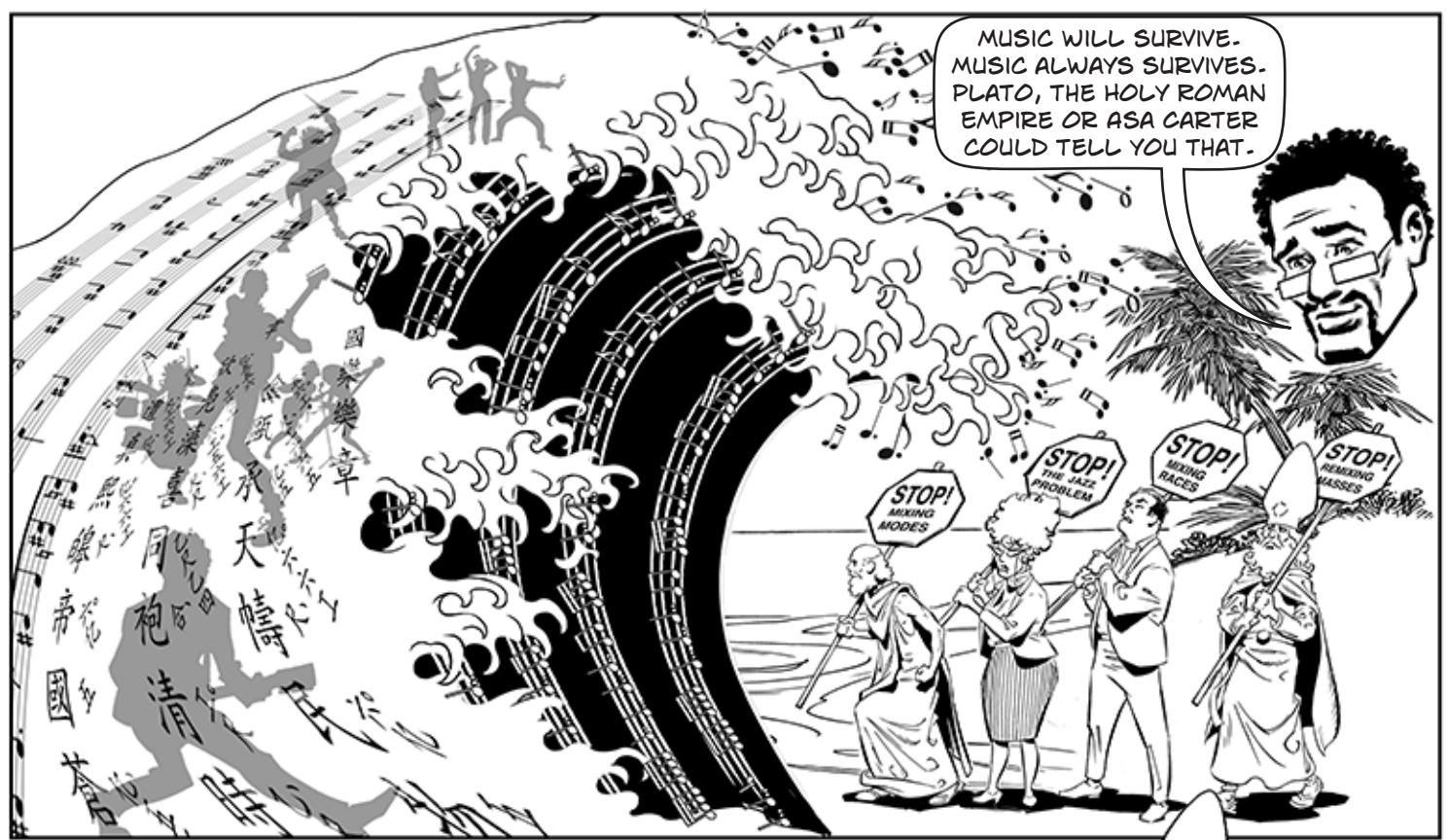
\$













WHAT ABOUT YOUR
MUSIC BACKGROUND?
CLASSICAL, I
WOULD GUESS?

NO - PRETTY MUCH
ALL PUNK ROCK.
EARLY SEX PISTOLS
KIND OF STUFF.

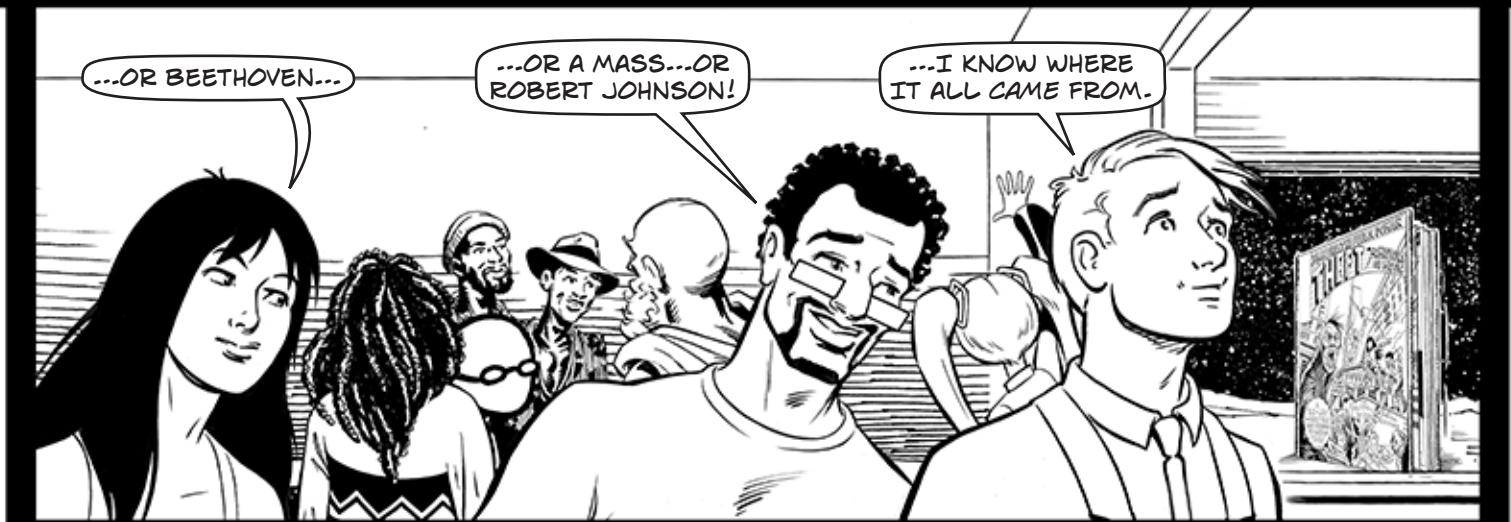
YEAH, I WAS THE
FRONT MAN FOR A
BAND CALLED MEAT &
THE TENDERIZERS.
I WAS "MEAT."

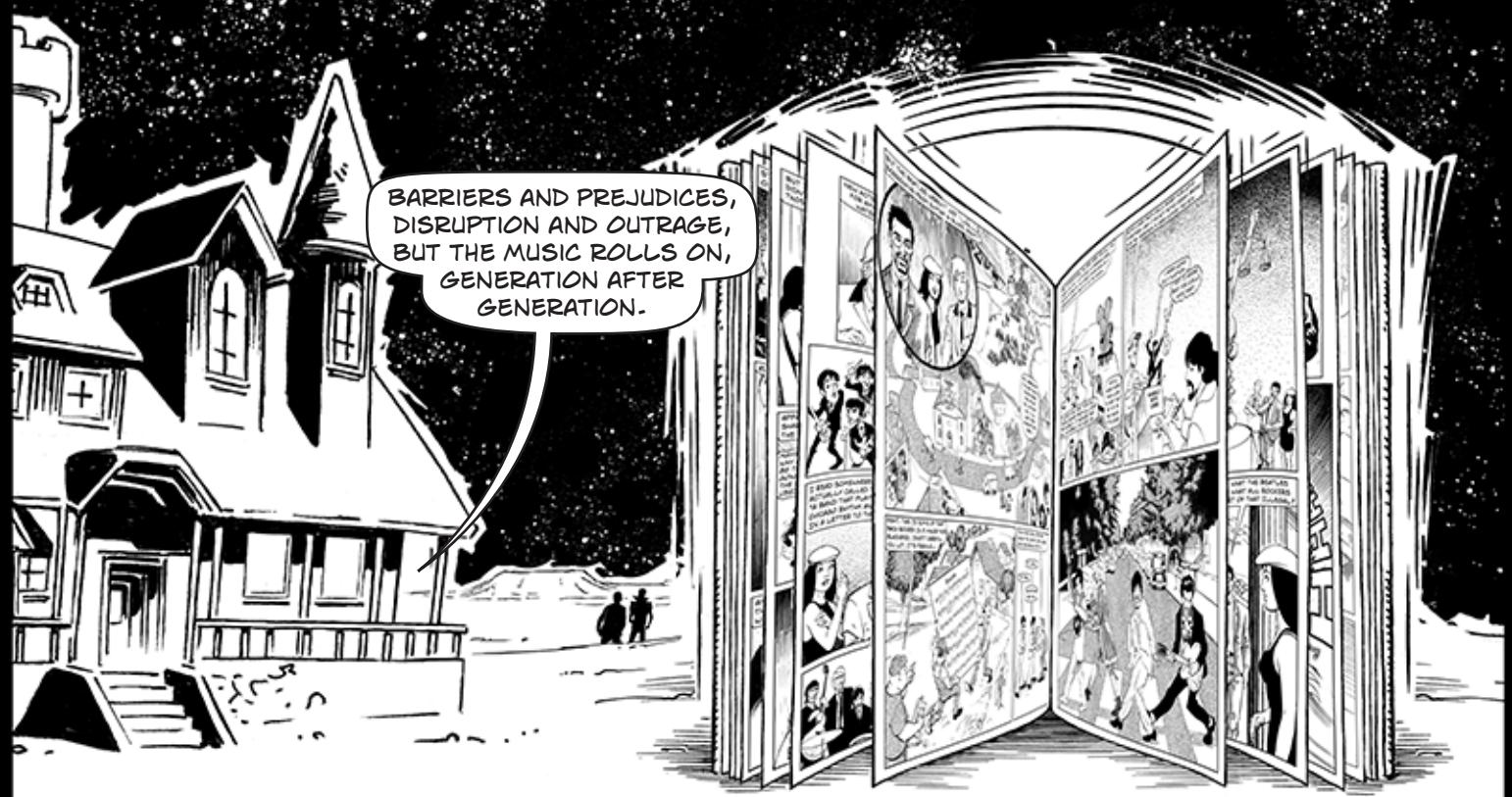
IT WAS SIMPLE STUFF. TWO CHORDS MAINLY.
BUT I KNEW THOSE TWO CHORDS WELL!!

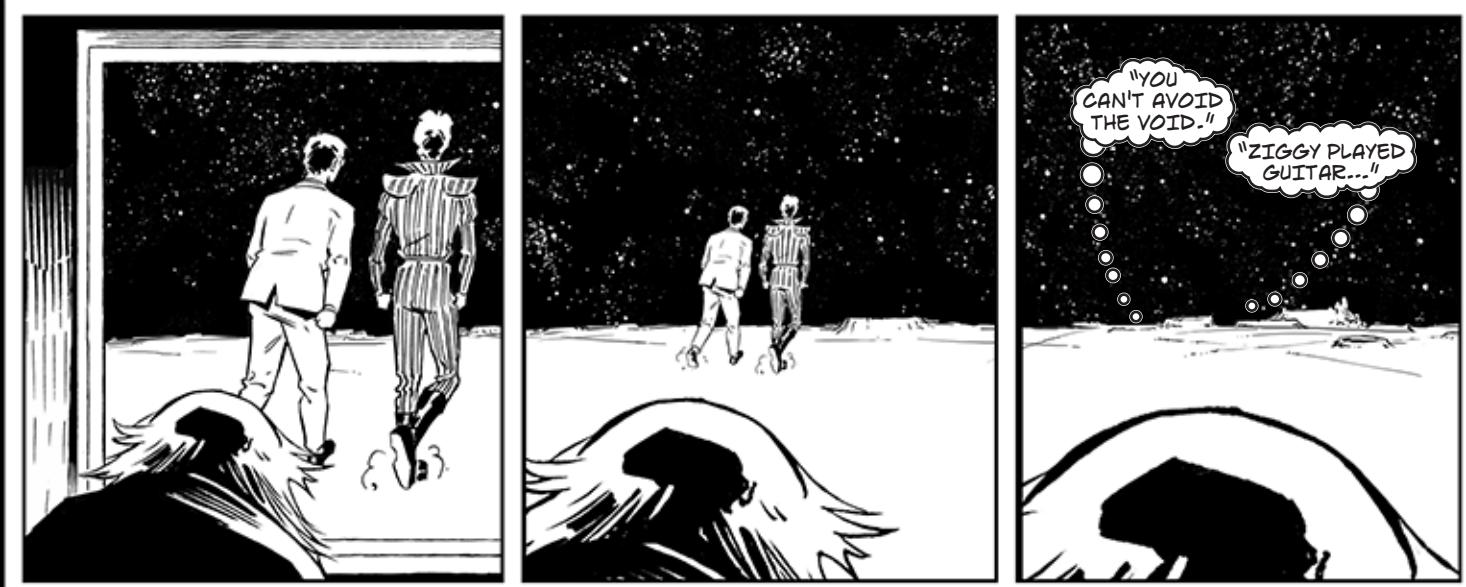












THESE SHADOWS HAVE DANCED FOR YOU FOR A FRAGMENT OF TIME.



PERHAPS SOMETHING IN THEIR WORDS HAS CAUGHT YOUR ATTENTION, TAUGHT YOU SOMETHING, GIVEN YOU AN IDEA?



BUT NOW THEIR MOMENT IN THE LIGHT IS OVER.

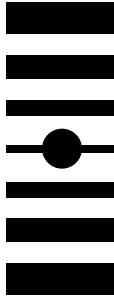


UNTIL THE NEXT TIME WE MEET, ALL THAT IS LEFT IS...

...THE OPPOSITE OF MUSIC...



SILENCE.



About the Book Or “*Pictures of Dancing About Architecture*”*

Music touches us deeply. A banal sentence. Remember when you were a teenager and the only thing more important to you than music, was the person you were in love with? (Requited or not.) Remember that moment when you could not even explain who you and your friends *were* without referring to this song, or that genre, this artist, that band? Remember being transported—made into something different—by a guitar riff, a line in a song (“and the *click* of high heeled shoes”), a rap lyric (“Straight outta Compton...”), Goodman’s clarinet (“the ill woodwind that nobody blows good”), Davis’s trumpet, Casal’s throbbing cello, Horowitz’s dreamy precision—by an insistent bass line, a brilliant “drop” in EDM, by the apparently accidental inevitability of a musical phrase? That is what music is to us. It reaches our core—or maybe creates it.

Music is different. An argument, you can accept or reject, fact-check or analyze. A tune? Not so much. Music seems to flow over, through or behind our mental firewalls. We talk about it touching us “viscerally,” as though our viscera, our guts, were a locus for beauty. But music reaches places in our minds, not just our intestines.

Music builds on itself. To those who think that mash-ups and sampling started with YouTube or a DJ’s turntables, it might be shocking to find that musicians have been borrowing—*extensively* borrowing, consciously and unconsciously—from each other since music itself began. We don’t mean simple copying—the reproduction of an entire song. We mean the borrowing and cultural cross-fertilization that creates more music. Church musicians borrowing from troubadours. The Marseillaise quoted in the 1812 Overture. The African polyrhythms that came to the United States during slavery. The fragment of another tune in a jazz solo. Whether it is the rhythm and blues and country music that built rock and roll, the fusion of blues and gospel that made soul music, or the wall of sound in early rap, the lines of borrowing and cross-fertilization go on and on. Sometimes musical traditions are appropriated without adequate credit or compensation. Sometimes the borrowing brings communities together, creates a shared and more inclusive culture. And that borrowing continues even when it is forbidden; whether by the state, or the church, or the racial segregationist, or the guardians of high culture. It goes on even when the technology of the time seems to make it difficult. In fact, those technologies—from musical notation to the player piano to the tape loop to the sample deck—turn out to be unruly. They often do the opposite of what we expect them to, sometimes to our great benefit.

Music’s production systems have changed. The technologies have evolved, of course. (Isn’t it remarkable to think that, until about the end of the 19th century, to hear music you either had to play it yourself or hire someone to play it for you? We think ourselves at the bleeding edge of musical technology, but the advent of recorded music is a greater transformation than anything that has happened in our lifetimes.) The *incentive* systems have changed, from the troubadour or the gifted amateur, to the Church composer, the aristocratic patronage system, the rise of music as a commodity for the masses—whether in the form of sheet music, player piano rolls, vinyl, CD, downloads or streams. And with the technologies and the incentive systems, the *law* of music has changed, often for good but sometimes for ill. We now face the irony that as rampant illegal downloading of recorded music goes on, the artistic practice of *making* music has never been so tangled in cumbersome permissions and fees, licenses and collecting societies. Artists should get paid—this book is most emphatically **not** a defense of illegal downloading—but the law should serve creativity, not hinder it.

Music matters. People fight about it—not just the kind of fight when one spouse ludicrously denies the brilliance of Joni Mitchell and the other insists upon it. People fight about music because they think it

*The full quotation is “Writing about music is like dancing about architecture.” It is popularly attributed to Elvis Costello. He said he does not remember saying it. The difficulty of attribution in a world of borrowing! Someone should write a comic book about it.

has power, that its shape reflects our culture—or changes it—that it strengthens the state or the religion—or undermines it. Name a line that we care about: philosophical, religious, political, racial, cultural, legal. Music is on those battlements, conscripted to hold a line, even when those lines become increasingly...blurred.

This is a “graphic novel,” a *comic book*, by two law professors about the history of music, of musical borrowing, from Plato to rap. Obviously, some explanation is needed. We write about innovation and creativity. Ten years ago, disturbed by the way that documentary filmmakers were being hobbled by ludicrous copyright claims over tiny fragments of music or image momentarily caught by their cameras, we wrote a comic book about “fair use” with our late, and much-missed, colleague, Keith Aoki. (For some reason, readers seem to prefer comic books to our law review articles. Go figure.) Our goal was to translate our legal expertise and scholarship into an accessible form for the new generation of digital creators who lacked the high-priced legal advice that established media took for granted. We thought the comic would be read by a few film students. It has been downloaded more than a million times and translated into multiple languages. There was a demand, it seemed.

We thought we were done with comic books. But then we started writing and teaching about musical borrowing—the way that composers and musicians borrow from each other, whether by sampling, quoting, parodying, or building on a genre. We found ourselves disturbed by the same “permissions culture” that we had written about in documentary film. Even the tiniest musical reference brought forth a demand for licensing and payment. Of course, there are lots of occasions when permission *should* be asked and where payment is entirely appropriate: for example, using a fragment of a song in a commercial or taking a substantial chunk of a tune and building a new song on it, not as commentary, but simply as a commercial remix. But this was different. This was the regulation of music at the atomic level. No amount was too small for a property claim, despite the fact that copyright law has many exceptions to allow for insubstantial borrowing and reference. Could one imagine the great musical genres of the past being developed under such a scheme? Jazz? The blues? Soul? Rock and roll? We concluded that it was unlikely. That seemed...worrying.

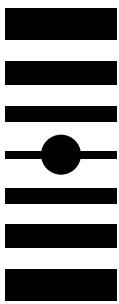
Our research took us to the history of musical borrowing. Even limiting ourselves for reasons of time and practicality to the Western musical tradition, that history was vast, a scholars’ delight, an endless set of puzzles and connections that led us further and further back in time. The research for the book took us years. (Far too many years, in fact.) There are many histories of music that chart the rise and fall of musical movements—classicism to romanticism, or rock to punk. We have benefited from them. But there is another side to musical history. As we worked, we realized that, again and again through history, there had been numerous attempts to police music; to restrict borrowing—for reasons of philosophy, religion, politics, race—again and again, race—and law. And because music affects us so deeply, those fights were *passionate* ones. They still are. The history runs from Plato to *Blurred Lines* and beyond. And to understand the history of musical borrowing, one had to spin the story out still further—into musical technologies (from notation to the sample deck), aesthetics, the incentive systems that got musicians paid, and law’s 250-year long struggle to assimilate music. This is that story. It is assuredly not *the* history of music. But it is definitely a part of that history and, we think, a fascinating one. Remember those musical moments that we mentioned earlier? The music that made you, you? You wouldn’t have those moments but for this history, this story. We have tried to tell it here. We hope you like it.

James Boyle & Jennifer Jenkins
Durham, NC. 2017

About the Authors

James Boyle is William Neal Reynolds Professor of Law at Duke Law School and the former Chairman of the Board of Creative Commons. He has written for *The New York Times*, *The Financial Times*, *Newsweek* and many other newspapers and magazines. His other books include *The Public Domain: Enclosing the Commons of the Mind*, *Shamans, Software and Spleens: Law and the Construction of the Information Society*, and *Bound By Law*, a comic book about fair use, copyright and creativity (with Jennifer Jenkins).

Jennifer Jenkins is a Clinical Professor of Law (Teaching) at Duke Law School and the Director of the Center for the Study of the Public Domain. Apart from her legal qualifications, she plays the piano, and holds an MA in English Literature from Duke University. Her most recent book is *Intellectual Property: Cases and Materials* (3rd ed, 2016) (with James Boyle). Her recent articles include *In Ambiguous Battle: The Promise (and Pathos) of Public Domain Day*, and *Last Sale? Libraries’ Rights in the Digital Age*.

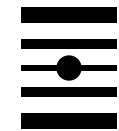


Acknowledgments and Further Reading

This is a book about borrowing. And scholars are borrowers. Massive borrowers, whose only surety is the promise to “pay it forward.”

We have benefited from so many sources—colleagues, scholars we have never met, online resources, blogs, books about the Renaissance music scene, or the Mississippi Delta, or classical music or the blues. What follows here is not a complete list of our sources. Instead of offering that here and making the book 400 pages long, we’ve provided an extensive set of references for the comic online here: <https://law.duke.edu/musiccomic/references/>. But what follows is a good place to get started for the person who is interested more generally in the comic’s themes, as well as a heartfelt “thank you” from us to those whose work informed our research.

The History of Western Musical Borrowing



Everyone interested in the history of borrowing in Western music should begin with the work of Professor J. Peter Burkholder. We consulted his work extensively. In particular we relied upon:

- The “Borrowing” section Professor Burkholder wrote for *Grove Music Online* (part of *Oxford Music Online*) http://www.oxfordmusiconline.com/public/book/omo_gmo. Unfortunately, this is behind a paywall. This resource offers exhaustive details about borrowing in Western music through articles that run from medieval monophony and polyphony to Renaissance music, various classical periods, “art music,” and jazz.
- Burkholder also compiled with Andreas Giger and David C. Birchler an online resource called “Musical borrowing & reworking: An Annotated Bibliography”: <http://www.chmli.indiana.edu/borrowing/>
- J. Peter Burkholder, *All Made of Tunes: Charles Ives and the Uses of Musical Borrowing* (Yale University Press, 1995), a book on borrowing in the work of the American modernist composer Charles Ives.
- Moving beyond borrowing alone, the broader history of Western music is covered in J. Peter Burkholder, Donald Jay Grout and Claude V. Palisca, *A History of Western Music* (Ninth Edition) (W.W. Norton & Co., 2014).

Apart from Professor Burkholder’s prodigious *oeuvre*, we found many other works useful. Here are a few that are particularly worthy of note. A fuller listing is in the online reference guide to the comic.

- Honey Meconi, ed., *Early Musical Borrowing* (Routledge, 2004)
- Norman Carrell, *Bach the Borrower* (Allen & Unwin, 1967)
- John T. Winemiller, “Recontextualizing Handel’s Borrowing,” *The Journal of Musicology* (Autumn 1997)
- David Metzer, *Quotation and Cultural Meaning in Twentieth-Century Music* (Cambridge University Press, 2003)

Despite its fascinating features, music's relationship to copyright—through history—has been a subject that until relatively recently received little scholarly attention. The articles and books noted below changed that. Carroll's series of articles is a magisterial introduction to music copyright's history. Arewa writes sensitively of music, property and cultural appropriation—particularly across racial lines. Boyle illustrates the story of musical borrowing and copyright with a 100-year long history of a protest song written after Hurricane Katrina (told in the "I Got A Mashup—A Song's Tale" section of this comic, pp. 201–222). Vaidhyanathan and McLeod were the first seriously to engage with the cultural and aesthetic effects of restrictive legal regulation on musical borrowing, particularly in rap and hip-hop music. Together with the work of Lessig, their scholarship has defined the field. Greene has written extensively about the intersection of music, copyright, and race. McLeod and DiCola have offered the definitive account of the law and culture of digital sampling. Demers provides a musicologist's perspective on these issues.

- Michael W. Carroll, "Whose Music Is It Anyway?: How We Came to View Musical Expression as a Form of Property," *University of Cincinnati Law Review* (Summer 2004) and "The Struggle for Music Copyright," *Florida Law Review* (September 2005)
- Olufunmilayo B. Arewa, "From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context," *North Carolina Law Review* (January 2006); "Copyright on Catfish Row: Musical Borrowing, *Porgy and Bess*, and Unfair Use," *Rutgers Law Journal* (Winter 2006); "Blues Lives: Promise and Perils of Musical Copyright," *Cardozo Arts and Entertainment Law Journal* (2010)
- James Boyle, *The Public Domain: Enclosing the Commons of the Mind* (Yale University Press, 2008), Chapter 6 "I Got A Mashup." This book is freely available online at <http://www.thepublicdomain.org/download/>.
- Siva Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (NYU Press, 2001)
- Kembrew McLeod, *Owning Culture: Authorship, Ownership, and Intellectual Property Law* (P. Lang, 2001)
- Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (The Penguin Press, 2008); *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (The Penguin Press, 2004)
- Kevin J. Greene, "Copyright, Culture & Black Music: A Legacy of Unequal Protection," *Hastings Communications & Entertainment Law Journal* (Winter 1999)
- Kembrew McLeod and Peter DiCola, *Creative License: The Law and Culture of Digital Sampling* (Duke University Press, 2011)
- Joanna Demers, *Steal This Music: How Intellectual Property Law Affects Musical Creativity* (University of Georgia Press, 2006)

When it comes to the way that the structure of economic incentives affects music, there is no better resource than:

- Frederic M. Scherer, *Quarter Notes and Bank Notes: The Economics of Music Composition in the Eighteenth and Nineteenth Centuries* (Princeton University Press, 2004). (Professor Scherer judiciously decides not to present the reader with any conclusions about which is superior: music developed under a patronage system, or music written for some form of mass market sale.)



Online Resources

We made extensive and grateful use of an excellent collection of historical documents compiled by the University of Cambridge, "a digital archive of primary sources on copyright from the invention of the

printing press (c. 1450) to the Berne Convention (1886) and beyond.” You can find some of the documents we refer to in this book, from Petrucci’s patents to Orlando di Lasso’s printing privileges (filed under the alternate name Orlande de Lassus), in this database.

- *Primary Sources on Copyright History (1450–1900)* <https://www.cipil.law.cam.ac.uk/primary-sources-copyright-history-1450-1900>

Another extremely useful website is the “Music Copyright Infringement Resource” sponsored by Columbia Law School and the University of Southern California Gould School of Law. There, you can find judicial opinions from over a hundred music copyright cases from 1844 to the present, along with commentary and relevant sheet music and audio files.

- *Music Copyright Infringement Resource* <http://mcir.usc.edu/>

Those interested in following endless trails of musical borrowing will enjoy the encyclopedic, crowdsourced “Who Sampled” website—you can choose a song and find both the songs it used, and the songs that in turn used it, along with the relevant audio.

- *Whosampled* <http://www.whosampled.com/>

The Music



The materials cited above—particularly the encyclopedic *Grove Music Online*, Burkholder et al.’s *A History of Western Music*, and Meconi’s *Early Musical Borrowing*, provide a wealth of information about Western music throughout history, including Renaissance music and “classical” music from the Baroque, Classical, Romantic, and 20th century periods. Here is a selection of additional resources on the music of Ancient Greece, the Middle Ages, and the Renaissance.

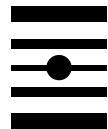
- William A. Johnson, “Musical Evenings in the Early Empire: New Evidence from a Greek Papyrus with Musical Notation,” *Journal of Hellenic Studies* (2000). For our discussion of Ancient Greek notation, we are particularly indebted to this article written by a Duke colleague, which casts light on Greek notation using a Roman-era papyrus.
- Thomas J. Mathiesen, *Apollo’s Lyre: Greek Music and Music Theory in Antiquity and the Middle Ages* (University of Nebraska Press, 1999)
- Anna Maria Busse Berger and Jesse Rodin, eds., *The Cambridge History of Fifteenth-Century Music* (Cambridge University Press, 2015)
- Richard L. Crocker, *A History of Musical Style* (Revised Edition) (Dover Publications, 1986)
- Richard L. Crocker and David Hiley, eds., *The New Oxford History of Music: Volume II: The Early Middle Ages to 1300* (Second Edition) (Oxford University Press, 1990); Gerald Abraham and Dom Anselm Hughes, eds., *The New Oxford History of Music: Volume III: Ars Nova and the Renaissance 1300–1540* (First Edition) (Oxford University Press, 1960)

Turning to more recent genres and American music, the following resources illuminate everything from how slaves influenced American music and the history of the banjo, to our national anthem, to genres such as jazz, blues, rock and roll, and hip hop. Many of these resources detail the impact of black music and the persistence of racial anxieties in response to new genres.

- Eileen Southern, *The Music of Black Americans: A History* (Third Edition) (W.W. Norton & Co., 1997)
- Laurent Dubois, *The Banjo: America’s African Instrument* (Harvard University Press, 2016)
- Brian Ward, *Just My Soul Responding: Rhythm and Blues, Black Consciousness, and Race Relations* (University of California Press, 1998)
- Mark Anthony Neal, *What the Music Said: Black Popular Music and Black Public Culture* (Routledge, 1998)
- Samuel A. Floyd, Jr., *The Power of Black Music: Interpreting Its History from Africa to the United States* (Oxford University Press, 1995)

- Mark Clague, *Star Spangled Songbook* (Star Spangled Music Foundation, 2015) (collecting reuses of the national anthem)
- Ted Gioia, *The History of Jazz* (Second Edition) (Oxford University Press, 2011)
- Paul Berliner, *Thinking in Jazz: The Infinite Art of Improvisation* (University of Chicago Press, 1994)
- Robert Palmer, *Deep Blues: A Musical and Cultural History of the Mississippi Delta* (Penguin Books, 1982)
- Holly George-Warren and Patricia Romanowski, eds., *The Rolling Stone Encyclopedia of Rock & Roll* (Third Edition) (Rolling Stone Press, 2001)
- Paul Friedlander, *Rock and Roll: A Social History* (Westview Press, 1996)
- Glenn C. Altschuler, *All Shook Up: How Rock 'n' Roll Changed America* (Oxford University Press, 2003)
- Paul Miller (a.k.a. DJ Spooky, that Subliminal Kid), ed., *Sound Unbound: Sampling Digital Music and Culture* (MIT Press, 2008)
- Mark Costello and David Foster Wallace, *Signifying Rappers* (First Edition) (Ecco Press, 1990) (yes, that David Foster Wallace)

The People



The comic features a fascinating cast of composers and performers, and the lives of many others informed our research. The sources cited above (especially *Grove Music Online* and *A History of Western Music*) offer biographical sketches of the classical composers we discuss early in the comic. For Stephen Foster, Scott Joplin, George Gershwin, Dizzy Gillespie, Robert Johnson, Chuck Berry, Little Richard, Elvis Presley, Jerry Leiber and Mike Stoller, Ray Charles, and the Beatles, here are selected resources.

- Ken Emerson, *Doo-dah!: Stephen Foster and the Rise of American Popular Culture* (Simon & Schuster, 1997)
- Edward A. Berlin, *King of Ragtime: Scott Joplin and His Era* (First Edition) (Oxford University Press, 1994)
- Howard Pollack, *George Gershwin: His Life and Work* (University of California Press, 2007)
- Robert Wyatt and John Andrew Johnson, eds., *The George Gershwin Reader* (Oxford University Press, 2004)
- Dizzy Gillespie, with Al Fraser, *To Be, or Not...To Bop* (Doubleday Books, 1979)
- Elijah Wald, *Escaping the Delta: Robert Johnson and the Invention of the Blues* (Amistad/HarperCollins, 2004)
- Bruce Pegg, *Brown Eyed Handsome Man: The Life and Hard Times of Chuck Berry* (Routledge, 2002)
- Michael T. Bertrand, *Race, Rock, and Elvis* (University of Illinois Press, 2000)
- Jerry Leiber and Mike Stoller, *Hound Dog: The Leiber & Stoller Autobiography* (Simon & Schuster, 2009)
- Charles White, *The Life And Times Of Little Richard: The Quasar of Rock* (Harmony Books, 1985)
- Michael Lydon, *Ray Charles: Man and Music* (Routledge, 2004)
- Ray Charles and David Ritz, *Brother Ray: Ray Charles' Own Story* (Da Capo Press, 1992)
- Elijah Wald, *How the Beatles Destroyed Rock 'n' Roll: An Alternative History of American Popular Music* (Oxford University Press, 2009)
- Walter Everett, *The Beatles as Musicians: Revolver through the Anthology* (Oxford University Press, 1999)



The Technology

Sources on the earliest “technology” we discuss—notation—are listed earlier. Here are some excellent resources discussing the revolutions wrought by the advent of sound recording technology, radio, and the Internet.

- Mark Katz, *Capturing Sound: How Technology Has Changed Music* (University of California Press, 2004)
- Greg Milner, *Perfecting Sound Forever: An Aural History of Recorded Music* (Farrar, Straus and Giroux, 2009)
- Christopher H. Sterling and John Michael Kittross, *Stay Tuned: A History of American Broadcasting* (Third Edition) (Lawrence Erlbaum Associates, 2001)
- Russell Sanjek, *Pennies from Heaven: The American Popular Music Business in the Twentieth Century* (Updated Edition) (Da Capo Press, 1996) (a comprehensive look at how 20th century technological developments changed the music business)
- Whitney Broussard, “The Promise and Peril of Collective Licensing,” *Journal of Intellectual Property Law* (2009) (discussing the ASCAP antitrust consent decree)
- Paul Goldstein, *Copyright’s Highway: From Gutenberg to the Celestial Jukebox* (Revised Edition) (Stanford University Press, 2003)
- William W. Fisher III, *Promises to Keep: Technology, Law, and the Future of Entertainment* (Stanford University Press, 2004)
- Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (Yale University Press, 2006)
- Jonathan Zittrain, *The Future of the Internet—And How to Stop It* (Yale University Press, 2008)
- Michael D. Smith and Rahul Telang, *Streaming, Sharing, Stealing: Big Data and the Future of Entertainment* (MIT Press, 2016)
- Matt Novak, “Watching David Bowie Argue With an Interviewer About the Future of the Internet Is Beautiful,” available at <https://paleofuture.gizmodo.com/watching-david-bowie-argue-with-an-interviewer-about-th-1791017656> (offering highlights from a prescient interview between David Bowie and the BBC, along with a link to the video)



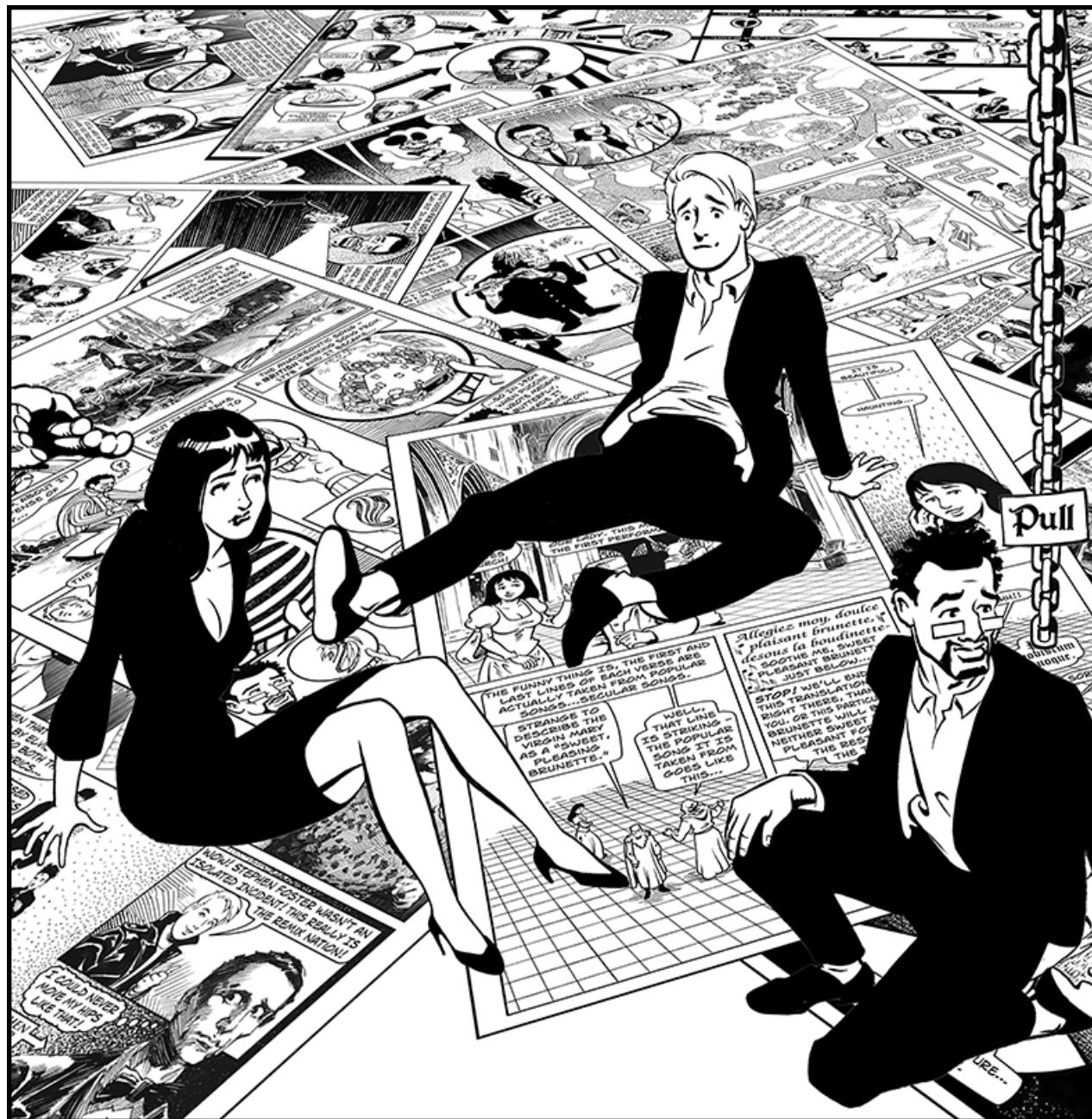
Copyright Law and the Music Business

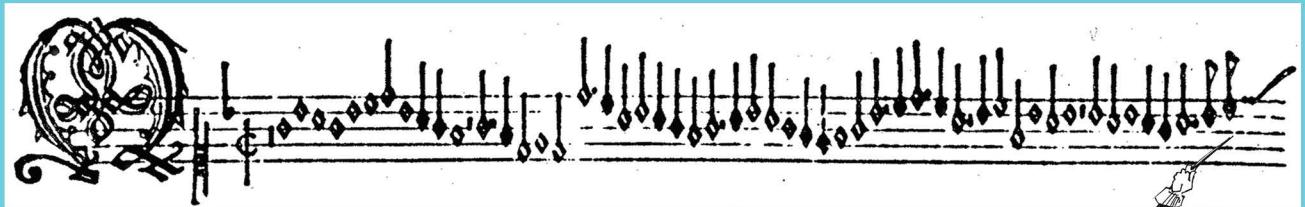
The Center for the Study of the Public Domain provides many resources on copyright law, all freely available online. In addition, the full text of the 1906 debates covered on pp. 89–91 of the comic is available on Google Books, and the Copyright Office offers useful information circulars covering the minutia of copyright law. A few prominent resources on music licensing and the music business are also included below.

- James Boyle and Jennifer Jenkins, *Intellectual Property: Law & The Information Society: Cases & Materials* (Third Edition, 2016), available at <https://law.duke.edu/cspd/pdf/IPCasebook2016.pdf>
- Keith Aoki, James Boyle, Jennifer Jenkins, *Bound By Law?* (Center for the Study of the Public Domain, 2006), a comic about copyright, fair use, and documentary film, is available at <https://law.duke.edu/cspd/comics/>
- The Center’s materials on orphan works are here <https://law.duke.edu/cspd/orphanworks/>
- The 1906 debates are online in full at <https://books.google.com/books?id=m7QvAAAAMAAJ>
- The Copyright Office’s information circulars are available here <https://www.copyright.gov/circs/>
- Stanford University offers information about copyright and fair use at <http://fairuse.stanford.edu/>

- The Future of Music Coalition offers resources on music, law, and technology at <https://futureofmusic.org/research>
- Al Kohn and Bob Kohn, *Kohn on Music Licensing* (Fourth Edition) (Aspen Publishers, 2009)
- Donald S. Passman, *All You Need to Know About the Music Business* (Ninth Edition) (Simon & Schuster, 2015)
- M. William Krasilovsky and Sidney Shemel (authors), John M. Gross and Jonathan Feinstein (contributors), *This Business of Music: The Definitive Guide to the Business and Legal Issues of the Music Industry* (Tenth Edition) (Watson-Guptill Publications, 2007)

For the rest? Turn to the comic and just...“Pull.”

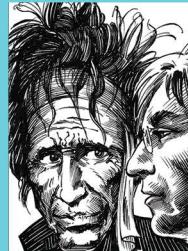
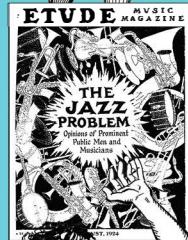




This comic lays out 2000 years of musical history. A neglected part of musical history. Again and again there have been attempts to police music; to restrict borrowing and cultural cross-fertilization. But music builds on itself. To those who think that mash-ups and sampling started with YouTube or the DJ's turntables, it might be shocking to find that musicians have been borrowing—extensively borrowing—from each other since music began. Then why try to stop that process? The reasons varied. Philosophy, religion, politics, race—again and again, race—and law. And because music affects us so deeply, those struggles were *passionate* ones. They still are.

The history in this book runs from Plato to *Blurred Lines* and beyond. You will read about the Holy Roman Empire's attempts to standardize religious music using the first great musical technology (notation) and the inevitable backfire of that attempt. You will read about troubadours and church composers, swapping tunes (and *remarkably profane* lyrics), changing both religion and music in the process. You will see diatribes against jazz for corrupting musical culture, against rock and roll for breaching the color-line. You will learn about the lawsuits that, surprisingly, shaped rap. You will read the story of some of music's iconoclasts—from Handel and Beethoven to Robert Johnson, Chuck Berry, Little Richard, Ray Charles, the British Invasion and Public Enemy.

To understand this history fully, one has to roam wider still—into musical technologies from notation to the sample deck, aesthetics, the incentive systems that got musicians paid, and law's 250-year struggle to assimilate music, without destroying it in the process. This is that story. It is assuredly not the *only* history of music. But it is definitely a part—a fascinating part—of that history. We hope you like it.



For more information, and free digital versions of this book, please visit
<https://law.duke.edu/musiccomic/>