Sampling the ‘soul of music’ in the 4th Industrial Revolution:  
A Copyright and Competition perspective  
Kalpana Tyagi

Sampling may be defined as taking a segment of a copyright-protected sound or a sound recording and employing it, in order to make a new composition.

Defining a theory of music, in other words, what merits protection is germane to appreciating use of which parts of the sound therein may actually constitute sampling. In the purist European tradition, melody poses at the heart of music. Considering the limited permutations and combinations in which notes and chords may be combined to create melodies, composers, in practice, increasingly experiment different aspects of music to create new compositions.

While the current approach in the field of copyright and related rights may be befittingly responsive to ‘classical music’, woes of popular music remain under-addressed considering that while there exists a “rich vocabulary to describe harmony, there is an impoverished vocabulary [to articulate] rhythm, pitch nuance and timbre” [Fishman, May 2018].

A restrictive approach may also negatively impact downstream innovation and creativity in the marketplace for music. In other word how music plays to the tunes of copyright and related rights, impacts competition in the market for creativity.

While it may be true that to further the objective of creativity, copyright must afford a high degree of protection to the right-holders; following the remarkable decision in Pelham, it is a befitting moment to re-think and re-consider the conditions in which this higher degree of protection limits follow-on innovation and creativity in the emerging genres of popular music.

This is on account of the fact that a restrictive interpretation confined to melody may lead to a restrictive effect on creativity and innovation. Evident, and perhaps widely-written victims of this approach are the pop, rock, jazz, blues, hip-hop and electronic music (in other words, popular music).

Against this background, this research paper, looks for balancing of the rights of the right-holder and samplers and evaluates, whether this melody-centric approach is befitting in the age of Artificial Intelligence (AI)-enabled digital sampling.

---

1 Assistant Professor, Faculty of Law, University of Maastricht.  
E-Profile: https://www.maastrichtuniversity.nl/p70069645 Email: k.tyagi@maastrichtuniversity.nl