Grand Upright Music, Ltd. v. Warner Bros. Records Inc.: Battle Over the Rights to Sample the famous 1972 O'Sullivan song "Alone Again (Naturally)" as "Fair Use" Under the Copyright Act.

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In *Grand Upright Music, Ltd. v. Warner Bros. Records Inc.*, 780 F. Supp. 182 (S.D.N.Y. 1991) the United States District Court for the Southern District of New York held that music sampling without permission constitutes copyright infringement under the Copyright Act of 1976, 17 U.S. Code *§ 501*. Warner Bros. Records Inc. ("Warner Bros.") argued that music sampling was "rampant in the music business and, for that reason, their conduct … should be excused" (justia.com). The court determined that the defendants violated not just the Seventh Commandment, by stealing, but also the copyright laws of the United States. The defendants elected to release a recording album and single before Grand Upright Music, Ltd. ("Grand Upright") permitted rights to use a portion of their work as a "sample." The hearing, in this case, was established by Order To Show Cause to obtain an initial injunction against Warner Bros. "for the improper and unlicensed use of a composition 'Alone Again (Naturally)' written and performed on records by Raymond 'Gilbert' O'Sullivan" (justia.com).

Warner Bros. admitted that rapper Biz Markie had sampled a portion of the song "Alone Again (Naturally)" in the track "Alone Again" from the rapper's third album, *I Need a Haircut*. However, Warner Bros. claimed that Grand Upright did not own valid copyright for the sampled song, although Grand Upright produced documentation that O'Sullivan had transferred the title to them, along with testimonies from O'Sullivan himself regarding the transfer of the title to Grand Upright. The issue, therefore, hinged on "who owns the copyright to the song 'Alone Again (Naturally)' and the master recording thereof made by Gilbert O'Sullivan" (justia.com) and whether the music sampling was "fair use" regardless of the sampling not being approved by the song's original owner. The "United States District Court Judge Kevin Thomas Duffy granted the injunction and referred the defendants—Biz, his publisher, his producers, and his record label, among other entities—to the United States Attorney for possible criminal prosecution" (Falstrom 361). The judgment set precedents for sampling in the Hip-hop music industry, requiring that all future sampling be approved by the original copyright owners. The ruling

shaped the way "statutory law—which does not directly cover sampling—can be applied to sampling disputes" (Hohman).

Facts

On December 17, 1991, the United States District Court for the Southern District of New York granted an injunction for the first music sampling case to go through a trial, *Grand Upright Music Ltd. v. Warner Bros. Records, Inc.* Grand Upright, the plaintiff, held the copyright to the song "Alone Again (Naturally)", which was made famous in 1972 in a recording by singer and songwriter Raymond "Gilbert" O'Sullivan. The plaintiff brought the suit against *Warner Bros. Records, Inc*. for the "improper and unlicensed" use of the song by rapper Biz Markie in "Alone Again," a track that appeared on Markie's album, *I Need a Haircut* (Falstrom 361). Markie used a digital sample of 10 seconds of music from "Alone Again (Naturally)" in his song "Alone Again." The defendants alleged that sampling the song did not constitute "improper and unlicensed" use because not only was unapproved sampling common in the music industry and considered "fair use," but Grand Upright did not own a valid copyright to the sampled song. These two matters had to be decided by the court. In the first matter, Judge Kevin Thomas Duffy's written opinion began with the admonition taken from the Bible, "Thou shalt not steal," which meant that the court viewed sampling as equal to theft, especially since Markie had already admitted to sampling O'Sullivan's song. The second matter the court determined was who owned the copyright to the composition and master recording of "Alone Again (Naturally)." Three articles of evidence satisfied the court that the plaintiff's claim of ownership was valid: 1) certificates of copyright and deeds showing the transfer of its title to the plaintiff; 2) written testimony from Gilbert O'Sullivan himself regarding his authorship and performance; and 3) letters from defendants to the O'Sullivans requesting their permission to use the sample (Falstrom 364). The plaintiff had alleged that Cold Chillin' Records, who recorded Markie's song, blatantly violated the Copyright law when they disregarded the fact that other sample approval requests were pending at the time they submitted their request, which indicated that the defendants should have known that similar denials of permission by rightsholders of other samples used on Markie's album and single might be forthcoming, for which similar action would have been appropriate (justia.com). The defendants' "fair use" defense against copyright infringement under the Copyright Act failed against the category of evidence presented by the plaintiff.

Legal Background

Judge Kevin Thomas Duffy had to examine the Copyright Act of 1976, 17 U.S.C. § 501 – infringement of copyright and 17 U.S.C. § 107 – limitation of exclusive rights: "fair use" to apply judgment in this case. The U.S. "Supreme Court has described fair use as 'a privilege in others than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent'" (courtlistener.com, n.d). The "fair use" is violated when works are used for purposes other than academic, scholarly, research, or news reporting. In *Salinger v. Random House*, 811 F.2d 90 (Second Cir. 1987), the issue of unpublished work and whether it was "fair use" was examined in this case. The plaintiff believed the right to privacy superseded the public right to information. The plaintiff's attorneys argued that the defendants' unauthorized reproduction, quoting, and paraphrasing of the plaintiff J.D. Salinger's unpublished work for use in a biography about Salinger's life was not "fair use" but copyright infringement. The court found "fair use" was not established because the purpose of the sampling was not for the creation of academic, scholarly, research, or news reporting, and that the defendants did not obtain permission to republish or sample the work. In *N.Y. Times v. Roxbury Data Interface*, 434 F. Supp. 217 (SD NY 1977) the plaintiff argued that publishing individual and personal names in an index with citations to the pages where the names appeared was not "fair use" but a violation of copyright law. The court found that "fair use" was established, because the defendants did not copy the index, but rather extracted names to create their own alphabetical index. These examples show clear differences in "fair use" under the Copyright Act which applies to sampling and whether, when applied to *Grand Upright Music, Ltd v. Warner Bros. Records Inc.,* it constitutes copyright infringement. *Warner Bros.'* case was based on "17 U.S.C. § 107, which establishes the affirmative defense of fair use. "Fair use combines delineated standards with flexibility and discretion, allowing principled decision making without the rigidity of bright-line rules" (Falstrom 380).

Holding

Judge Kevin Thomas Duffy ruled that sampling without permission constitutes copyright infringement. The judgment changed the Hip-hop music industry, requiring that all future sampling be approved by the original copyright owners.

In the written court documents, "Its first four words-'Thou shalt not steal'-contain the opinion's first and only reference to any authority or precedent" (Falstrom 364). The court noted

that "the defendants...would have this court believe that stealing is rampant in the music business and, for that reason, their conduct here should be excused" (justia.com). The court also wrote that "it is clear that the defendants knew that they were violating the plaintiff's rights as well as the rights of others (justia.com) and that their only aim was to "sell thousands upon thousands of records" (justia.com).

Analysis

The plaintiff's success and the brutal nature of the judge's decision were reasonable and predictable. From a case study perspective, this case sets a precedent for why sampling should not be considered quotidian but obtained through formal requests that are cleared, and written permission is established. The defendants' exercised poor judgment in their decision to release Biz Markie's song without obtaining permission to sample the famous 1972 O'Sullivan hit song "Alone Again (Naturally)." The defendants' flippant admission as to why they did not believe the matter would result in a lawsuit, that "fair use" and unapproved sampling was common in the music industry, is extremely reckless. The Copyright Act of 1976 clearly establishes "fair use" as "a privilege in others than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent" (courtlistener.com, n.d) and that any "fair use" must be established for the purposes of academic, scholarly, research, or news reporting. The defendants' use of O'Sullivan's work does not constitute any of these purposes, which begs the question of whether the defendants' only aim was to "sell thousands upon thousands of records" (justia.com), and confirms that the defendants' defense of "fair use" was ridiculous. The court may have been forgiving had the defendants not blatantly disregarded the copyright laws. The fact that Judge Duffy ruled that the defendants' behaviors did not only constitute stealing but exhibited no remorse for their actions, indicates that the judgment received in this case was harsher than normal. Therefore, the defense of "fair use" and erroneous interpretations of the copyright law made things worse for the defendants. This case serves as a perfect example of not only why artists should avoid sampling without permission, but why counsel for the defendants in sampling cases should be more prepared when charged with copyright infringement. This case "made artists responsible for getting the thumbs-up from the musicians they sampled" (Richards).

Conclusion

Artists often obtain a license to sample other artists’ work; however, those who do not obtain licenses often argue in court that “the copyright law does not cover their particular use of the work” (Hohman). Most of these sampling cases, primarily in the United States and the United Kingdom, have shaped the way “statutory law—which does not directly cover sampling—can be applied to sampling disputes” (Hohman). Sampling continues to cause legal disputes; however, copyright laws seek to protect the creation of work for the benefit of authors and society the same. The court played a critical part, in this case, to focus on the misuse and abuse of copyright laws and the making of legislation that would protect future use of sampling, while setting clear guidelines on what constitutes “fair use” from what constitutes stealing. This ruling may now allow Congress to examine other portions of the copyright laws and amend them to ensure artists continue to receive protection for their work regardless of the digital demands they likely face in the future.

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