



**INDIANA UNIVERSITY
BLOOMINGTON**

ARCHIVES OF AFRICAN AMERICAN MUSIC AND CULTURE

TO: Library of Congress, Copyright Office
FROM: Brenda Nelson-Strauss, Langston Collin Wilkins
RE: Music Licensing Study
DATE: May 23, 2014

We're writing in regards to the forthcoming Copyright Office Music Licensing Study. As a music archivist and scholar based at a major state university, it is imperative that we are given the ability to collect, preserve, and provide access to sound recordings for educational and research purposes. At present, however, an increasing percentage of contemporary music is distributed online via streaming or digital downloads subject to end-user license agreements that most often limit uses to "personal entertainment only." These restrictive terms are now pervasive across entertainment platforms, yet there has been scant music-specific discussion about their impact on educational use or their subversion of rights granted under U.S.C. §107-108, and 17 U.S.C. §110. Furthermore, there are a plethora of EULAs, each different and subject to interpretation, that challenge our ability to determine a.) allowable uses; and b.) if a copy (i.e. download) can even be "legally acquired" by a university archive whose mission includes collecting and preserving the music of under-represented artists.

This issue was address in the Library of Congress National Recording Preservation Plan under [Recommendation 4.4: Preservation of Twenty-First Century Recordings](#): "Physical copies of commercial recordings are being rapidly replaced by digital audio files distributed online by third-party companies (e.g., iTunes, Amazon, eMusic) through end-user license agreements that limit uses to "personal, non-commercial, entertainment" only. With some digital files, the purchase is not even classified as a "sale." Under the terms of the license, the content remains the property of the provider, and all uses are governed by the terms of the license. In the near future, it appears likely that much new music will be distributed via the "cloud," with users permitted access privileges only. These licensing agreements effectively make it impossible for research libraries and archives to legally purchase copies of file-based recordings, while simultaneously preventing legal educational use of these recordings in the classroom and impeding preservation. Because licenses trump copyright law, section 107 and 108 provisions for libraries and archives—meant to serve the public good and ensure the availability of works over time—do not apply. Furthermore, private collectors, who are most adept at discovering and documenting emerging genres, may never legally be able to place their digital audio files in an archive, no matter how rare or at risk their collections may be. If this licensing problem is not resolved soon, the bulk of the nation's culturally significant recordings from the twenty-first century will be held privately by companies and individual artists who may lack incentives or resources for long-term preservation."

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To further illustrate how the ambiguous nature of the current licensing landscape affects our ability to serve scholarly needs, we've drafted the brief case study "Who's Saving Hip Hop" documenting the challenges of collecting contemporary hip hop. Like many forms of African American music, hip hop was "created on the margins of society by and for the exclusive use of Black people."¹ Though hip hop has become a multi-billion dollar industry, the underground and entrepreneurial nature of the genre has placed it at the forefront of the "digital download dilemma." Artists worldwide are actively creating and making music available through a variety of blogs, websites, and other platforms—bypassing the traditional relationship between labels and artists. In fact, the output of these underground artists is often more desirable from a scholarly perspective because they're not subject to aesthetic changes imposed by labels for marketing purposes.

Who's Saving Hip Hop: A Case Study - ©2014 Langston Collin Wilkins

1. A quantitative study of the top hip hop albums of 2013 and 2014 reveals an increasing digital presence. *Rolling Stone's* list of the "[20 Best Hip Hop albums of 2013](#)" features three digital-only releases: Ka's *Night's Gambit*, Kevin Gates *Luca Brasi Story*, and Chance the Rapper's *Acid Rap*. However, *Rolling Stone's* list is rooted in mainstream releases from artists signed to or distributed by major record labels who remain dedicated to physical releases. On the other hand, Stereogum.com's "[The 40 Best Rap Albums of 2013](#)", which includes more independent releases, features 28 digital-only releases out of 40. The vast majority of these digital-only records are self-released by artists. Similarly, DJBooth.net's current (April 28, 2014) "[Top Albums & Mixtapes](#)" chart features 12 digital-only releases out of 20. In short, hip hop is largely post-label. Artists are increasingly self-releasing materials in digital form. In order to ensure that contemporary hip hop is accurately accounted for in our nation's repositories, clearly the end-user license issue must be addressed.

2. The problem of mixtapes is of particular concern. Mixtapes, within the contemporary hip hop industry, are album-length compilations of new songs or freestyles that are self-released by artists for free. Mixtapes are one of the driving forces of the new hip hop industry. Up and coming artists use them to introduce themselves and their music to listeners. Drake, Kendrick Lamar, and Future are among the notable artists who have taken this approach. Established artists, like Lil Wayne and Rick Ross, release mixtapes to both maintain their music presence between albums and to promote upcoming commercially released albums. Similar to albums, mixtapes are also promoted via single and video releases.

In today's hip hop landscape, the overwhelming majority of mixtapes are released digitally. Founded in 2005, Datpiff.com is the largest web-based mixtape distributor. Featuring a user-based upload system, the site allows registered users to download a limited number of mixtapes per day. Datpiff.com also features "sponsored" mixtapes that are available to non-registered users as well as exclusives that are not available on any other site. Currently, Datpiff houses exclusive and sponsored mixtapes from popular artists such as Fat Trel, Gucci Mane, Young Thug, and MMG. With over 10,000 mixtapes available, Livemixtapes.com is another notable distributor. Mixtapes are also released via artist platforms such as Bandcamp.com and Soundcloud.com. Artists also commonly distribute their mixtapes through popular blogs

¹ Maultsby, Portia K., "From the Margins to the Mainstream: Black Popular Music." 2008 (Unpublished paper)
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(2dopeboyz.com, Steadybloggin.com, Kevinnottingham.com, Fakeashoredrive.com, etc.) and websites.

3. The rise of digital music has been a boon to regional scenes such as those in Chicago, Oakland, and Houston. Lacking access to the traditional music industry infrastructure, artists in these scenes have turned to releasing their music digitally, which allows them to disseminate their music both locally and nationally. As a long time collector of Houston-based hip hop, my collection has become dominantly digital in recent years. Of the 100 plus Houston-related albums in my collection, 65% of them are digital. Much of this is due to the recent rise of mixtape culture. The most critically acclaimed Houston rap releases of 2013—Propain’s *Ridin’ Slab*, DeLorean’s *Grace*, and Fat Tony’s *Smart Ass Black Boy*—were all digital-only mixtapes. Regional and underground scenes are rooted in digital-based music which leaves them at risk in terms of long term preservation and access.

4. This matter also has classroom implications. As a hip hop educator, music plays a central role in my classes. Because hip hop is a living culture, hip hop classes become spaces in which students can engage with current trends and issues in the art form. In order to achieve this level of engagement, however, students must be exposed to the music within the context of class. Since contemporary hip hop is increasingly distributed as digital downloads, a whole generation of hip hop music will be left out of the classroom and libraries, to the detriment of students and society at large.

5. An overview of the various licenses utilized by digital hip hop sellers reveals many variations:

a.) www.datpiff.com: “downloading of any content, graphic, form or document from the Site grants you only a limited, nonexclusive license for use solely by you for your own **personal use** and not for republication, distribution, assignment, sublicense, sale, preparation of derivative works or other use.”

b.) www.hotnewhiphop.com: “Content on the Website is provided to you AS IS for your information and **personal use only** and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes.”

c.) www.djbooth.net: “Content on the Website is provided for **personal use only** and may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever.”

d.) www.bandcamp.com: “Company grants each user of the Site and/or Service a worldwide, non-exclusive, non-sublicensable and non-transferable license to use, modify and reproduce the Content, solely for **personal, non-commercial use**.”

e.) www.reverbnation.com: “Users will be allowed to copy, store and burn your Music and use your Music in connection with an unlimited number of devices as reasonably necessary for the **User's personal and noncommercial use**.”

In light of the above, we pose the question, “Who’s Saving Hip Hop?” If libraries are not legally able to collect and preserve this music, are we relying on fans with ample hard drive capacity? Or on commercial platforms or fan website to maintain files in perpetuity? If artists are not represented by the ever shrinking number of labels, or if they can’t afford to press physical CD copies, will they forever be on the margins? Must educators rely on links to YouTube or web pages?

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We urge the USCO to take a broad view with the Music Licensing Study and address licensing mechanisms that impact the collection, preservation, and educational use of digital-only music. At the very least, more exposure of these issues along with discussions of licensing models could make a significant difference. In our opinion, many individual creators are not intentionally restricting educational uses. Rather, they are simply copying language that was originally crafted by attorneys representing mega-platforms and industry. The current paradigm shift from downloads to streaming further endangers the ability of libraries to build carefully curated collections that document and preserve local and regional culture for future generations. As suggested by other library advocates, extending the protections implicit in the first sale doctrine to copies of digital content lawfully acquired by libraries and archives could also mitigate this issue. In either case, Fair Use and First Sale rights should be preserved regardless of medium.

Regards,

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