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It's a Legal Matter, Baby: Fair Use Law and the Rock 'n' Roll Scholar

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In order to reveal the discrepancy between the rock scholar's desire to quote copyrighted lyrics and the limited use allowed by holders of these copyrights, this essay explores the traditional understanding of the "fair use" doctrine in the context of a post-Napster, corporate-friendly legal world. In three parts—The Law, The Book, and The Lesson—Hamelman analyzes recent legal developments in copyright, discusses their impact on his 2004 book on rock 'n' roll music, and then provides guidelines for aspiring authors in this field. The essay argues that scholars must not assume that lyrics can be quoted with impunity, and that to avoid repercussions they should prepare themselves for an arduous permissions process.

> It's a legal matter, baby, a legal matter from now on. (The Who)

The Law

Of all the unpleasant academic tasks I have had to face—writing grants, studying for foreign language orals, sweating out a dissertation, applying for a job, even grading freshman essays—none has been as unpleasant as seeking permissions to quote lyrics for a book I wrote on rock 'n' roll music. Before starting this book, entitled *But Is It Garbage? On Rock and Trash*, I labored under the illusion that because I was a teacher writing a form of criticism to be published by a university press, I was free to quote any textual source I needed, just as scholars, without so much as a by-your-leave, have always quoted literary, historical, and other cultural sources in their articles and monographs. I suppose I may have had a faint idea, formed over the years by noticing "permissions" and "acknowledgments" sections in the front pages of rock 'n' roll books and the sleeves of records and compact discs, that, when I finished the book and found a press for it, I too would have to contact music publishers and request—in my fantasy, a simple pro forma process—to use a given line or two, at which time these publishers would thank me for my interest in their artists (after all, would my scholarship not mean free publicity for them?), sign off the requested lyrics, and wish

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me well. But, early in the project, I must have repressed this "faint idea"—rather, repressed the fear behind it—because I intended to cite dozens of songs, each lyric having the potential to drag me into a legal morass that might not materialize as long as I refused to acknowledge it. Right on cue, as Freud might have said, my repressed fear returned to haunt me, assuming a heft and packing a force that drove me to distraction for the better part of two months. I had been unable to keep at bay any longer a problem caused by ignorance of law, by denial, and by a sense of academic entitlement.

Part of the problem lay in the fact that writing the book was a happy experience; no serious obstacle interrupted the flow of words. Furthermore, the acquisitions editor of the press that accepted my manuscript encouraged me to "write the book I wanted to write." These were welcome words for the obvious reason that it proved the press believed in me, which in turn increased my self-confidence. But, a little later, my project editor sent me the press's policy on permissions, which threatened to dampen my enthusiasm, if not significantly alter my method of composition.[1] This question arose: should I continue to "write the book I wanted to write" (with its dozens of lyrical citations) and then revise it depending on the outcome of the permissions phase or should I begin to paraphrase lyrics so as to avoid grief later on? I decided to write the book I wanted to write, a decision that led to the present essay, which I offer as both a warning and a workshop on a neglected but critical aspect of rock 'n' roll scholarship.

Before proceeding with examples drawn from my experience, we must review the federal guidelines on copyright. Reading them without the benefit of legal training, I discovered a troubling irony lurking in the twenty-four sections of the Copyright Law of the United States of America and Related Laws Contained in Title 17 of the *United States Code*, passed in 1976. Despite the precision and length of the law—the section on pertinent definitions alone runs to about ten single-spaced pages, while section 114 ("Scope of exclusive rights in sound recordings") surpasses twenty pages—the section on fair use (§107) is one of the three shortest (175 words in six paragraphs). Section 107 states that "the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright." For further explanation of fair use, readers can visit the Frequently Asked Questions (FAQ) page, where they are then encouraged to access FL 102, which includes this disclaimer: "The distinction between 'fair use' and infringement may be unclear and not easily defined." In other words, all of the federal government's lengthy fine-tuned code cannot erase a gray area. Irony lies in the discrepancy between prolix legalese and the inability to define "the distinction between 'fair use' and infringement" with anything approximating precision because "fair use" itself baffles the definers.

FL 102 codifies another ambiguity: "There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the

copyrighted material does not substitute for obtaining permission."[2] The FAQ page echoes §107 and FL 102:

> Under the *fair use* doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentage of a work. Whether a particular use qualifies as fair use depends on all the circumstances. (emphasis in original)

These points—which I feel compelled to repeat so that my readers appreciate the ambiguities ("no legal rules," etc.) and relativity ("fair use depends on") inherent in the fair use code—are reinforced in Circular 21, the federal government's twenty-four-page pamphlet on fair use addressed to librarians and educators:

> Although the courts have considered and ruled upon the fair use doctrine over and over again, *no real definition of the concept has ever emerged.* Indeed, since the doctrine is an equitable rule of reason, no generally application definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. (6, emphasis added)

Vacillating between these criteria and the uniqueness of each case, the government concedes that "the endless variety of situations and combinations of circumstances that can rise [*sic*] in particular cases precludes the formulation of exact rules in the [fair use] statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change" (7).

Circular 21 reprints §107 in order to review the criteria that determine fair use. Essentially, these are the purpose, character, commercial or non-profit status, amount and substantiality of the use, as well as the nature and the effect of such use on the original work. Circular 21 provides guidelines for copying materials from books and magazines, an action with which most educators, often finding themselves at the photocopy machine before class, are familiar. It also explains the limits of fair use in terms of musical reproduction in the classroom. Librarians are treated to a reprint and analysis of §108 of the copyright code, which focuses on forms of reproduction permissible to them, such as duplicating titles to replace deteriorating recordings, decomposing films, or out-of-print works that cannot be restored at a reasonable cost.

With pamphlets such as Circular 21 readily available, it is easy for a teacher or librarian to understand the restrictions on reproduction. On the other hand, a scholar using the work of either living authors or deceased authors whose estates monitor usage very carefully must operate on less solid ground. As he or she scrolls through the code and combs through the verbiage of federal law, it is not clear what kind of or how much original text, sound, or image he or she is permitted to use in an essay, book, or presentation. Even the meaning of "commercial" is unclear. Nonetheless, in an era that has seen the emergence of a global music industry

asserting its might with all the arrogance of a monopoly, penalties for infringement can be severe. One legal source claims, "If the copyright owner seeks to impose statutory damages, he or she can recover between $500 and $20,000, or, if the owner proves willful infringement, he or she can recover up to $100,000" (Reyburn 995). The United States Copyright Office submits higher figures: a maximum of $30,000 statutory damages per work for unintentional infringement and $150,000 per work for willful infringement (FAQ). Perhaps the risk of such serious legal repercussions enlivens the gambling instinct in literary scholars who, refusing to bother with the permissions process, would prefer to hazard the consequences than to do without a copyrighted quotation of great literary value. (After all, the request to use copyrighted material could well be denied.) For purposes of the rock 'n' roll scholar, however, the literary value of the desired lyric may be less important than the authority that quoting the lyric, as well as other lyrics of similar quality, confers on the manuscript in question. But this aesthetic crux does not matter to the owners or managers of the copyright, who typically are not the composers or performers themselves.

Needless to say, we live in a time when talk of music copyright pervades print and broadcast media. We all know the Internet has become the field of struggle for copyright attorneys working on behalf of a music industry determined to wrest control back from tens of millions of file-sharers who sprouted up overnight once services such as Napster appeared in the 1990s. By the year 2000, there were, according to Sara Reyburn, already an estimated 80,000 music sites on the Web (996). Dozens of articles fill the legal journals, all of them debating the impact of new technologies on copyright, with the Recording Industry Association of America (RIAA) vs. Napster being the definitive case. Since 2000, the field of battle has broadened. On 23 March 2004, for instance, the RIAA website crowed that on that day suit was brought against 532 illegal file sharers, eighty-nine of them "using university networks to illegally distribute copyrighted sound recordings on peer-to-peer services." The other 443 defendants were accused of using commercial servers ("RIAA Brings New Round"). Clearly, the number one legal question of our age is this: does downloading music files constitute piracy or fair use?

Although it appears that the answer to this question is "piracy", post-millennium consumers continue to fly in the face of federal acts passed in 1992 (Audio Home Recording Act/AHRA) and 1998 (Digital Millennium Copyright Act/DMCA) as they gobble up free music without much interest either in the laws that the recording industry's lobbyists have persuaded Congress to pass or in the daily news of another round of lawsuits filed against high school and college students. It is possible that consumers have never understood or do not fully understand the new statutes, or any statutes, on copyright. Moreover, the judgments against other file-sharers might seem abstract to them, punishments that would never happen to them. "Many people," Reyburn pointed out just four years ago,

> are probably unaware that accessing and transmitting musical works on the Internet poses any legal problems. Requiring licenses for every transmission, while a well-motivated goal, may therefore be unrealistic both because transmitting is

> easily accomplished by people ignorant of the possibility of copyright infringement and there is no central mechanism for regulating transmission. (Reyburn 1000)[3]

But, even if the masses did or do understand copyright code, the AHRA worked *against* the recording industry because it did not define the computer hard drive (still a fairly new technology in the early 1990s) primarily as a digital recording device. Legally, this non-definition made it difficult for a copyright holder to prosecute people accessing music files that pass through a hard drive, which all files do. Furthermore, the AHRA protects downloaders by repeating one of the principles of fair use law: "no infringement action may be brought if use of the digital or analog recording device is for noncommercial use" (Beets 512), and, of course, most home recording is non-commercial in intent.

Counteracting the consumer-friendly AHRA, however, is the corporate-friendly DMCA, whose "provisions [have] changed the traditional laws of copyright, as critics have urged, largely at the expense of users"—that is, at the expense of fair use (Mendelson 603). The trend currently being institutionalized by the courts is to abet the monopolization of knowledge and property by limiting fair use through enforcement of the strict provisions of the DMCA, which, indifferent (if not hostile) to fair use, has erected barriers against infringement and circumvention, both closely defined. Many experts allege that corporate copyright holders are gaining a distinct advantage over everyday people—not bootleggers, pirates, and hackers—who wish to share information in the public domain of a free society in the process of adapting to sudden and rapid advances in technology. Judging from Laura Mendelson's findings, the DMCA is a chilling symbol of a sea change in the application of copyright:

> The tendency in the last several years has been for courts to look at fair use as a relic of print culture, unworkable in a digital environment....The DMCA essentially shifts regulatory power from the judiciary to owners of copyright. Copyright owners not only hold copyrights to their works, but access rights as well. In fact, it is hard to see any public interest motives [the long-standing basis for fair use law] implicit in the DMCA. (Mendelson 602, 605)

Other legal experts, including a few who have scrutinized the Napster case, have reached similar conclusions.[4] Writing in 2003, Peter Moore contended that the DMCA's "provisions have had, and will likely continue to have, adverse effects on consumers' rights to exploit fully merchandise that they lawfully purchase" (1437–38). Moore believes the legitimate concern of record companies "to reduce true infringement of their valuable copyrights" has created disproportionate protections that "tend to reduce the rights of consumers to make fair, noninfringing uses of copyrighted material that they obtain lawfully" (1439). The severity of the DMCA lies in the fact that "there is no exception for circumvention of copy protection done for a noninfringing use. Even if the manufacturer of the circumvention technology [liable, along with the user, to prosecution] seeks only to enable noninfringing uses and not piracy, the DMCA still stops him" (1464).[5] Writing in 2004, Thomas Morrow and Jeffrey Sullivan emphasized the DMCA's notorious "inconsistency,"

charging that "strongly pro-rights-holder sentiments...animated the drafters of the DMCA" (2). Exemptions to the law are narrow, rendering the consumer (and fair use code) yet more powerless (and more ineffectual) against "the aggressively pro-content-protection regime inaugurated by the DMCA" (6).

In an essay with the disturbing title "Mutilating Music," Vanita Kohli upholds the principle of copyright protection for creators but does not sympathize with the music industry's current troubles, mainly because the industry (in effect, a self-serving, destructive monopoly) and its legal apparatus (notably the RIAA) have always bullied its artists:

> Most creators...usually sign away all their rights to a company, which then exploits those rights. Copyright is no longer about creative expression and the protection of that expression by the law—the original intention of the law. It is about protecting the monopoly, which the law gives copyright owners who are big contributors to GDP. For example, over 5 per cent of the USA's GDP comes from the entertainment industry making it one of largest contributors to the U.S. economy [*sic*]. Music alone is an almost $40 billion industry globally, of which a chunk is controlled by five large companies. Obviously we are talking of huge stakes here. So, like all other legislation, copyright law is about who can lobby hardest. (Kohli 16)

The "huge stakes" for the five companies are financial domination acquired through domination of copyrighted music that technology has threatened in unprecedented ways to democratize. The "huge stakes" for the general public are the decreased dissemination of intellectual property through "anti-circumvention provisions [that] extend the copyright owner's right to encompass access control" (Mendelson 604). As for the alleged crisis of illegal file-sharing, Kohli argues that, since most artists have already "signed away all new technology rights, they will get very little out of the internet, unless they are really big enough to re-negotiate their contracts. The bedrock of creative expression, copyright law, does nothing to protect the creator's monetary rights" (19).

Where the money really matters (not, that is, in academic use of rock lyrics), the music industry has concentrated its strength. Despite industry reprisal in the form of injunctions, lawsuits, and marketing campaigns, confusion, legal wrangling, and consumer disobedience prevail. Nineteen-ninety-nine saw the first big lawsuit of the MP3 epoch when the RIAA sued Napster, which has since become the archetypal free file-share service. Although Russell Beets' fifty-page study of this lawsuit does not relate directly to my present argument, I have studied and cited it because it is more than a tale of a new technology wreaking havoc on a bloated, outmoded recording industry. It is also a crash course in copyright law. During the course, the student comes upon many curious facts. For example, one tactic that Napster used in its doomed defense was to invoke the AHRA (546), and one tactic that Napster's users employed to bypass the blocks Napster imposed to comply with the injunction to clean up shop was to misspell song titles in order to access the titles they sought (552). Come hell, high water, corporate intervention, or government persecution, the kids were going to get free music.

The Napster brouhaha and its offshoots have garnered much attention. In contrast, why should anyone care what rock 'n' roll scholars, with their limited audiences and nonexistent profits, do with lyrics cited to flesh out their theoretical arguments? After all, quoting lyrics from a Lou Reed album in a scholarly context without obtaining permission seems far less unethical than downloading (not to mention burning) that same album without compensating him. (I mention Lou Reed not only because I cite him often in *But Is It Garbage?* but also because he is one of a group of rockers who have criticized Napster. One should note that the anti-RIAA faction is a formidable group in its own right, and that this faction includes not only disgruntled consumers but many high-profile critics, rock stars among them.)[6] Nonetheless, my point in reviewing the file-sharing controversy is not to take a side but to emphasize that these days rock musicians and their copyright holders are skittish about usage. Consequently, the trickle-down effect for a rock 'n' roll scholar means that quoting a lyric, without permission, in a journal article or a book is risky business indeed. A scholar who labors under fuzzy assumptions about free access to copyrighted material for academic purposes cannot be too careful. Ignorance of the law does not constitute defense in an infringement trial.

The Book

Having a basic grasp of fair use law—enough to know that federal bureaucrats balk at defining it but that corporate lawyers do not balk at prosecuting violations of it—we can now turn to the permissions process as it relates to the rock 'n' roll scholar. The process would seem to be a painless matter of sending a standardized request, usually via fax, to the appropriate song publisher and waiting a few weeks at most for an affirmative or negative reply. (Ninety-nine per cent of publisher names and contact numbers can be found at the ASCAP and BMI websites.) In practice, the process does not go this smoothly. For one thing, there is no standardized request form. True, my press gave me a template from which to work, but before I learned that this template was merely a starting point, I had sent out at least ten requests, all defective, and all requiring me to amend and send out new versions. The defect lay not in the template *per se* but in my inability to see things from the point of view of my intended audience.

Specifically, the template included a line item where the requesting author (me) was instructed to provide a brief summary of the publication's content. Looking at the scant space provided, and wanting so much to expedite the task that I did not take the liberty of stretching the space as needed, I wrote a short two-sentence summary of my 300-page book—a classic example of Linda Flower's theory of "writer- vs. reader-based prose." That is, as a writer deeply versed in his subject, I was assuming far too much about the audience's ability to extrapolate the book's theme and content from two sentences, as well as from other details preceding this curt summary. According to Flower, writer-based prose "is natural and adequate for a

writer writing to himself or herself. However, it is the source of some of the most common and pervasive problems in academic and professional writing. The symptoms can range from a mere missing referent or an underdeveloped idea to an unfocused and apparently pointless discussion" (268–69). Flower teaches that in writer-based prose "a writer may allow himself to ignore the additional problem of accommodating a reader. Writer-Based prose, then, functions as a medium for thinking. It offers the writer the luxury of one less constraint" (278)—in my case, the constraint of time and tedium. Perhaps my oversight was less a matter of bad writing than of hurriedness or, worse, of passive aggression ("I prefer not to do this task"). In any event, later versions of my request letter went out with an improved summary. This new reader-based summary fared better with my readers, predominantly lawyers, paralegals, administrative assistants, licensing agents, and business personnel, occasionally a musician in possession of his or her own copyright.

This first mistake in judgement was followed by one I made in the next line-item, number ten. Here the author was instructed to provide galley sheet(s) or manuscript page(s) on which the requested lyric appeared. Taking this instruction literally, I typed in the page number of the relevant pages. When responses started coming in, as they quickly did, from agents who wished to read the requested lyric in context, I realized that in my haste to send out the first round of permissions—a haste tinctured by the illusion that the procedure was little more than a matter of protocol—I had failed to provide the copyright owner with the most important information of all: the actual use of the lyric. A page number, pointless in itself, would hardly suffice. Once this lesson sank in, I began to photocopy and submit the entire manuscript page that included the desired lyric, sometimes supplementing this page with the pages preceding and following it.

A final slip-up on the template—again, all my fault—concerned the distribution of copies. Music publishers want to know the number of cloth and paper units that will be printed on the first run. Since fair use is determined partly by a book's potential for commercial success, the copyright holder has a right to know how much money the author and press might make on the product. Knowing the amount of the first printing, the copyright holder can better decide (1) whether to give permission and (2) whether to charge the author more or less for use of the lyric. The fact that the press may be "non-profit" in nature or educational in design does not mean much to copyright holders or their representatives, whose job it is to protect their company's and client's rights and to keep the royalties rolling in. In neglecting to examine my contract with the press, I failed to list the correct number/ratio of cloth and paper units, which caused a mix-up down the line when a song publisher permitted me to use a lyric for the first 500 (cloth) copies only. I had not asked permission for the paper run that would be marketed along with the cloth. Swallowing my humble pie, I contacted the song's licensing agent, explained my oversight, and asked her to alter the contract in my favor. After doing this, I had to review every other affirmative response up to that point in order to make sure each permission contract I had signed was not limited to 500 cloth units.

Although this may sound platitudinous, it is worth mentioning that professors of humanities are sometimes out of touch with the business practices of the so-called real world. Many of us have been seduced into thinking, possibly because of the influence of critics such as Jacques Derrida, that "*There is nothing outside of the text*" (original emphasis). In the mid-1970s Derrida declared: "[I]n what one calls the real life…'of flesh and bone,' beyond and behind what one believes can be circumscribed as…text, there has never been anything but writing; there have never been anything but supplements, substitutive significations which could only come forth in a chain of differential references" (158–59). But these philosophical niceties, no matter how revolutionary in academia, are tenets of an esoteric deconstructive theory; they are not tenets of the business world. In that world, there is indeed something outside the particular text known as the rock 'n' roll lyric—two concrete things, in fact: (1) copyright law and (2) hard cash to be paid by scholars who have been permitted, after asking properly for such permission, to quote lyrics from a song that they, shaped by literary theory and cocooned in academic towers, might have been beguiled into thinking was just another text. For this reason, scholars writing about rock music should heed the advice given by the author(s) of government document FL 102: "The safest course is always to get permission from the copyright owner before using copyrighted material." This advice by an anonymous government scrivener is best left un-deconstructed by partisans of Jacques Derrida.

The scholar's request to cite a rock tune will elicit one of three orders of response. First is "no." The "no" is non-negotiable, unambiguous, and absolute: "Don't think about quoting the lyric." The second possibility is "yes." Since the granted "yes" is often conditional, the author must decide whether or not to accept the conditions (from paying a fee to limiting distribution territory and language) or to sacrifice the lyric. The third basic category, "maybe"—more accurately called "in limbo" or "indifferent"—is less simple than it appears because it means one of two things. Either the song publisher is withholding permission until the author submits more information about the intended use or the song publisher does not respond at all to the request, thereby throwing the author into the quandary of deciding whether or not to invoke an unwritten rule circulating in editorial offices at university presses: "Lack of response to request equals indifference to request equals permission to cite by default." After much discussion about the risks involved, my project editor and I decided not to invoke this rule more than once or twice.

From a pool of about seventy songs whose lyrics were cited in my manuscript, I faxed or mailed fifty-four requests. The discrepancy between numbers occurred for three reasons. First, some of my requests included multiple titles by the same composers, all controlled by one publisher: thus, one letter to Sony/ATV requested the use of five numbers by Lennon-McCartney (no response). Second, many tunes are owned by two or more publishers, each song demanding its own request (in no case did all the holders of a given copyright respond to all my requests to use their song). Third, because the five- to eight-word lines taken from ten-odd songs seemed to fall well within the domain of fair use, I did not contact their owners.

Consequently, these citations survived the deletions and paraphrases of the post-permissions phase.

Of the fifty-four requests, four were declined, nine were approved, and thirty-eight remained "in limbo." The three other requests were sent to holders who were good enough to tell me I had contacted the wrong office (for example, personnel at RCA Records let me know they have nothing to do with Lou Reed's lyrics on the album *Berlin*) or that the copyright had been sold to another party, whose name and address I then had to locate. Thanks to the miracle of faxes, a few responses came back on the same day the request was submitted. The longest interval between request and response—a letter to EMI that had to be forwarded to Hal Leonard Corporation, one of the big copyright houses, for handling—was four months and eight days: 8 May 2003 until 16 September.

Although the shortest, the "no" column contains the most interesting anecdotes in my searches. Because the present text is a scholarly, not-for-profit essay, the fair use doctrine allows me to quote the same lyrics that were prohibited in the medium of a book. I should add that, while some of these same lyrics might have qualified for fair use in that book, thereby obviating the need for a permission request, my project editor and I decided from the outset to obtain clearance for most of my citations, especially those that seemed particularly "literary," even though their word-length was a small fraction of the song total. Once a lyric is requested, the verdict on its use must be accepted. In other words, had I not been so fastidious (some might say paranoid), I might have kept some fine citations that I, with regret, expunged or, with toil, paraphrased.

One of these fine literary citations was made famous in "Werewolves of London," recorded by the late Warren Zevon, and composed by Zevon, Waddy Wachtel and LeRoy P. Marinell. In a passage rehashing the rock lyric vs. poetry debate, I wanted to present an example of virtuosity, and what popped into my mind was this line: "Little old lady got mutilated late last night". The phrase's blend of alliteration (l's, d's and soft t's) and assonance (short i's and long a's) shows a lyricist at the top of his game. Eight words, to be plucked from a song totaling 157 words...why would anyone refuse my request?

The first of the song's three publishers (all agents must remain nameless) granted gratis use of the lyric. The second license-holder did not respond at all. The third, however, strung me along for a while in a series of e-mails in which he exacted more and more information about the book. Having possession of the page of text on which the eight-word passage appeared did not satisfy him or his people, who, I suspected, did not include Zevon, Wachtel and Marinell. Eventually, he demanded a copy of the entire manuscript for review. Flabbergasted, I asked my press to deal with the agent. An editor was happy to try. No luck. In the end, we backed off when the agent, hearing that we could not agree to his singular terms, instructed us not to reprint one word of "Werewolves of London." The moral of this anecdote is clear. Even a complimentary use of a lyrical passage can meet with a prohibitive condition from a licensing firm.

Another line couched in a complimentary passage fared no better. This one was taken from "The Wasp (Texas Radio and the Big Beat)" by the Doors: "No eternal reward will forgive us now for wasting the dawn," an example of rock poetry reflecting the theme of waste that my book analyzes. Not a great loss, but one I regretted, having had my eye on this lyric since the first days of the project, it being a unique expression of wastefulness by a wasted musician. A harder denial to take was written by Patti Smith herself. In a cordial e-mail, the star corrected what she deemed my misinterpretation of a detail in "25th Floor" from *Easter*. (I stand by my interpretation.) The length of my request, a hefty seventy-five words, was not at stake. Smith declined my request simply because she did not agree with the way I had read her lyrics. In this case, it was not the severity of the DMCA, but the censorship of the composer that foiled my analysis of "25th Floor," which praised Smith's lyrics (particularly the rhapsody commencing with the words "the transformation of waste"), performance, and originality.

Very generous and much appreciated gratis "yes"s were granted by the copyright holders of Amy Rigby (lyrics from two tracks), Bob Dylan (five songs from *Time Out of Mind* OK-ed without a murmur), the Byrds ("5D [Fifth Dimension]"), Mazzy Star ("Wasted", owned by four parties), and Lou Reed (lyrics from *Berlin*, use conditional upon my meeting the reasonable word limit). Upon opening the SASE returned by Stephen Malkmus of the band Pavement, a thrill passed over me. Seeing his "yes" signature in black marker on the bottom of the last page of the form was one of the highlights of the task. Malkmus forfeited all interest in my citation of his lyrics on the EP *Watery, Domestic*. Finally, there was the good will of Jim MacLean, leader of obscure '80s indie band Sewer Trout. Tracking him down took some time and ingenuity. It was worth it. Mr MacLean was happy to hear that his group's song "Garbage In, Garbage Out" had contributed to my study. Mr MacLean is a rarity: a rock 'n' roll composer indifferent to copyright or royalties. (All of his songs for Sewer Trout are in the public domain.) In the search for Mr MacLean, I chanced upon various indie labels, notably No Idea Records and their irresistible website—a delightful pay off for my detective work. So was the discovery of Sewer Trout's refreshing (designed in Courier 12) half-page website, essentially a discography of weird album titles such as *From the Bowels of Suburbia*, *Songs about Drinking*, and *Vagina Envy*.

Two publishers (representing Nick Drake and Daniel Johnston) granted permission on a fee basis, $25 and $65, respectively. This they did after gathering from me more information about their lyrics' intended use, more proof that the permissions template is but a starting-point in the process. Meanwhile, the aforementioned request "in limbo" for four months came back affirmative contingent upon the company's receipt of $50 for the lyric's use in the first 500 copies only (my cloth/paper oversight haunting me again), leaving me to wonder what would happen to all my permissions should the book go into a second printing. But an author can only worry about so many things at one time. As for the belated permission, the lyric in question had already been paraphrased, rendering the "yes"

moot and saving me fifty dollars. As it was, my total payout of ninety dollars fell well within my tax-deductible budget.

Exactly 70 per cent of my lyric requests ended up "in limbo." Needing to move on to the next stage of production, my project editor and I decided to remove all but a few of the no-response lyrics from the text. Again, it is possible that had we kept them we would have been protected under fair use. On the other hand, many of the lyrics were controlled by mighty corporations whose ire we did not want to inflame—i.e., whose lawyers we did not want to meet in court. I have mentioned Sony/ATV. Other big guns were Warner/Chappell, Universal Songs of Polygram, MCA, EMI, and Warner Bros. And, so, going by the wayside were Beatles lyrics such as "I used to get mad at my school" ("Getting Better") and "When I get to the bottom I go back to the top of the slide/Where I stop and I turn and I go for a ride/Till I get to the bottom and I see you again" ("Helter Skelter"); a bunch of excerpts from vintage Beck; and these lines from one of Johnny Rotten's anthems: "I don't work, I just speed/That's all I need/I'm a lazy sod, I'm a lazy sod" ("Seventeen").

The push and shove was also given to vinyl confessions of Ian Curtis of Joy Division, notably these words from "Passover:" "This is a crisis I knew had to come/ Destroying the balance I'd kept....Turning around to the next set of lies/Wondering what will come next". Bits and pieces of numbers by Ian Dury, Leonard Cohen, the Birthday Party, INXS, Björk, Napalm Death, Korn, Bob Dylan, Paul McCartney, Cowboy Junkies, Alice Cooper, the Cramps, and Napster-haters Metallica were, as if in the spirit of my book's title and theme, dumped. For some reason, probably because I did not separate each band's management from each band's indie persona, and because I tend to romanticize the indie ethic at the expense of the mainstream, I took no-replies from the following bands almost personally: the Replacements (key lines from "Sixteen Blue"), Sonic Youth ("Total Trash," "Providence," "Quest for the Cup," and "Waist"), Black Flag (no reply from Greg Ginn to borrow "Wasted"), Shellac (perhaps Steve Albini never got word that I was seeking to cite the vitriolic "House Full of Garbage"), Bad Religion ("White Trash [Second Generation]," "You Give Up," and "What Can You Do?"), and the Crucifucks (the trashy "Marching for Trash").

From my point of view, I was not writing a book merely to further my career. My scholarship was much more than an academic exercise. I was writing a book out of a passionate need both to examine the twin theme of trash/salvation in rock 'n' roll music and to spread the word about the work composed and recorded by the artists and bands mentioned. I was "using" them only up to a point, after which I was helping them. It is conceivable that my book might increase the sales and reputation of some of them. But is this kind of altruism (or self-delusion) another weakness in the make-up of the average humanities professor? I do not know. I do know, however, that the rock 'n' roll scholar who assumes what I did—that stars (and non-stars) should be grateful for the work we do on their behalf—is bound for disappointment. If the process is not about dollars, then it is about indifference, two not very inspiring alternatives for either the altruist or the pure-minded humanist. As

for the exasperated scholar who sits there tallying the thousands of dollars he or she has spent on rock music over the decades, only to have one permission request after another rejected or ignored by the industry—this person will succeed only in fanning his or her indignity. Best to let it go. To quote Jackson Browne, "Nobody owes you nothin'".

Originally, I hoped to insert five or six illustrations in *But Is It Garbage?* Except for two photographs taken by me, these images required permissions. I did well with album covers, receiving instant, free go-ahead to use the first Buffalo Springfield LP (to enhance an argument about the saving grace of that classic disc) and the Trashmen's *Surfin' Bird* LP (to do the same thing). This smooth sailing turned rough in my attempt to borrow Annie Leibovitz's famous black-and-white portrait of Keith Richards slumped in a chair, presumably after a concert. "Torn and frayed: Keith backstage in 1974" reads the caption. Maybe so, but never has a wasted (by exhaustion? drugs?) human being looked so gorgeous. Keith's eyes are closed because he is asleep, at peace. "Hair" doesn't describe his hair: no, shagging over his beautiful face is a massive virile black mane made more attractive by a few blond streaks. Two chains, one sporting his label's lip/tongue logo, droop to the right of the man's sternum. His right hand, maker of so many magic riffs, hangs limp; his left hand crosses his lean bare torso; the disheveled, baroque shirt, pulled wide open, covers his left breast but not his right. Keith's navel lurks behind his left wrist. Belly hair spreads over the area between belly-button and top pants button. A strap embellished with two rose patches hangs below the button-down fly, and a mushroom patch decorates the star's groin. Scarves drape over his sleeping arm. He slouches to the right. Keith Richards has been captured in a blissful state, fully exposed, fully vulnerable, fully himself.[7] It is no mystery why I wanted to reproduce this image in my book: no words can do justice to it.

My request to insert the photograph was denied despite my negotiations by telephone with Ms Leibovitz's representative in New York City. I did not agree with his reasons (out of respect for him and his client, I shall not summarize them) but nothing I said could prevail upon him to reconsider. Protests of my "life-of-the-mind" scholasticism would not have impressed him, so I did not take that approach. I listened and learned. The world of copyright is, let it be repeated, the world of money and might. During our five-minute discussion, this gentleman offered evidence of how much a single permission can set back a pop-culture scholar. He said that he had negotiated similar licenses on behalf of his client for $1,500—serious money, well within the means of the Rolling Stone Press book where I found the photograph but well beyond my means. Not that it mattered. Without the picture of Keith Richards to lead off the second section in my book ("Wasted"), there was every reason to pull all illustrations, including my own two photographs of a turntable, complete with *Hotel California* on the spindle, trashed beside a residential dumpster. The book I had wanted to write, and did write, was falling apart all around me, and the readers of *But Is It Garbage?* would never know what they were missing.

Other media implicated in my book were an academic quarterly, a rock semi-annual, and a long poem. Norton gave me clearance to extract seven lines (forty-eight words) from the book-length *Garbage* by A. R. Ammons. The fee: $30. When I recalled the thousands of Norton anthologies I have required my students to buy over the years, not to mention the scores of Nortons I have bought for myself, this $30 stuck in my craw. But I wrote the check, glad to enrich my text with some suitable verse.

Furthermore, Jack Rabid, editor and publisher of one of alt-music's top magazines, *The Big Takeover*, replied within an hour to an e-mail in which I asked to reprint some passages from his publication. His "yes" was accompanied with gratitude and good wishes. This happy ending shows why it is a good idea to read an editor's fine print at the front of a magazine. There I was surprised to see that Mr Rabid demands approval to reprint anything from *The Big Takeover*. Having studied the United States code on copyright, I now sense that fair use would have protected my selective scholarly citations of reviews and interviews published in this magazine. At the same time, my respect and admiration for Mr Rabid (not an acquaintance) are so high that I complied with his policy. In fact, it was an honor to have a brief e-chat with him about my project, one in which I suspect he might be interested since much of my book focuses on the alternative rock 'n' roll to which he has dedicated his life.

Finally, Routledge permitted me to plunder an article I wrote for the spring 2003 volume of *Popular Music and Society*. This was one of the quickest and friendliest permissions I got. That this courtesy is standard procedure in academic publishing did not lessen my gratitude for the opportunity to quote myself without legal repercussions.

The Lesson

I began this paper by saying that the permissions process was the most unpleasant task I have faced as a professor—my way of saying that it involved much drudgery with little reward. Moreover, my decades as a fan of rock 'n' roll counted for nothing. There is no line-item on the permission template to shout about the thousands of record albums, cassettes, and compact discs one has collected. For instance, my lifetime purchase of at least 100 units of Beatles music, analog and digital and celluloid, did not earn me points with the bureaucrats who control the Fab Four's publishing. I submitted my request to an address in Nashville, waited and heard nothing. All that work, all that love, for nothing. There's nary a Beatles song excerpted in *But Is It Garbage? On Rock and Trash.*

Obviously, the unpleasantness (time investment, frustration) for other rock scholars will depend largely on the number of lyrics and images they want to represent in their text. I wanted too many of them—first problem. Second problem: I went after the lyrics and images without experience and with no knowledge of copyright law. My press enjoys international esteem, yet it does not retain legal

counsel for each one of its authors. (I would wager that most university presses do not have a lawyer hanging around the editorial office fielding questions on copyright.) Having seen that the United States government has trouble defining copyright, we cannot expect an editor constrained to worry about copyright infringement to define it any better. And so to err on the side of safeness, my press and I nixed the vast majority of "in limbo"s.

Also obvious is that my feelings about the process are based on my experience. Yet my experience can alert others venturing into rock 'n' roll criticism. To a greater or lesser degree, all rock scholars will have to deal with copyright, which is to say, with agents of a federally protected monopoly much bigger than each one of us. Against such forces, no one can assume that his or her status as an educator confers privilege or merits special dispensation. Contrary to what our vocational self-images might suggest as we cultivate our corner of the humanities without an eye on the marketplace, we educators are not shielded from scrutiny by copyright agents scouring print material for transgressions. We cannot pretend that file-sharers engross all the resources of the copyright police. We cannot afford to be complacent about copyright laws we do not fully understand, especially in an age where Napster is defeated by the RIAA and where the Digital Millennium Copyright Act "does not seem, in its language, its spare exemptions, or its judicial implementation, to have concern for fair use" (Mendelson 606).

In order to write the book I wanted to write, I spent countless hours searching for the e-mail/fax/phone/street addresses of music publishers, preparing the templates for them one by one, cutting and pasting relevant passages, reaching dead ends and starting all over again, and satisfying follow-ups for more details about my thesis. Despite these efforts, 70 per cent of my faxes, calls, and letters were ignored. The waiting period segued into a period of intense revision. To remove even a short citation in a finished essay is to start a concentric ripple coursing through the text. The affected paragraph is like a small, still pond and the deletion is like a big rock plunked into the middle of it. Paraphrases change meanings; grammar and style must accommodate new transitionals; key words, upon deletion, cry for synonyms; and sentences on each side of the paraphrase need spit and polish. I like to flatter myself that the need to revise inspired me to improve the book; I certainly was not going to let the loss of some primary text undermine four years of toil. But it did hurt to lose several lyrics, such as those by Patti Smith, Warren Zevon, and Lennon-McCartney, and to lose the illustrations of Keith Richards and, with Keith off limits, those of Buffalo Springfield and others that had been approved. It also hurt to know my readers would never know the full story, would never hold the book that I had envisioned and actually written. Still, the permissions process, aside from being "educational" and thus beneficial in itself, brought me back to my text time and time again, forcing me to think hard about everything from syntax to purpose and to take a step forward for every setback caused by an uncooperative corporation.

This essay is thick with implicit tips for scholars planning to write about rock 'n' roll music. To conclude, let me list the most important tips and add a few more.

Scholars should:

- Know and abide by the copyright policy of their press or journal
- Read the Copyright Law of the United States of America (www.copyright.gov)
- Not ask for permission if they are convinced fair use protects them from legal action; if permission is denied, the lyric will have to be sacrificed
- Allow plenty of time to research, prepare, and submit requests, and more time to receive responses
- Send copyright owners more rather than less information about the thesis (avoid "writer-based prose")
- Document and keep copies of all requests
- Not expect their presses or journals to provide legal support or advice
- Be persistent
- Expect disappointments and accept conditions
- Realize that most officials in the recording industry neither understand nor care about the scholar's high intellectual mission
- Save receipts/cancelled checks for fees paid for use, and deduct these fees on their income tax returns
- Cite as few lyrics as possible (eschewing lyrical epigraphs altogether because they could be interpreted as "decorative" rather than scholarly) in order to avoid subsequent revisions

Heeding these tips, the rock 'n' roll scholar will probably avoid the mistakes I made and get his or her article into print with as little delay and as much unquestionable fair use as possible. An added benefit of the process involves the scholar's enlightenment regarding copyright *vis-à-vis* the recording industry's attempt to redefine infringement and punish it according to a new set of self-serving standards. In a culture dominated by grasping corporations emboldened by federal statute, quoting a silly love song has become a dangerous act even for mild-mannered scholars interested not in making a profit but in making sense of rock 'n' roll music.

Notes

[1] My acquisitions editor was Derek Krissoff; my project editor was Jon Davies; my press is the University of Georgia Press. I dedicate this essay to these two remarkable editors, for whose support and instruction I will be forever grateful.

[2] FL 102 also states: "The 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law cites examples of activities that courts have regarded as fair use: 'quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.'"

[3] Reyburn's estimation of consumer ignorance may have changed considerably during the past few years of media attention to piracy and copyright. A posting on the Recording Industry

Association of America's website on 23 March 2004 declares that, according to a March survey by Peter D. Hart Research Associates, "those who say it is illegal to 'make music from the computer available for others to download for free over the Internet,' stands at 63 percent, with only 15 percent saying they think it's legal. Sixty-two percent of the subgroup of students also thought the activity was illegal; but 28 percent thought it was legal, suggesting that more education is required. By a more than two-to-one margin, the public supports the record companies' [*sic*] legal efforts, according to the Hart poll. Fifty-six percent say they are 'supportive and understanding' when told that the 'record industry is gathering evidence and preparing lawsuits against individual computer users who are illegally sharing substantial amounts of copyrighted music online,' compared to 19 percent who say they are 'unsupportive and negative.' Among students, 50 percent are supportive and understanding, while 27 percent are unsupportive and negative" ("RIAA Brings New Round").

[4] In addition to Beets and Moore, see Emily Larocque, who sums up the legal problem thus: "The *Napster* litigation is one of the latest efforts of the courts to reign in and define the limits of Internet copyright law. It manifests the tension between Congress's desire to provide copyright protection while at the same time promote technological advances on the Internet. Due to this tension, which is magnified by the Internet's unique capabilities and worldwide implications, copyright law is changing with the goal of finding the proper balance between these desires" (788).

[5] Moore wraps up these assertions with a witty analogy: What the DMCA provides "is analogous to banning roadside assistance because some people might trick AAA into breaking into another person's car" (1464). In his conclusion, he offers another cutting analogy: "The House of Representatives characterized circumventing copy protection as 'the electronic equivalent of breaking into a locked room in order to obtain a copy of a book.' If that is the case, then the DMCA allows a landlord to prevent a tenant from getting into his apartment if he loses his keys, even though the rent is already paid. It also allows the landlord to prevent a transfer of lease, even when other laws specifically allow it. It makes the landlord a dictator in the home" (1469).

[6] For statements supporting the RIAA position, see "Artists, Managers and Industry Leaders Speak Out against Napster." For anti-RIAA arguments and allegations of exploitation, see Vanita Kohli's "Mutilating Music." For comments on the industry's mangling of the opportunities the Internet had provided them, see Jack Rabid's and Michael B. Ackerman's editorials in *The Big Takeover*.

[7] My description of Leibovitz's photograph is based on the full-page reprint in Robert Palmer's *The Rolling Stones* (198).

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