

Overview of Sample Clearance

Disclaimer: *I am an attorney, but I am not your attorney. Everything contained below is personal opinion and not meant to be taken, or acted upon, as legal or professional advice. Please consult an attorney before taking any action.*

To start, assume every piece of music is “copyright protected” ***until clearly told otherwise***. Using someone else’s copyright protected music, no matter how short (this has some caveats as well, but just assume there is no “safe” amount to use), you could be subject to copyright infringement

Copyright Infringement:

This is usually reported in one of two ways

1. Rights holder (usually publisher of music) directly reports you. This is fairly rare
2. Filter/algorithm on a platform finds portion of copyrighted work in your song and automatically flags/takes down (most common occurrence)

What happens when infringement detected (Risk you run for not clearing samples)?

1. Platform flags your content (potentially resulting in a copyright strike)
2. Platform mutes your content (in the case of Twitch VODs)
3. Platform takes down your content mid-stream (Facebook and their current music practices)
4. Content de-monetized
 - a. This is the most serious one. Even for using a small piece of content for a sample can lead to never seeing any revenue – See “Harlem Shake” copyright issue
5. Infringement lawsuit
 - a. Potentially subject to large fines, and/or giving up all revenue from song

Thoughts on Using Samples:

- If you’re going to use samples, be prepared to not make any money on your track/beat with samples
 - Use it to get in the door, have 2-3 sample-free beats
- May be difficult to get clearance before the track is fully recorded and produced in its final form. Rights holders may want to hear final before signing off

Process of Clearing a Sample

This process is easier than it seems in principal, but a little trickier in execution. Very basically, you need to find the person who has the permission to grant you rights to use a song. This is usually the publisher/record label/writer (sometimes same entity, sometimes different people/companies)

Two types of Rights: There are two different song rights you must secure in order to clear a sample: 1) Master Sound Recording Rights; 2) Publisher/Composition Rights. **YOU MUST GET BOTH!** Here is where it can get tricky, likely several people own and/or control the rights to a song's composition.

How to Find Rights Holders:

1. Find out the record label/publisher of the song
 - a. This can usually be done at sites like <https://www.discogs.com/> or Wikipedia
 - b. Looking for who put out the song originally
2. Find the owner of the label/publisher's music catalog. This will usually be Performance Rights Organizations ("PROs") like [BMI](#), [ASCAP](#), [Harry Fox Agency](#), [SESAC](#), [SOCAN](#)
 - a. Try searching their song repositories. May involve some searching of who owns the publisher/record label.
 - b. If found in a PRO, this will tell you the exact ownership of the song, (percentages each entity owns) and tell you who you need to contact in order to secure rights
3. Contact all publishers controlling portions of the song and request clearance to that song
 - a. If rights holders are large clearing houses like BMI, ASCAP, SONY, they will have clear processes in order to request a license
 - b. May need to contact writers, labels, publishers, individually to secure 100% rights

Process of Contacting Publishers:

Once you have figured out who owns the song, you'll need to reach out with the following information

1. Information you found on the PRO website pertaining to the track
2. Information on the track you sampled (length of sample and section/timestamps of song)
3. Link to your work/song
4. Length of your song
5. Planned release date

Price for clearing samples:

This is a very case-by-case basis but will usually center around how popular the song is, and how much you have sampled

- Range of \$2,000-\$10,000 for master rights; another \$2000-10,000 for publishing rights
- May also include percentage of royalties
- Sometimes royalties are used in place of upfront fees

Alternatives if Cannot Clear

- **Re-recording:** If you are unable to secure the “master recording” rights, but are able to secure “publishing rights”, you are able to re-record the song and use it without infringement. “Master recording” rights are the rights to use the actual sound of the original master recording of the song. “Publishing/composition” rights are the rights held by the song producer/writer for the underlying composition and lyrics of the song
- **Eating the Sample:** If you are not able to clear a song before selling it, be prepared to not make any money on it. Use it as a promotional item to get in the door, have 3-4 more sample-free beats in your pocket ready
- **Be Inspired:** There is nothing illegal about using a sample or someone else’s piece of work as inspiration. Copyright only extends to the direct copying, or substantially similar works. Inspiration is not infringement

Top Myths of Sample Clearance

- I only used a few seconds of a song/my sample is barely noticeable!
 - There is no “safe” amount of a song to sample. Sampling without permission is infringement.
 - Even if the sample is layers deep or barely audible, it can still be actionable
- The artist said I was allowed to use the sample.
 - Artists themselves are rarely ever the ones with the ability to grant you rights to use the music.
 - Generally assume the writers/composers/record labels/publishers have the ability to grant permissions you need (sometimes they are the same entity, sometimes all different)
- I said: “No copyright infringement intended”!
 - Copyright infringement does not require that you intended to do it. Whether you claim it was intentional or not, if you use someone else’s work you should presume you are infringing
- Producers must clear their beats before selling them
 - This is not necessarily true. Often the rights holders will not grant permission until the final track is produced (at which point other parties such as the artist/labels/publishers would be involved). Some labels will

have money set aside for song clearance. Be prepared to include this as part of the negotiation in the sale of the track/beat

- I put the song out for free/didn't make any money.
 - “Intended financial gain” is an element of copyright infringement, so you may think that if you put your track out for free you remove this element, and therefore no infringement. There have been cases clearly addressing this, and they do not agree with that reasoning. Even if the track was not monetized it can still be argued to help your career, or otherwise financially
 - Copyright infringement damages can still come with huge fines, even if you did not make any money; it is called “Statutory Damages”.