SLIDES 17: THE MUSIC INDUSTRY - DE MINIMUS USE & SAMPLING
Class Outline

• Compositions v. sound recordings
• Licensing
  – Musical works and Section 115
  – Sounds recordings and Section 114
  – Sync licenses
• De minimus copying
  – Of musical compositions
  – Of sound recordings
• Sampling
• The Right to Prepare Derivative Works
<table>
<thead>
<tr>
<th>Reproduction right</th>
<th>Musical work</th>
<th>Sound recording</th>
</tr>
</thead>
</table>
|                   | Statutory license for covers *(Harry Fox)*  
Sync right for audiovisuals/things that are not phonograms, as well as for derivative works via direct negotiation with *(music publishers)*  
Various small exceptions in statute | Requires voluntary license *(record labels)*  
Various small exceptions in statute  
Soundalikes ok: do not violate reproduction or derivative works rights |

<table>
<thead>
<tr>
<th>Performance right</th>
<th>Musical work</th>
<th>Sound recording</th>
</tr>
</thead>
</table>
|                   | Collectivelifensing *(ASCAP/BMI/SESAC)*  
Exceptions such as those in § 110 | Analog: none**  
Digital: 3-tier scheme of (1) none, (2) statutory license *(SoundExchange)*, (3) voluntary license *(record labels)* – depending on platform  
Exceptions such as those in § 110 |
Copyright #1: Publishing Right (on underlying musical composition; these rights originally vest with the songwriter, and are subsequently usually assigned to a publishing company)

Copyright #2: Sound Recording Right (on sound recording of a song; typically, these rights originally vest with the recording artist & are later assigned to a record label, or they may be assigned up front as part of a work-for-hire contract)

Royalty #1(a): Mechanical Royalty (payable to copyright holder - usually a music publisher - for music sales, both physical & digital copies; the licensee is usually a record label)

Royalty #1(b): Performance Royalty (payable to copyright holder - usually a music publisher - for song plays, both analog and digital transmissions; the licensee is usually a radio station)

Royalty #2(a): Master Royalty (potentially payable to artist for music sales, both physical & digital, existence and amount dependent upon terms of artist's contract with record label)

Royalty #2(b): Digital Performance Royalty (payable to copyright holder - usually a record label - for song plays, only for digital transmissions; the licensee is usually an internet radio service.) There is no analog performance royalty.
Compulsory Licensing Scheme for Covers (§ 115)

- Applies to any “phonorecord” that mechanically reproduces the musical work
  - Player piano rolls, CDs, cassettes, digital downloads
  - But not web streaming
- The musical work must have been previously distributed to the public, embodied in a phonorecord created under the copyright owner’s authority.
- Allows for reproduction in phonorecords, as well as a new arrangement of the work to conform it to the style of the recording artist
  - But not changes to the basic melody or fundamental character of the work
- The statutory royalty rate for phonorecords made and distributed after January 1, 2006, is 9.1 cents or 1.75 cents per minute of playing time (or fraction thereof), whichever is greater.
Reproduction Right in a Sound Recording (§ 114):

• “The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording.”

• “The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality.”

• “The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording.”
Track: “My Humps”

- Composers: will.i.am, David Payton
- Recording artist: The Black Eyed Peas
- Publisher (owner of copyright on musical composition): Cherry River Music Co., Jimi Mac Music, OG Music and Will I Am Music Inc.
- Record label (owner of copyright on sound recording): A&M/Interscope
- Performing rights org (working on behalf of publisher(s)): BMI
Alanis Morissette covers “My Humps”
James Newton  
“Choir”

Beastie Boys  
“Pass the Mic”
Get Off Your Ass and Jam

100 Miles and Runnin'