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BRIDGEPORT MUSIC, INC. v. DIMENSION FILMS*383 F.3d 390 (6th Cir. 2004)*

The Sixth Circuit held that any unlicensed sampling, or using part of an existing sound recording in a new recording, is an infringement of the copyright in the original sound recording where the defendant does not dispute having sampled. With this holding, the court announced a new bright-line rule that no substantial similarity or *de minimis* inquiry should be undertaken in assessing infringement liability for sampling as it pertains to the sound recording, versus music composition copyright. That is, a sound recording copyright owner holds the exclusive right to sample her own recording.

Plaintiff Bridgeport Music owns the musical composition and sound recording copyright in “Get Off Your Ass and Jam” (“Get Off”) by George Clinton and the Funkadelics. “Get Off” opens with a three-note guitar solo. This guitar solo was digitally sampled into a new song, “100 Miles and Runnin’” (“100 Miles”), which was used by defendant Dimension Films in the soundtrack for the film “I Got the Hook Up.” The sample was used in “100 Miles” five times, for approximately seven seconds each time. Bridgeport brought suit for infringement of its copyright in the sound recording. The district court granted summary judgment in favor of the defendant, holding that under both the qualitative/quantitative *de minimis* analysis and the fragmented literal similarity tests, the sampling did not rise to the level of appropriation.

Plaintiff appealed, arguing that no substantial similarity or *de minimis* inquiry should apply when the defendant does not dispute that it digitally sampled a copyrighted sound recording. The Sixth Circuit agreed, and reversed the district court’s grant of summary judgment. The appellate court found that the district court erred in applying an analysis for infringement of a copyrighted musical composition where the issue at hand was infringement of the copyrighted sound recording.

The Sixth Circuit used a “literal approach” to analysis under 17 U.S.C. § 114(a) and (b). These subsections give the owner of a copyright in a sound recording exclusive rights to prepare derivative works in which the actual sounds fixed in the sound recording are rearranged. Under its literal approach, the court read § 114(b) to mean that the owner of a sound recording has the exclusive right to sample its own recording. The court held that § 114(b) precludes the use of a substantial similarity test by rendering irrelevant both how much a digital sampler alters the actual sounds and whether the ordinary observer can or cannot recognize the artist’s performance, because the exclusive rights of a sound recording owner encompass the alteration of the actual sounds in the recording. The court explained that the only question in determining infringement is whether the defendant re-recorded sounds from the original.