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LIVING TO SEE HIS GLORY DAYS: WHY HAMILTON'S LIN MANUEL MIRANDA IS NOT
LIABLE FOR COPYRIGHT INFRINGEMENT, BUT OTHER WRITERS AND COMPOSERS ARE

DEIDRE DAVIS

ABSTRACT

This comment discusses the idea of individuals receiving preliminary permissions of copyrighted works before using the work as a component of their own. By doing so, an individual has a better opportunity to avoid copyright infringement. Lin Manuel Miranda, the writer of the musical Hamilton, took preliminary measures to avoid copyright infringement, and these measures will be examined throughout this comment. Copyright infringement cases and other infringement cases will be addressed, as well as a proposal to simplify obtaining preliminary permissions in copyrighted works.

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I. INTRODUCTION

Transforming from “The Hamilton Mixtape”¹ in 2013 at the Vassar Reading Festival,² to a musical worthy of President Barack Obama’s attendance,³ the Broadway musical, *Hamilton*, continues to receive more popularity than the creator, Lin Manuel Miranda, ever imagined would occur. Miranda publically disclosed many influences for the musical composition and character depictions he chose for the hit musical.⁴ Additionally, he references “classics”⁵ by directly quoting or sampling them in the *Hamilton* score,⁶ such as his “subconscious”⁷ inspiration from Cypress Hill’s song, “Insane in the Brain,”⁸ for the lyrics relating to Alexander Hamilton possessing a “top notch brain.”⁹

Miranda directly uses the above influences and references without copyright infringement liability. Yet, others are generally faced with liability for similar situations. For example, Justin Bieber, who’s hit song, “Sorry,” is being accused of

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¹ Nicole Scholet, *Hamilton Mixtape Unveiled at Vassar Reading Festival*, THE AHA SOCIETY (Aug. 27, 2013), <http://the-aha-society.com/index.php/publications/articles/87-aha-society-articles/145-hamilton-mixtape-reading>.

² *Id.*

³ Nick Ramsey, *Obama attends matinee performance of Broadway’s ‘Hamilton,’* MSNBC (Jul. 19, 2015), <http://www.msnbc.com/the-last-word/obama-attends-matinee-performance-broadways-hamilton>.

⁴ Rebecca Milzoff, *Lin-Manuel Miranda on Jay Z, The West Wing, and 18 More Things That Influenced Hamilton*, VULTURE (Jan. 15, 2016), <http://www.vulture.com/2015/07/lin-manuel-mirandas-20-hamilton-influences.html>.

⁵ Robert Viagas, Adam Hetrick, *From Last Five Years to The Notorious B.I.G.-Hamilton Shout Outs and References You Need to Know*, PLAYBILL (Jul. 29, 2015), <http://www.playbill.com/article/from-last-five-years-to-the-notorious-big-hamilton-shout-outs-and-references-you-need-to-know-com-355053>.

⁶ *Id.*

⁷ Forrest Wickman, *All the Hip-Hop References in Hamilton: A Track-by-Track Guide*, CULTURE SLATE (Sep. 24, 2015), http://www.slate.com/blogs/browbeat/2015/09/24/hamilton_s_hip_hop_references_all_the_rap_and_r_b_allusions_in_lin_manuel.html.

⁸ *Id.*

⁹ *Id.*

copyright infringement,¹⁰ may face liability damages similar to the case involving the song, “Blurred Lines.”¹¹ Although strikingly similar to Miranda’s use, Bieber, and many others may face problems with copyright infringement and hefty damages.¹²

The difference between the uses of copyrighted works in regard to Justin Bieber and Lin Manuel Miranda, is the preliminary steps Miranda chose before using any influences or references in the musical Hamilton.¹³ In addition to these preliminary permissions, Miranda added his own original twist on the pieces.¹⁴ In other words, even if a writer, such as “Insane in the Membrane” writer, Cypress Hill, pursued a claim against Miranda for using “subconscious” inspiration for a series of lyrics in Hamilton,¹⁵ Miranda would still be free of liability.

Part II of this comment specifies background for the process of creation, in the aspects of Broadway musicals and pop-artists. The background for musical theatre illustrates the timeline for compositions, character development, and the workshop of a musical. For parallel and contrast, a discussion on the timeline for a composition from a pop-artist perspective, along with the steps that receive copyright protection, will take place. Additionally, the background will illustrate the guidelines of copyright law and registration of a copyrighted work, liability for copyright infringement, and alternatives for avoiding copyright infringement.

Part III discusses why Miranda would not be liable for copyright infringement. Additionally, this comment constructs a comparison of Miranda’s use of other works to Justin Bieber’s use of other works, to show why the outcome of each case is different, pursuant to the Copyright Act of 1976 and precedent cases.

Part IV proposes how to avoid the issues of copyright infringement liability in the future, with preliminary measures, as well as how to stray from reliance on fair use.

II. BACKGROUND

A. Federal Copyright Laws

The scope of federal copyright law is applicable to subject matter that is tangible.¹⁶ To look at tangibility in a different way, think about the fact that if something is not given in any type of physical manner, such as an idea or an expression, then copyright

¹⁰ *Justin Bieber Is Being Sued Over a Riff in His Song ‘Sorry,’* FORTUNE (May 27, 2016), <http://fortune.com/2016/05/27/justin-bieber-sorry-sued/>.

¹¹ *Williams v. Bridgeport Music, Inc.*, No. LA CV13-06004 JAK (AGRx), 2015 U.S. Dist. LEXIS 97262, at *1, *4 (C.D. Cal. July 14, 2015).

¹² *Id.*

¹³ Viagas & Hetrick, *supra* note 5.

¹⁴ *Id.*

¹⁵ Wickman, *supra* note 7.

¹⁶ 17 U.S.C. § 102. To be eligible for protection of copyright, the work must be in “any tangible medium of expression.” To further expand on what is and is not copyrightable, in regards to music, it is important to note that copyright protection is not extended to the style of a musical composition. A style, or genre, cannot be fixed in a “tangible medium of expression,” and therefore goes unprotected.

law does not cover it.¹⁷ Copyright, in general, protects musical works and sound recordings from duplication or sampling without the creator's permission.¹⁸

The copyright protection stems from the idea that giving the creators exclusive rights to their works will promote "progress of science and useful arts."¹⁹ These copyright protections last for the term of 70 years after the creator's death.²⁰ However, anything before 1922 is public domain and useable free of copyright infringement, as the copyrights have expired on these works.²¹

Although copyright protection extends to any tangible creative work, a copyright owner may register their work as well.²² For a musical theatre production, copyrights are generally registered through the United States Copyright Office.²³ Musical compositions, however, are generally registered with Broadcast Music Inc. (BMI), or The American Society of Composers, Authors and Publishers (ASCAP), as these registries ensure payment to the artists when their music plays.²⁴

Copyrights provide not only protection, but limits on the creator's exclusive rights, with exceptions for others to use the works, including fair use.²⁵ Other exceptions include transferring copyright ownership,²⁶ and providing royalties to the creator.²⁷

Even with exceptions, many individuals still become liable for the infringement of copyrights.²⁸ In other words, if an individual uses a copyright protected work, without permission from the creator, they may be liable for copyright infringement. Copyright

¹⁷ 17 U.S.C. § 102.

¹⁸ See 17 U.S.C. § 102(a); 17 U.S.C. § 106A.

¹⁹ U.S. CONST. art 1, § 8, cl. 8.

²⁰ 17 U.S.C. § 302(a).

²¹ *Copyright and Public Domain*, PUBLIC DOMAIN INFORMATION PROJECT (Oct. 2, 2016), <http://www.pdinfo.com/copyright-law/copyright-and-public-domain.php>.

²² See 17 U.S.C. § 408.

²³ *ECO Registration System*, THE UNITED STATES COPYRIGHT OFFICE (Oct. 2, 2016), <http://www.copyright.gov/eco/>.

²⁴ See *Payment System:: Registering Your Works with ASCAP*, ASCAP (Oct. 3, 2016), <http://www.ascap.com/members/payment/registering.aspx>; *Instructions for Updating Registered Works*, BMI (Oct. 6, 2016), <http://www.bmi.com/creators/updateworks>.

²⁵ 17 U.S.C. § 107. This section indicates that an individual, other than the creator, may use the copyrighted work, so long as the copied work is "for purposes such as criticism, comment, news reporting, teaching...scholarship, or research." Further determinations for fair use surround four factors to be considered, which include: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work." This section further includes that fair use is not barred by the fact that a work is unpublished when there is a finding of fair use, based on the above factors.

²⁶ 17 U.S.C. § 201(d)(1). This section states that the creator of the copyright may transfer the copyright "in whole or in part by any means of conveyance or by operation of law." In other words, individuals who are not the original creators may still use the desired work, so long as they receive at least partial transfer of copyright from the creator.

²⁷ See 17 U.S.C. § 803. This section describes the role of the copyright royalty judges, as well as the guidelines for royalty petitions.

²⁸ 17 U.S.C. § 501(a)-(b). Infringement of copyright occurs when any individual uses a copyrighted work and violates the rights held exclusively by the creator.

infringement liability gives numerous options for remedies, such as injunctions,²⁹ damages, and profits.³⁰

B. Sampling Music: Permissions and Penalties

Sampling music means taking parts of prior compositions or recordings, and incorporating them into a new composition or recording.³¹ Although sampling is not illegal, the person(s) sampling must receive permission from the copyright owner.³² Obtaining permission for the sampling is generally given through a license.³³ There are various routes for obtaining a license, such as paying a flat fee, or paying the copyright owner a royalty based off of the amount of sampling.³⁴

Failing to receive permission for use of the sampling causes issues under copyright law.³⁵ Substantial penalties, generally in monetary damages, occur when an artist samples another's music in their own composition or recording without permission.³⁶ Additionally, the copyright owner of the sampling may also require an "injunction," or restriction, of the copyright infringer's music, causing the infringer "to recall all of [their] albums and destroy them."³⁷ Although fair use may be able to relieve the infringer from liability, relying on fair use may be dangerous because works that are substantially similar are rarely found to fall under the exception of fair use.³⁸

²⁹ 17 U.S.C. § 502. An injunction may be used as a remedy for copyright infringement to prevent an individual from further use of a copyrighted work.

³⁰ 17 U.S.C. § 504(b). A copyright owner may recover both damages and profits for a copyright infringement. The damages remedy any suffering the copyright owner endured as a result of the copyright infringement, while profits may be obtained by a copyright owner from the gross revenue the copyright infringer obtained with the work.

³¹ Michael McCready, *The Law Regarding Music Sampling*, COPYNOT (Oct. 4, 2016), <http://www.copynot.org/Pages/Music%20sampling.htm>; see also Jane McGrath, *History and Evolution of Music Sampling*, ENTERTAINMENT (Oct. 2, 2016), <http://entertainment.howstuffworks.com/music-sampling1.htm>.

³² McCready, *supra* note 31.

³³ *Id.*

³⁴ *Id.* When playing a flat fee for sampling, the "buyout fee can range from \$250 to \$10,000 on a major label. Most fees fall between \$1,000 and \$2,000." In terms of royalties, royalty rate ranges from one-half (1/2) of a cent, to three (3) cents "per record pressed."

³⁵ *Id.*

³⁶ *Id.* "A copyright infringer is liable for "statutory damages" that generally run from \$500 to \$20,000 for a single act of copyright infringement. If the court determines willful infringement, damages can run as high as \$100,000."

³⁷ McCready, *supra* note 31.

³⁸ *Id.* This article notes that relying on fair use is a problem because "test for infringement is whether the sample is "substantially similar" to the original." Note that "a judge or jury is the one who determines this and these people may be much less receptive to your music than your fans." It is also important not to confuse fair use in correlation to the rumor that "you can use four notes of any song under the 'fair use' doctrine." This rumor is false, as copyright law does not contain a "four note" rule." An illustration of the falsity of the four note idea is supported with Saturday Night Live being sued for using four notes of the jingle, "I Love New York."

C. Case Law Pursuant to Copyright Laws

Further illustrating copyright law, are the cases brought pursuant to the black letter law. A common theme noticed in many of the copyright infringement cases is the allegations of “sampling” music, and doing so without permission.³⁹ The case between Casey Diemel and Justin Bieber illustrates the consequences that occur if an artist samples another’s music without permission. Justin Bieber is not the only artist facing possible consequences of copyright infringement. Currently, Kanye West is being sued by a Hungarian rock artist, Gabor Presser, for alleged copyright infringement.⁴⁰ Robin Thicke’s “Blurred Lines,” is currently on appeal after the jury found copyright infringement, believing that “Blurred Lines” is sampled from Marvin Gaye’s “Got to Give It Up.”⁴¹

Many other popular artists and composers have been sued for copyright infringement allegations, similar to Robin Thicke’s case, including The Beach Boys, Led Zeppelin, George Harrison, Ray Parker Jr., and Vanilla Ice.⁴²

³⁹ Rich Smith, *When You Need Permission to Sample Others’ Music*, NOLO (Oct. 2, 2016), <http://www.nolo.com/legal-encyclopedia/permission-sampled-music-sample-clearance-30165.html>.

⁴⁰ Jonathan Stempel, *Kanye West is sued by Hungarian rock star for alleged song theft*, REUTERS (May 23, 2016), <http://www.reuters.com/article/us-people-kanyewest-gaborpresser-idUSKCN0YE1WZ>. According to Presser, Kanye West’s 2013 song, “New Slaves,” uses one-third (1/3) of his 1969 song, “Gyonghaju Lany,” which he composed while he was in the band, Omega. Presser alleges that the use of the sampling is “unauthorized,” and is asking for “at least \$2.5 million in damages for copyright infringement.” Kanye’s attorneys responded to this allegation by sending Presser a ten-thousand (10,000) dollar check and demand a license for the sampling, but the complaint stated that “Presser never cashed the check.” Similar to Bieber’s case, Presser brought in multiple parties, including Sony/ATV Music Publishing LLC.

⁴¹ Eriq Gardner, *“Blurred Lines” Appeal Gets Support From More Than 200 Musicians*, HOLLYWOOD REPORTER (Aug. 30, 2016), <http://www.hollywoodreporter.com/thr-esq/blurred-lines-appeal-gets-support-924213>. This case brought a unique issue, and gained a lot of support in the music industry. Many feel that ‘The verdict in this case threatens to punish songwriters for creating new music that is *inspired* by prior works.’ The appeal is bringing about an argument for “clearer rules so that songwriters can know when the line is crossed, or at least where line is.”

⁴² Jordan Runtagh, *Songs on Trial: 10 Landmark Music Copyright Cases*, ROLLING STONE (Jun. 8, 2016), <http://www.rollingstone.com/music/lists/songs-on-trial-10-landmark-music-copyright-cases-20160608/the-beach-boys-vs-chuck-berry-1963-20160608>. The Beach Boys’ song, “Surfin’ U.S.A.,” received backlash for allegedly plagiarizing Chuck Berry’s song, “Sweet Little Sixteen.” To try to avoid a lawsuit, Berry eventually received songwriting credits in 1966. Led Zeppelin’s songs “Bring It On Home” and “Whole Lotta Love” both received allegations of copyright infringement. Different parties brought suits and both settled outside of court. George Harrison received allegations of using the Chiffon’s “He’s So Fine” for his number one hit, “My Sweet Lord.” Harrison admitted similar qualities between the songs, even though he claimed he used the “Oh Happy Day,” which is public domain, as the basis for his melody for “My Sweet Lord.” The court ruled that Harrison was guilty, and he had to pay substantial damages as a result. Ray Parker Jr.’s “Ghostbusters” settled with Huey Lewis for “lifting” the melody from “I Want a New Drug.” Vanilla Ice settled a case between himself and Queen/David Bowie for sampling Queen’s “Under Pressure” for his song, “Ice Ice Baby.”

D. *The Process of Creating Hamilton*

Each Broadway musical tends to create its own unique path before making it to the Broadway stage;⁴³ beginning at the script for the show, and evolving to opening night. For *Hamilton*, the process began after writer, creator, and title role star of the musical, Lin Manuel Miranda, picked up an Alexander Hamilton biography, written by Ron Chernow, in 2008 while on vacation.⁴⁴ Shortly after, Miranda began writing the musical, and in 2009, piloted a song from “The Hamilton Mixtape,” later renamed “Hamilton,” at the White House Poetry Jam, in front of President Obama.⁴⁵ The *Hamilton Mixtape* began further transformation when the show work-shopped at the Vassar Reading Festival in 2013. Later renamed to “Hamilton,” the musical took to Off-Broadway⁴⁶ in early 2015,⁴⁷ and by July 13, 2015, the musical found its permanent spot on Broadway, at the Richard Rodgers Theatre.⁴⁸

During the process of making *Hamilton* a hit Broadway musical, many transformations and ideas evolved to create the musical viewed on stage today.⁴⁹ Miranda credits the development of the lead character, Alexander Hamilton, to Ron Chernow’s biography of Hamilton.⁵⁰ Chernow’s book, in addition to books written by Joseph J. Ellis, laid the groundwork for how Miranda decided to portray the founding fathers.⁵¹

The composition for a musical tends to be one of the most intricate details of a musical. The creation and process of a composition goes far beyond lyrics.⁵² Processes for compositions vary from arranging music notes in a particular fashion, to incorporating other ideas or technologies to gain a new evolution for the sound or style of the composition.⁵³ The composition for the score of *Hamilton* evolved a great deal from the initial stages of the show. *Hamilton* carries a unique quality to the Broadway stage, stemming from its contemporary score, which derived from unusual inspirations for the musical theatre genre.⁵⁴ Miranda went so far as to use inspirations like *Jay Z* and *8 Mile*,⁵⁵ to compose a score far from the traditional Broadway tunes.

⁴³ Paul Mroczka, *How a Show Gets to Broadway*, BROADWAY EDUCATORS (Jan. 28, 2015), <http://broadwayeducators.com/how-a-show-gets-to-broadway/>.

⁴⁴ Mark Binelli, ‘*Hamilton*’ Creator Lin-Manuel Miranda: The Rolling Stone Interview, ROLLING STONE (Jun. 1, 2016), <http://www.rollingstone.com/music/features/hamilton-creator-lin-manuel-miranda-the-rolling-stone-interview-20160601>.

⁴⁵ Scholet, *supra* note 1.

⁴⁶ Mroczka, *supra* note 43.

⁴⁷ Adam Hetrick, *Hamilton Ends Sold-Out Off-Broadway Run Tonight – Broadway Revolution Is Next*, PLAYBILL (May 3, 2015), <http://www.playbill.com/article/hamilton-ends-sold-out-off-broadway-run-tonight-broadway-revolution-is-next-com-348197>.

⁴⁸ *Id.*

⁴⁹ Robert Viagas, *Beach Read to Broadway! How Lin-Manuel Miranda Turned a History Book into Hamilton*, PLAYBILL (Aug. 5, 2015), <http://www.playbill.com/article/beach-read-to-broadway-how-lin-manuel-miranda-turned-a-history-book-into-hamilton-com-355514>.

⁵⁰ Milzoff, *supra* note 4.

⁵¹ *Id.*

⁵² See Evan S. Tobias, *Composing, Songwriting, and Producing: Informing Popular Music Pedagogy*, 35 RES. STUD. IN MUSIC EDUC. 213, 213-37 (2013).

⁵³ *Id.*

⁵⁴ Milzoff, *supra* note 4.

⁵⁵ *Id.*

E. Composing the Song, “Sorry,” by Justin Bieber and Allegations of Copyright Infringement

Like the composition of scores in musical theatre, composing a song in today’s popular music genres requires a process before releasing the song to its desired audience.⁵⁶ Justin Bieber’s recent song, “Sorry,” dives into a more technological aspect to composition, compared to musical theatre compositions. Beyond the writing of the composition and lyrics, the finalized product of a song is likely to include the recording of the song itself, as well as created variations of the song with present technologies in engineering and mixing.⁵⁷ For this particular composition and recording, and common for larger artists, many different collaborators worked together to create “Sorry.”⁵⁸ In addition, unlike the multiple years the transformation of Hamilton required, the process of “Sorry,” from composition to recording, took approximately one year from beginning to end.⁵⁹

The composition of “Sorry” recently became the subject of copyright infringement allegations by artist, Casey Diemel, better known under her stage name, “White Hinterland.”⁶⁰ Her complaint alleges that Bieber, and other collaborators, “sampled” the important vocal riff in her composition of “Ring the Bell,” to create the vocal riff in the composition of “Sorry.”⁶¹ Diemel clearly states that no party from the collaboration of “Sorry” asked for license or permission to use her vocal riff.⁶² Diemel filed her complaint on May 25, 2016, and whether copyright infringement occurred between the parties is not yet decided.⁶³

⁵⁶ Complaint and Jury Demand at 11, *Casey Diemel v. Warner-Tamerlane Publishing Corp.*, et al., 2016 WL 30232799 (M.D. Tenn. 2016) (No. 3:16-cv-00978).

⁵⁷ See Tobias, *supra* note 53 at 213-37.

⁵⁸ Compl., at 11.

⁵⁹ *Id.* The Plaintiff of this case alleged that collaborators of “Sorry” began looking for vocal selections for Justin Bieber in 2014, specifically to include on their debut album under the construction of their production company, “Jack Ü.” After a session with other collaborators in 2015, “Sorry” became created and released to the general public.

⁶⁰ Compl., at 2.

⁶¹ *Id.* at 2-7. Diemel lists a number of parties she alleges “infringed” upon her “vocal riff.” The parties include Justin Bieber, Warner-Tamerlane Publishing Corp., Julia Michaels, Justin Tranter, Bieber Time Publishing, LLC, Universal Music Publishing Inc., Sonny Moore (p/k/a “Skrillex”), Kobalt Music Publishing America, Inc., Michael Tucker and Def Jam Records. Diemel alleges in her complaint that in 2012, she “composed the original vocal riff featured in ‘Ring the Bell.’” She goes further to say that this vocal riff is “a qualitatively and quantitatively distinct and integral element of ‘Ring the Bell.’” In other words, she is making the claim that this certain vocal riff is a substantial musical part of the song. She later makes that clear by calling said vocal riff a “crucial sound to the recording” and “the backbone for the composition and song’s initial hook.”

⁶² *Id.* at 8. “Plaintiff does not permit the exploitation of “Ring the Bell” without license and permission, as it represents unique and valuable intellectual property to her.”

⁶³ *Id.* at 1-3. Filed in the United States District Court for the Middle District of Tennessee Nashville Division because of federal question. The case’s origin is of original proceeding and Diemel is seeking a trial jury demand on the issue.

III. ANALYSIS

Sometimes artists, writers, lyricists, and composers create a truly exceptional work. So much so, others cannot help but notice. In fact, other individuals want to use this work to create their own work. Many artists take the opportunity to take parts of popular works and use them in their own work.⁶⁴ Sometimes, the original copyrighted work is something unknown to many, or it is a popular artist or song.⁶⁵

Both unknown artists' and known artists' works are frequently used. However, individuals have a choice when sampling. They can either get permission before using the sampling or work, or use the sampling without permission.⁶⁶

A. Advantages of Obtaining Preliminary Permissions Before Using Copyrighted Works

Lin Manuel Miranda, serves as an example for the benefits of preliminary permissions for copyrighted works. Miranda, and many other Broadway shows, began writing and scoring the music long before these compositions, and later complete Broadway shows, hit any stage.⁶⁷ The writer, composer, or lyricist may see something from another work, such as a musical, TV show, or book, and want to use it as their own.⁶⁸ Hamilton illustrates how Miranda properly sampled or used variations of other's works in his own creation.⁶⁹ Before simply using other copyright owner's ideas in his own work, Miranda obtained permissions to use variations of other's works, before placing them in his own work.⁷⁰ After receiving these permissions, Miranda used them in Hamilton.⁷¹

The means Miranda used for preliminary permission for a sampling or use of a copyrighted work, seems to work for avoiding copyright infringement; as this method

⁶⁴ McCready, *supra* note 31; *see also* Jane McGrath, *supra* note 31. Both of these articles give a clear illustration of how works are sampled and the correct way to sample without liability of copyright infringement.

⁶⁵ Compl., at 10. Diemel's song "Ring the Bell" streamed approximately eight-hundred thousand (800,000) times. This amount is small in comparison to the number of plays of popular artists. *See also* Viagas & Hetrick, *supra* note 5. This article describes the variety of well-known, and little known, copyrighted works Miranda chose to use in the Broadway musical, Hamilton.

⁶⁶ *See* McCready, *supra* note 31. This article sets forth what options are available by means for obtaining permissions from the owner of a copyright, as well as repercussions that may occur if there is no permission by the copyright owner.

⁶⁷ Mroczka, *supra* note 43. This article sets forth the variety of ways that musical theatre shows progress to the Broadway stage. Additionally, going through the variety of processes illustrates the time and patience it takes to make a show successful. *See* Scholet, *supra* note 1; *see also* Binelli, *supra* note 44. Both of these articles illustrate the timeline of Hamilton. The illustration is important to understanding the problems that could occur, had Miranda not preliminarily asked for permission. Had he not, he would run the risk and having to revert to earlier steps in the process, as the show was tested on smaller stages, and other various performances, before making it to Off-Broadway and Broadway stages.

⁶⁸ Milzoff, *supra* note 4.

⁶⁹ Viagas & Hetrick, *supra* note 5.

⁷⁰ *Id.*

⁷¹ *Id.*

serves to save time, money, and potential future copyright infringement litigation.⁷² Additionally, obtaining preliminary permissions tends to promote a larger abundance of artistic creations without fear of copyright infringement.⁷³

Similarly, in the music industry,⁷⁴ obtaining preliminary permissions from a copyright owner provides the same benefits. Like Miranda, Nicki Minaj exemplifies how preliminary permissions affect the music industry. One of Nicki Minaj's most successful songs, "Anaconda" benefitted from preliminary permissions from Sir-Mix-A-Lot.⁷⁵ Although Sir-Mix-A-Lot's, "Baby Got Back" is heavily sampled in her work, no copyright infringement occurred because she obtained preliminary permissions.⁷⁶

The only true disadvantage of obtaining preliminary permissions to a copyrighted work is that the owner may refuse to grant permission to the use of their work. When refusal from the copyright owner of a work occurs, the individual seeking permissions cannot use the work in collaboration with their own.⁷⁷ If they use the work anyways, they run the risk of a suit for copyright infringement.

Although the refusal of permission is a possibility, the artist seeking permission will ultimately still save time and money by seeking permission. In an instance where an individual already used the work, the retroactive removal of the unpermitted work would take time and money in numerous stages of the process.⁷⁸

For instance, say a song or composition in its demo stage uses a copyrighted work, of which the owner of the copyright wants removed. The artist of the new work would not only have spent money to record the demo, but now would have to spend more money to record the demo again (without the copyrighted work), if unpermitted sampling occurred. Additionally, if the new song or composition had collaborators, the artist may need to spend additional money to have the collaborators come back in to the studio and compose a new version of the work without the copyrighted sample.⁷⁹

⁷² McCready, *supra* note 31.

⁷³ See U.S. CONST. art 1, § 8, cl. 8. This section highlights on the implication that framers intended to promote a market pace of ideas, while also protecting individuals work when it is rightfully their ideas.

⁷⁴ See Compl., at 19. Diemel alleges that the use of her riff from "Ring the Bell" was used by Bieber without her permission.

⁷⁵ Steven J. Horowitz, *Sir Mix-A-Lot on Nicki Minaj's 'Anaconda,' Booty Fever & New Music*, BILLBOARD (Sep. 12, 2014), <http://www.billboard.com/articles/columns/the-juice/6251411/sir-mix-a-lot-on-nicki-minajs-anaconda-booty-fever-new-music>.

⁷⁶ *Id.* Sir-Mix-A-Lot explains that before she even used a substantial sample from his song "Baby Got Back," she asked for permission from him and his manager and himself told her "it was cool to use it." Even after receiving the permission, Nicki Minaj contacted Sir-Mix-A-Lot when she "wanted to change something about the chorus," and even supplied him with "small little snippets of what was going on" in her work. He implied that Minaj created a substantial amount of originality to the work and admitted that "she ended up coming up with all the ideas" for her song, "Anaconda."

⁷⁷ See McCready, *supra* note 31.

⁷⁸ See Kaitlyn Ellison, *5 famous copyright infringement cases (and what you can learn)*, 99DESIGNS (2013), <https://99designs.com/blog/tips/5-famous-copyright-infringement-cases/>. One of the cases highlighted in this article, *Modern Dog v. Target Corporation*, discusses how Modern Dog had to "sell their studio to cover the legal costs associated with the battle."

⁷⁹ Compl., at 10-12. Numerous collaborations occurred to complete the product of Justin Bieber's song, "Sorry." Thomas Pentz, also, known as "Diplo," collaborated as a producer on Bieber's album "Believe." Skrillex collaborated with Bieber on their own album, in addition to his song, "Sorry." Diplo, Skrillex, and Michael Tucker, also known as Blood, collaborated and "produced a number of musical

If a musical is already in production on a stage, the musical then runs the risk of an injunction by the copyright owner. In other words, the musical would have to cease the show immediately upon the copyright owner's request.⁸⁰ As a result, the musical would lose money including, but not limited to, money spent on the production, such as set pieces, rental for stage space, lighting, costumes, and payment to the actors.

In the music industry, a song with unpermitted sampling of copyrighted works also runs the risk of an injunction of the song. If the injunction is granted, the artist who released the song with an unpermitted sampling may need to remove their album from the public.⁸¹ This could include the album in various forms of hard and digital copies, which the artist would have to destroy.⁸² The cost and time to obtain all of these copies, destroy them, and then possibly create a new album without the unpermitted sample, induces substantial costs to the artist. Additionally, to potentially record the song in a studio, and to release the album without the unpermitted sample, would incur more unavoidable financial costs.

Thus, no matter the use of copyrighted material, in the long run, it is better to ask the copyright owner about potentially using the copyrighted work first, before going into any further steps of production, no matter what the outcome.

B. Sampling or Using a Work Without Permission: Negative Outcomes That May Occur as a Result

Samplings of copyrighted works without preliminary permission still occur frequently, both on stage and in the music industry.⁸³ Sometimes, the sampling or use of the copyrighted work leads to a negative outcome for the individual who used the work without permission. One of the most common repercussions of not seeking preliminary permissions is a lawsuit brought by the copyright owner.⁸⁴ Injunctions or specific performance may be available.⁸⁵ In conjunction with the lawsuit, the unauthorized user may have to spend a substantial amount of time and money for said

tracks for Bieber to consider for inclusion on the *Purpose* album," including the song under issue, "Sorry." Julia Michaels and Justin Tranter also collaborated as writers.

⁸⁰ Julie Musbach, *UPDATE: Shelton's Unsanctioned Adaptation is Shut Down Due to Copyright Infringement*, BROADWAY WORLD (Aug. 6, 2017), <https://www.broadwayworld.com/article/UPDATE-Shelton-Theatres-Unsanctioned-Adaptation-is-Shut-Down-Due-to-Copyright-Infringement-20170806>.

⁸¹ Jennifer Vineyard, *Beyonce's B'Day Over? Singer Pulls Deluxe Editions Due to Lawsuit*, MTV NEWS (Apr. 24, 2007), <http://www.mtv.com/news/1557909/beyonces-bday-over-singer-pulls-deluxe-editions-due-to-lawsuit/>. This article discusses Beyonce's issue with the cover of "Still in Love (Kissing You)" on her B'Day Album. Royalty Network sent a "cease and desist" letter to Beyonce's recording label, Sony, asking them to stop the distribution of the album.

⁸² McCready, *supra* note 31. The copyright owner of the sampling may require an "injunction," or restriction, of the copyright infringer's music, causing the infringer "to recall all of your albums and destroy them."

⁸³ See Stempel, *supra* note 40. According to Presser, Kanye West's 2013 song, "New Slaves," uses one-third (1/3) of his 1969 song, "Gyonghaju Lany," which he composed while he participated in the band, Omega.

⁸⁴ See Runtagh, *supra* note 42.

⁸⁵ *Id.*

lawsuit, including paying for a lawyer and court fees, and the possibility of attending trial.

Justin Bieber provides an example of sampling music without permission and he is facing possible consequences as a result. The alleged sampling in this case comes from an unrecognized artist in the music and pop-culture world; in comparison to Justin Bieber's fame as an artist.⁸⁶ The song from which the sample was taken is not as popular as songs of Justin Bieber.⁸⁷ Diemel creates a substantial argument that Bieber may have sampled the song without permission.⁸⁸ Although not determined, Bieber may have taken the sample without permission, in the hopes of avoiding negative repercussions, since Diemel's song did not reach the popularity of Bieber's.⁸⁹

Other artists, such as Sam Smith and Vanilla Ice, ran into the same problem.⁹⁰ Both heavily sampled a song without permission, and neither were relieved from liability for copyright infringement.⁹¹ Although the case against Bieber is in the early stages of the lawsuit, both Sam Smith and Vanilla Ice had to spend a substantial amount of time and money in order to amend their unpermitted use.⁹² It is unclear why both artists chose to use the samplings without gaining preliminary permission before use, since at the time Sam Smith and Vanilla Ice released their songs, they might not have known they were sampling.⁹³

No matter how known or unknown, an individual sampling without permission, may suffer unfortunate results for their actions.⁹⁴ The reason is still unclear as to why an individual would choose to use an unauthorized sampling of copyrighted work. Additionally, it is difficult to gather an assumption as to why an artist, writer, lyricist, or composer would place themselves in a vulnerable position, and make themselves vulnerable to suit. The only plausible reason is to try to avoid paying royalties or fees to the copyright owner.⁹⁵

C. Using a Sampling Without Infringement

Not all unpermitted samplings of copyrighted works guarantees that an individual committed copyright infringement.⁹⁶ If an individual does not gain

⁸⁶ Compl., at 10.

⁸⁷ *See id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Runtagh, *supra* note 42.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ McCready, *supra* note 31.

⁹⁵ *Id.*

⁹⁶ *See* 17 U.S.C. § 201(d)(1). This section states that the creator of the copyright may transfer the copyright "in whole or in part by any means of conveyance or by operation of law." In other words, individuals who are not the original creators may still use the desired work, so long as they receive at least partial transfer of copyright from the creator. *See also* 17 U.S.C. § 107. This section indicates that an individual, other than the creator, may use the copyrighted work, so long as the copied work is "for purposes such as criticism, comment, news reporting, teaching...scholarship, or research." Further determinations for fair use surround four factors to be considered, which include: "(1) the

permission preliminarily to using a sample of a copyrighted work, the individual may argue that fair use allows them to use the sample without permission.⁹⁷ Although public domain is only an exception for a work that is not copyrighted, fair use sets out factors considered to determine whether or not an individual is exempt from copyright infringement, which include (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion taken; and (4) the effect upon the potential market.⁹⁸

Using the factors with Miranda's "subconscious" inspiration from "Insane in the Membrane" by Cypress Hill, Miranda would likely be exempt from infringement.⁹⁹ The purpose and character of the use is for use in Hamilton, which may pose a possible infringement problem, as well as the fact that Miranda is gaining substantial revenue from the musical, addressed in factor four.¹⁰⁰ However, factors two and three are not substantially met to uphold a copyright infringement action against Miranda.¹⁰¹ The nature of the use of the copyrighted work centralizes around the two words, "insane" and "brain." Aside from these words, Miranda's composition does not have any similarities to the composition of Hill's song. Additionally, the amount and substantiality, mentioned in factor three,¹⁰² is miniscule in Miranda's composition. The lyrics in Hamilton's number, "Helpless," only uses the line, "top-notch brain, insane," one time throughout the entire song.¹⁰³ Hill could argue that the lyrics "insane" and "brain" are a substantial part of his song,¹⁰⁴ but there is not enough evidence to hold Miranda's use of the words as an infringement of Hill's copyrighted work.

Justin Bieber's case may have a more difficult time arguing fair use. The four factors considered for fair use have more substantial problems in this case.¹⁰⁵ The purpose and character¹⁰⁶ of the use of the sample in question is for the purpose of creating a song to gain revenue.¹⁰⁷ Additionally, the nature of the sampled portion, and the amount and substantiality of the portion used¹⁰⁸ throughout Bieber's song

purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work." This section further includes that fair use is not barred by the fact that a work is unpublished when there is a finding of fair use, based on the above factors.

⁹⁷ See *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994). This case illustrates a successful fair-use defense from 2 Live Crew using Roy Orbison's band name, Oh Pretty Woman, in their song called "Pretty Woman."

⁹⁸ *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 588 (1985).

⁹⁹ *Wickman*, *supra* note 7.

¹⁰⁰ *Harper & Row Publishers, Inc.*, 471 U.S. at 539.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Helpless Lyrics*, GENIUS (last visited Aug. 9, 2017), <http://genius.com/Lin-manuel-miranda-helpless-lyrics>.

¹⁰⁴ *Insane in the Membrane Lyrics*, METRO LYRICS (last visited Aug. 9, 2017), <http://www.metrolyrics.com/insane-in-the-membrane-lyrics-cypress-hill.html>.

¹⁰⁵ *Compl.*, at 1.

¹⁰⁶ *Harper & Row Publishers, Inc.*, 471 U.S. at 539.

¹⁰⁷ *Compl.*, at 19-20. "Sorry" became released as a single, and as a part of Beiber's album, *Purpose*.

¹⁰⁸ *Harper & Row Publishers, Inc.*, 471 U.S. at 539.

maintains a substantially similar purpose in regard to the sound of both songs, and the sampled portion is used throughout the entirety of both songs.¹⁰⁹ In terms of the fourth factor,¹¹⁰ Justin Bieber's song may affect the sales of the song created by Diemel, as the sampled portion relates to the entirety of the copyrighted work. Bieber can argue he added to the sample, by adding notes onto the original riff in Diemel's song, but it is likely he will be liable to Diemel for copyright infringement.¹¹¹

IV. PROPOSAL

Lin Manuel Miranda is an excellent example of what it looks like to avoid copyright infringement issues when using, or sampling, another individual's copyrighted work(s).¹¹² By taking preliminary measures, Miranda saved time, money, and risk of future lawsuits.¹¹³ Had Justin Bieber, and other artists, taken the same measures as Miranda, they could have avoided complaints filed against them.¹¹⁴ Relying on fair use may become an issue for many, even if they think that they are not using a substantial part of another copyright owner's work.¹¹⁵

Preliminary permissions arguably may be hard to acquire for artists, especially if an individual cannot contact the copyright owner.¹¹⁶ A specialized agency should be in place to help with these types of connections, to promote more individuals to seek preliminary permissions of copyrighted works. By having an agency in place, more individuals would have the opportunity to receive preliminary permissions in a more effective manner. For instance, the specialized agency could start a regulation that requires copyright owners to submit whether they plan to allow other individuals to use their work, when they register their copyrighted work with BMI or ASCAP.¹¹⁷ The

¹⁰⁹ Compl., at 19.

¹¹⁰ Harper & Row Publishers, Inc., 471 U.S. at 539.

¹¹¹ Compl., at 21-22.

¹¹² Viagas & Hetrick, *supra* note 5.

¹¹³ *Id.*

¹¹⁴ Compl., at 2-7. Diemel alleges in her complaint that in 2012, she "composed the original vocal riff featured in 'Ring the Bell.'" She goes further to say that this vocal riff is "a qualitatively and quantitatively distinct and integral element of 'Ring the Bell.'" In other words, she is making the claim that this certain vocal riff is a substantial musical part of the song. She later makes that clear by calling said vocal riff a "crucial sound to the recording" and "the backbone for the composition and song's initial hook."

¹¹⁵ McCready, *supra* note 31. McCready discusses how many believe the "rumour going around that you can use four notes of any song under the 'fair use' doctrine." McCready urges individuals not to follow this rule and expresses that "[o]ne note from a sound recording is a copyright violation." He gives an example of the case against Saturday Night Live and states that this infringement claim occurred over "only four notes." McCready reiterates that the fair use test looks for substantial similarities as well as if the sample used is a substantial part to the copyrighted work.

¹¹⁶ Viagas & Hetrick, *supra* note 5.

¹¹⁷ See ASCAP *Payment System: Registering Your Works with ASCAP*, ASCAP (Oct. 3, 2016), <http://www.ascap.com/members/payment/registering.aspx>; *Instructions for Updating Registered Works*, BMI (Oct. 6, 2016), <http://www.bmi.com/creators/updateworks>.

individual could include a permission or licensing fee for using a sample of their song, and/or what royalty they require for the use of their copyrighted work.¹¹⁸

By having this detailed and necessary information in one area, an individual could simply contact the specialized agency to determine whether or not they can use a particular copyrighted work. Even if a copyright owner did not give full details on their terms for using their work, the agency would at least be able to quickly get both parties in contact with one another to determine the permission terms. Both Broadway, and music in general, would greatly benefit from this type of program.¹¹⁹ Not only would a specialized agency, such as the above, help with efficiency of gaining permissions,¹²⁰ it would also promote the marketplace of ideas, as users could expand upon a copyrighted work without the fear of being liable for copyright infringement.¹²¹

Realistically, many individuals will not get preliminary permissions. Lack of preliminary permissions may occur for a variety of reasons. A large reason revolves around individuals being unaware that a copyright of the work exists. Additionally, an individual may think that their work is substantially different from the work of the copyright owner, and depend on fair use.¹²² Although individuals may be unaware they are taking another's work, or if they do not think there is a similarity between their work and the copyright owner's, they are still at risk of committing copyright infringement. When this occurs, the same specialized agency could step in for determining whether fair use is in play, or if copyright infringement occurred.

Having a specialized agency like this would be substantially beneficial for artists, composers, and writers, as well as for the court systems. Additionally, funding could incur by having individuals pay fees (fees substantially less than court costs or attorney's fees) for these services provided. For artists, composers, and writers, they

¹¹⁸ See *Payment System, Registering Your Works with ASCAP*, *supra* note 24. The specialized agency could ideally make a user friendly addition onto this type of registration on their own website. The major licensing and royalty companies, such as ASCAP, could provide a link to the specialized agency for the individual to connect to and complete registration for the agency as well.

¹¹⁹ See Runtagh, *supra* note 42. This article illustrates how there is a surplus of copyright infringement cases. Although a specialized agency will not eliminate copyright infringement cases completely, looking at some of these cases illustrate that the music and musical theatre community could benefit from having a specialized agency that assists in these matters to prevent copyright infringement in the preliminary stages.

¹²⁰ See Viagas & Hetrick, *supra* note 5. Lin Manuel Miranda obtained his permissions without the assistance of a program. Although this is doable, as illustrated here, a specialized agency that contains all of the work in one place could potentially save time and money for those seeking preliminary permissions. Sure, if an individual is looking for one preliminary permission, it time and efficiency of an individual obtaining the permission on their own may be similar to that of a specialized agency. However, if you look at the substantial list of preliminary permissions Lin Manuel Miranda sought before using the copyrighted work, it is evident that individuals like Miranda would truly benefit from a specialized agency's assistance.

¹²¹ See *Harper & Row Publishers, Inc.*, 471 U.S. at 539. The idea that copyright law tries to create a marketplace of ideas with a balancing act of protecting a copyright owner, while providing room for more ideas to expand upon the copyrighted works.

¹²² Compl., at 2-7. Diemel alleges in her complaint that in 2012, she "composed the original vocal riff featured in 'Ring the Bell.'" She goes further to say that this vocal riff is "a qualitatively and quantitatively distinct and integral element of 'Ring the Bell.'" Although Diemel may see a substantial similarity, Bieber may not have asked for any preliminary permissions from Diemel on the basis that he did not find his composition to have any substantial similarity to Diemel's vocal riff in her song, "Ring the Bell."

need individuals who have substantial knowledge in music and composition to determine if works constitutes copyright infringement. Currently, juries generally determine whether or not copyright infringement has occurred.¹²³ Although juries are deciding these types of important issues in copyright law, they obtain no specialized knowledge in copyright infringement.¹²⁴ In other words, juries may not have the necessary skillset to determine the outcome of copyright infringement.

The intricate musical composition of a song is substantially different from the style of a song. To an untrained ear, composition and style may be difficult to differentiate.¹²⁵ By having juries determine what is composition and what is style, they may be finding individuals guilty of copyright infringement when, in fact, there is no copyright infringement.¹²⁶ What's more, a jury may find that an individual lacked liability to a copyright owner, and in reality, copyright infringement did occur.

A specialized agency would have experience and knowledge in composition to accurately determine whether copyright infringement occurred. For example, a person educated in music theory and composition, would be able to spot when an artist sampled someone's melody, but changed the key to make the sample less recognizable.¹²⁷ To an untrained ear, there may not be a noticeable similarity, which could result in a copyright owner lacking enforcement of their copyrighted work.

Additionally, the specialized agency would be beneficial to the court system. By having a specialized agency in place, the agency could potentially screen for frivolous claims of copyright infringement before these claims even make it into court. The specialized agency would have the ability to determine copyright infringement, based on their detailed knowledge of the subject matter. After the specialized agency would determine that there is in fact copyright infringement, the case could move forward

¹²³ See Barone Defense Firm, *What is the Difference Between a Question of Law and a Question of Fact?*, BARONE DEFENSE FIRM (Jan. 31, 2017), <https://baronedefensefirm.com/blog/what-is-the-difference-between-a-question-of-law-and-question-of-fact/>. Illustrating that if there is a question of law, the judge decides. Whereas, if there is a question of fact, a jury is to decide. See also, Ben Sisario and Noah Smith, *'Blurred Lines' Infringed on Marvin Gaye Copyright, Jury Rules*, THE NEW YORK TIMES (Mar. 10, 2015), <https://www.nytimes.com/2015/03/11/business/media/blurred-lines-infringed-on-marvin-gaye-copyright-jury-rules.html?mcubz=3>. Illustrates that the copyright issue in the case needed a jury to decide the fact of whether the song, "Blurred Lines," was stylistically similar to Marvin Gaye's "Got to Give It Up," or if there was in fact substantial similarity between the two songs which went beyond style.

¹²⁴ See McCready, *supra* note 31. "Remember, a judge or jury is the one who determines this and these people may be much less receptive to your music than your fans." McCready confirms the fact that that there is a substantial chance that copyright infringement will not be determined by someone with expertise in music composition versus style.

¹²⁵ See *id.*

¹²⁶ See *id.* McCready discusses how either a judge or jury generally decides the outcome of a copyright infringement case, in regards to copyright infringement in the music industry and sampling music.

¹²⁷ See Compl., at 14-16. Diemel's complaint lists out that the notes from "Ring the Bell," which are sampled in "Sorry," are of the same notes, according to "scientific pitch notation." Additionally, Diemel lists out the pitch sequence and key, which are not only allegedly the same, but "determine the energy and feeling for both songs." A judge or jury may solely hear the "energy or feeling" of both songs, and determine that there is infringement. However, just because both songs have substantially similar styles, does not mean that they have the same composition. Thus, it is important to have specialists determine if the pitch sequences, notes, and other similarities are present and constitute copyright infringement.

into litigation. Having a first-step program for individuals, such as this, could help with a floodgate of frivolous copyright cases tried in court.

Although one could argue that the screening process may step onto the boundaries of an individual's constitutional right of due process,¹²⁸ the agency would really do the exact opposite. The agency would solely act as a first-step process for when a copyright owner believes his or her copyrighted work is being infringed upon. Even if the specialized agency did not determine that copyright infringement occurred, the copyright owner could still take their claim into court, however, the plaintiff would know their unlikely chance at victory, as well as that the case may be frivolous, and thus making it difficult to obtain an attorney.

Take, for instance, the case currently against Justin Bieber, brought by Casey Dienel.¹²⁹ Before Casey Dienel filed a claim, she could have gone to the specialized agency and paid a fee to determine whether or not the musical composition of her song had enough similarities to Bieber's song to constitute copyright infringement. The agency suggested above would likely have found a substantial similarity between the two songs, and therefore Dienel would proceed to file a claim for copyright infringement. Although this would not guarantee a ruling in her favor, Dienel would have saved money and time by using the specialized agency as a first step.

V. CONCLUSION

Seeking preliminary permissions is the best way for artists, composers, or lyricists to avoid copyright infringement claims.¹³⁰ By having a specialized agency in place to assist with preliminary permission measures, the accessibility and efficiency of copyright infringement actions would be substantially higher. In other words, the agency may obtain permissions in a more efficient and accessible manner than individuals seeking preliminary permissions on their own. If preliminary permissions are not sought before use, the specialized agency could also step in to assist with determining what may constitute copyright infringement, and what may not. This specialized agency could help composers, lyricists, writers, and others in the music industry save time and money when pursuing a copyright infringement claim; by acting as a first step before individuals spend a substantial amount of money and time in court.

¹²⁸ See U.S. CONST. amend. V. Discusses that all citizens of the United States have a right to Due Process, or to be heard in court.

¹²⁹ Compl., at 1.

¹³⁰ See Viagas & Hetrick, *supra* note 5. This article discusses the various permissions Lin Manuel Miranda sought in order to use other's copyrighted works in his Broadway musical, Hamilton. Additionally, the substantial list of permissions he incurred illustrates an implication of the length of time it took for Miranda to obtain numerous copyright permissions on his own.