Kluwer Copyright Blog

Remixing and Remastering Music in US Copyright Law: Some Reflections after Arty v Marshmello

Enrico Bonadio (City, University of London) and Anushka Tanwar (University School of Law and Legal Studies, New Delhi) · Wednesday, June 16th, 2021

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In 2019, Artem Stoliarov, a Russian DJ whose stage name is Arty, filed a lawsuit before the US District Court for the Central District of California, alleging that Marshmello's song 'Happier' copied the synthesizer melody from his 2014 remix of OneRepublic's 'I Lived' (OneRepublic is an American pop rock band). Marshmello, an American electronic music producer and DJ, won the case as Judge Philip S. Gutierrez held that Arty had contractually given up ownership of the rights over remix composition, and therefore had no grounds to sue.

Background and decision

In 2014, OneRepublic released the song 'I Lived' through their label Interscope Records. Subsequently, Interscope and Arty's company, Telma Music LLC, entered into a contract (the 'Remixer Declaration') in September 2014. Under the terms of the Remixer Declaration, Interscope offered Arty $10,000 to create a remix of 'I Lived', titled 'I Lived (Arty Remix)'. The Remixer Declaration provides that Arty does not have any ownership or financial interest in the "underlying musical composition" embodied in the Remix Master. Arty worked on the original masters produced by OneRepublic, crucially adding his own creative elements, i.e. a derived composition ('Arty Elements').

In August 2019, Arty claimed in court that, although he has no ownership interest in ‘I Lived’ or the Remix Master itself, he owns the copyright over the Arty Elements that he added to ‘I Lived’ to create the Remix Master, and that Marshmello (and several other defendants including music publishers) had infringed his rights by using an instrumental hook similar to the Arty Elements. Specifically, he maintained that 19 out of 20 notes in Marshmello’s four-bar synthesiser for Happier were identical to Arty’s remix.

The dispute came down to the interpretation of the Remix Declaration, and in particular of the term “underlying musical composition”, which is not defined in said declaration. The defendants argued that such term refers to both the elements taken from the song ‘I Lived’ and the ‘Arty Elements’, i.e. the composition that underlies the remix. Therefore, since Arty signed and agreed that he is not entitled to own rights over the “underlying musical composition” – the argument goes – he does not hold any standing to bring copyright infringement claims against them. On the contrary, Arty pointed out that the expression “underlying musical composition” refers solely to the original version of ‘I Lived’ by OneRepublic, and not the combination of the ‘I Lived’ elements and the Arty Elements in the Remix Master. This would mean that he holds the rights over the Arty Elements.

Judge Gutierrez sided with Marshmello and the other defendants by granting summary judgment of non-infringement, and holding that there was no ambiguity in the Remixer Declaration: the expression “underlying musical composition” – the judge confirmed – should be interpreted as referring to the finished remix track, and not the original OneRepublic master, which inevitably meant that Arty had also given up all of his ownership and financial interests over the Arty Elements.

From remixes to remasters

Marshmello’s attorney has obviously cheered the ruling, noting that it is supported “not just by fundamental contract and copyright law principles, but also by longstanding industry practice recognizing that remixers do not acquire ownership interests in the remixes they prepare, unless they specifically negotiate for and obtain such interests from the rights holders”.

While the case focused on the interpretation of a contractual clause, the decision confirms that in general it can get complicated when it comes to copyright ownership of re-interpretations of previous songs or recordings, whether they are remixes (as in the Arty v Marshmello case) or remasters. What is the difference between remixes and remasters? As also noted by Judge Gutierrez at the beginning of his decision, remixes of other artists’ songs and recordings involve “taking a popular composition or sound recording and changing it, sometimes by adding original material”. Thus, remixes entail that a song or sound recording is tweaked, for example by inserting additional lyrics or different instruments. A remaster, on the other hand, is another version of a previous recording, which leaves the main structure of the latter intact. Remastering often enhances the earlier recordings as it gives a different sound experience for commercial or artistic reasons, e.g. by exploiting digital technological advancements which may allow cleaning of the sound and removal of original distortions. For example, several Beatles’ albums have been remastered. Due to modern music production techniques, though, the line distinguishing between remixes and

remasters is increasingly blurred and unclear.

US copyright law does not protect remasters, as they lack originality. A 2018 decision from the 9th Circuit, i.e. *ABS v. CBS* (Case No. 16-55917), confirmed that. In this case the US Court of Appeals held that digitally remastered sound recordings could not be protected by federal copyright law. The issue was whether a remaster, which involved subjectively and artistically modifying the sound balance, timbre, spatial imagery and loudness range, but otherwise leaving the previous record unedited, could be considered original enough to attract copyright. The court held it could not, "unless its essential character and identity reflect a level of independent sound recording authorship that makes it a variation", which was not the case in this dispute.

Lessons

We can draw lessons from both *Arty v Marshmello* and *ABS v CBS*. The first is that remixers who want to claim ownership of the copyright over their remixes should specify that in the contract. Second, if the person who does the remastering wishes to obtain copyright, they should not limit themself to contributions that are too mechanical or minimal, as the latter would be unlikely to be considered original derivative works. A more significant input is needed (see also Chase Brennik, *Termination Rights in the Music Industry: Revolutionary or Ripe for Reform?*, 2018 New York University Law Review, p. 803). This is also in line with The Compendium of Copyright Office Practices (Section 313.4(A)), which reminds us that **"**dubbing [a specific type of mastering] a sound recording from a pre-existing recording" is considered a work which does not satisfy the originality requirement because it is a mere copy. Also, the US Copyright Office guidance provided in Circular 56 (Copyright Registration for Sound Recordings) interestingly explains that:

A [copyrightable] *derivative sound recording is an audio recording that incorporates preexisting sounds, … The preexisting recorded sounds must be rearranged, remixed, or otherwise altered in sequence or character, or the recording must contain additional new sounds. The new or revised sounds must contain at least a minimum amount of original sound recording authorship. … Mechanical changes or processes, such as a change in format, declicking, or noise reduction, generally do not contain enough original authorship to warrant registration.*

Therefore, not only do those who rework previous recordings need to contractualise their copyright ownership when negotiating with the owner of the rights over the earlier work, but they must also have given a clearly recognisable contribution that significantly adds to the existing work. Absent either of these, they will likely be unable to invoke any copyright over their derivative works under US copyright law.

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