

# Newsweek

Issues 2006: Economy

## Why Crush Them? When Louis Armstrong borrowed from his peers, the law smiled on him. So why does it look upon his successors as digital criminals?

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794 words

28 November 2005

Newsweek International

NEWI

Newsweek International

48

English

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In the next five years, there will be more than a billion additional machines for making music in the world. Not pianos or guitars, but computers. These computers are increasingly changing the way music gets made. A whole host of "composers" use these machines to create powerful new compositions. And as these creators can become experts without 20 years of piano lessons, these machines are inviting a much wider range of creative souls to express their creativity.

Much of this music follows in the footsteps of hip-hop. Using powerful (but cheap) digital technologies, any kid can now remix sounds found on an ordinary CD and, after adding his or her own style, produce a new creative work. And while the genre has developed far beyond what hip-hop originally was, the inspiration is the same: how do you take found creativity, and make it something new?

Nor is music the only place where this remix culture is flourishing. University of Southern California researcher Mimi Ito describes an emerging anime music video (AMV) culture, in which tens of thousands of kids take Japanese anime recorded from TV and then, using personal computers, recut these anime to fit them to popular songs or, in some cases, popular movie trailers. "You don't understand how important this is," one American father told me after I had described to an audience this emerging form of art. "My son couldn't get into college until he showed them his AMVs."

Remix in art is, of course, nothing new. What is new is the law's take on this remix. For while the law of copyright protected Louis Armstrong as he made "fair use" of the compositions of his jazz contemporaries, courts in the United States have held that there's no fair-use right to a sound recording at all. Any sample taken without permission, however small, is "piracy." And such is the view of almost all in the movie industry. In his recent book, "Darknet," J. D. Lasica describes asking seven major studios for permission to include short clips from popular movies in his own home movie. Lasica promised he would not show the film to anyone except his family. All but one denied the request. Asked if he could use two 10-second clips of Daffy Duck, for example, Warner Brothers wrote, "we do not... allow our material to be edited or altered in any way."

It is said by many that the Internet has changed things. And indeed, for an enlightened few, it has. The rock band Wilco discovered that it sells more albums, and more concert tickets, when it makes its music relatively freely available on the Net. Warner Music now seems to be singing the same song.

But the change we rarely notice is the effective change the law has made to the right of creators to use this technology to create. The tradition of remix was alive and well before digital technologies came along—for the rich, at least. Digital technologies then democratized that tradition, extending the power to create broadly. But according to copyright law, remix in the world of digital technologies is presumptively illegal unless expensive permissions are secured. As one producer described to me, "It cost us \$40,000 to make the CD, and then \$200,000 to clear the rights to the music we remixed." Or as another documentary filmmaker described: digital technologies made it possible to produce a powerful new political documentary for less than \$50,000, but it cost more than \$50,000 to clear the rights to the news clips used in that documentary. And these are the lucky ones, the ones who can afford the permission. For the average kid, there is no such luck. Thus,

rather than welcoming a new generation of creators, the law calls them "pirates," and rallies technology companies to build the tools to stop this "piracy."

We can build those tools. We can drive these new creators underground. We can reinforce a system in which remixing is legal only for those who can afford high-priced lawyers. But the question governments should be asking is: why? Just at the moment when digital technologies give to our kids the most extraordinary power of creativity, why shut it down? If Shakespeare and Disney and Miles Davis were not pirates, what principled reason is there to condemn their digital equivalents?

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