

# ***Copyright Disincentives***

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Over the last decade, a spate of high-profile copyright infringement lawsuits rattled the music industry. Controversy followed in the wake of multi-million dollar damages awards, with criticism emanating from courts, scholars, and musicians alike. The basic logic of the critique is sound: the specter of such massive liability for small and inadvertent similarities disincentivizes the creation of new music. But the disincentive effect remains curiously under theorized. This Article develops a nuanced account of this disincentive theory and shows that the feared disincentive has not come to pass. In doing so, this Article makes several contributions to the copyright literature. First, it provides a deconstruction and explication of the disincentive theory currently lacking in the literature. Second, it presents substantial new evidence on the state of infringement litigation in the music industry. This Article analyzes an original dataset culled from the dockets of hundreds of infringement actions, supplemented by interviews with musicians, to assess whether high-profile litigation translates into disincentives across the field. Both lines of inquiry show that disputes take place only at the highest end of the market. Third, it extrapolates from both theory and evidence to explore the feared disincentive effect and responsive policy prescriptions. This Article posits that infringement litigation might serve beneficial distributive ends. At the same time, the state of law in this area insufficiently reflects actual musical practices, suggesting the need for reform. In that context, this Article develops a novel right of attribution for musical works to operationalize the proposed reforms.