

Dilla Time: Copyright and Distributive Justice for Beatmakers

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Hip hop music developed around “beats”—looped rhythmic patterns often limited to bass and drums—created on drum machines and synthesizers or from samples of pre-existing human performed drums and bass. J. Dilla revolutionized pop music by blending straight time and swing time on his sampler and drum machine in a way that had never been done before. This paper considers two strands of distributive justice for beatmakers (building on the work of Greene, Hughes, Merges, and others).

First is the system of protection and exploitation for particular beats under the music industry's beat licensing platforms. Copyright for anything other than traditional European-centric notions of melody has been proposed and amplified (which would destroy beats protection), while the industry's platforms may undermine beat producers/DJs' full and considered ownership and control of their beats. The platforms create marketplaces that make the three core copyright licenses at issue (master, performance, and mechanical) more easily manageable for beatmakers with limited copyright knowledge. But while they often advise beatmakers to register the beats, and at least one platform offers services for that, it is unclear how many beatmakers are so registering their works, leaving enforcement challenges down the road. The paper defends the copyrightability of beats, while also exploring the aforementioned issues and proposing solutions for beatmakers to better understand and control their copyrights.

Second is the question of style protection for specific beatmakers (sitting within the larger debate over style protection). This is called most spectacularly by the case of J. Dilla, who is revered in the music world among not only rap and hip hop artists and producers, but also among jazz, fusion, EDM, soul, R&B, funk, and even rock musicians. While his specific beats and productions for other artists are protectable, the situation also provides a perfect case in current time for advancing protection of musical composition and sound recording styles. His “Dilla Time” innovation on drum/rhythm machines was specific, quantifiable, and, to adopt a patent term, non-obvious to say the least. It thus fits every measure of originality, novelty, non-obviousness, distinctiveness etc. that are used across IP regimes. Its impact on the industry (and on fans) has been massive. The paper makes the case for style protection for Dilla Time.