



2-26-2018

## What Is (And Isn't) Fair Use in Music Sampling?

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McKinney, Devin, "What Is (And Isn't) Fair Use in Music Sampling?" (2018). *Musselman Library Staff Publications*. 88.  
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# What Is (And Isn't) Fair Use in Music Sampling?

## **Abstract**

"Fair use" is a principle embedded in copyright law which permits -- under circumstances governed by a set of considerations commonly known as "the four factors" -- the borrowing of material from copyrighted works to create new works. Created for Fair Use Week 2018, this poster highlights the principle as it has applied to three controversial cases involving music sampling. For each case, the observer is given the essential facts; shown which of the four factors (represented by icons) were most central; and told the real-world outcome of each case. As an interactive display, the poster covered each "Outcome" column with a flap, requesting the observer to make a guess as to the outcome before confirming it.

Via a listening stand near the poster, observers were also enabled to hear excerpts from the contested works. Those excerpts may be accessed at: <http://musselmanlibrary.org/fair-use-week/2018/samples.html>

## **Keywords**

Fair Use, Copyright, Fair Dealing, The Verse, Bitter Sweet Symphony, Danger Mouse, The Grey Album, Drake, Pound Cake

## **Disciplines**

Intellectual Property Law | Library and Information Science

## **Comments**

Displayed on the main floor of Musselman Library from February 26th to March 2nd, 2018, during [Fair Use and Fair Dealing Week 2018](#).

# WHAT IS (AND ISN'T) FAIR USE IN MUSIC SAMPLING?

Below are three controversial cases of musical artists borrowing from others' work to create their own. Each brought different reactions and different results.

Listen to the samples from the contested songs. Consider the facts and factors. Ask how *you* would have decided each case. Lift the flap to see the outcome.

## The Facts

## The Factors

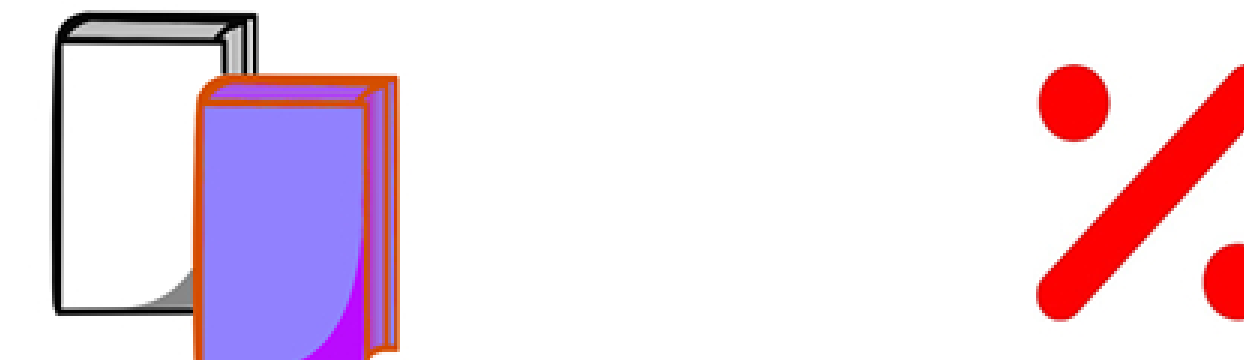
## The Outcome



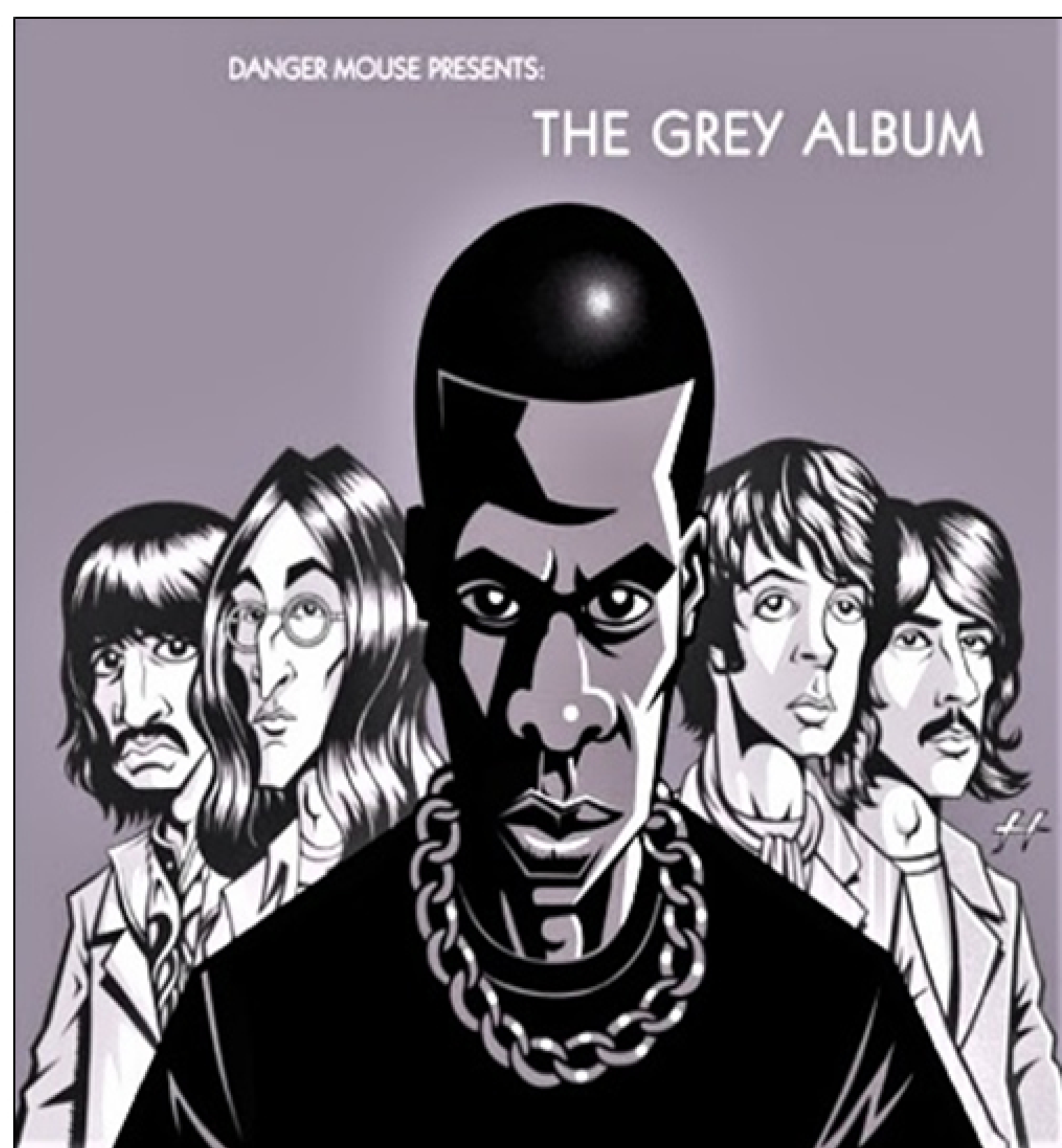
The Verve  
"Bitter Sweet Symphony"

1997

In return for 50% of royalties, The Verve were permitted to use a 5-second sample from an orchestral version of a Rolling Stones song. When the new song became a hit, the rights-holder sued for *all* royalties, claiming the portion of the original used exceeded the agreement.



The Verve agreed to surrender all of its royalties, and to give composer credit to Mick Jagger and Keith Richards, authors of the original song.



Danger Mouse  
The Grey Album

2004

DJ Danger Mouse mashed up Jay-Z's *Black Album* with the Beatles' *White Album*. The result was an Internet sensation. But Danger Mouse had not secured copyright clearance from either party, and the Beatles' company threatened legal action unless he stopped distributing the album.



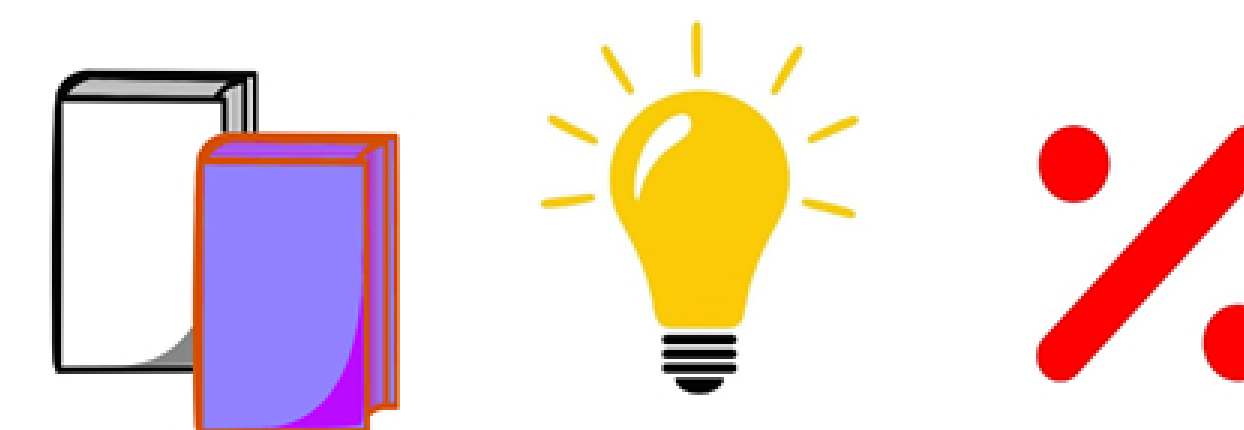
Danger Mouse complied with the legal order. But by then the album had been both lavishly praised and heavily downloaded, and no prosecution was pursued. (In fact, two years later, Jay-Z and Paul McCartney performed together at the Grammy Awards.)



Drake  
"Pound Cake"

2017

Drake sampled the majority of a brief spoken-word "rap" by jazz artist Jimmy Smith. The original was edited slightly, both to remove musicians' names and to change the meaning of one sentence. The Smith estate sued, claiming copyright infringement.



A federal judge declared this fair use. By editing just one sentence of the original, Drake had given Jimmy Smith's words new meaning and purpose, thus fulfilling copyright's "ultimate goal" – "to expand public knowledge and understanding."