

PATRICK SIMPSON
MELOMANIA #4 SCRIPT

ON OCTOBER 22ND, 1990, ARTHUR AGEE TURNED 18.

[HOOP DREAMS - "I am fixing him a birthday dinner today. It's his 18th birthday, and I wanna show him how much we appreciate him, and love him, and care for him..."]

HIS FAMILY CELEBRATED JUST LIKE ANY OTHER FAMILY WOULD—THEY BAKED HIM A CAKE, STUCK SOME CANDLES IN IT, AND SANG THE HAPPY BIRTHDAY SONG.

[HAPPY BIRTHDAY SONG]

ALL OF THIS APPEARED IN THE 1994 DOCUMENTARY, HOOP DREAMS. IT TOLD THE STORY OF ARTHUR, AND ANOTHER HIGH SCHOOLER NAMED WILLIAM GATES, AS THEY TRIED TO FOLLOW THEIR DREAMS OF BECOMING PROFESSIONAL BASKETBALL PLAYERS. IT WOULD GO ON TO BECOME ONE OF THE MOST POPULAR AND CRITICALLY-ACCLAIMED DOCUMENTARIES OF THE 90S, AND PROBABLY OF ALL TIME.

BUT, THIS DIDN'T COME WITHOUT A COST. WHAT WAS ORIGINALLY GOING TO BE A 30 MINUTE PBS SHORT TURNED INTO A FULL LENGTH FEATURE THAT TOOK OVER FIVE YEARS TO FILM, AND THEY HAD TO SORT THROUGH OVER 250 HOURS OF FOOTAGE. BUT I'M NOT TALKING ABOUT ANY OF THAT. REMEMBER HOW THEY SANG HAPPY BIRTHDAY TO ARTHUR?

[LAST LINE OF HAPPY BIRTHDAY SONG]

IN ORDER TO LEGALLY DISTRIBUTE THE MOVIE, THEY HAD TO LICENSE THAT. FOR FIVE THOUSAND DOLLARS.

[DISPARITION - CITADELS]

[ON THE MEDIA INTERVIEW - “Hoop Dreams, the family sings the boy Happy Birthday, and we had to license that for five thousand dollars. We didn’t ask them to sing it, it’s a snippet in our movie, our movie’s not about Happy Birthday, it’s about the relationship between his family members.”]

WARNER/CHAPPELL MUSIC CLAIMED TO OWN THE COPYRIGHT ON THE HAPPY BIRTHDAY SONG, AND COLLECTED ROYALTIES ON IT FOR DECADES. AND THE COPYRIGHT WASN’T EVEN FOR THE SONG—IT WAS FOR THE LYRICS. SO THEY MADE ABOUT FIVE THOUSAND DOLLARS A DAY, FOR SOMETHING THAT WAS WRITTEN IN THE 1800S, THAT IS QUITE POSSIBLY THE MOST POPULAR AND GENERIC SONG IN THE ENTIRE ENGLISH LANGUAGE. BACK IN 2015, A COURT FINALLY DECIDED THAT IT SHOULD GO INTO THE PUBLIC DOMAIN, BUT IT BRINGS UP THE QUESTION: HOW CAN COPYRIGHT LAW FOSTER CREATIVITY WHEN IT ALLOWS SOMETHING LIKE THIS TO HAPPEN?

IN THIS FINAL EPISODE OF OUR MINISERIES ON HOW MUSIC GROWS OUT OF OTHER MUSIC, WE’RE GOING TO EXPLORE THAT QUESTION, AND MAYBE EVEN COME UP WITH A FEW SOLUTIONS. BECAUSE RIGHT NOW, IF A CORPORATION CAN MAKE MILLIONS OF DOLLARS OFF OF THE HIGHLY ORIGINAL LYRICS TO THE HAPPY BIRTHDAY SONG, THEN THERE’S A PROBLEM. I’M PATRICK SIMPSON, AND THIS IS MELOMANIA.

[DISPARITION - CITADELS]

SO LET’S GET A LITTLE BIT OF CONTEXT. COPYRIGHT IN THE UNITED STATES WAS ORIGINALLY ADOPTED IN THE CONSTITUTION, IN WHAT IS NOW

CALLED THE COPYRIGHT CLAUSE, ARTICLE ONE, SECTION EIGHT. IT STATED THAT THE PURPOSE OF COPYRIGHT WAS...

[DOMENICO GALLO - TRIO SONATA NO. IN G]

[CONSTITUTION AUDIOBOOK - "To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."]

IN ESSENCE, COPYRIGHT WAS A CONTRACT BETWEEN CREATORS AND THE GOVERNMENT, WHERE THE CREATORS WOULD MAKE ART AND ADVANCE IN SCIENCE, AND THE GOVERNMENT WOULDN'T LET ANYONE COPY THEIR WORK FOR A LIMITED TIME. AND BACK THEN, THAT LIMITED TIME OF COPYRIGHT PROTECTION WAS 28 YEARS. BUT THEN, IN 1831, IT WAS EXTENDED TO 42 YEARS.

[DING]

AND THEN AGAIN, IN 1909, TO 56 YEARS.

[DING]

[TRIO SONATA BEGINS TO LOOP]

AND AGAIN, IN 1976, TO THE LIFETIME OF THE AUTHOR, PLUS 50 YEARS.

[DING]

AND FINALLY AGAIN IN 1998, TO LIFETIME OF THE AUTHOR PLUS 70 YEARS.

[STUTTERED DING]

[TRIO SONATA RETURNS TO NORMAL]

AND SO, AS YOU MAY HAVE GUESSED, THAT'S WHAT A LOT OF PEOPLE THINK IS THE PROBLEM WITH COPYRIGHT: THAT IT LASTS WAAAY TOO LONG. FOR EXAMPLE, HERE'S CGP GREY, A PRETTY WELL-KNOWN EDUCATIONAL YOUTUBER, IN HIS VIDEO ON COPYRIGHT.

[CGP GREY - "It's hard to imagine, for example, that Edgar Rice Burroughs started writing A Princess of Mars and Tarzan in 1911 because the copyright laws had just been extended, and would not have done so otherwise. Or that JK Rowling, while living on benefits in Scotland was busy doing the math, and wouldn't have written Harry Potter if the copyright protection was just for her whole life, and not an additional seven decades thereafter."]

AND VI HART, ANOTHER YOUTUBER, IN HER VIDEO ABOUT THE HAPPY BIRTHDAY SONG.

[VI HART - "These lyrics are protected by United States copyright law, because what incentive would there be for lyricists to create great work if the people who buy the rights from the people who bought the rights from the people who bought the rights from them, seventy years after they're dead, can't make millions of dollars a year, off people repeating the words "happy birthday to you" over and over to the tune of a public domain song?"]

AND THEY ARE BOTH VERY INTELLIGENT, RESPONSIBLE PEOPLE. I ACTUALLY SUBSCRIBE TO BOTH OF THEM ON YOUTUBE. SO THEIR PERSPECTIVE ON COPYRIGHT IS WHAT I MYSELF BELIEVED. AND I STILL HELD THAT BELIEF WHEN I WENT TO INTERVIEW ROBERT MEITUS.

[ROBERT MEITUS INTERVIEW - "Hello, Robert Meitus. Hi, this is Patrick..."]

HE'S THIS COPYRIGHT LAWYER THAT I INTERVIEWED TO GET A FEW QUOTES FOR THIS EPISODE AND MAKE SURE THAT I HAD THE RIGHT IDEA ABOUT THE ISSUE.

["I am an attorney in Indianapolis and live in Bloomington and teach at the Maurer School of Law, part of Indiana University."]

BUT, IT TURNS OUT THAT HE AND I DIDN'T AGREE ON EVERYTHING RIGHT AWAY. I BROUGHT UP THE ISSUE OF THE DURATION OF COPYRIGHT, AND UH... WELL LET ME JUST PLAY YOU THE CLIP.

["... to be able to collect royalties from it. So like why does it help incentivize creativity by extending it so much? I feel like that-

Well let me ask you this. Let me ask you this. What would be the difference between 10 years of copyright or 20 years of copyright, okay? My wife's a songwriter. So if she had twenty years of copyright protection, or let's look at it backwards, twenty years of copyright protection, or no copyright protection. Do you think that would be a difference? If she had no copyright protection, the minute she recorded a track, anybody could copy it and sell it. Obviously a problem, right?

Yes, yeah, for sure.

So do you think if she had twenty years of copyright protection, that would adequately incentivize her?

Perhaps.

Do you think if she had 30 years..."]

AND THEN IT CONTINUED LIKE THIS, FOR A LITTLE BIT.

["I would suggest you have no idea, because you haven't done the social science research, and study to know, you're just guessing. Do you think that somebody's gonna create the next Star Wars, do you like Star Wars?

Sure, yeah.

So what if I told you Star Wars, you know, 30 years ago, today was gonna cost 250 million dollars to make, you'd probably say there's no way. But it does. What if we cut copyright back? Do you not think then, that there's a large chance that it will affect Warner Brothers', Disney's incentive to put in 200 million dollars to create this huge gigantic work of art? Or do you think they'll just do it anyways?"]

SO HE BASICALLY SLAMMED ME ON THIS. AND I HAVE TO SAY, AFTER HEARING HIS POINTS, I AGREE WITH HIM. THE ISSUE LIES NOT WITH THE LENGTH OF COPYRIGHT—THE CRUX OF IT ALL HAS TO DO WITH FAIR USE.

[DISPARITION - BLUE DREAMER]

IF YOU DON'T KNOW, FAIR USE IS THIS EXCEPTION TO COPYRIGHT LAW THAT ALLOWS FOR THE KINDS OF TRANSFORMATIVE WORKS THAT WE'VE DISCUSSED IN THE PAST FEW EPISODES. WHAT'S HAPPENING IS THAT COPYRIGHT OWNERS ARE CLAIMING THAT THEY HAVE MORE RIGHTS THAN THE LAW PROVIDES, AND THEY'RE COMPLETELY IGNORING FAIR USE. AND WE'RE JUST LETTING IT HAPPEN. TAKE FOR INSTANCE THIS COURT CASE THAT HAS SET THE STANDARD FOR SAMPLING IN THE MODERN MUSIC INDUSTRY: BRIDGEPORT MUSIC INC. VERSUS DIMENSION FILMS. THE CASE CENTERED AROUND AN N.W.A. SONG, 100 MILES AND RUNNIN', AND IT'S USE OF A SAMPLE OF A FUNKADELIC TRACK WITHOUT GETTING PERMISSION

FROM FUNKADELIC'S RECORD LABEL, BRIDGEPORT MUSIC. THE SAMPLE WAS THE FIRST TWO SECONDS OF A GUITAR CHORD AT THE BEGINNING OF THE SONG.

[GUITAR CHORD LOOPED]

THEY PITCHED IT DOWN.

[PITCHED DOWN CHORD LOOPED]

AND THEN LOOPED IT A FEW TIMES UNDERNEATH THE TRACK. IT'S ALMOST IMPOSSIBLE TO HEAR UNLESS YOU'RE LISTENING FOR IT. WHEN BRIDGEPORT SUED FOR COPYRIGHT INFRINGEMENT, THE COURT DISMISSED THE CASE UNDER THE DE MINIMIS DOCTRINE. IN LAYMAN'S TERMS, THE JUDGE SAID THAT THE SAMPLE WAS SO SMALL AND INSIGNIFICANT THAT THEY DIDN'T EVEN HAVE TO PERFORM THE STANDARD FAIR USE ANALYSIS ON IT. BUT THEN, BRIDGEPORT APPEALED, AND IN THE COURT OF APPEALS FOR THE SIXTH CIRCUIT, THE DECISION WAS REVERSED. THE JUDGES SAID THAT THE SAMPLE WAS COPYRIGHT INFRINGEMENT, AND DECLARED THAT ALL SAMPLES ARE COPYRIGHT INFRINGEMENT UNLESS THEY ARE LICENSED.

[“... any amount, they set this new rule in Nashville in the sixth circuit, any amount of an actual sound recording is de facto, automatically infringement. Because they read the copyright act wrong, I believe. And that is good law in that circuit, that's part of the United States, not all of it. And no, I don't agree with that. And most courts follow a little bit different rules, but that's the tendency, to say any amount that's recognizable, and I think to me, if it's de minimis, only a little bit, it shouldn't be infringement.”]

SO WHAT DO WE DO ABOUT IT?

[DISPARITION - MOSTAR]

WELL, WE COULD REFORM THE COPYRIGHT ACT TO CREATE SOME OBJECTIVE MEASURES FOR WHETHER SOMETHING IS FAIR USE OR NOT. CREATE WHAT ARE CALLED SAFE HARBORS.

["I would, I'd give some more statutory, what we call safe harbors, where you feel like, you do this, under a certain number of seconds or something, some other objective measures, that you're not gonna be sued."]

BUT THEN THAT WOULD DISCOURAGE ANY USE THAT WOULD BE OVER THAT SET AMOUNT. SO INSTEAD OF THAT, WE COULD EXTEND WHAT'S CALLED COMPULSORY LICENSING INTO THINGS LIKE SAMPLING. COMPULSORY LICENSING IS JUST SAYING THAT YOU CAN LICENSE WHATEVER YOU WANT FROM A COPYRIGHT OWNER, AND THEY CAN'T STOP YOU.

["... but just think of it as a mechanical license, it's automatic, they can't turn me down."]

AND THEN, EVERY TIME YOU SELL YOUR SONG, OR DISTRIBUTE IT IN ANY OTHER WAY, YOU WOULD HAVE TO PAY THE COPYRIGHT OWNER A SET AMOUNT OF MONEY, USUALLY AROUND 10 CENTS. SO FOR THE N.W.A. SONG THAT WE DISCUSSED EARLIER, EVERY TIME THAT THEY WOULD SELL THAT SONG, THEY WOULD PAY ABOUT TEN CENTS TO FUNKADELIC. THIS WORKS WELL, BECAUSE IT ALLOWS FOR TRANSFORMATIVE WORKS, WHILE AT THE SAME TIME COMPENSATING THE ORIGINAL AUTHOR.

["... and it's a very good economic low-transaction cost, good economic value, for everybody in the whole."]

SO HOW DO WE GET THIS ACCOMPLISHED? WELL THE MOST IMPORTANT THING IS TO ACTUALLY CARE ABOUT IT AND EDUCATE YOURSELF ON THE ISSUE. BECAUSE IF YOU CARE ABOUT IT, THEN YOUR REPRESENTATIVES IN CONGRESS SHOULD CARE ABOUT IT TOO, AND THEY'RE THE ONES THAT COULD ENACT THIS LEGISLATION. AND YOU SHOULD CARE ABOUT THIS, BECAUSE THINGS LIKE SAMPLING AND REMIXING ARE BECOMING INCREASINGLY COMMON NOW, WITH TECHNOLOGY CONSTANTLY IMPROVING, ALLOWING MORE AND MORE PEOPLE TO DO THIS KIND OF CREATIVE WORK.

AND IN A MORE GENERAL SENSE, LIKE WE'VE DISCUSSED IN THE PAST TWO EPISODES, ALL MUSIC GROWS OUT OF OTHER MUSIC, SO COPYRIGHT LAW MUST REFLECT THAT REALITY. BECAUSE IF WE JUST LET THIS GO, THEN ALL THOSE ARTISTS THAT WE'VE TALKED ABOUT IN THE PREVIOUS EPISODES, LIKE MIKE SCHELLE... WELL, THEY WON'T BE ABLE TO MAKE THE GREAT MUSIC THEY DO. AND THEN? NOTHING. NO KID A, NO ROLL OVER BEETHOVEN, NOTHING. *breath* AND THAT'D BE A SHAME, AND A WASTE OF ALL OF THAT CREATIVITY. SO WHAT I'M ASKING YOU, ALL OF YOU, ALL OF US, IS TO CARE ABOUT IT ENOUGH, TO LET THAT CREATIVITY HAPPEN.

[DANGER MOUSE - ENCORE]

MELOMANIA IS WRITTEN AND PRODUCED BY ME, PATRICK SIMPSON. THE TRACKS THAT I USED ARE, IN ORDER OF APPEARANCE, DISPARITION'S CITADELS, DOMENICO GALLO'S TRIO SONATA NUMBER ONE IN G, DISPARITION'S BLUE DREAMER AND MOSTAR, AND WHAT'S PLAYING RIGHT

NOW IS ENCORE BY DANGER MOUSE, A TRACK OFF OF THE GREY ALBUM, WHICH COMBINED THE BEATLES' WHITE ALBUM WITH JAY-Z'S THE BLACK ALBUM. THIS IS THE LAST PART OF A THREE PART SERIES ABOUT HOW MUSIC GROWS FROM OTHER MUSIC, AND YOU CAN CHECK OUT THE PREVIOUS TWO EPISODES ON WHJE DOT COM, SOUNDCLOUD, OR ITUNES. SINCE THIS IS THE END OF THE SEMESTER FOR ME, NO NEW EPISODES OF MELOMANIA WILL BE COMING OUT FOR A WHILE, BUT I DO HAVE SOME BONUS CONTENT SCHEDULED TO COME OUT TO FILL IN THE GAP A LITTLE BIT, SO LOOK FORWARD TO THAT. MELOMANIA IS A PRODUCTION OF 91.3 WHJE, BROADCASTING FROM BEAUTIFUL, DOWNTOWN, CARMEL INDIANA. THANKS FOR LISTENING.