

KEMBREW MCLEOD

How Copyright Law Changed Hip-Hop

An Interview with Public Enemy's Chuck D and Hank Shocklee

*When Public Enemy released *It Takes a Nation of Millions to Hold Us Back*, in 1988, it was as if the album had landed from another planet. Nothing sounded like it at the time. *It Takes a Nation* came frontloaded with sirens, squeals, and squawks that augmented the chaotic, collaged backing tracks over which PE. frontman Chuck D laid his politically and poetically radical rhymes. He rapped about white supremacy, capitalism, the music industry, black nationalism, and—in the case of “Caught, Can I Get a Witness?”—digital sampling: “Caught, now in court ‘cause I stole a beat / This is a sampling sport / Mail from the courts and jail / Claims I stole the beats that I rail... I found this mineral that I call a beat / I paid zero.”*

*in the mid-to late 1980s, hip-hop artists had a very small window of opportunity to run wild with the newly emerging sampling technologies before the record labels and lawyers started paying attention. No one took advantage of these technologies more effectively than Public Enemy, who put hundreds of sampled aural fragments into *It Takes a Nation* and stirred them up to create a new, radical sound that changed the way we hear music. But by 1991, no one paid zero for the records they sampled without getting sued. They had to pay a lot.*

Stay Free! talked to the two major architects of PE.'s sound, Chuck D and Hank Shocklee, about hip-hop, sampling, and how copyright law altered the way PE. and other hip-hop artists made their music.

The following is a combination of two interviews that Kembrew McLeod conducted separately with Chuck D and Hank Shocklee.

Kembrew: What are the origins of sampling in hip-hop?

Chuck D: Sampling basically comes from the fact that rap music is not music. It's rap over music. So vocals were used over records in the very beginning stages of hip-hop in the '70s to the early '80s. In the late 1980s, rappers were recording over live bands who were basically emulating the sounds off of the records. Eventually, you had synthesizers and samplers, which would take sounds that would then get arranged or looped, so rappers can still do their thing over it. The arrangement of sounds taken from recordings came around 1984 to 1989.

Kembrew: Those synthesizers and samplers were expensive back then, especially in 1984. How did hip-hop artists get them if they didn't have a lot of money?

Chuck D: Not only were they expensive, but they were limited in what they could do—they could only sample two seconds at a time. But people were able to get a hold of equipment by renting time out in studios.

Kembrew: How did the Bomb Squad [Public Enemy's production team, led by Shocklee] use samplers and other recording technologies to put together the tracks on *It Takes a Nation of Millions*?

Hank Shocklee: The first thing we would do is the beat, the skeleton of the track. The beat would actually have bits and pieces of samples already in it, but it would only be rhythm sections. Chuck would start writing and trying different ideas to see what worked. Once he got an idea, we would look at it and see where the track was going. Then we would just start adding on whatever it needed, depending on the lyrics. I kind of architected the whole idea. The sound has a look to me, and Public Enemy was all about having a sound that had its own distinct vision. We didn't want to use anything we considered traditional R&B stuff—bass lines and melodies and chord structures and things of that nature.

Kembrew: How did you use samplers as instruments?

Chuck D: We thought sampling was just another way of arranging sounds. Just like a musician would take the sounds off of an instrument and arrange them their own particular way. So we thought we was quite crafty with it.

Shocklee: “Don't Believe the Hype,” for example—that was basically played with the turntable and transformed and then sampled. Some of the manipulation we was doing was more on the turntable, live end of it.

Kembrew: When you were sampling from many different sources during the making of *It Takes a Nation*, were you at all worried about copyright clearance?

Shocklee: No. Nobody did. At the time, it wasn't even an issue. The only time copyright was an issue was if you actually took the entire rhythm of a song, as in looping, which a lot of people are doing today. You're going to take a track, loop the entire thing, and then that becomes the basic track for the song. They just paperclip a backbeat to it. But we were taking a horn hit here, a guitar riff there, we might take a little speech, a kicking snare from somewhere else. It was all bits and pieces.

Kembrew: Did you have to license the samples in *It Takes a Nation of Millions* before it was released?

Shocklee: No, it was cleared afterward. A lot of stuff was cleared afterward. Back in the day, things was different. The copyright laws didn't really extend into sampling until the hip-hop artists started getting sued. As a matter of fact, copyright didn't start catching up with us until *Fear of a Black Planet* [1990]. That's when the copyrights and everything started becoming stricter because you had a lot of groups doing it and people were taking whole songs. It got so widespread that the record companies started policing the releases before they got out.

Kembrew: With its hundreds of samples, is it possible to make a record like *It Takes a Nation of Millions* today? Would it be possible to clear every sample?

Shocklee: It wouldn't be impossible. It would just be very, very costly. The first thing that was starting to happen by the late 1980s was that the people were doing buyouts. You could have a buyout—meaning you could purchase the rights to sample a sound—for around \$1,500. Then it started creeping up to \$3,000, \$3,500, \$5,000, \$7,500. Then they threw in this thing called rollover rates. If your rollover rate is every 100,000 units, then for every 100,000 units you sell, you have to pay an additional \$7,500. A record that sells two million copies would kick that cost up twenty times. Now you're looking at one song costing you more than half of what you would make on your album.

Chuck D: Corporations found that hip-hop music was viable. It sold albums, which was the bread and butter of corporations. Since the corporations owned all the sounds, their lawyers began to search out people who illegally infringed upon their records. All the rap artists were on the big six record companies, so you might have some lawyers from Sony looking at some lawyers from BMG and some lawyers from BMG saying, "Your artist is doing this," so it was a tit for tat that usually made money for the lawyers, garnering money for the company. Very little went to the original artist or the publishing company.

Shocklee: By 1990, all the publishers and their lawyers started making moves. One big one was Bridgeport, the publishing house that owns all the George Clinton stuff. Once all the little guys started realizing you can get paid from rappers if they use your sample, it prompted the record companies to start investigating because now the people that they publish are getting paid.

Kembrew: There's a noticeable difference in Public Enemy's sound between 1988 and 1991. Did this have to do with the lawsuits and enforcement of copyright laws at the turn of the decade?

Chuck D: Public Enemy's music was affected more than anybody's because we were taking thousands of sounds. If you separated the sounds, they wouldn't have been anything—they were unrecognizable. The sounds were all collaged together to make a sonic wall. Public Enemy was affected because it is too expensive to defend against a claim. So we had to change our whole style, the style of *It Takes a Nation and Fear of a Black Planet*, by 1991.

Shocklee: We were forced to start using different organic instruments, but you can't really get the right kind of compression that way. A guitar sampled off a record is going to hit differently than a guitar sampled in the studio. The guitar that's sampled off a record is going to have all the compression that they put on the recording, the equalization. It's going to hit the tape harder. It's going to slap at you. Something that's organic is almost going to have a powder effect. It hits more like a pillow than a piece of wood. So those things change your mood, the feeling you can get off of a record. If you notice that by the early 1990s, the sound has gotten a lot softer.

Chuck D: Copyright laws pretty much led people like Dr. Dre to replay the sounds that were on records, then sample musicians imitating those records. That way you could get by the master clearance, but you still had to pay a publishing note.

Shocklee: See, there's two different copyrights: publishing and master recording. The publishing copyright is of the written music, the song structure. And the master recording is the song as it is played on a particular recording. Sampling violates both of these copyrights. Whereas if I record my own version of someone else's song, I only have to pay the publishing copyright. When you violate the master recording, the money just goes to the record company.

Chuck D: Putting a hundred small fragments into a song meant that you had a hundred different people to answer to. Whereas someone like EPMD might have taken an entire loop and stuck with it, which meant that they only had to pay one artist.

Kembrew: So is that one reason why a lot of popular hip-hop songs today just use one hook, one primary sample, instead of a collage of different sounds?

Chuck D: Exactly. There's only one person to answer to. Dr. Dre changed things when he did *The Chronic* and took something like Leon Haywood's "I Want a Do Something Freaky to You" and revamped it in his own way but basically kept the rhythm and instrumental hook intact. It's easier to sample a groove than it is to create a whole new collage. That entire collage element is out the window.

Shocklee: We're not really privy to all the laws and everything that the record company creates within the

company. From our standpoint, it was looking like the record company was spying on us, so to speak.

Chuck D: The lawyers didn't seem to differentiate between the craftiness of it and what was blatantly taken.

Kembrew: Switching from the past to the present, on the new Public Enemy album, *Revolverlution* [2002], you had fans remix a few old Public Enemy tracks. How did you get this idea?

Chuck D: We have a powerful online community through Rapstation.com, PublicEnemy.com, Slamjamz.com, and Bringthenoise.com. My thing was just looking at the community and being able to say, "Can we actually make them involved in the creative process?" Why not see if we can connect all these bedroom and basement studios, and the ocean of producers, and expand the Bomb Squad to a worldwide concept?

Kembrew: As you probably know, some music fans are now sampling and mashing together two or more songs and trading the results online. There's one track by Evolution Control Committee that uses a Herb Alpert instrumental as the backing track for your "By the Time I Get to Arizona." It sounds like you're rapping over a Herb Alpert and the Tijuana Brass song. How do you feel about other people remixing your tracks without permission?

Chuck D: I think my feelings are obvious. I think it's great.

Originally published in *Stay Free!* no. 20 (fall 2002), available online at <http://www.stayfreemagazine.org>.