



## The beats from others – but your own songs

The melody is a catchy tune but the groove just doesn't match. For days, you haven't got rhythm while some ingenious lyrics are on the tip of your tongue. There are many reasons why creators use someone else's raw material for their own songs. The following legal and practical tips on how to deal with bought-out beats help you keep in sync with formalities. Text by Martin Korrodi and Claudia Kempf



Those who produce their own songs with bought-out beats have to familiarise themselves with the licensing terms and conditions of the supplier and to mention the "beat maker" on the works registration at SUISA. (Photo: PrinceOfLove / Shutterstock.com)

Producing new works using pre-existing creations is probably one of the oldest and most successful cultural techniques in existence. Due to the technical developments, the integration of "third-party" beats into your own songs becomes simpler every day, and is thus widespread – especially in the genres of hip-hop and rap.

### Raw material for the song production

Under the term "Sampling", this practice has been in place for several decades. Whereas, in the case of sampling, elements are taken from market-ripe productions and processed further, a multitude of platforms nowadays offer a huge range of beats which are produced specially as raw material for "building" your own songs.

When implementing such pre-fabricated elements it is vital to observe that you don't just have to "buy" the recording but also acquire the legal authorisations in order to use the recording and the underlying composition for your own works. What the purchaser may do with the acquired beat is set out in so-called licensing terms and conditions. Such "small print" may, for example, carry different names on the websites of the suppliers, such as "license agreement", "terms of use", "licensing contract" or "legal matters".

### Watch out for the small print!

Customers usually assume that they may do anything they like with the acquired material as soon as they have purchased the respective beat. This process is, however, usually not a typical purchase agreement but a licensing agreement which often contains limiting terms and conditions and may therefore prevent the registration and exploitation of the finished song.

Under a purchase agreement, the title to a specific work copy is acquired (e.g. on a CD). In this process the buyer has, however, not acquired any rights in the works (compositions) and performances (recordings) which are included on the CD.

Especially when working with pre-fabricated beats, buyers must be clear which copyright-relevant actions are permitted with regards to the beats and which ones are not (reproduction, arrangement etc.) This also applies if you obtain the beats free of charge.

### Check list: Check these 9 items first before buying the beats

The following overview collates the most important items that you ought to observe from a legal perspective when acquiring beats via the internet:

- The **licensing terms and conditions** (license agreement, terms and conditions, etc.) must always be examined thoroughly! In the case of uncertainties, it is imperative that you consult with the supplier or with SUISA before you complete the purchase transaction.
- Certain offers only allow the **non-commercial exploitation**: In such cases, neither the sale of the song (via digital or physical media), nor TV or radio plays are permitted. As a consequence, a monetisation via Youtube is not allowed either.

- The licence often only covers a **specific number of copies** of the finished song (e.g. "up to 3,000 units"). If this number is exceeded, a new licence has to be acquired, depending on the respective provisions, or a share in the collected revenue for the exploitation has to be paid to the beat maker.
- Some licensing models explicitly provide for an **exclusion of specific exploitations** (e.g. "TV/Radio plays not included").
- The producers of the beats are often members of a collective management organisation themselves and demand that they participate with a certain **percentage as co-authors** when the finished songs are registered.
- In nearly all cases, the name of the beat maker has to be mentioned when the finished song is used in line with the beat maker's stipulations (**Credits**).
- In the case of **non-exclusive** licences it is imperative to observe that other customers may also use the same material for their songs.
- It is often possible to acquire the material on an **exclusive** basis if you pay a higher fee. In such cases, the respective beat will be deleted from the store once the purchase process has been completed and is thus no longer available to any other customers. In the case of exclusive deals, all necessary authorisations are usually granted in order to be able to exploit the finished song without any limitations.
- **Guarantee and indemnity:** Customers who invest a lot of time and money also want to be sure that the finished production is free from third-party claims. In the licensing terms and conditions, the beat maker should therefore issue a guarantee to this end and indemnify customers from any third-party claims.

### Registration of the finished songs with SUISA

Due to the rights administration agreement, SUISA has the duty to license the works of its members vis-a-vis the customers. The rights administration agreement applies consistently to all works of a member – it is usually not possible for SUISA to take limitations for a specific song contained in the licensing agreement with the beat maker into consideration.

In particular, SUISA shall not monitor the number of licensed copies or exempt specific exploitations of a song from its licensing activities. As a consequence, SUISA cannot accept any work registrations which contain beats whose use is only permitted subject to restricted conditions.

### Mention the beat maker in the work registration

The work registration must be in line with the contents of the licensing agreement. As a consequence, the shares for the exploitation of the beats must be clearly stipulated in the agreement or in the terms and conditions of business. If the shares are not clearly specified, and this does, unfortunately, sometimes happen, they have to be clarified with the supplier.

The following provisions can often be found:

1. The beat maker must receive a specific percentage of the collected income for the exploitation. In the work registration, the beat maker must be mentioned as a composer with this very percentage.
2. The beat maker will not receive a share but demands "Credits"; his/her name therefore has to be mentioned. In the work registration, the beat maker must be mentioned as a composer with a 0% share.
3. The beat maker neither asks for a share nor for "Credits". The beat maker must still be mentioned as a composer with a 0% share. If the name of the composer is not known, "unknown" may be entered in the composer field.

Independently of the licensing provision, the beat maker must therefore always be mentioned in the work registration. On top of that, a note needs to be made in the comments field when registering the work that it contains a purchased beat. Moreover, it is mandatory to provide a copy of the licensing agreement.

The following shall also apply here: If works are created where several authors have contributed, the shares and authorisations must be clearly specified prior to publication.

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### Purchase via the internet

The purchase of beats via the internet from an unknown supplier holds the same risks as any other purchase on the internet. The government has therefore issued some **basic guidelines** which should be observed when making purchases on the internet.

### Jamahook – a social network for musicians

A portal by musicians for musicians is currently in its infancy, which shall facilitate the collaboration between musicians, beat makers and producers. The core piece of this platform is a sophisticated algorithm which allows to find suitable sounds or beats matching your own music – in an instant. The search includes harmonies, rhythms, tempo and timbre. Jamahook does not just simplify the musical collaboration but also the regulation of copyright-related legal aspects. In this context, SUISA supports the makers of this platform which has its registered office in Switzerland. More info on this project: [www.jamahook.com](http://www.jamahook.com) as well as [www.youtube.com/jamahook](https://www.youtube.com/jamahook)

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Tags: Composition, Licensing agreement, Co-author, Author, Work registration

Acquisition date: 09.06.2017 [<https://blog.suisa.ch/en/the-beats-from-others-but-your-own-songs/>] by Manu Leuenberger