



## Sampling and Remixes

The articles about arrangements in the “Good to know” series have so far focused on “conventional” arrangements of musical works. Sampling and remixes are two additional and specific forms of arrangement. What rights need to be secured when existing recordings are used to produce a new work? What agreements have to be contracted? Text by Claudia Kempf and Michael Wohlgemuth



*From the copyright point of view, remixes and sampling are specific forms of arrangement. (Photo: Tabea Hüberli)*

Sound samplings come in many different forms and techniques. But they all have one thing in common: they incorporate parts of a musical recording into a new work. This regularly raises the question whether such parts of works or samples are protected by copyright or – especially in the case of very short sound sequences – whether they may be used freely.

In the case of a remix, an existing production is taken and re-arranged and re-mixed. This may involve taking apart a whole work and putting it together again with the addition of new elements. Theoretically, the degree of re-arrangement in a remix may range from a simple cover version to a completely new arrangement. As a rule, a remix is simply an arrangement. Remixes generally keep a work's existing title and add a tag which refers either to the form of use (radio edit / extended club version, or similar) or the name of the remixer (generally a well-known DJ).

By contrast with conventional arrangements, in addition to using an existing work to create a derived work or arrangement, samples and remixes also use an existing sound recording. Therefore, one must distinguish between two categories of rights: the rights of the authors of the original work on the one hand (copyrights), and the rights of the performing artists and producers of the recording on the other (neighbouring rights).

### Securing the copyrights

In principle, copyright law protects entire works of music, as well as parts of works which meet the qualifying criteria, provided the term of protection of 70 years (after the death of the last deceased author) has not yet expired. The melody, a solo or other elements of a work can therefore be protected and may not be freely used if they qualify as a work of an individual character. This must be determined on a case-by-case basis. The more marked the characteristics of the sampled element, the less likely you will be able to use that element for free. The notion that two bars, nine notes or two seconds of music can be used for free is only a rumour since, regrettably, there is no clear delimitation defining when a part of a work has an individual character.

So if a protected part of a third-party composition is sampled and incorporated into a new work, and the part concerned has an individual character, the arrangement rights in the original work must be secured from the publisher or, in the case of unpublished works, the author. This is done through a sampling agreement or an arrangement licence.

In the case of a remix, a distinction is made depending on who creates the remix: the author of the original work or a third party. For copyright purposes, the original author is essentially free to create remixes of his own work. If, however, the original work was composed by several people, he will need permission from his co-authors to create a remix; and if the original work was published by a label, he will need the permission of the label to use the sound recording (neighbouring rights).

If the remix was created by a third party, a distinction must be made depending on whether the remix was commissioned or made on the remixer's own initiative. In the latter case, the rights must be secured from the author or his publisher by means of an arrangement license (often referred to as a “remix agreement”).

## Securing neighbouring rights

Since sampling and remixes borrow from pre-existing sound recordings, the rights in the recording and the artists' performances must also be secured. As a rule, the rights of the performing artists are assigned to the record producer or the label when the production is made. These rights are also limited by a term of protection. Currently, the term of protection for recordings in Switzerland is 50 years after the first publication, provided that the recording is actually published for the first time within 50 years of the recording date. Otherwise, the recording date is decisive for the expiry of the term of protection. In the EU, however, the term of protection is 70 years. In the framework of the revision of the Copyright Act currently before the Swiss Parliament, it has been proposed to increase the term of protection under Swiss law in line with that of the European Union.

If the term of protection is still valid, the rights in the recording have to be secured. The rumour that "two seconds are fair use" is fundamentally false. However, there is controversy as to whether recording protection applies to the shortest sound sequences. The European Court of Justice is currently **examining** this very matter in "Kraftwerk vs. Pelham: Metall auf Metall".

The rights in a recording are normally held by the record producer, i.e. by the party who bears the economic risk of the recording. The producer can be an artist himself (own productions), a record company ("label") or a broadcasting company, and the corresponding rights must be secured accordingly. Colloquially, the rights in the recordings are often referred to as "master rights".

**NB.** A work's term of protection may have expired while the recording is still protected. In this case, the rights in the work no longer need to be secured, but the rights in the recording still do. This would also apply to recordings of natural sounds and animal cries, for example, which are not protected by copyright. In this case, the recording, as the economic output of the producer, is protected just the same.

## Main points of a sampling agreement

Depending on the circumstances, the sampling agreement (also referred to as a "sample clearance agreement") regulates the rights in a work and its recording. When these rights are all held by the same party, a single agreement can be made. As a rule, however, two agreements will be concluded: one with the author or his publisher, and the other with the record label. The following points must be covered:

- Name and address of the contracting parties (pseudonyms if applicable)
- Subject of agreement: work and/or recording. Duration of the sample. How exactly may the sample be used? Can it be altered?
- Scope of licence: what rights are granted? Is the licence exclusive or non-exclusive? For which territory and for how long?
- Rights splitting/licence shares: in most cases, rights are determined by the shares of the participants in the work. The authors of a new work and the rightholders of the original work are all entitled to a share in the new work. The sampling agreement must in any event indicate the splitting. In addition to this rule which depends on the economic success of the new production, the original rightholders may demand a lump-sum fee for the arrangement right. Moreover, the royalty for the use of the recording usually takes the form of a percentage per sold copy of the new production, or of a lump-sum fee.
- Distribution timetable: when and how often are rights settled?
- Warranties: the rightholder must warranty that he holds all the relevant rights in the sample.
- Place, date, signature of rightholder
- Governing law and jurisdiction

## Main points of a remix agreement

A remix agreement must specify whether the remix is commissioned or the remixer is acting on his own initiative and applying for a remix licence. Depending on the premises, the agreements can be quite different. Moreover, in the case of a remix and depending on the circumstances, the rights in the work and the recording also have to be regulated. When these rights are all held by the same party, a single agreement can be concluded. As a rule, however, two agreements have to be made: one with the author or publisher, and the other with the performing artist or record label. The following points must be covered:

- Name and address of the contracting parties (pseudonyms if applicable)
- Subject of agreement: work and/or recording. Duration. Title of the remix. Credits.
- Production terms: delivery date, special requirements (if commissioned)
- Scope of licence: what rights are granted? Is the licence exclusive or non-exclusive? For which territory and how long?
- Fees: as a rule, a lump-sum fee is agreed, more rarely a participation in sales and other licence fees such as sync fees.
- Rights splitting: as the arranger of the newly created work, the remixer is usually (but not necessarily) given a share. Accordingly, the arrangement percentage indicated in SUISA's Distribution Rules is applicable (see article "**Arranging works protected by copyright**"). In rare cases, if, for example, the remixer's contribution to the new work is very significant, he will be granted co-authorship status in the remix. In these cases his participation may also be higher.
- Distribution timetable: when and how often are rights settled?
- Place, date, signature of rightholder
- Governing law and jurisdiction

## When does a remix or a work containing samples have to be registered with SUISA?

When filing an application to register a work with samples excerpted from a protected work, the sampling agreement (which does not have to be expressly designated as such) must be enclosed or – in the case of online registration – uploaded. The rights splitting must be clearly indicated in the sampling agreement. Otherwise, the new work cannot be registered.

**NB.** In contrast to conventional arrangements where the arranger is registered as such for the new work, it is general practice for works with samples to list all the authors as co-authors of the work. The authors and, if applicable, publishers of the work from which the samples are taken thus become co-rightholders of the new work. When applying to register a work, it is important to list all rightholders of the work from which the samples are excerpted or at least to clearly state which original work was sampled.

When filing an application to register a remix of a protected work, the remix agreement (which does not have to be expressly designated as such) must be enclosed or – in the case of online registration – uploaded. The remixer will only be granted a share of the earnings if the remix agreement clearly indicates that he is entitled to a share. If no percentage is specified, the remixer will be entitled to the share allotted to the arranger under the Distribution Rules. If no reference is made to any share, SUISA will record the name of the remixer in the original version with the comment that the remix is approved but the remixer is not entitled to any share. If a publishing house registers a remix of a work which it published in the original, SUISA waives the need for a remix agreement since the publisher can always secure the arrangement rights directly from its author.

## Summary

In addition to the arrangement rights (copyright), remixes and sampling always also affect neighbouring rights, since they use existing recordings (containing the rights of performing artists). The rights in the recording may be held by the same rightholder as the arrangement rights (author or publisher), or by a third party (often a record company or label), and must be secured even for very short sequences. The more rightholders involved, the earlier one should start enquiring and securing the rights. Likewise, remix and sampling permissions should always be recorded as written agreements (which also facilitates registration of the works with SUISA) and should clearly indicate how rights are split.

SUISA assists its members in locating the rightholders. In the case of published works, it provides the publisher's particulars so that he can be contacted directly. In the case of unpublished works, it forwards enquiries to the authors or their heirs. Enquiries should be addressed to: publisher (at) suisa (dot) ch Details of the producers of a recording can be found under the © note on the

recording itself.

---

#### Related articles

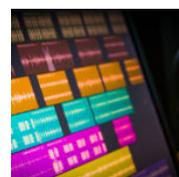
**Arrangement of works in the public domain** – Before you start arranging musical works that are not protected by copyright, it is worth being aware of the legal pitfalls in order to avoid costly stumbles. Seeking inspiration from others, arranging existing works for different instrumentation, incorporating all or part of existing compositions into new works ... these are age-old practices. [Read more](#)



**Arranging works protected by copyright** – Musical works in the public domain can be arranged at will. But works which are still protected by copyright, i.e. whose author has been dead for less than 70 years, cannot be arranged without permission from the rightholders. How does one go about obtaining such permission, and what points must be regulated in the permission in order to be able to register an arrangement with SUISA? [Read more](#)



**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. [Read more](#)



[back](#)



This article was posted in Good to know.

Tags: Arrangement, Electronic music, Co-author, Music label, Music producer, Model contract, Original composition, Term of protection, Copyright, Neighbouring rights, Work registration

Acquisition date: 05.06.2019 [<https://blog.suisa.ch/en/sampling-and-remixes/>] by Manu Leuenberger