

The Ghosts Got You: Hip Hop and the Intellectual Property Debate

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In their summer 2005 issue, hip hop production magazine *Scratch*, featured an interesting article on super-producer Timothy “Timbaland” Mosley. What I found interesting about the article was not simply the various keyboards and drum machines Timbaland uses, but rather a brief discussion of a sampling technique he employs called ghosting. According to the article’s author, famed hip hop journalist Dave Tompkins, ghosting “involves playing over the original sample and then extracting it, leaving [its] rhythmic aftereffects in the mix.” Timbaland elaborates on this definition by comparing ghosting to remixing, where he keeps the original lyrics, uses the original track, “and adds another beat around the original beat. Then take that other beat out and put my beat through.” In ghosting then, the sampled song serves as the foundation of the new track, around which a producer constructs all of his or her new sonic elements. Yet, upon the songs’ release, audiences listening to this ghosted track never hear the sample, the songs centerpiece and organizing rubric, but instead experience it through its absence. For Timbaland, the power of ghosting resides in its ability to allow him to sample while simultaneously circumventing issues of copyright and sample clearance. After all, with respect to copyright infringement in sampling, how does one exactly litigate against something that cannot be heard, that defies the aural?

In what follows, I would like to briefly explore the technique of ghosting and its relationship with copyright and intellectual property. I argue that ghosting disrupts conventional

writings on intellectual property and sampling. These writings contend that the uneven and biased legal structuring of copyright have lessened the creativity of hip hop production, and have forced producers to fall within one of two camps: those who sample and those who don't—those who are rich or risky enough to sample and those who simply cannot afford to sample. Yet, this binary, like all binaries, fails to fully capture the various ways in which those involved in hip hop are currently grappling with copyright laws. Indeed, ghosting presents a highly creative alternative response to this binary, as it allows producers to sample without presenting its audible effects—that is, through ghosting, producers simultaneously sample and do not sample.

In today's talk, I'll examine three ghosted songs: Lloyd Bank's "I'm so Fly," Justin Timberlake's "Sexyback," and Nelly Furtado's "Say it Right." Those familiar with these songs will recognize them as produced by Timbaland, and I must confess that this is an intended consequence. I draw on tracks produced by Timbaland for two reasons: Firstly, he's the first producer that I've come across who explicitly discusses ghosting and is seemingly one of its chief proponents and practitioners. Secondly, because I've studied Timbaland samples both within and outside the academy for over six years, I've become intimately familiar with his music and the songs that he has sampled. And so I bring this expertise in highlighting moments of ghosting.

Some might wonder how exactly I'm going to discuss a practice whose main objective is to defy detection. Indeed, how do you talk about something that's not supposed to be heard? As we all know, ghosts, whether you believe in them or not, reveal themselves in fleeting moments, and so I draw on what I'm calling ephemeral sources of sound—such as web links that no longer exist, defunct production magazines like *Scratch*, and alternate versions of hip hop songs—in order to expose these sonic ghosts. Yet, this act of revealing ghost necessarily raises questions

of sample ethics, as it exposes sampled songs that producers attempt to conceal. As someone personally and academically invested in sampling, I will adhere to these sampling ethics that scholars like Joe Schloss and Wayne Marshall have tellingly articulated, and thus will not disclose the names of any those sampled tracks. Instead, I will play very short undetectable snippets of them to illustrate ghosting. So, with that said, I now want play a ghosted record in order to concretize this powerful sampling technique called ghosting, and I will then follow-up with the three songs that sit at the heart of this essay.

**[PLAY “I’M A BELIEVER” AND DISCUSS THE OPENING SAMPLE
DROPPING OUT FOR THE REST OF THE TRACK AND HOW THAT
EVIDENCES GHOSTING]**

GHOSTS ARE SO FLY

Following the success of his fellow G-unit member 50 cent, Lloyd banks began to record his debut album, the *Hunger for More*, in 2003. Online hip hop sites initially reported that a song entitled “I’m so Fly” would appear on the album, and that the song would be produced by up and coming producer, Nottz. Yet, while “I’m so fly” did appear on the album, the liner notes curiously read: “produced by Timbaland for Timbaland Productions” What happened to Nottz? Did these sites obtain the wrong information, or was something else going on? Two years later, Banks cleared up this confusion, telling an online hip hop website: “When I had the original ‘I’m so fly,” Nottz produced it. I couldn’t clear the sample. I had to take the *a capella* and send it to Timbaland, and he came back with the official beat.”

While not explicitly evoked, and perhaps then providing further evidence of a haunting, Banks' confession points to the act of ghosting. As noted earlier, ghosting shares similarities with remixing, and by providing Timbaland with the *a capella* of the original "I'm so Fly," Banks enacted a similar request. And here we might think of the myriad remixes that emerged after Jay-z released the *acapella* version of his 2004 Black Album. In Banks' case, however, rather than encouraging a remix, Banks desired to elude the copyright demands of sample clearance, which had halted the release of the original "I'm so fly." As a result, he went to Timbaland to obtain commercial intelligibility.

Sending Timbaland the *a capella* of "I'm so Fly" only after the original wasn't cleared, suggests that the song had already been recorded. Therefore, the *a capella* given to Timbaland lacked sounds, and Timbaland consequently inserted his own musical instrumentation into these sonic gaps. Yet, the original beat, while technically inaudible, remained as a rhythm, a rhythm that Banks initially wrote to in the studio with Nottz, and thus the aurally absent foundation through which Timbaland based his version around. Simply put, "I'm so Fly" had become a product of ghosting. Indeed, this effect seemingly paid off as not only did the song make the album and thus avoid sample clearance issues, but it helped push Banks' album into platinum status. Clearly, a million people were captured by ghosts.

GHOSTS ARE BRINGIN' SEXYBACK

Arguably, Justin Timberlake's 2006 song "Sexyback" was one of the top pop dance tracks of that year. Developing into a catch-phrase, sitting seven weeks atop the Billboard Top 100 charts, and earning a Grammy, "Sexyback" proved to be a commercial and critical success. Yet, what does it mean for fans, critics, and general audiences to riff of, acclaim, dance, sing

along to, and listen to ghosts through their engagement with “Sexyback?” Similar to “I’m so fly,” ghosting helped “Sexyback” circumvent intellectual property laws and gain commercial intelligibility.

A little over a year after the release of “Sexyback,” music technology magazine, *Sound on Sound*, conducted an interview with Timbaland’s main studio engineer, Jimmy Douglass. During the interview, Douglass discussed the making of “Sexyback,” and interestingly revealed the ghosts of the track, stating:

In the middle and end of the song you can hear a voice going “you ready?” that’s me. That phrase was originally a sample, but we knew we didn’t want to go for trying to get sample clearance, so we took it out. I tried to imitate it, but I couldn’t get the sound right, until I realized that it was not played back at the right speed...So I used Pro Tools [a recording software] to bring the tape machine down when I recorded my vocals, and then sped it back up, so my voice sounded just like the sample.” To illustrate this point, here’s a comparison between “Sexyback” as it was released, and the song that contained the original sample.

[PLAY “SEXYBACK” AND THEN THE VOCAL SAMPLE]

Initially, “Sexyback” reads as a standard story of ghosting: due to concerns over copyright infringement lawsuits, Douglass extracted the vocal sample from the original recording of “Sexyback.” However, instead of removing the vocal sample and leaving its absence to haunt the track, Douglass turned himself into a sample—that is, into a ghost. As samples are sounds from the past inserted into a current record, by becoming the original sample in “Sexyback,” Douglass became a sound from the past, literally a sonic ghost. In a larger paper I theorize what

it means to be a sonic ghost, but for this essay, I want to focus on what becoming a ghost means for sampling and intellectual property.

Although Douglass' transformation into a ghost is a derivative of ghosting, it is important to remember that by becoming a ghost, he adhered to the main point of ghosting: sample, but do so in a way that circumvents copyright laws. Indeed, the myriad steps Douglass took to become a sample point to his allegiance to the sampling aesthetic and tradition. But because he was the sample, and not the original black funk artist initially sampled, Douglass eluded the processes of obtaining sample clearance. In the end, this move worked as "Sexyback" became a one of the most successful songs of this decade. One only wonders what would have happened to "Sexyback" and Justin Timberlake's career if "Sexyback" was never ghosted; if it had to first obtain permission before being released, a permission that is never guaranteed.

GHOSTS KNOW HOW TO SAY IT RIGHT

If Justin Timberlake emerged as 2006's biggest male pop star, Nelly Furtado was its female equivalent. Following the immensely popular "Promiscuous Girl" and "Maneater," Furtado aimed to solidify her dominance in 2006 with the release of "Say it Right." Initially, the song sounds like a standard pop ballad with random yelps by Timbaland, and Timbaland scattling during the chorus "Ay da da ay!"

[PLAY THE CHORUS OF "SAY IT RIGHT"]

Yet, when we turn to the instrumental version of "Say it right," where all human sounds are removed and only instrumentation and samples remain, the songs ghosts curiously emerge.

[PLAY INSTRUMENTAL CHORUS]

Clearly, not all of Timbaland's scats are his. Instead, he intertwined his vocals with that of sampled vocals from a song interestingly about deception. So first, we're going to take a listen to that sampled vocal track, and then to a brief audio mix of the vocal sample with how it appears on the instrumental of "Say it Right."

[PLAY SAMPLE AND THEN MIX]

How was Timbaland able to seamlessly fuse his vocals with that of the sample? Nelly Furtado provides a glimpse of the answer in her discussion of the "Say it right" with Rolling Stone. In the interview, Furtado explains that Timbaland played a lot with the spacing of the microphones, to give an effect that he was "singing from a different country." This point is key because, as samples are phrases from the past inserted into the present, they naturally produce an effect of temporal and spatial distancing—an effect of not produced in the same studio, at the same time. Thus, by playing with the mics, Timbaland mimicked these spatial and temporal effects of sampling, allowing him to easily flow his vocals into those of the sampled recording. Like Douglass in "Sexyback," Timbaland became the sample—he and the sample were virtually indistinguishable. As a result, Timbaland allowed the sample to remain in "Say it right" because most listeners would, and did, assume that the scats came from his own voice. This risk proved accurate, as, again, "Say it right" avoided the routes of sample clearance and actually won Furtado her third Grammy.

CONCLUSION

What I've tried to do in this essay is sketch out what happens when take a more critical engagement with sampling and intellectual property. Rather than simply assume that the biased copyright laws have split hip hop into two camps—those who sample and those who don't—we need to explore how those in hip hop are actually approaching these laws. In ghosting, producers maintain a commitment to the tradition of sampling, but do so through creative means to bypass issues of copyright infringement. Although I've only looked at three examples of ghosting, there are many others and I call upon other scholars invested in sampling to further engage this topic. So, the next time you hear a hip hop song filled with synths, don't automatically assume THAT it doesn't contain a sample. Indeed, while you listen and dance to this song, you might be experiencing a ghost.

Thank You