

The New Copyright Law Manifesto: A Roadmap for Racial Justice for Black Artists

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In their seminal work, “The Communist Manifesto,” Marx and Engels posited that “a specter is haunting Europe— the specter of communism.” Similarly, a specter has long haunted copyright law— the specter of racial inequality and rampant appropriation of the creative works of African American artists. Perhaps no metaphor better captures this dynamic than a scene from 1934, when the towering jazz innovator and self-proclaimed creator of jazz, Jelly Roll Morton, wandered the streets of Los Angeles, sick almost unto death.

Morton spent his final days cleaning toilets and writing desperate letters to his music publisher, Melrose, begging for royalty checks that would never arrive. The stories of artists and performers such as Morton, Elizabeth Cotton, Bessie Smith, Ronnie Spector, Barrett Strong and George Clinton, and their travails under the oppressive yoke of copyright and contract law, are at the core of my almost completed, fantastical novel on Black music and copyright law, *The Copyright House of Horrors*.

Jelly Roll Morton’s experience was largely emblematic of the treatment of African American artists in the music industry— an industry that would utterly not exist but for their contributions. However, the problem of expropriation of the creativity of marginalized peoples is not just an American problem, but a global one.

While today “everyone knows” that African American artists, particularly in the music arena, have faced over a century of divestment of their creative works, no scholar has identified the provenance of the dynamics and their mechanics through a critical race theory lens. My work, spanning two decades now, situated the problem in the fallacy of

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race-neutrality, and proposed reparations as the remedy. The gap between what Black artists created— in essence the music behind the entire music industry— and the mere pittance they have received in comparison to their creative contributions has always been striking and continues in present times.

The pernicious copyright dynamics of the past persist here in the present. Music industry practices, and the structure and function of copyright law replicate inequality. Today, we are witnessing multi-million music publishing and sound recording catalog sales encompassing the work of legacy Black artists at an unprecedented rate. Yet many of the performers and composers behind the music have never been compensated. The racially discriminatory practices of yesterday's music industry are baked into the economic cake consumed today.

In this presentation, I will explore how copyright law doctrine has fostered the divestment of Black cultural production through the lens of "the seven deadly sins" of copyright law for Black artists, with a particular focus on two copyright law formalities— copyright registrations and copyright terminations. I will also set forth a ten-point plan to begin to close the racial justice gap in copyright and the entertainment industry. The U.S. Copyright Office should and must take on a leading role in the project, including advocacy for reparations for Black music artists.

False copyright registrations, including forced joint authorship credit, have been a staple of the music industry from Jelly Roll Morton to Lil Wayne, aided by a copyright registration system that facilitates fraud. At the other end of the spectrum, the harsh requirement of copyright registration for rights enforcement victimizes artists from underserved communities.

Ostensibly, copyright terminations are the salve for inequitable music industry contracts (i.e., standard contracts). In reality, the promise of copyright recapture is all but illusory except for the most sophisticated and well-financed artists. The old-school hip-hop music catalog is now in the copyright termination windows, but how many hip-hop artists even know that recapture exists, much less how to navigate the byzantine provisions of the 17 U.S.C. section 203?

Copyright formalities create a perfect storm for the re-disenfranchisement of Black creativity in the modern era, suggesting that both serious reform and redress is needed to achieve social justice and equity for the architects and innovators of the American music business.