

## Curatorial > VARIATIONS

With this section, RWM continues a line of programmes devoted to exploring the complex map of sound art from different points of view organised in curatorial series.

'Variation' is the formal term for a musical composition based on a previous musical work, and many of those traditional methods (changing the key, meter, rhythm, harmonies or tempi of a piece) are used in much the same manner today by sampling musicians. But the practice of sampling is more than a simple modernization or expansion of the number of options available to those who seek their inspiration in the refinement of previous composition. The history of this music traces nearly as far back as the advent of recording, and its emergence and development mirrors the increasingly self-conscious relationship of society to its experience of music. Starting with the precedents achieved by Charles Ives and John Cage, VARIATIONS will present an overview of the major landmarks in Sampling Music, following examples in twentieth century composition, folk art and commercial media through to the meeting of all those threads in the present day.

Curated by Jon Leidecker.

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Jon Leidecker was born in 1970 in Washington D.C. to two physicists. Since 1990 he has performed appropriative collage music under the pseudonym Wobbly, aiming for extended narratives spun from spontaneous yet coherent multi-sample polyphony. Selected recent works are freely available online. <http://detritus.net/wobbly/>

# VARIATIONS #5

## The Discipline

As art and industrial practitioners formally map out the discipline, hip-hop's discovery of digital sampling technology in the mid-eighties provided a reintroduction to its original roots in block party DJ collage. The international success of the new genre then prompts a legal backlash against the art form, with a rash of lawsuits filed against both commercially successful pop artists like De La Soul, Biz Markie and 2 Live Crew and left-field provocateurs like the KLF, Negativland and John Oswald.

## 01. Transcript

Hello. This is Jon Leidecker, and welcome to the fifth episode of VARIATIONS, tracing the history of appropriative collage in music. We're four hours and eight decades in and finally at the point in our timeline when collage music breaks the international Top 10 charts, and one might ask: what took music so long? Because for decades, artists in nearly every medium but music had already recognized collage as the hallmark aesthetic of the twentieth century.

There's a short answer to 'what took music so long'. Conceptual works of musical collage began appearing as early as the twenties, but breakthroughs in technology were needed before they could be realized. Tools designed to address the needs of audio engineers only gradually fell into the hands of creative artists, who repurposed them into musical instruments by artists. If density in musical collage on par with Schoenberg and Webern's music was imaginable before the forties, a composition with hundreds of edits such as John Cage's 'Imaginary Landscape No. 5', his 1952 collage of 42 jazz records, was only capable of being realized given access to easily editable magnetic tape. James Tenney's 1961 Elvis remix 'Collage No. 1' in part required the advent of high-fidelity recording, so that his source material could remain recognizable after being re-recorded multiple times. And in the late sixties, the introduction of direct-drive turntables and the compact mixing board laid the groundwork for disco and hip-hop DJs to begin improvising with these tools as tactile instruments that hadn't been as possible with earlier, less malleable models. But that's just the short answer. Any aesthetic is often preceded by a long period of innocent practice before the practitioner, let alone the audience, is ready to self-consciously recognize that practice, and begin calling it a work of art.

So when hip-hop finally began landing songs that included intact recordings of other people's songs on the pop charts in the mid-eighties, this was not only because of the growing access musicians had to Digital Samplers designed to capture and loop these sounds. The audience coming of age was a generation whose primary experience with music was the studio-produced pop song. From Phil Spector and the Beatles onward, the production of the recording was at least as important as the song itself. So the first generation that grew up taking this definition of a song's identity for granted became the first audience that ready for a music that let them in on the secret. When you listen to music made of recognizable samples, and can hear how they're being transformed and manipulated, then you're also getting a direct demonstration of all of the techniques that the studio engineers use to create and compose virtually all modern popular music. A song where the drummer is clearly a loop shines a light on other songs using looped drums, by bands ranging from the avant-garde Faust and This Heat to the #1 hitmaking Bee Gees. A track in which sounds from three completely different bands are fused together into one song illustrates how most pop music is no longer recorded in real time, but overdubbed on different days, by different musicians, in different studios, often without even meeting. A track in which a familiar note is pitch-shifted and recombined into melodies and chords illustrates how malleable sound itself has become, how all recorded noises are being crafted and arranged, and how engineers have become as much the composer of a song as the person writing the 'notes'. It's a genre created for the



[Casio SK-1]



[Jam Master Jay]

generation in which the recording has finally replaced the live performance as the most familiar, the most comfortable, the most real experience of music.

Yet even now these assumed concepts are hard for us to be completely comfortable with when stated aloud – this is not how we want to define, or relate to something as elemental as musical sound. We hear a recording as a living sound; we experience a voice as something intrinsic to the individual, not something to be redeployed, recaptured, recomposed later by another individual. It's no surprise that the history of collage in music is also the history of musicians hesitating in the face of the option. When he was asked by label owners to cut one of his turntablist live performances to vinyl in 1977, Grandmaster Flash admitted – 'I was blind, I didn't think that somebody else would want to hear a record re-recorded onto another record with talking on it. I didn't think it would reach the masses like that.' And furthermore, even when hip-hop pioneers finally began to find themselves into the studio, they studiously avoided using the vinyl of others. There is a profound irony in that fact that Flash, the man who had pioneered the art of DJing as a personal expression, released a series of records almost completely free of any signs of turntablism – apart, of course, from one exception, the legendary *Grandmaster Flash and his Adventures on the Wheels of Steel*. But the norm in almost all early recorded hip-hop found MCs rapping over music that had been re-recorded by hired musicians, or stripped down to original productions made with minimal drum machines and synths. The audio recycling that was at the heart of hip-hop was apparently unthinkable to its initial practitioners in the studio.

This began to change in the mid-eighties. Other turntablists followed Flash's lead and developed his techniques, keeping the collage roots of hip-hop alive on countless bootleg Scratch Mix records and live radio shows across the country. And by the mid-eighties, when Digital Samplers had dropped in price to a point where they could be found in most recording studios, it was hip-hop DJs who became the musicians and producers who knew exactly what to do with a machine that made it simple to capture and sequence loops. The tools allowed a music that had been defined by improvisatory live performance became a precise studio discipline, deployed by the musicians who already knew which sampled breaks had been road tested by ten years worth of block parties.

If Run-DMC's albums still mostly kept to drum machines and live instruments, their videos showed Jam Master Jay as an equal member of the band, and on their breakthrough album *Raising Hell* – the loops are purposefully lifted from authentically scratched up old records. At the dawn of the age of the Compact Disc, the sound of vinyl suddenly becomes the sound of something real, a noisy sample signifies music that has been played and respected.

**[Run-DMC 'Peter Piper', 1986]**

Live DJs with two or three turntables had kept the music simple, but in the studio producers began overdubbing, using different loops for verse and chorus.

**[LL Cool J 'Rock the Bells', 1985]**

**[Schoolly D 'Dis Groove Is Bad', 1987]**

Using sampled fragments to compose new songs became a discipline. Bits sourced from other musicians' finished work led to new sonic combinations that those musicians would not have played themselves. DJ Code Money producing Schoolly D on 'Dis Groove Is Bad' locks four records to the same tempo, each in their own key. If you'd put all these musicians in the same room, they would never have written this arrangement, and it would have been challenging to play – hocketing short parts, modulating from G minor rock to D major funk – these shifts break too many of the rules musicians take for granted while learning to play their instruments. DJs were using new instruments that didn't need those rules – the notes had been played, and now they could be recombined and accelerated into new musical forms.

In this Boogie Down Productions song, you hear not a digital loop, but Scott La Rock clockspinning the vinyl back for each blast. You hear phase and pitch variety that sounds like the right kind of sick. These were new instruments, adding their own distinctive voice to the sound of older ones.



[Stetsasonic]

**[Boogie Down Productions 'Poetry', 1987]**

And Marley Marl's production for MC Shan's 'The Bridge' went for samples that contain more hissing vinyl noise than music, injecting the medium itself into sound less nostalgic than futurist.

**[MC Shan 'The Bridge', 1986]**

By 1987, James Brown's long instrumentals and vocal shouts were getting hit hard by the samplers, reestablishing his influence in looped form through dozens, eventually thousands of new tracks. Producing for Rakim, Eric B. would find that one choice loop, and then scratch blasts of sonic counterpoint through the song like a painter.

**[Eric B. and Rakim 'I Know You Got Soul', 1987]**

In his book *Hip Hop America*, Nelson George mentioned the idea that this generation, born after the Civil Rights Movement and coming of age in the Cosby Show-era might have been the first black generation to experience cultural nostalgia. Hip-hop was pushing the songs once segregated on the sixties and seventies soul and R&B charts into the mainstream pop music canon through an avalanche of samples. But not everyone recognized this activity as an inherently creative one. In an interview with George, jazz musician and pop songwriter Mtume charged that 'this was the first generation of African-Americans not to be extending the range of the music' and criticized the musicians of the entire genre for laziness. The group Stetsasonic responded with their track 'Talkin' All That Jazz', from 1988.

**[Stetsasonic 'Talkin' All That Jazz', 1988]**

Well here's how it started  
 Heard you on the radio talkin' 'bout rap  
 Sayin' all that crap about how we sample  
 Givin' examples  
 Think we'll let you get away with that?  
 You criticize our method of how we make records  
 You said it wasn't art, so now we're gonna rip you apart

Tell the truth, James Brown was old  
 'Til Eric and Rakim came out with 'I Got Soul'  
 Rap brings back old R&B  
 And if we would not, people could've forgot  
 We wanna make this perfectly clear  
 We're talented and strong and have no fear  
 Of those who choose to judge but lack pizzazz  
 Talkin' all that jazz

Now we're not trying' to be a boss to you  
 We just wanna get across to you  
 That if you're talkin' jazz, the situation is a no-win  
 You might even get hurt, my friend

Stetsasonic could have made the argument that sampling had always been an intrinsic part of the jazz tradition. Jazz had been the first form of music to spread itself on a global level while largely staying an oral tradition. Thanks to recordings, the sounds of jazz spread internationally while remaining an oral tradition, taught as much through sonic emulation of the performances as it was through learning the compositions in the written form of sheet music. While improvising, musicians freely borrowed each other's styles and used fragments of each other's tunes, sometimes to pay tribute, and sometimes to parody. Or sometimes both: in Louis Armstrong's cover of Fats Waller of 'Ain't Misbehavin'' from 1929, he carefully drops a quote from Gershwin's 'Rhapsody in Blue' early in his solo. This is partly a tip of the hat to Gershwin. But perhaps only after snatching that hat off of Gershwin's head and putting it on himself – Louis' cover proved to be one of his biggest crossover hits. Then Armstrong's recorded solos, as well as those of all his true contemporaries everyone else's, entered the lexicon for the next generation. By the forties and the rise of be-bop, Charlie Parker



[Severed Heads, 1984]



[Coldcut]

dropped fragments of his favorite solos into his improvisations, putting the melodies into a different context over new chord sequences.

**[Charlie Parker 'Cheryl', 1948]**

Radio announcer fading himself in over the solo: If you were listening closely just there, maybe you noticed Charlie Parker's quotation from famous Louis Armstrong's introduction to 'West End Blues', showing that sometimes the new school does borrow from the old. You have to love sample trainspotting from 1949. For all of these reasons, it is obvious hip-hop was expanding and consolidating the traditions of black American music. As Toni Morrison put it, 'black art must have the ability to use found objects, and it must look effortless.' DJs were using found sounds and using them with a modern sense of how music could be organized, and through the medium of popular music, finally gaining control of the power to edit their own history.

By the mid-eighties, the expensive Synclavier and Fairlight samplers were being edged out of the market by simpler and cheaper designs. In 1984, the Ensoniq Mirage keyboard hit the market for under \$2000, quickly followed by the Akai's keyboardless rackmountable S612 in 1985. The Emu SP-1200, a combination drum machine and mixing board, and Akai's MPC60, with its tactile drum pads, could both used as stand-alone workstations, a studio increasingly as portable as any other musical instrument. And in 1985, so much more than just a toy, Casio's SK-1 made its way into countless homes at a price point of just over a hundred bucks.

The industrial experiments chartered by Throbbing Gristle and Cabaret Voltaire were carried further into the eighties by the countless myriad participants fueling the cassette underground. Cassette releases were fueled by the ability to self-produce, the politics of home copying, and this copying was reflected in the music, in cassette albums by bands like California's Big City Orchestra and Japan's Violent Onsen Geisha, chewing samples up into pure sound. Slowly moving closer towards a form of dance music was the Australian group Severed Heads. Armed with several delays and multitrack tape loops, the samples often stole the show from the instruments, with tracks often entirely out of borrowed sounds. Their early records anticipate every hallmark of what would later become Industrial Dance Music. This is 'Gashing the Old Mae West' from 1984.

**[Severed Heads 'Gashing the Old Mae West', 1984]**

Informed by hip-hop, British group the Age of Chance began constructing pop from samples. Their 'Kisspower' 12" from 1986 is like an industrial take on hip-hop's bootleg scratch mixes, and might have even been released if the label executives hadn't gotten nervous after actually listening to it, and hearing how much it freely borrowed.

**[Age of Chance 'Kisspower', 1986]**

The British band Coldcut, similarly inspired by hip-hop and specifically the sample-density exhibited on Double D and Steinski's Lessons, got started in collage on pirate radio's Kiss FM before splicing together their singles 'Beats and Pieces' and 'Say Kids' in 1987.

**[Coldcut 'Say Kids (What Time Is It)', 1987]**

Not to waste too much of your time by trainspotting each of the samples used in these tracks, but you'll notice as we flip from track to track that the same samples keep reappearing, sampled and resampled by different collage artists. Tracking down the sources was a way to prove your knowledge. Each new artist acknowledged the fact that a collage movement was underway by tracking down the sample's original source – by redeploing it they proved their knowledge and added themselves to the same movement.

Also early 1987, two British musicians recovering from over-involvement in the record industry united to form the Justified Ancients of Mu Mu. Steered towards collage by both American hip-hop and French Situationism, their first single 'All You Need Is Love' contained a rap about AIDS set to samples by the Beatles and



[The Justified Ancients of Mu Mu]

Pin-up star Samantha Fox, using pop to critique itself. Their debut album was eventually the target of a lawsuit from the pop group ABBA over the track 'The Queen And I'.

**[The Justified Ancients of Mu Mu 'The Queen and I', 1987]**

The JAMMs settled out of court, and followed it up with a version of the album with all of the illegal samples removed and a set of instructions on how to edit them back in – the album is mostly composed of silence. Later chart-topping releases as the Timelords, and most famously the KLF (or Kopyright Liberation Front) continued to introduce aspects of political collage to radio listening audiences.

One of the biggest UK #1 hits of 1987, and one of the first international hits assembled almost entirely out of other people's sounds: 'Pump Up The Volume' by M/A/R/R/S.

**[M/A/R/R/S 'Pump Up The Volume', 1987]**

This was a hit that was nominated for a Grammy in the Instrumental category. Which is funny – as it is covered with vocals, but audibly edited ones. The vocals have been composed and arranged as a stream of abstract sounds stemming from multiple sources, with the result that listeners turn to the editing itself as the 'voice' of the song. Assembled from 30 records, the title is taken from the song's sample of Rakim, here cloned into a riff. And they even go to the same Dunya Yunis record sampled by Byrne & Eno in 1981 for 'My Life in the Bush of Ghosts', a link tying back to the first generation of world music collages from the sixties, now manifesting itself in collage's first chart topping radio hit.

Right on the heels of 'Volume' was a similar single called 'Beat Dis' by Bomb the Bass, followed immediately by a Coldcut remix for Eric B. and Rakim which stole the Rakim hook right back from M/A/R/R/S, making it clear to everyone that a full blown trans-atlantic movement was underway, freely trading samples and sounds back and forth. But it's a thin line between future music and pop simply eating itself. By 1989, the song 'Swing the Mood' by Jive Bunny & the Mastermixers had gone to #1 in eight countries, a bizarre conflating of World War II swing time and early rock and roll from the fifties – two generations of music mashed into an instant wedding DJs favorite.

We have weirder music to talk about now. Nurse with Wound, a band which launched its career by listing their record collection in the jacket sleeve of their first album, was from the beginning a collage band, often including samples from their favorite records mixed equally and indistinguishably alongside the sounds of their own playing. But they went overt on their lounge and burlesque music cut-up album *Sylvie and Babs Hi-Thigh Companion*, dragging sampling back towards Surrealism in 1985.

**[Nurse with Wound 'You Walrus Hurt the One You Love', 1985]**

Roberto Musci and Giovanni Venosta made a focused return to the utopian aesthetic of sixties world music collage with their *Urban & Tribal Portraits* in 1987.

**Roberto Musci & Giovanni Venosta 'Technowaltz', 1987]**

Less industrial than Mutant, Germany's Holger Hiller started his solo career by using a keyboard sampler to create bizarre arrangements for his pop songs. But before long, the song structures were clearly growing out of the sounds he was borrowing, creating an amalgamate of techno, ethnic and twentieth century classical music, from the orchestral mashups on his 1986 album 'Hyperprism', to the dance mixes of the 'Ohi Ho Bang Bang' single from 1988.

**[Holger Hiller 'Whippets', 1986]**

**[Ohi Ho Bang Bang 'The Two / The Three', 1988]**



[Christian Marclay *Record without a Cover*, 1985]

The precise control afforded by digital recording suddenly enabled a music where melodies could be extracted from samples of speech, and then accompanied by traditional instruments. The father of these pieces, albeit one that was actually created simply with the traditional razor blades and magnetic tape, is Scott Johnson's 'John Somebody' from 1981.

**[Scott Johnson 'John Somebody', 1981]**

In 1985 'Different Trains' by Steve Reich used the digital sampler to return to the Musique Concrète phasing techniques he investigated in his mid-sixties tape-loop pieces, this time accompanied by full orchestra.

**[Steve Reich 'Different Trains', 1989]**

Many other pieces in this genre underline the tonal melodies suggested by human speech, from Bob Ostertag to Paul DeMarinis. But perhaps the most comprehensive sampled speech melody piece was *Le Trésor de la Langue* by René Lussier, with precise atonal transcriptions of interviews on the subject of the slow demise of the French language in Quebec.

**[René Lussier 'Le Trésor de la Langue / Manifeste du F.L.Q.', 1989]**

Bearing the mark of a ravenous and diverse record collector, John Zorn's compositions level any distinctions between the art and pop music sources that he draws from. Influenced by seemingly everything, from the hyper-caffinated tune-collage scores of Carl Stalling for Warner Brothers Cartoons, to the sixties genre collisions and destructions of Mauricio Kagel. In his Game Pieces, culminating in the piece *Cobra*, a set of instructions for improvising ensembles, he sets musicians playing in different styles and genres against each other to create live music that often sounds like recordings being mixed. I remember seeing his 1989 group Naked City playing 'Speedfreaks' in concert: a piece for a group that had grown up so familiar with high density tape collages that they now had the ability to play that kind of music live.

**[Naked City 'Speedfreaks (from Torture Garden)', 1989]**

If shortwave radio noise was the hallmark of sixties collage music, due to the radio being its hallmark instrument, it only makes sense that as the turntable took its place, scratching and hissing vinyl noise became the definitive artifact of eighties sampling music. Christian Marclay's *Record without a Cover* was sold without a cover so that each copy would age more quickly and in its own unique way, and his album *Footsteps* was first exhibited on the floor of a gallery to be walked on before put in covers and sold.

**[Christian Marclay 'Record without a Cover', 1985]**

Working out of New York, producer Todd Terry injected sampling into the developing minimal genre of House Music. As influenced by disco and hip-hop, Terry would lift snares, kick drums and melodies out of other songs, but he stepped beyond looping intact samples, rearranging the slices into new melodies and riffs. When you sample a chord, and play a melody, you get parallel chords familiar to anyone who's been to a dance club in the last 25 years. This is 'Party People' from 1987.

**[Royal House 'Party People', 1987]**

Early hip-hop was largely about the loop – skipping straight to the peak part of the record and extending it out into ecstatic trance music. Only a machine can sustain a peak like this. Try screaming the exact same way twice, and you'll find that your voice won't let you. As loops became a standard production element, the ante was upped on the search for crazier peaks. Coming out of Long Island, the Spectrum City DJs were honed by years of performing for crowds and on their weekly radio show. Reforming as the Bomb Squad and producing for Public Enemy, they went for the most aggressive sound imaginable. Instead of looping a short drum break or a basic riff on James Brown's longer jams, the Bomb Squad would go straight for the most extreme part of the record, the part where every musician was peaking, and build from there.



**[Public Enemy 'Bring the Noise', 1988]**

In the studio Public Enemy recorded layers over the loops like a live band, then added individual details, sounds, and media samples to nearly every distinct bar on the record like painters, an endlessly textured barrage of pure information. Spoken word samples captured from the Civil Rights Movement, local radio shows, classic soul records act as call and response to Chuck D's raps. Often acclaimed as the definitive album from the golden age of hip-hop, on PE's second album *It Takes A Nation of Millions to Hold Us Back*, every sound you hear is to a purpose.

**[Public Enemy 'Party for your Right to Fight', 1988]**

Produced by Prince Paul of Stetsasonic, De La Soul's debut *3 Feet High And Rising* not only kept up the level of density, it broadened the range of music hip-hop sampled from, drawing from Johnny Cash or Hall & Oates as often as Funkadelic or Sly Stone. And if jazz masters used to quote each other's tunes during their solos, in the digital age you now hear rappers paying respect to each other simply by duetting with samples of them.

**[De La Soul 'Cool Breeze on the Rocks' / 'The Magic Number', 1989]**

Moving from New York to LA, the Beastie Boys hooked up with a production team called the Dust Brothers for their second record Paul's Boutique. The Dust Brothers were already hard at work on instrumentals they thought were too sonically dense for anyone to rap over. But those were exactly the tracks the Beasties wanted, keeping pace with their stream of pop culture references, changing direction with every verse. If the first five seconds of a pop song are the critical moment where you get the listener's attention with your basic sound, the next step was for musicians to keep your attention, by composing songs made out of the opening five seconds of ten different songs. Songs like these.

**[Quick collage of samples from Alphonze Mouzon, Rose Royce, Diana Ross & The Supremes, Harvey Scales, Alan Moorhouse, Paul Humphrey, Ronnie Laws, Sugar Hill Gang, Funky 4+1, Afrika Bambaataa & James Brown]**

And here's how those sounds came together in 'Shake Your Rump':

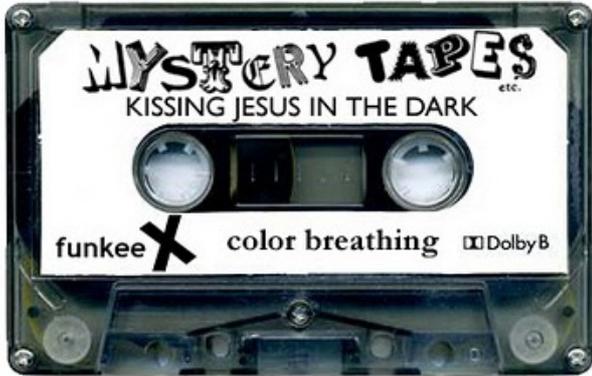
**[Beastie Boys 'Shake Your Rump', 1989]**

Encountering these records together in the summer of 1989, I remember being surprised at how quickly hip-hop had bridged pop music with the collage aesthetic I associated with experimental bands like Negativland. But there was another album had just been released which would push back the definitions of what was possible even farther.

Canadian John Oswald spent the seventies refining his alto sax playing, slowly removing any sense of traditional tone or melody from his sound, while developing a sense of composition through editing the tapes of his improvisations. But the line between the sounds he recorded from scratch and the games he enjoyed playing with other people's recordings started to blur. One piece for dance borrowed a guitar sample from the Beatles which he intended to re-record later, only to find that it changed the piece too much when re-recorded and replaced with a close replica – the piece simply required the original sample. This led to the Mystery Tapes, a series of mixes cutting together entire songs and voices, but often backwards or at different speeds, with maximum use of odd juxtapositions – slowly melting away the line between curator and author. Slowly the editing took over to the point where Oswald found himself a composer who entirely used the sounds of other people.

**[Mystery Labs 'Mystery Tape x1 v.2' / 'Mystery Tape x2 v.3', 1983]**

*Kissing Jesus in the Dark* is Oswald's first masterpiece, the a-side assembled from early eighties R&B radio, the B-side an overwhelming tour of world music called 'WX', a slowly evolving global ensemble playing new kinds of harmonies achieved entirely through editing.



[Mystery Tapes *Kissing Jesus in the Dark*, 1983]



[John Oswald *Plunderphonics*, 1989]

# plunderphonics

## [John Oswald 'WX', 1983]

Much as Stockhausen was hardly the first to explore electronic music, but rather a lucid and visionary author of articles and manifestos which explained the new musical vocabulary being explored in each of his pieces, Oswald's 1985 essay *Plunderphonics, or Audio Piracy as a Compositional Prerogative* laid out the terms, the stakes, the implications and even the morality of composing with other people's sounds. And his 1989 album *Plunderphonic* put this writing into audible practice.

## [John Oswald 'Metallica: Net' / 'Public Enemy: Brown', 1989]

A thousand copies of *Plunderphonic* were pressed and about 700 were distributed free of charge, given away to anyone who requested a copy. Among those who did were the Canadian Recording Industry Association, who soon after filed a cease and desist order on behalf of Michael Jackson, whose music and image had been sampled, both for the track 'Dab' and for the album's cover, which depicted Jackson beneath his leather jacket as a nude white female. (It's worth noting that in the sampling cases that target low-selling experimental releases, it's usually the cover art that really gets you in trouble.)

## [John Oswald 'Michael Jackson: Dab', 1989]

Essential to Oswald's definition of Plunderphonics is full attribution of your sources, but even though the liner notes listed the original artists and recordings in detail, and made a point of being an entirely non-commercial release, the CRIA's lawyers told Oswald that in order to avoid prosecution, all rights and all remaining copies of the CD had to be turned over, to them, to be destroyed. And this is exactly what happened.

It's worth paying attention whenever the law determines that a work of art needs to be destroyed. Collage is a creative form which through its existence proves that 'borrowing and creation are not exclusive'. But in making this obvious, this art form poses a threat to the way in which our culture of ownership has come to define art itself – as a series of distinct, original ideas, each one single-handedly created by an individual, working alone and gifted by a form of genius. Over the last century, the concept of physical property has blurred with the concept of intellectual property, and we now live in a world in which ideas and abstract concepts are also seen as the private property of individuals. In this world, an art form which proves that human creativity is inherently more complicated than that becomes a threat to the established order. To those who profited from the sale of music, it was clear that the emerging discipline of sampling was a threat that was itself in need of discipline.

Until the late eighties, the Record Industry had dealt with sampling on an ad-hoc basis. But from 1989 to 91, a rash of sampling lawsuits broke out against some of the songs that had been slipping through the cracks. Sometimes a sample was deemed too short to have to clear, as when De La Soul sampled the Turtles for a minute-long instrumental, resulting in a lawsuit that was settled out of court. But sometimes, even when asking for permission, a label would simply say no, as when Biz Markie sampled Gilbert O'Sullivan. When they went ahead and released the record anyway, the resulting lawsuit, settled in 1991, sent shockwaves across the industry when Judge Kevin Thomas Duffy opened his decision with the words 'Thou shall not steal', finding for the plaintiff and recommending the case for further criminal prosecution. Sampling was now legally distinct from the practice of covering someone else's song, where you simply listed and paid the publisher. Total control had been established; in order to sample, you had not just to pay any price they asked, but to beg – because the owners had been granted the legal option to refuse permission.

Some were surprised that lawsuits also hit relatively non-commercial artists like John Oswald and Negativland, who received a cease-and-desist for their notorious 1991 single 'U2'. Even with their provocative album covers, which were integrated with the aesthetic of the music contained, and designed to attract attention, squashing these releases seemed to many like a total overreaction, like using cannonfire against mosquitos. Both Oswald and Negativland instantly



[Public Enemy]

settled out of court, lacking the funds to pursue their case, but in years to come would be approached by dozens of progressive lawyers offering their services for free should they be sued again. Biz's lawyers had blown their case; it was already clear that a strong argument for the artist's right to sample could be found in the concept of Fair Use, a doctrine in US copyright law allowing for the use of copyrighted material for commentary and criticism without requiring permission of the owner. When Roy Orbison's publishers sued Luther Campbell and the 2 Live Crew, the case went all the way to the Supreme Court. And in 1994, the Supreme Court decided for the Crew, arguing that their parody was Fair Use, regardless of the fact that their song was also a commercial release. It is no accident that an art music project such as Negativland has yet to be sued again, and that all subsequent lawsuits have been commercial label against commercial label, deploying lawyers who are careful to argue strictly in terms of commerce, and never in terms of art.

The Golden Age of hip-hop is usually agreed upon as taking place between 1985 and the early nineties. After that, only producers who kept themselves to one, maybe two samples a song thrived – a response to the climate created in the wake of lawyers holding up the release of De La Soul's second album for an entire year in a vain attempt to clear every last sample. Public Enemy's third album *Fear of a Black Planet*, a standard-setting pinnacle of what can be done in pop music, was their last album produced by the Bomb Squad. By the time of their next album, each James Brown sample had a price of \$20,000 and climbing, making the production of an album with hundreds of samples an economic impossibility. The Golden Age of hip-hop was a period of music brought to an end at its very creative peak, terminated not by the exhaustion of artists but by inflexible and outdated laws. But beneath the entire racially tinged rhetoric over what constitutes theft, and exactly who the real criminals are, was fear – fear of a truly revolutionary music that undermined the very concept of what it is that constitutes originality. If the lawyers seemed to win this round, by cutting down a musical form at its creative and commercial peak, there was a larger fight ahead, challenging the record industry and everything it represented, a war that the industry was not going to be able to win.

[Public Enemy 'Fight the Power', 1989]

I'm Jon Leidecker, and this has been the fifth episode of VARIATIONS. Thanks for listening.

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## 02. Acknowledgments

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