

## Cross-Border Music Sampling: Navigating American and Japanese Laws on The Weeknd's "Out of Time"

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### Abstract

The global music industry has experienced a significant rise in cross-border collaborations, driven by digital technology that enables artists to sample music from a wide range of cultures and genres. This digital revolution has not only fostered creativity but also led to a blending of musical traditions, allowing for fresh sounds and global connections. However, the practice of music sampling presents complex legal challenges, particularly with regard to copyright law, which varies across different countries. Musicians must navigate the dual copyrights of music compositions and sound recordings, each with its own set of rules and protections. This often leads to legal disputes over unauthorized sampling, as artists may unknowingly infringe on another creator's rights. To sample music from foreign artists, musicians must obtain permission from both the copyright holder of the composition and the sound recording, which involves understanding and respecting the moral rights of the original creators. This process can be particularly challenging for emerging artists who may lack the necessary industry connections to negotiate with major record labels or copyright holders. In many cases, securing sample clearance can be a costly and time-consuming process, making it difficult for independent musicians to use samples legally. The balance between creativity and intellectual property protection is essential in ensuring that copyright laws protect original creators' rights while still promoting innovation and artistic expression. By respecting these laws, sampling can remain a powerful tool for creativity while ensuring that the growing global music industry operates within legal boundaries, benefiting both artists and creators alike.

**Keywords:** Music Sampling; Copyright Law; Moral Rights; Licensing; Legal Protection

## **A. Introduction**

Sampling, a technique born from the innovative practices of early hip-hop artists in the 1970s by manipulating vinyl records with turntables and a mixer, has evolved into a cornerstone of contemporary music production.<sup>1</sup> This practice involves incorporating elements of a pre-existing recording, be it a rhythm, melody, or vocal as samples into a new composition. By repurposing these fragments, artists not only pay homage to their influences but also forge new creative ideas or paths in their music careers.

In recent decades, the digital age has broken down geographic and stylistic barriers, allowing artists to sample from a vast global pool of music. This digital revolution has led to engaging “cultural exchange” and musical fusions, as evidenced by the resurgence of 1980s Japanese City Pop elements in contemporary music.<sup>2</sup> Characterized by its smooth melodies, funky rhythms, and nostalgic aesthetic, Japanese City Pop has inspired a new generation of artists, particularly in the hip-hop and pop genres. A prime example is The Weeknd’s *Out of Time*, a 2022 chart-topping track from his 80s-inspired album *Dawn FM*. The song’s intro samples Tomoko Aran’s *Midnight Pretenders*, showcasing the global reach of contemporary music production, which allows artists to incorporate samples from diverse cultural contexts and countries.

With the rise in cross-border sampling, artists face the increasingly complex challenge of navigating diverse copyright laws. Unauthorized sampling has often led to legal disputes, with record labels and artists pursuing legal action against producers for alleged violations of copyright infringement. The principle underlying copyright protection is that individuals gain ownership of their creations by combining their labor and creativity, thereby justifying the moral and exclusive rights granted to artists over

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<sup>1</sup> Expo, Ego. “Culture: A Walk down the History of Sampling in Hip-Hop Music Production.” Ego Expo Australia, March 10, 2023. <https://www.egoexpo.com.au/post/entertainment-a-walk-down-the-history-of-sampling-in-hip-hop-music-production>

<sup>2</sup> “Crossing Borders of Genre and Culture: Japanese Samples in American Hip Hop.” Sabukaru, 31 May 2022, [sabukaru.online/articles/crossing-borders-of-genre-and-culture-japanese-samples-in-american-hip-hop](https://sabukaru.online/articles/crossing-borders-of-genre-and-culture-japanese-samples-in-american-hip-hop).

their intellectual property.<sup>3</sup> These moral rights, a central feature of the Berne Convention for The Protection of Literary and Artistic Works, safeguard creators against the unauthorized use of their musical works, ensuring their artistic contributions are respected and protected.

However, it is also imperative for aspiring musicians to recognize that copyright law is primarily governed by national legislation rather than international frameworks as international treaties such as the Berne Convention only act as a minimum standard for the members of the convention.<sup>4</sup> Consequently, when incorporating samples into their work and registering it, artists must diligently examine the copyright regulations of the jurisdiction from which the original material originates. These laws often differ significantly, encompassing creators' rights, the duration of copyright protection, and specific limitations or exceptions, all of which bear directly on the legality of sampling practices.

In light of these considerations, the purpose of this writing is to provide legal clarity and guidance for musicians who wish to sample music from artists based in other countries. Additionally, it seeks to address the following key questions: (1) What are the correct procedures for obtaining permission to sample music from an artist in another country? (2) What legal considerations and requirements must be met to register music containing samples both domestically and internationally? (3) What legal assurances exist for artists whose works are used as samples?

## **B. Research Methods**

This paper adopts a case study approach to explore the practical implications of copyright issues in the context of cross-border music sampling. Specifically, it will conduct an in-depth analysis of the legal procedures and requirements followed by The

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<sup>3</sup> John Locke, *Two Treatises of Government*, ed. Peter Laslett (London: Cambridge University Press, 1988), pp. 116-131.

<sup>4</sup> John D. DeFrance, *Sound Recordings: Copyright and Contractual Differences between the United States and Japan*, 21 *Loy. L.A. Int'l & Comp. L. Rev.* 331 (1999): 332-333, <https://digitalcommons.lmu.edu/ilr/vol21/iss2/8>

Weeknd in sampling Tomoko Aran's *Midnight Pretenders* for his track *Out of Time* and registering the work in both the United States and Japan. The study employs a normative juridical research methodology, relying on a literature review of various legal materials. Primary legal sources include the copyright laws of the United States and Japan, while secondary sources consist of publications and journals offering expert opinions and analyses related to these legal frameworks.

### **C. Analysis and Discussions**

#### **C.1 Procedural Guidelines for Securing Music Sampling Rights in Foreign Jurisdictions**

Musicians seeking to obtain samples from an artist in another country should begin by familiarizing themselves with the concept of moral rights, a key component within the copyright law framework. Historically rooted in the Kantian and Hegelian philosophical belief, moral rights affirms that authors should retain certain inherent rights of personality, which persist beyond the commercial exploitation of their creative works.<sup>5</sup> These rights recognize that intellectual creations are extensions of an individual's personality and message, serving as a manifestation of their unique intellectual and emotional expression. Therefore, moral rights function as a specialized legal device designed to protect the integrity of the personality and message embedded in creative works. Distinct from the economic dimensions of copyright, moral rights are inherently personal to the author and exist independently of the work's commercial value.

The right of integrity is a key moral right musicians must consider when obtaining a sample. This right guarantees that the author's work truly represents his creative personality, free of distortions and mutilations amounting to misrepresentation of the artist's creative vision and personality.<sup>6</sup> As sampling involves an underlying piece of

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<sup>5</sup> Yoo, Christopher S., "Rethinking Copyright and Personhood" (2019). All Faculty Scholarship. 423. [https://scholarship.law.upenn.edu/faculty\\_scholarship/423](https://scholarship.law.upenn.edu/faculty_scholarship/423)

<sup>6</sup> Sergio Felix, Akhsa Soendoero, and Arizal Tom Liwafa, "Mengungkap Melodi : Membongkar Hak Royalti Atas Hak Cipta Lagu Di Industri Musik Digital Indonesia," *Anthology: Inside Intellectual Property Rights* 2, no. 1 (2024): 1–27.

work that is subsequently interpreted and in many cases modified by a later user, the right of integrity requires the sampling musician to obtain permission from the original creator who acts as the copyright holder to ensure the use aligns with copyright law and respects the creator's artistic intent.

Every recorded song involves two distinct copyrights: the music composition symbolized as (©) and the sound recording symbolized as (®).<sup>7</sup> The music composition encompasses the melody, harmony, and lyrics, typically owned by the artist or their publishing company. The sound recording, on the other hand, pertains to the specific audio recording of the performance, including production techniques and mastering. This right is usually held by the artist's record label, a company responsible for recording, producing, distributing, and promoting music. In today's music industry, artists primarily operate within two spheres: the major record labels (Sony, Warner, and Universal) and their subsidiaries, or as independent artists releasing music on their own.

Japan, as a member of the Berne Convention since 1899, established its initial Copyright Law during the Meiji era.<sup>8</sup> While this legislation provided a foundational framework, it remained largely unchanged for approximately 70 years, undergoing only incremental amendments. However, the postwar era witnessed significant advancements in scientific and reproduction technologies, resulting in the diversification of reproduction methods and exposing the limitations of the existing law. Concurrently, successive revisions to the Berne Convention at the Brussels, Stockholm, and Paris conferences elevated the international standards of copyright protection. In response to these domestic and global imperatives, Japan undertook a comprehensive reform of its copyright framework, culminating in the enactment of a new Copyright Law in 1970 (hereinafter referred as "Japanese Copyright Law").

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<sup>7</sup> Jesse, Jim. Essay. In *The Music Copyright Manual*, 1st ed., 17–21. Rock N Roll Law, n.d. Accessed December 9, 2024.

<sup>8</sup> Outline of the Japanese copyright law. Accessed December 9, 2024.

[https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/Copyright\\_Law.pdf](https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/Copyright_Law.pdf).

Under Japanese Copyright Law, a musical work is eligible for protection if it meets at least one of the following criteria<sup>9</sup>:

- a. It is a work created by a Japanese national, a corporation established under Japanese law, or a corporation with its principal office in Japan;
- b. It is a work published in Japan;
- c. It is a work other than one set forth in the preceding two items, which Japan is under an obligation to protect pursuant to an international treaty.

Tomoko Aran's *Midnight Pretenders* satisfies two of these statutory criteria for copyright protection. The song was first released on May 28, 1983, in Japan under the record label Warner Music Japan (ワーナーミュージック・ジャパン) and published by Be-Kikakushitu.Inc, thereby qualifying as both a work created by a Japanese national/entity and one published domestically. Upon registration, the respective rights were allocated such that Warner Music Japan holds the ® (phonogram) copyright, while Be-Kikakushitu.Inc and Tomoko Aran hold the © (composition) copyright. Furthermore, under Japanese Copyright Law, as stated in Article 20, moral rights were conferred exclusively to Tomoko Aran as the creator. These rights, which are inalienable and endure for the creator's lifetime, ensure the protection of the author's personal and reputational interests in the work.

In practice, obtaining a sample clearance necessitates securing permission from both the © copyright holder and the ® copyright holder. This dual-layered process ensures that all intellectual property owners are adequately compensated and their rights are respected. For instance, when The Weeknd sought to sample the guitar riff intro from Tomoko Aran's *Midnight Pretenders* for use in his own composition, it was imperative to negotiate agreements with both the © copyright holder, Be-Kikakushitu Inc. (representing Tomoko Aran), and the ® copyright holder, Warner Music Japan. Both

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<sup>9</sup> Japan - CROSS-BORDER copyright guide 2018. Accessed December 9, 2024. <https://www.rpclegal.com/-/media/rpc/files/perspectives/ip/japan.pdf>.

parties possess the authority to either approve or reject such requests as the right of preserving the integrity is recognized and stipulated in Article 20 of the Japanese Copyright Law. A rejection by either would prevent the creation of a derivative work incorporating the sample. In this particular case, the absence of rejection indicates that both rights holders reached a mutually acceptable agreement with The Weeknd. This agreement, likely encompassing terms related to financial compensation, attribution, and usage rights, permitted The Weeknd to legally create a derivative work incorporating the sampled material.

For an established musician with a strong reputation and the support of a major company, such as The Weeknd with Universal Music Group, obtaining sample clearance from another prominent artist associated with a major record label is often a less difficult process. This is due to the existing networks and personal relationships within the music industry, which facilitate negotiations. Additionally, major record labels are often more inclined to grant sample permissions to high-profile artists, as such collaborations are likely to yield significant financial and promotional benefits.

In contrast, emerging or independent musicians face more challenges when seeking to clear samples, particularly from major record labels like Warner Music Group. Without the benefit of industry connections, these artists are often required to follow a more formal and structured process. For instance, Warner Music Group, which includes the Warner Music Japan label, provides a dedicated licensing platform accessible via their website (<https://www.wmgmusiclicensing.com>).

Musicians must complete a detailed application form, including information such as the project title, production company, territories of use, media formats requested, type of usage, duration of the sample within the project, and other relevant details. This standardized process ensures that the record label has all necessary information to evaluate the request thoroughly.

Furthermore, it is important for musicians to recognize that there is no legally mandated maximum rate for obtaining sample clearances. This flexibility allows

copyright holders to negotiate fees based on various factors, such as the prominence of the sampled material, the artist's profile, and the scope of use. Consequently, when using platforms like Warner Music Group's licensing website (<https://www.wmgmusiclicensing.com>), applicants are required to disclose their overall music production budget and specify the maximum amount they are willing to allocate for obtaining samples. This pricing model can pose significant financial challenges, particularly for independent or emerging musicians with limited resources.

As an alternative to sampling, musicians might consider employing the practice of "replaying" or re-recording. This approach involves re-performing or re-recording a specific section of a composition to use in their work. By doing so, artists can bypass the need for negotiating sample clearance for the original sound recording, potentially reducing costs and legal complexities. For example, rather than sampling the guitar intro from Tomoko Aran's *Midnight Pretenders*, an artist could record their own rendition of the guitar section for use in their project.

This approach results in the creation of a derivative work of the composition but not of the original master recording. As a result, the artist would only need to negotiate a licensing agreement with the copyright holder of the composition (the publisher) rather than with the copyright holder of the recording (the record label).<sup>10</sup> However, it is crucial to understand that the publisher retains the right to deny the request, in which case the replay cannot be legally used.

## **C. 2 Key Legal Considerations and Requirements for Securing Copyright Protection**

We've come to understand that sampling is a notable example of derivative work, as it involves the recasting, transforming, or adapting of an existing work to create a new one. For a derivative work to be protected under copyright law, it must also exhibit originality. Originality is a fundamental requirement for the copyrightability of any

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<sup>10</sup> Jesse, Jim. Essay. In *The Music Copyright Manual*, 1st ed., 99. Rock N Roll Law, n.d. Accessed December 9, 2024.



artistic, literary, or dramatic work and is often referred to as the sine qua non of copyright.<sup>11</sup>

Justice Peterson, in *University of London Press Ltd. v. University Tutorial Press Ltd.*, clarified that copyright law does not concern itself with the originality of ideas but rather with the originality of the expression of thought, which must originate from the author.<sup>12</sup> This principle emphasizes that copyright protects the unique expression of a work, even if the underlying ideas are not novel. To qualify as original, the expression must not be copied from another work but must instead be independently created by the author.

Musicians must recognize that the concept of originality is reflected in the legal frameworks of many nations. Most copyright laws stipulate that protection is granted only to "original works" or "original expressions." However, these regulations generally do not provide a precise definition or set specific criteria for what constitutes originality. The United States, as a common law jurisdiction with a legal tradition rooted in English law, the determination of originality is approached on a case-by-case basis. Courts have developed tests of originality through judicial precedent, evaluating whether a work meets the threshold of independent creation and exhibits a minimal degree of creativity.<sup>13</sup>

The first standard for determining originality is the "Skill and Labor" test, which assesses the measure of independent input contributed by the author. In the context of U.S. copyright law, originality is understood as a combination of skill, labor, and judgment. To satisfy this standard, an author must contribute their own intellectual effort and demonstrate a minimum degree of creativity in expressing their ideas, resulting in a

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<sup>11</sup> Wiraatmaja Lookman, Andri Kurniawan, and Kuras Purba, "Pertanggungjawaban Hak Cipta Cover Lagu Terhadap Pencipta Pada Konten Digital Youtube," no. 28 (2021): 28–48.

<sup>12</sup> Iyer, Anushka. "University of London Press v. University Tutorial Press." IP Matters, August 30, 2021. <https://www.theipmatters.com/post/university-of-london-press-v-university-tutorial-press>.

<sup>13</sup> Analyzing "originality" in copyright law. Accessed December 9, 2024. [https://ipmall.law.unh.edu/sites/default/files/hosted\\_resources/IDEA/idea-vol51-no3-krishna-hariani-anirudh-hariani.pdf](https://ipmall.law.unh.edu/sites/default/files/hosted_resources/IDEA/idea-vol51-no3-krishna-hariani-anirudh-hariani.pdf).

distinct variation from pre-existing knowledge or works.<sup>14</sup> This requirement is particularly significant when the work in question incorporates or builds upon pre-existing material created by another artist. The author must show that their contribution involves independent skill and labor, ensuring that the new work exhibits originality sufficient to merit copyright protection.

The second standard for determining originality is the "Modicum of Creativity" test. Under this standard, mere skill and labor are insufficient to satisfy the requirement for originality. In U.S. copyright law, it is further required that the work demonstrate a creative spark, reflecting the author's individual creativity. This creative element necessitates that the expression embody a degree of inventiveness or originality, extending beyond technical effort to include choices that reveal the author's personal input. In essence, the work must express or reflect the author's personality, emotional depth, or internal deliberations, as manifested through the creative decisions made during its production.

*Out of Time*, first published in the United States on January 7, 2022, demonstrates that The Weeknd successfully meets both the *Skill and Labor* test and the *Modicum of Creativity* test in his song *Out of Time*. While the track incorporates samples from Tomoko Aran's *Midnight Pretenders*, these samples only make up about 10–15% of the overall composition. The Weeknd enriches the pre-existing material by adding his own original vocal performance, unique lyrical content, new instrumental layers, and fresh production technique elements crafted by his team. These additions highlight the significant effort and technical expertise that went into creating *Out of Time*.

In addition to his labor, The Weeknd's creativity shines through in how he approaches the 1980s-inspired style, particularly through his distinctive vocal delivery, which has become a hallmark of his music. The lyrics also set the two songs apart: while

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<sup>14</sup> Felicia Irene Christabelle Suryanto et al., "Taylor's Version: A Case Study in Intellectual Property Rights for Musicians," *Anthology: Inside Intellectual Property Rights* 2, no. 1 (2024): 372–87, <https://ojs.uph.edu/index.php/Anthology>.

*Midnight Pretenders* reflects uncertainty in a relationship, *Out of Time* explores themes of regret and the desire for second chances. By reinterpreting the original material and infusing it with his own artistic perspective, The Weeknd produces *Out of Time* as a unique work, satisfying both tests for originality.

In addition to originality, the United States Copyright Law requires that a work must be fixed in a tangible form to qualify for protection. For a work to be considered “fixed,” its embodiment in a copy or phonorecord must be sufficiently permanent or stable to allow it to be perceived, reproduced, or otherwise communicated for more than a transitory duration. The law does not impose limitations on the form, manner, or medium of fixation, allowing it to encompass words, notes, sounds, or other expressions capable of perception directly or through a device “now known or later developed.”

In the context of music, advancements in technology have significantly expanded the tangible mediums of expression, ranging from physical formats such as albums, cassettes, and CDs to digital downloads, streaming platforms, and music stored on personal devices.<sup>15</sup> The Weeknd exemplifies this principle by presenting his music in various tangible forms, including published albums and vinyl records, as well as digital platforms such as YouTube, Spotify, and Apple Music. These diverse mediums ensure his works meet the fixation requirement while remaining accessible to a global audience.

### **C. 3 Formalizing Copyright: The Process of Registering Your Work**

Having established that *Out of Time* by The Weeknd is legally eligible for copyright protection, an important question arises: should an artist register their work with the relevant copyright office in their country? According to the Berne Convention for the Protection of Literary and Artistic Works, an artist’s work is automatically protected as soon as it falls within the scope of the law’s protection. This principle is reinforced by the U.S. Copyright Office statement, which asserts that copyright protection is conferred on

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<sup>15</sup> Fajar Sugianto, Astrid Athina Indradewi, and Yohanie Mareta, “Book Pirates and Copycats : Infringement That Speaks For Itself” 2, no. 1 (2024): 259–69.

an artistic work the moment it is created and fixed in a tangible form.

In general, the registration of a copyright is a voluntary process and is left to the discretion of the author.<sup>16</sup> While registration is not required for a work to be protected under copyright law, it provides several advantages. Many creators opt for registration to establish a public record of their copyright and to obtain a certificate of registration. Additionally, registered works may be eligible for statutory damages and attorney's fees in the event of successful litigation. Moreover, if a work is registered within five years of publication, it is considered prima facie evidence of the validity of the copyright in a court of law, meaning the registration is presumed to be valid unless disputed. This advantage is stipulated in the U.S. Copyright Office's Circular 1: Copyright Basics and Circular 38b: Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA).<sup>17</sup>

Musicians seeking to register their musical works with the United States Copyright Office have two primary options: online registration or paper application.<sup>18</sup> To apply online, applicants must visit the Copyright Office's official website and complete the following steps: (1) fill out the online application form, (2) pay the required filing fee, and (3) upload an electronic deposit copy of the musical work or send a physical deposit copy (e.g., albums, CDs, or vinyl records). Notably, if the musical work is intended for publication in a physical format, it is mandatory to submit a physical copy, even if a corresponding digital version is available. The online registration system offers advantages such as reduced filing fees and expedited processing times.

Alternatively, musicians may opt for the paper application process, which involves completing one of the fillable PDF forms available on the Copyright Office's website, such as Form SR (Sound Recordings). After completing the form, the applicant must print and sign it. The completed form, along with the filing fee and deposit copy, must then be

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<sup>16</sup> Akbar Nugroho and Davi Pandi, "The Issue of No Benchmark in Determining the Economic Value of Intellectual Property" 2, no. 1 (2024): 284–99.

<sup>17</sup> Circular 1. Accessed December 9, 2024. <https://www.copyright.gov/circs/circ01.pdf>.

<sup>18</sup> Circular 2 copyright registration. Accessed December 9, 2024. <https://www.copyright.gov/circs/circ02.pdf>.

mailed as a single package to the address specified on the final page of the application.

To determine whether a work is registered with the United States Copyright Office and protected under copyright law, one can search the public catalog of copyright registrations maintained by the Office. For instance, *Out of Time* by The Weeknd is recorded in the United States Copyright Office under registration number PA0002360409, with a publication date of January 7, 2022.<sup>19</sup> The registration includes comprehensive information, such as the copyright claimants—XO Music Publishing LLC (a publishing company owned by The Weeknd), Daniel Lopatin, and Oscar Holter (producers). It also identifies the pre-existing material incorporated into the work, including the music, lyrics, and a sample from *Midnight Pretenders*, as well as the basis for the registration claim, which, in this case, consists of new music and lyrics.

An intriguing aspect of *Out of Time* by The Weeknd is its publication in multiple countries, including Japan. As outlined in Section “I” of this paper, Japanese Copyright Law extends protection to musical works published in Japan, including those initially released abroad and subsequently disseminated within Japan. Moreover, such protection applies to works that Japan is obligated to safeguard under international treaties. As both Japan and the United States are signatories to the Berne Convention, Japan is similarly required to protect foreign musical works under the Convention's framework.<sup>20</sup>

These works, classified as "Foreign Works" under Japanese Copyright Law, receive the same level of protection as domestic works, ensuring compliance with international obligations. However, while copyright protection is automatic under the Berne Convention, musicians are advised to manually register their copyrights for foreign musical works in Japan or other countries. This step provides formal evidence of ownership and reinforces their legal position in cases of copyright infringement. The registration process in most countries, including Japan, is generally similar to that of the United States, requiring the submission of the work to the respective national copyright

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<sup>19</sup> Data was accessed through “public records” in the <https://www.copyright.gov> website

<sup>20</sup> Implementation of the National Treatment principle; Ensuring equal treatment for foreign and local works

office.

#### **C.4. Attribution and Economic Rights in Music Sampling: Protecting Creators' Contributions and Royalties Fee**

As the original creator of *Midnight Pretenders*, Tomoko Aran holds the moral rights based on both Japanese and international copyright provisions. The right of attribution is another example of moral rights which became the fundamental aspect of copyright law to ensure that creators are recognized as the authors of their works. When it comes to attribution, it will involve acknowledging the creator's contribution when a work is copied, which typically includes displaying it near the work, such as in a caption for a photograph. It should include the work's title, the name of its creator, and the source, along with any specific terms under which it was copied, such as 'used with permission' or 'licensed under CC BY'. Creators usually specify how they want their work to be credited, and these guidelines should be respected to uphold the integrity and honor the original creation.<sup>21</sup> The foundation of this protection lies in international provisions such as the Berne Convention for the Protection of Literary and Artistic Works, which Japan has adopted. Japanese copyright law closely mirrors these provisions in its Copyright Act to protect creators' reputations and legacies.

In the case of *Midnight Pretenders*, The Weeknd's use of a sample from Tomoko Aran's song in his song *Out of Time* demonstrates the application of the right of attribution. In accordance with Article 19 of the Japanese Copyright Law, Tomoko Aran has the authority to decide how her name is presented in connection with her work. For instance, she may choose to have her real name, a pseudonym, or even no name associated with the work, as long as the omission does not harm her claim to authorship or violate fair practices.<sup>22</sup>

In addition, the right of attribution prevents unauthorized claims of authorship by

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<sup>21</sup> "Intellectual Property and Copyright: Definitions", education.vic.gov.au. Accessed 10 December 2024. <https://www2.education.vic.gov.au/pal/intellectual-property-and-copyright/guidance/definitions>

<sup>22</sup> Article 19. *Copyright Law of Japan*

others. By crediting Tomoko Aran as the original creator, her legacy and contribution are acknowledged, protecting her reputation in the music industry. This recognition is independent of any economic transaction such as licensing fees or royalties – even after transferring economic rights to a third party or licensing the sample, she still has the right to be credited as the original creator of the song.

The credit given to Tomoko Aran ensures that the value of her music is acknowledged by both industries and audiences. For example, when *Midnight Pretenders* was sampled by The Weeknd’s song *Out of Time*, her name appeared in copyright registration records, reaffirming her role as the original creator. This aligns with Article 6bis of the Berne Convention, which mandates that authors have the right to claim authorship independently of economic rights.<sup>23</sup>

Sampling involves reusing and transforming existing works to create something new, where without proper attribution of the original creator, the new work risks devaluing the original and potentially misleading the audience about its origin. By crediting Tomoko Aran as the original creator, her contribution to the sampled work is transparently acknowledged and demonstrates compliance with the law.

This is not a mere formality but an acknowledgment of the integrity of the creative process and the respect due to the originators. Making sure Tomoko Aran is credited for *Midnight Pretenders* illustrates the larger principle of moral rights in copyright law, which concerns the personal connection a creator has with a work, apart from economic rights.

In a world of global collaborations and cross-cultural musical influences, proper attribution becomes even more important. In the case of *Out of Time* by The Weeknd, the incorporation of *Midnight Pretenders* pinpoints the growing trend of using classic tracks as creative foundations for modern music. Such practices raise a need for clear legal mechanisms that can secure the rights of original creators from being overshadowed or forgotten. By following the standards of attribution, the music industry provides an environment of respect and recognition for artistic contributions, whoever created them

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<sup>23</sup> Article 6bis. *Berne Convention for the Protection of Literary and Artistic Works*

and whenever.

Besides, at least the right of attribution required under Japanese and various international copyright laws protects works against cultural appropriation. For example, it prevents works derived from certain cultural or historical backgrounds from being deprived of their identity or from being misrepresented. In this way, for artists such as Tomoko Aran—wherein the work takes deep roots in its cultural context—appropriate attribution ensures the cultural and historical importance of the work for further creation.

Proper attribution also increases the visibility of original creators in today's music markets. In the case of the sample *Midnight Pretenders*, the credit given to Tomoko Aran not only preserved her legal rights but also exposed her music to new audiences, potentially rekindling interest in her catalog. This dual benefit—legal recognition and increased visibility—illustrates the broader impact of moral rights in fostering a vibrant and respectful creative ecosystem.

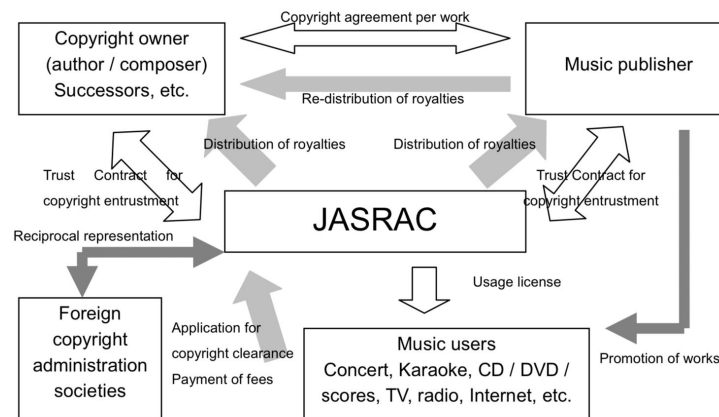
The attribution of *Midnight Pretenders* to Tomoko Aran is a cornerstone of both Japanese and international copyright law, exemplifying the enduring importance of recognizing creators' contributions. It underscores the balance between fostering creativity through transformative uses like sampling while maintaining respect for the original works and their authors. By standing for these principles, copyright law continues to safeguard the rights, legacies, and reputations of artists, guaranteeing that their voices be heard in an ever-changing landscape.

To have a better understanding how copyright law structure these economic rights, it is important to note that unlike mechanical royalties, which have maximum rates set by law, sampling typically requires upfront payment through a licensing fee. This fee represents a negotiated value that can vary based on factors like the sample's prominence in the new work and its market potential. After obtaining the licensing fee, the artist like The Weeknd must also consider the ongoing obligations, such as royalty payments, to ensure that the original creator like Tomoko Aran benefits from the commercial success of the new track *Out of Time*. These royalties depend on the performance and distribution



of the work, reflecting the broader legal framework that balances both economic and moral rights of creators, fostering a fair and collaborative music industry where artists' contributions are justly recognized and compensated.

More importantly, the distinction between licensing fees and royalties underlines how copyright law is structured. A license fee is a one-off payment to grant permission to use the sample, while the royalty is a recurring payment that depends on the performance and distribution of the work. Even after licensing the sample, The Weeknd has to pay royalties to Tomoko Aran to make sure she keeps benefiting from the success of *Out of Time*. This system shows how copyright law balances the economic and moral rights of creators while fostering a collaborative and innovative music industry.



**Picture 1. The copyright management structure of JASRAC**

Source: <https://www.jasrac.or.jp/ejhp/membership/pdf/guide.pdf>

The diagram of copyright administration shows how organizations like the Japanese Society for Rights of Authors, Composers, and Publishers (JASRAC) represent creators in the management of copyright. As a copyright management organization in Japan, JASRAC oversees music copyrights by collecting royalties and distributing them to songwriters, lyricists, and music publishers. It simplifies the licensing process by serving as a one-stop shop for music users, including broadcasters and streaming

platforms, across both traditional and digital media.<sup>24</sup> When a creator, such as Tomoko Aran, entrusts her work to JASRAC, the organization ensures that her rights are upheld by facilitating licensing agreements and collecting royalties. It acts as a bridge between copyright owners, music publishers, and users such as broadcasters and streaming platforms. The distribution of royalties by JASRAC is also a continuous acknowledgment of the creator's economic rights and the creator's ability to benefit from the commercial success of the works.

However, within the context of the Common Law approach, when it comes to sampling, the de minimis standard is used to assess whether a sampled segment is so minor or unsubstantial that it would not justify legal action. This threshold is designed to determine if the sampled content is trivial enough not to require compensation or permission from the original creator.<sup>25</sup> A de minimis argument can also act as a negative defense, asserting that no infringement occurred because the work taken was inconsequential or did not utilize integral, substantial portions of the copyrighted material. The de minimis standard evaluates both the quantitative and qualitative aspects of the use, focusing on whether it is unrecognizable to an ordinary observer or too minor to impact the original work significantly. In certain jurisdictions, this approach varies widely, reflecting differing interpretations of what constitutes substantial similarity. While such minor uses might not necessitate payment of royalties, they still trigger a fair use analysis to evaluate whether compensation is needed.<sup>26</sup>

Fair use, an American Common Law doctrine, allows certain uses without permission if they significantly transform the original work by adding new expression,

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<sup>24</sup> "JASRAC's Management". JASRAC. Accessed 10 December 2024.

[https://www.jasrac.or.jp/cjhp/about/admini\\_env.html](https://www.jasrac.or.jp/cjhp/about/admini_env.html)

<sup>25</sup> Sean M. Corrado, Care for a Sample? De Minimis, Fair Use, Blockchain, and an Approach to an Affordable Music Sampling System for Independent Artists, 29 *Fordham Intell. Prop. Media & Ent. L.J.* 179 (2019): 195. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1706&context=iplj>

<sup>26</sup> Jeremy King, An Examination of the Copyrightability of Sampler Instruments and its Impact on Derivative Works, 45 *Colum.J.L.& Arts* 95(2021): 109, <https://journals.library.columbia.edu/index.php/lawandarts/article/view/8955/4623>

meaning, or message.<sup>27</sup> The fair use analysis considers factors like the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion taken, and the effect on the market for the original work.<sup>28</sup> Fair use emphasizes the transformative nature of a work, focusing on whether the new use adds significant value or changes the original in a meaningful way. While the de minimis standard focuses on the triviality of the use, fair use provides a broader framework, sometimes permitting significant portions to be used when the new work serves a transformative purpose. If a sampled work significantly alters or transforms the original content, it may still require permission or payment to the original creator, even if it does not meet the de minimis threshold.

In the case of *Midnight Pretenders*, the sampling extends beyond a de minimis use. The Weeknd's incorporation of Tomoko Aran's song into his own track, *Out of Time*, involves a noticeable and significant segment of the original song that shapes the identity of the new composition. This use is not subtle or hard to spot; it is a deliberate choice that requires clear acknowledgment to credit Tomoko Aran's contribution properly. Utilizing a recognizable sample necessitates legal protection and fair compensation, as it involves borrowing from another artist's work to create a new, distinct musical piece. Such a situation underscores the importance of respecting creators' rights and ensuring fair compensation, even when the sampled use is deemed transformative. Proper attribution and the potential for royalty payments are essential to honor Tomoko Aran's role as the original creator, aligning with the broader legal framework's objective to safeguard creators' rights and ensure they receive fair recognition within the music industry. This scenario highlights the need for a balanced approach to copyright, recognizing both the need for creative freedom and the responsibility to compensate artists fairly for their

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<sup>27</sup> Elizabeth C. Vista, Taking Bytes: Sound Recordings, Digital Sampling, and the De Minimis Exception, 67 Vill. L. Rev. 29 (2023). : 32,

<https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=3552&context=vlr>

<sup>28</sup> "Measuring Fair Use: The Four Factors," Copyright and Fair Use Stanford Libraries, Accessed 10 December 2024, <https://fairuse.stanford.edu/overview/fair-use/four-factors/>

contributions. Even when the use is transformative, it requires proper credit and possible monetary compensation to respect the original creator's rights and contributions fully. By acknowledging the borrowed elements and compensating appropriately, The Weeknd ensures that Tomoko Aran's contribution is not overlooked and that the legal framework's goals of protecting creators' rights are upheld.

#### **D. Conclusion and Recommendation**

Music sampling requires careful attention to copyright laws to respect the rights of the original creators while fostering creativity. This process involves two main rights: the music composition and the sound recording, which both require permission from their respective holders. Like The Weeknd legally sampled Tomoko Aran's *Midnight Pretenders* by securing agreements with Be-Kikakushitu Inc. (©) and Warner Music Japan (®). Established artists often find this process easier due to industry connections, while independent musicians face stricter procedures and higher costs. Some opt to re-record specific elements instead of directly sampling, which can reduce legal financial challenges, but still, it requires permission.

Originality is a key criterion for copyright protection, evaluated through tests like "Skill and Labor" and "Modicum of Creativity." *Out of Time* by The Weeknd showcases originality by blending unique vocals, lyrics, and production with the sampled material. Additionally, works must be in a tangible medium, such as digital platforms or physical formats, to qualify for protection. Registering a copyright is voluntary but provides legal advantages, such as stronger claims in infringement cases. For international works, agreements like the Berne Convention ensure reciprocal protection, as seen in Japan's recognition of *Out of Time*.

Attribution is another critical aspect, ensuring creators like Tomoko Aran are credited for their contributions, which preserves their reputation and prevents cultural misrepresentation. Financially, copyright holders may earn through licensing fees and royalties, balancing economic and moral rights. This system not only compensates

original creators but also supports the broader music industry by fostering collaboration. By respecting copyright laws, artists ensure that their work remains legally protected while also promoting the growth of global musical exchange.

Therefore, In light of the foregoing analysis, the following recommendations are put forward:

1. Artists should invest time in educating themselves about copyright laws, including the differences in copyright protection across various countries. This knowledge can help them avoid accidental infringements when sampling works from international artists. Additionally, raising awareness about the importance of respecting intellectual property rights can contribute to a more responsible and legally compliant music industry, ultimately benefiting both creators and consumers.
2. Promote mandatory attribution standards in all sampling agreements to ensure original creators are consistently recognized. This practice not only upholds moral rights but also preserves cultural and artistic legacies, fostering a respectful and collaborative music industry. Transparent crediting further mitigates risks of cultural appropriation and strengthens the integrity of transformative works.

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