

# BLAWND

A few weeks ago, Techdirt published this piece (<http://www.techdirt.com/articles/20090515/1154504899.shtml>) on the new DJ Danger Mouse album *Dark Night of the Soul*. Danger Mouse, due to legal battles with EMI over the album content, elected to release an album that contains the album artwork and a blank recordable CD. Danger Mouse has once again found a way to let the online community and the industry now that its' practices are outdated and, frankly, perpetuating the misunderstanding and misjudgment about mashups.

## Not the First Time at the Copyright Rodeo for Danger Mouse

Jay-Z probably could not imagine the legal controversy that would ensue when he released *The Black Album* in a cappella form in 2004. Jay-Z released this version of the album for mashup and remix use. Danger Mouse, who is also known for his production of Gnarlz Barkley's *St. Elsewhere* and the Gorillaz *Demon Days*, first rose to popularity when he released a remix of Jay-Z's *The Black Album* with The Beatles' *The White Album*. The remix, heralded by critics, was subsequently released to a few outlets. Soon enough, EMI, the music industry giant who holds the copyright of The Beatles (pausing to shake my fist at the lack of Beatles music on iTunes), caught wind of the release and sought to cease distribution. Danger Mouse had not obtained the permission to use The Beatles' material.

EMI's action spawned a reaction by the online remix community. In a protest, known as Grey Tuesday, websites, led by

## Grey Areas, Grey Albums.

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## past.

**November 2009**

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download for 24 hours. Over 100,000 copies were downloaded. EMI backed down in that particular battle, but the prospect of sampling in remix and music production remains one of copyright's hot issues. It is one of the places where the battle of the digital commons comes to a head and reversion to forms of virtual civil disobedience must be had.

Danger Mouse is but one example of his growing mashup trend. A product of the availability of both user-friendly digital mixing technology and the wide array of audio and video offerings, legal and illegal, mashups will just continue to grow in production and distribution. With the quality and unique sound that these producers create, it is no wonder that corporations and established musicians have begun to dabble with this burgeoning online art as well.

Yet, for a legal system that is not exactly full of tech-savvy contemporaries making decisions about how to apply the fair use doctrine or look at these practices from a 2009 standpoint, decisions in cases like this end up being superficially dismissed as part of some of left ("Copyleft") line of thought and mutually exclusive from the prospect of the "promotion of progress" as outlined in the Copyright and Patent Clause in the Constitution.

This situation flags many other issues that need to be addressed in the copyright world:

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■ **A Need for IP Savvy Judges:** Few of the justices on the Supreme Court seem to appreciate the complexities of issues such as these, evidenced by a 2003 Copyright decision, *Eldred v. Ashcroft*. See tomorrow's post.

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■ **A Need for an Understanding of Copyright in a Digital World**

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■ **A Need for a Compelling  
Copyright Narrative**

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By the way, you can listen to *Dark Night of the Soul* on NPR: <http://www.npr.org/templates/story/story.php?storyId=104129585>.

**Older  
Entry:  
You  
Aren't  
Writing  
on the  
Bathroom  
Stall.**

**Newer  
Entry:  
Eldred  
Revisited.**