

Friend or Fiend? A “Fair Use” Analysis of Audioblogs

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INTRODUCTION

AUDIOBLOGS are a new and distinct breed of website emerging from a passionate community of music lovers, all connected by the internet and their interest in rare and forgotten recordings. As the mainstream media is beginning to recognize, “audioblogs (a.k.a. MP3 blogs) have become a kind of collective road map to a music subculture built around non-mainstream artists and self-made tastemakers.”² Like any website that involves downloading digital audio recordings, audioblogs raise concerns over copyright infringement and music piracy. This Note aims to establish the common characteristics of audioblogs and then determine whether or not these websites operate in violation of copyright law. Specifically, I will focus on the potential success a “fair use” defense raised by audiobloggers would have against a charge of copyright infringement under the Copyright Act of 1976.³ Upon completing this “fair use” analysis of audioblogs in their common form, I will conclude by examining possible alternative formats, including “sampling” and “streaming,” that audiobloggers may employ in order to strengthen their claims to legal legitimacy under the Copyright Act.

I. WHAT IS AN AUDIOBLOG?

In its most basic form, an audioblog is a website featuring music reviews with accompanying audio available for download.⁴ Invariably, an audioblog will focus on its creator’s particular musical obsessions and feature obscure, often

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² Joseph P. Kahn, *The World of Audioblogs is Growing, and so is the Community of Local People Who Create Them*, BOSTON GLOBE, Aug. 26, 2006, at D1.

³ 17 U.S.C. §§ 101-810 (2000).

⁴ See Jon Caramanica, *Hip-Hop’s Raiders of the Lost Archives*, N.Y. TIMES, June 26, 2005, § 2, at 28.