

The 'Purdie Shuffle' and the Price of Fame

Bernard Purdie is one of the most recorded drummers of all time. He is also one of the most copied. His distinctive "Purdie Shuffle" groove appears on countless rock tracks, including Steely Dan's "Home At Last" and "Babylon Sisters," as well as many other jazz and pop classics. Purdie's grooves have influenced numerous drummers. Jeff Porcaro, the original drummer of the group Toto, explains in detail in a YouTube video how he used the "Purdie Shuffle" as the basis for the beat he created for the 1982 Grammy-winning hit song "Rosanna."

Purdie is not only one of the most copied drummers; I believe he's one of the most sampled. Sampling and copying are not the same. Sampling takes place when a recording artist or producer lifts a portion of another recording for his own use, most often combining it with other original or appropriated elements to become something new. Sampling is usually carried out through use of a sampler, which can be a hardware device or software program that actually copies portions of a previously recorded track.

With all this derivative activity, does Purdie have any rights in his "Shuffle," especially when its use generates income for someone else? Certainly there are rights in samples that are used for economic gain. In fact, the only situation where a sample would not require permission and payment is where the material sampled is not protectable.

But in many cases, Purdie does not even own the samples of his drumming; the label for which he recorded owns them. If there's an underlying copyright in the sample, the law would consider it an "arrangement" paid for by



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Bernard Purdie

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the label and owned by them. In fact, in many recording sessions each musician is required to sign a form acknowledging that any materials created by the musician are owned by the label.

Hip-hop artist Dr. Dre sampled Ron Carter's bass intro to the Johnny "Hammond" Smith CTI recording "Big Sur Suite." A deal was eventually made for compensation, but it went to the label, which had an obligation to Hammond as the leader but not to Carter, who was a sideman. The publisher of the underlying composition (written by Hammond) also got a share of the pie.

Is Purdie's "Shuffle" even copyrightable? Probably not. Purdie's brilliant drum beat is short, and cases exist that have refused to give "short phrases" of content copyright protection. Also, Purdie's beat in every case has been recorded. Sound recordings (not to be confused with musical composition) were not subject to copyright protection prior to Feb. 15, 1972, when many of Purdie's records were made. Some recordings made prior to 1972 may be protected under state law, but not under the federal copyright law. For recordings after 1972, a recent case held that a drum track (one that was less inventive than Purdie's "Shuffle") could possibly receive copyright protection as a recording.

But whether or not it is actually protectable, we should consider whether Purdie's work should be protected. Should drummers be able to take beats from Purdie, Max Roach, Buddy

Rich or Elvin Jones and incorporate them—sometimes note for note—into their own style, transforming it into something new? After all, using the masters' licks is part of the jazz tradition, and it allows the music to grow while retaining its roots to the past.

As long as an artist does not sample a sound recording of Purdie's beat but merely plays it themselves, adapting it to their own composition or creation, they have little to worry about from a legal point of view—even if they copy the beat exactly. And Purdie himself is thriving. Producers continue to hire him to record as a sideman and as a leader. He is also a popular clinician and equipment endorser. Sony Music recently reissued Purdie's classic 1967 solo album *Soul Drums* on CD, with previously unreleased bonus tracks recorded in 1969 for an intended followup LP. In a recent *New York Times* story on Purdie and the "Shuffle," he said he was flattered by the versions he's heard by other drummers. However, if you want to hear the real thing live, you'll have to go to see Purdie on Broadway in the pit band for *Hair*, where his shuffle and its variations turn up at least half a dozen times. **DB**

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