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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

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Louis Hayes,

Plaintiff,

versus

Koch Entertainment, *et al.*,

Defendants.

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Civil Action G-06-515

### Opinion on Summary Judgment

I. *Introduction.*

In 2000, Top Rank Boyz, led by Louis Hayes, distributed its song “Where You From.” In 2002, Koch Entertainment distributed its “Where U From.” Hayes says Koch’s song infringes his copyright.

Hayes owns the copyright for his composition. Koch’s must be a copy – clearly derived from Hayes’s work. Hayes says that Koch’s title, refrain, melody, and lyrics are substantially similar to his.

2. *Titles.*

Both songs belong to the category of music roughly described as *rap*. Although the similarity of the titles does not matter because they are categorically not protectable, these songs illustrate the repetitiveness within the genre:

<u>Title</u>	<u>Group</u>
Where You From	The Dogg Pound
Where You From	Young Buck Feat E.S.G.
Where You From	Skull Duggery
Who Gives a F*ck Where You From	DJ Kayslay
Where You From	Trick Daddy

Where You From	Ghostown
Where You From	Grenshaw Mafia Bloods
Represent Where You From	DJ Chipman & The Buckwheat Boyz
Where You From	Carol City Cartel Ft. Rick Ross
Where You From	T.I.

3. *Lyrics.*

According to Hayes, in 2002 Koch's song with Master P. copied his song from 2000. Master P. – performing with Skull Duggery – distributed “Where You From” in 1998. The songs of Hayes, Koch, and Skull Duggery have a similar refrain. All three include multiple lines of “Where you from, nigga.” For Master P. to have stolen from Hayes, he would have had first to have stolen from himself.

A composer may copyright a song – a whole song. He may not protect words, phrases, names, titles, and slogans. Common sayings and customary phrases are open to all; they must have been combined in a unique expression to be owned. Even then, they are owned only in that configuration or an imitation of it. See *Acuff-Rose Music Inc. v. Jostens Inc.*, 155 F.3d 140 (2nd Cir. 1998).

“Where you from, nigga” appears to be a common phrase in the subculture that yields rap music. Although the inclusion of a phrase in popular music reinforces its currency, it is used in the music because it was used elsewhere first. Hayes cannot own “where you from, nigga” any more than he could protect “do you love me.”

The story – the theme – is the same. Both songs are about the singer's origins and distinguishing his from those of others. It is the eternal story of The Other – outsiders. The songs speak, apparently, of different places. Hayes's lyrics are about Houston. On the other hand, Master P. sings of New Orleans – the Calio projects – and addresses himself to people from other southern states. Skull Duggery's song refers to wards numbered as high as seventeen, apparently limiting its topic to Chicago or New York.

Both cover the customary topics like drugs and violence. Hayes writes about places and acts that exist independently of his creativity. Cole Porter could not own moonlight. Hank Williams had to share cheating hearts. Willie Nelson cannot fence blue eyes in. The Beach Boys plunged into the surf with Jan and Dean. Irving Berlin holds the copyright to “God Bless America,” but he had to share both God and America.

4. *Melody.*

Hayes asserts that the songs' melody are parallel. The melodies sound different – the back-beat and pacing vary distinctly. To a bad amateur ear, they are different music.

5. *Conclusion.*

Protecting the creative innovation of a composer is not remotely similar to partitioning the variety of human experience – with its harmonies, echoes, and vicious cycles. Louis Hayes owns what he created. That is all. It is at least evocative of Master P.'s earlier work as well as those of many, many others.

Master P. did not appear to defend this lawsuit, and the court entered a default judgment against him for an arbitrary amount. That judgment will be vacated. Because Hayes's composition has not been infringed by Koch, it axiomatically cannot have been infringed by Master P. – however irresponsible he may have been in handling his legal affairs.

Louis Hayes will take nothing from Master P., Koch Entertainment, L.P., and the others.

Signed on March 14, 2008, at Houston, Texas.



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Lynn N. Hughes  
United States District Judge