

2016

Hip Hop, the Law, and the Commodified Gangsta

Akilah N. Folami

Maurice A. Deane School of Law at Hofstra University

Follow this and additional works at: https://scholarlycommons.law.hofstra.edu/faculty_scholarship

Recommended Citation

Akilah N. Folami, *Hip Hop, the Law, and the Commodified Gangsta* 143 (2016)

Available at: https://scholarlycommons.law.hofstra.edu/faculty_scholarship/802

This Book Chapter is brought to you for free and open access by Scholarly Commons at Hofstra Law. It has been accepted for inclusion in Hofstra Law Faculty Scholarship by an authorized administrator of Scholarly Commons at Hofstra Law. For more information, please contact lawcls@hofstra.edu.

Hip Hop, the Law, and the Commodified Gangsta

Akilah N. Folami*

I. Introduction

Communications law has contributed to the proliferation of gangsta rap on broadcast radio. By helping to solidify consolidation of media and corporate control of the nation's radio airwaves, the Telecommunications Act of 1996 has been instrumental in creating the dominant gangsta image which has become the *de facto* voice of contemporary hip hop culture. Moreover, it has contributed to narrowing access to the radio air waves to those that would challenge gangsta rap and the resulting gangsta image that is steeped in racial, classist, and sexist stereotypes. While many critics have written gangsta rap off because of its misogyny, violence, and unbridled exhortation to material consumption, social commentary and resistance to gangsta rap can still be found within its very commercialized image. These rappers not only have achieved considerable commercial success but also have managed to maneuver in a mass-mediated and corporate-dominated space. In doing so, they have also provided some seeds of resistance to the mainstream gangsta image. Although such seeds of resistance may not receive as much attention as that of the gangsta image, it is evidence of resistance nevertheless. The law must not inhibit such contestation or the development of a robust dialogue, particularly the dialogue over the gangsta image and the hypercommodified stereotypes that underlie it.

II. Black American Subversion: Hip Hop to Gangsta Rap in Context

Despite its violence and misogyny—largely directed at other Black men and Black women—gangsta rap must continue to be considered within the context of hip hop's

* Associate Dean for Intellectual Life and Professor of Law, Hofstra University Maurice A. Dean School of Law. This chapter was originally published as *From Habermas to "Get Rich or Die Tryin'": Hip Hop, the Telecommunications Act of 1996, and the Black Public Sphere*, 12 Mich. J. Race & Law 235 (2007).

origins, the commodification of Black cultural expression, and the broader marketplace for American music. Historically, Black Americans have suffered from exclusionary practices, repression and violence in public spaces throughout the United States but have navigated these spaces nevertheless, through music, spectacle, and other subversive forms of cultural expression. Urban Black (and Latino) youth continued these historical practices of subversion with the emergence of hip hop, developed at a time when they were essentially abandoned and rendered invisible by both White and Black politicians alike and dominant public discourses. Soon after the passage of several civil rights acts, federal aid to already declining industrial cities was significantly decreased. The White dominant class and the burgeoning Black middle class, unconcerned, unable, or unsure of how to fix the poverty problem in America's urban areas, turned their attention to other issues. The poorest urban residents in America's large cities were thereby left vulnerable. By the late 1970s (when hip hop emerged), following the death of Malcolm X and the decimation of the Black Panther party, which both gave public voice to America's urban areas, the political fervor for economic and political equality had died down, at least as it related to the Black lower and urban class.

For example, the South Bronx, which most cite as the birthplace of hip hop, would suffer a significant spiral downward during this time. As industry jobs vanished in the South Bronx, youth violence and gangs proliferated, with the city soon to be declared a wasteland.¹ Isolated and ignored in what was categorized by most as a dying city, these youth lived on, despite the deteriorating conditions around them, through hip hop, which consisted of the beat, b-boying (or break dancing), graffiti-ing, and rapping. While these acts were not originally overtly political acts, they were subversive and signaled to the ruling authority that, while the South Bronx was literally burning and abandoned, the youth were living and claiming their space—in the midst of the blaze. By 1979, hip hop had its first commercial successes with Sugar Hill's "Rapper's Delight." And then in 1982, it had another with "The Message," by Grandmaster Flash and the Furious Five, which served as rap's first social commentary on life in the South Bronx ghetto. With the advent of rap groups Run-DMC and Public Enemy, rap would become more defiant, critical, and filled with racial pride.² With artists rapping about police brutality, the criminal justice system, inadequate social programs, unemployment, sex, rape, AIDS, poverty and declining living conditions, listeners learned about living in urban spaces, primarily in the East.

With the five-member group called Niggas With Attitude (N.W.A), America got a glimpse of life on the West coast. This image was filled with gang violence and pure seething rage. In contestation with the "positive" rap from the East, the West Coast sound was defined as "gangsta" rap, and was filled with references to Black women as hos and bitches and Black men as gangstas and "niggas." Generally, rappers also adopted the traditional Black bourgeois notions of attaining the American Dream via capitalism and consumerism but rejected its elitism and belief that one had to assimilate. Gangsta rap has survived calls for censorship on obscenity and indecency grounds, and boycotts from Black and White middle class communities. Rap would be deemed protected speech under the First Amendment, speech that gave voice to a historically marginalized segment of the population or that shed light on conditions in America's blighted urban areas.

III. The Commodified “Gangsta” and Resistance to the Gangsta Image by the “Gangsta” Himself

The gangsta sound remains prominent in contemporary rap lyrics even as some critics argue that life in the “hood” is not as bad as it was in the early 1990s. These critics contend that today’s “gangsta” lyrics are merely a corporate-creation, designed to sell an image that is popular with consumers. They assert that the current state of rap, with the pervasive gangsta and corporate-created rap lyrics, signal the death of hip hop’s subversive nature and hip hop’s disconnection from the legacy of subversion in the Black community. Upon closer inspection, subversion can still be found therein. Indeed, the music, as commodified as it may be, still gives voice to what would otherwise be an invisible and marginalized group of Black and Latino male youth. Scholars have developed a number of theories to better understand resistance, such as is found in the subcultural practice of recoding. According to Keith Aoki, “subcultural practices differ from the countercultural (1960s student movements) in that it recodes cultural signs rather than poses a revolutionary program of its own.”³ Gangsta rap serves as an example of Aoki’s “subcultural practices” of recoding. Specifically, today, rap has become one of the largest music genres in America. Several studies have established that the largest consumer base for sales of rap music is White male suburban youth. Some scholars explain rap’s enormous popularity among White consumers by arguing that White audiences partake in a voyeuristic gaze of Black street culture that they, as voyeurs, perceive to be authentic experience. They only find “staged authenticity” though, as corporate media conglomerates entrench these images of Black life with negative racial stereotypes.

Through gangsta rap lyrics, rap voyeurs are taken to the ghetto—a place of adventure, erotic fantasy and unbridled violence and adventure and the anti-thesis of suburban normalcy.⁴ Some identify these lyrics as “neo-gangsta” that exemplify the concept of staged authenticity. Introduced voyeuristically is the ghetto-centric “nigga” persona who more often than not is a gangsta, making his money as a pimp, hustler, drug dealer or killer, and the Black woman skeezer, bitch, or ho, who is intent on bringing the gangsta down via sexual manipulation or even violence. To some cultural theorists, this corporate and market-driven imagery offers an appealing fantasy to consumers (regardless of the supposedly harsh reality it depicts).⁵

On the surface, rappers participate in and thereby consent to their own subjugation and staged authenticity by supplying such rap lyrics and imagery, while rap and hip hop culture’s reliance on such exaggerated and negative stereotypes seems to do nothing to subvert these images of Black men and women. Viewing the commodification of gangsta rap through the lens of Aoki’s analysis of subcultural practices suggests, however, that “such stereotypical images [can be used] . . . at the very least, to contest, neutralize and complicate such representations.”⁶

In essence, such images can be “reworked to ‘talk back’ to power on multiple . . . levels and in so doing, to transform further iterations of the dominant discourse in an on-going, open-ended series of micro-negotiations.”⁷ This process of micro-negotiations or talking back (to negative stereotypes, in particular) through the prevailing racist discourses is by no means simple or easy especially for subordinate groups. It often requires subordinate groups to, in some degree, consent to their own subjugation, and adopt, consciously or unconsciously, a mental state that has been called by some, a “contradictory consciousness.”⁸

The recoding of even negative racial representations however, can serve, no matter how small, as a type of contestation and subversive expression.⁹ Hence, with regard to the current affairs of rap, despite the “acute tension” between the corporate media conglomerates and rappers, and the limited space available *within* the market driven mass media for contestation, rappers, such as Jay Z, Ice Cube, Jadakiss, and 50 Cent, have actualized the potential of which Aoki speaks. They have employed subcultural practices, which serve to subvert and dismember the dominant racialized gaze upon the “gangsta” image that predominates rap lyrics played on the radio.

In the movie *Get Rich or Die Tryin'* (2005), viewers get another mass-mediated depiction of the life of a gangsta turned rapper, portrayed by real life rapper, 50 Cent. The film includes scenes of hustling in the underground economy (50 Cent selling drugs on the streets in New York), of street gangsta violence (his mother's body set ablaze after gasoline was poured on her body, his friend betraying him and shooting him in the mouth, and the extraction of another hustler's teeth by pliers), and of him bling-blinging (50 Cent riding down the street in his new shiny white BMW that is the envy of the other hustlers on the block). However, the dominant gaze on the gangsta identity is also shifted, even if only temporarily, when the scene shifts from the predominant gangsta melodrama to a humanistic picture of a depressed 50 Cent sitting, with his mouth wired shut and drool falling down his mouth. He sits on the couch in his bath robe, in a house that has no heat on a cold snowy winter day, lamenting his inability to provide for his son and the mother of his son, while she, wrapped in a coat to keep warm, looks on him with pity.

Moreover, rather than taking on the skeezer/ho image or the self-sacrificing Black woman/mother who gives her life for the sake of the Black man or race (who is incidentally rarely given a scripted part in the staged authenticity gangsta drama), his son's mother confronts him about his pitiful state and tells him she resents that their son has to see him in this condition. In the end, the two embrace, thereby showing the intimacy between a Black man and woman. This example offers another instance of how the film challenges dominant narratives and stereotypes. The dominant gaze is further subverted when the voyeur glimpses a scene with 50 Cent, a Black man, conspicuously present in the life of his son, not only playing with him on the beach but also apparently enjoying it.

One can even find evidence of contestation of the commodified gangsta image on rap recordings. For example, the Jadakiss' song “Why?” takes on a clearly political and serious tone (although it is wedded in between his other songs on the album glorifying the gangsta life), suggesting that George Bush had information about the September 11th terrorist attack on the World Trade Center before it happened. Jay Z, a multi-platinum rapper, who has reaped significant financial reward from his many gangsta antics, asserts in a track titled “Moments of Clarity,” in his album, *The Black Album*, that while he could rap positive rap like Talib Kweli or Common Sense, he would not make any money if he continued to do so. Given his (and most rappers) former situation as a young Black man in urban America who had to hustle to make ends meet, he asserts that he had to make the best of his situation as a rapper and rap about what made money. His lyrics suggest that he is aware that he is being exploited by the music industry and that he has chosen to take on and adapt the corporate-created and consumer-driven public image. The song suggests that he does this to reap some financial rewards to, in turn, help the inner city and its inhabitants.

By subverting the dominant gaze within the commodified realm of the mass media, rappers have managed to maneuver in a tight space and have contested media conglomerate and controlled musical homogeneity on the air-waves. While gangsta rappers' (and others') acts of contestation may seem small, such “small” acts of resistance, still have their place. They subvert the dominant meaning of the gangsta image. Expanding these spaces for

contestation and dialogue is necessary. The Telecommunications Act, however, has narrowed the access of some to such mediated dialogue.

IV. The Telecommunications Act's Role in Commodifying the Gangsta and Stifling Commentary in Hip Hop

The Telecommunications Act relaxed local ownership restrictions. Just one year after passage of the Telecommunications Act, "concentration in ownership mostly resulted from mergers involving the fifty largest owners ... [namely with] ... Chancellor Media, Clear Channel, Infinity, and Capstar, owning a majority of stations that play some of the nations' most popular formats"¹⁰ and, as a direct result of such deregulation, there was a decrease in diverse and available sounds, opinions, ideas, news and expressions to the mass audience.

To cultural critic, Mark Anthony Neal, "[i]n the aftermath of the Telecommunications Reform Act, the massive consolidation in radio has left fewer people making the decisions about what music will be played. The ten largest radio conglomerates in the U.S. control more than two thirds of the national radio audience, with Clear Channel and Viacom (which, incidentally owns both MTV and BET) controlling more than 40 percent of that. That these conditions impact what music you hear on the radio and the ability of local groups to get on their local radio station goes without saying."¹¹ Pursuant to the Communications Act of 1934, the Federal Communications Commission was authorized to grant licenses to stations for a definite and temporary duration and mandated to do so in accordance with the public's "convenience, interest or necessity."¹² Broadcasters were deemed as trustees of the airwaves, and the FCC believed that regulating local and national radio ownership was the best way to promote competition and diversity in the radio market. Thus, the FCC began placing limits on radio ownership "to encourage diversity of ownership in order to foster the expression of varied viewpoints and programming and to safeguard against undue concentration of economic power."¹³

However, during the early 1980s, there was an ideological shift about what would best serve and meet the needs of the public over the radio airwaves. Many believed that deregulation, including deregulation of media radio ownership, was the most effective means of ascertaining and meeting public demand. Such demand turned primarily on consumption habits and in treating radio content as a consumer good. It was this ideological shift in regulating the airwaves from the trustee model to what became known as the marketplace model that influenced the drafting of the 1996 Telecommunications Act. Critics of this regulatory approach argued that it failed to take into account the ways in which corporate-controlled mass media influences consumer demand.

Many scholars have also found that the FCC's move towards deregulation has been to the detriment of the public, given the resulting reduction in competitive access to, and diverse voices heard on, the air. Indeed, although "local stations were supposed to be assets to local communities [and] the ownership rules were designed to keep ownership as diverse as possible ... all that changed in the 1990's [with the passage of the Telecommunications Act]."¹⁴ Media conglomerates abandoned any commitment to the idea of the local interest. To maximize profits, they laid off hundreds, decimated community programming, and all but standardized play lists across the country. Prior to the passage of the Act, if a particular region had 20 radio stations, 20 different program directors (PDs) would likely

decide what would be played. A smaller group of PDs now decide, often ceding some of their decision-making power to regional and national program directors.

The changes affected local disc jockeys as well. To increase profits, some stations even replaced live local disc jockeys with prerecorded announcers. The disc jockeys had been the key to the radio industry because they understood local tastes and intricacies. In the late 1990s, conglomerate owned stations adopted software that allowed disc jockeys to "voice track" or "cyberjock" their shows by creating short sound bites where a computer patched together their shows by combining the pre-recorded vocal drops with listener calls, "songs, promos, sound effects and commercials stored on a hard disk."¹⁵ These cyberjocked shows would then be sent out to other conglomerate owned stations in other local and regional areas. As a result of cyberjocking and voice tracking, hundreds, if not thousands of DJ positions were eliminated by "simply having one company jock send out his or her show to dozens of sister stations. Thanks to clever digital editing, the shows still often sound[ed] local."¹⁶ Moreover, decreased music diversity resulted from consolidation because [b]y only adding a few new songs, the station did not risk offending an advertiser.

Fewer slots for new music on tightly controlled playlists resulted, thereby, making it increasingly difficult for new artists to enter the airwaves. As is evident by the narrow range of rap music currently dominating the air-waves, it is obvious that hip hop and its artists have felt the negative effects of media conglomeration on access to the airwaves. An example of such negative effects is the once thriving, pre-Telecommunications Act adulterated, hip hop scene at KMEL-FM, one of the first leading hip hop stations in the country, in the San Francisco Bay Area.

KMEL was one of the first Top 40 cross-over pop stations in the nation to abandon its pop format, embrace rap, and target young multi-racial audiences with hip hop, dance, and freestyle rapping. Its programs, *Street Knowledge* and *Street Soldiers* with radio personalities Davey D and Cameron Paul, were particularly well known for discussing the social issues that confronted the Bay Area urban community. Although much smaller than the major cities of Chicago, Miami, and Los Angeles, the Bay Area station became the number two music station in the fourth-largest radio market in the country, commanding the largest radio audience among the highly coveted 18-to-34 demographic. It thrived with its music and talk shows, community oriented programming, and its pioneering Summer Jam concerts, which were soon imitated throughout the country. Moreover, in the Bay Area, competing stations often relied on and deferred to the judgment of mix show DJs to showcase new local artists who churned national hits and contributed to the massive growth of the local urban radio audience.

With the passage of the Telecommunications Act however, San Francisco's two most popular radio stations, KMEL and KYLD, were both bought out by the same company and its resources consolidated. These stations, prior to 1996, had competed for listeners by developing and showcasing diverse new talent and local community affairs. After a series of subsequent corporate mergers, both stations KMEL and KYLD landed in the hands of Clear Channel. This series of changes resulted ultimately in a format change of KMEL to prevent cannibalization of sister station KYLD. KMEL and KYLD's playlists soon looked and sounded exactly the same, playing the same music and countdown songs on any day of the week. With conglomeration, community affairs programming was drastically reduced, local and mixshow DJs were fired, specialty shows were discontinued. Playlists were narrowed, thereby limiting the ability of new and upcoming artists, who were without major record label financial backing, to gain access to the airwaves.

The passage of the Telecommunications Act of 1996 has led to the development of huge corporate media conglomerations in radio, who in turn control the radio airwaves and its content. The Act has helped to make it virtually impossible for alternative voices in rap (either by the gangsta rappers themselves through their alternative “positive” tracks or by other “positive” rap artists) to be heard on the radio, since corporate conglomerates are less concerned with diversity in ideas but in meeting market created consumer demand for such lyrics. The songs of rappers considered to be more “positive,” such as Common, Talib Kweli, Mos Def, The Roots and Dead Prez are not played on the radio nearly as much as those of the gangsta rappers. For producer Buckwild, a Bronx native and producer of numerous successful commercial and indie songs and artists, the hip hop game is creatively dying, particularly in New York, because of

[the] one-artist saturation thing: Whoever’s hitting it at one time runs the whole game. There’s no diversity. The classic time for hip-hop was ’94 and ’95 when you had ten different artists running the game. You had Wu-Tang, Nas, Mobb Deep, Biggie, Puffy, and a Tribe Called Quest. You had mad different flavors because no two artists were the same.¹⁷

Because the Telecommunications Act of 1996 has led to the corporate conglomeration of radio, it, ultimately, has led to the limiting of discursive space within the hip hop community. Rappers and others have attempted to pry open that space by other means, and by, what some would characterize as “small” acts of resistance. These acts of resistance are important given the limited space in which there is to maneuver. Whether on their albums or in other media outlets, such as television, film, satellite radio or the internet, rappers and others have begun to expand, yet again, the notion of where and how discourse may occur. More space, however, must be made for those that have not reaped the same visibility or financial reward as gangsta rappers. In order to achieve a greater democratization of the nation’s radio air waves, the law should encourage, rather than limit, such dialogue. The Telecommunications Act has however stifled this process of dialogic democracy. It has served to further marginalize the alternative or subversive voices of women and rappers, (including gangsta rappers) that would serve to challenge the views, beliefs, interests, or cultural meanings inscribed by the corporate media conglomerates.

Endnotes

1. Jeff Chang describes how, at one point, South Bronx housing units spanning the equivalent of four square blocks were burned down in a week, leaving thousands of vacant lots and abandoned building throughout the borough. Despite the growing blazes, seven fire companies in the Bronx were closed down along with thousands of firefighters and fire marshals laid off. Chang, *Can’t Stop, Won’t Stop*, 15. Moreover, crack served as a temporal escape from the realities of abject poverty, but unlike other temporal releases of the past like religion or music, it helped to destroy community relationships, increased Black on Black crime, and because it was relatively easy and inexpensive to make, led many youth to believe that the sale of it was a viable career option that would lead to upward mobility. Neal, *Postindustrial*, 369.

2. Rose, *Black Noise*, 18. Through other groups like Boogie Down Productions, Blacks and other listeners learned about Black history, heroes and sheroes, intellectuals, scientists, political theorists—all information that was not readily available (or even acknowledged) by the dominant discussion on Blacks and race relations. Dyson, “The Culture of Hip Hop,” 66.

3. Aoki, “‘Foreign-ness’ and Asian American Identities,” 59.

4. Kelley, “Looking for the ‘Real’ Nigga,” 130.

5. *Ibid.*, 153. Samuels analogizes White consumption of rap with the staged authenticity of tourists.

Staged authenticity is defined as the paradox of the tourists who are searching for the real in their touristic travels and yet only see the front of the stage, without recognizing or reacting to the back stage processes of production and commodification.

6. Aoki, "Foreign-ness," 1.

7. *Ibid.*, 59.

8. Harris, "Race and Essentialism in Feminist Legal Theory," 614. See also Lears, "The Concept of Cultural Hegemony," 570.

9. Merry asserts that although small acts of subversion are characteristically individual acts of resistance that do not, for the most part, rise to the level of protests movements like that of the 1960s civil rights era, such acts are still very important when power is understood in the context of social relationships and discourses. While these individual acts of resistance may not be inspired by a vision of a more just society and do not generate social movements, they are nonetheless "political activity which does not conform to conventional understandings of politics, yet is engaged in struggles over power." Merry, "Resistance and the Cultural Power of Law," 15–16.

10. Van Alstyne, "Clear Control," 640.

11. Neal, "Rhythm and Bullshit?"

12. Varona, "Out Of Thin Air," 151.

13. Prindle, "No Competition," 272.

14. Boehlert, "Radio's Big Bully."

15. *Ibid.*

16. *Ibid.*

17. Thomas, "Buckwild: Still Diggin." For a discussion of how female rappers and female R & B groups fit into this diverse conversation within hip hop, see Pough, *Check It While I Wreck It*, 20.