WHO SHOT YA: RAP BEEF "DISS" TRACKS AND THE FIRST AMENDMENT.

ANDRES FLORES, Thomas Jefferson School of Law

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What’s beef?
Beef is when you need two gats to go to sleep
Beef is when your moms ain’t safe up in the streets
Beef is when I see you
Guaranteed to be in ICU . . . .¹

ABSTRACT

The purpose of this Article is to add to the volume of scholarly work in the area of First Amendment protections for rap artist who create so called “diss” songs aimed at disrespecting their competitors and their possible liabilities for such songs. It is evident that rap music has become a permanent part of popular music, and as the market grows smaller and competition gets tougher rap artist must find new way to break into the industry and stay relevant. One of the ways rap artist do this is by creating a controversy with other, more established rappers. These tactics usually lead to a “beef” between rap artist, which many times lead to violence on the streets, either between the rappers, their entourage, or even fans.

There have been many attempts to hold rap artist liable for violent or sexual explicit lyrical content most of which have failed. The primary reason for that failure is because courts have been reluctant to remove First Amendment protection for these works based on the Brandenburg Test. This Article will address the immanency and foreseeability issues of both the

¹ THE NOTORIOUS B.I.G., WHAT’S BEEF? (Bad Boy Records 1997).
Brandenburg Test for incitement of lawless action and the Fighting Words Exception within the framework of rap “beefs” and ‘dis’ tracks. This article will also analyze the feasibility of regulation of songs that are commercial in nature under the Commercial Speech regulation. In order to aid in the analysis of these issues this article will discuss the history of rap beef through rap battles, the marketability and media coverage of rap beef, types of “dis” songs, technological and social advances, and specific examples of beef between artists and their consequences.

INTRODUCTION

Popular culture has always been a fluid and trend driven creature, styles, fashion, and even music have come and gone as society’s tastes change. However, one enduring staple of popular culture has been rap music. Rap music has morphed from decade to decade since its birth in the 1970s. From the urban streets to MC Hammer to gangster rap, it has endured even as other genres of music like disco or grunge have faded. It has carried on in large part, because of the urban culture that surrounds it and the acceptance of the genre by youth in America and beyond.²

There have been many attempts to hold rap artist liable for violent or sexual explicit lyrical content most of which have failed. The primary reason for that failure is because courts have been reluctant to remove First Amendment protection for these works based on the Brandenburg Test. This article will address the immanency and foreseeability issues of both the Brandenburg Test for incitement of lawless action and the “Fighting Words” exception within the framework of rap “beefs” and ‘diss’ tracks, and the possibility of such music falling within

² Theresa A. Martinez, Images of the “Socially Disinherited”: Inner-City Youth in Rap Music, 10 J. L. & FAM. STUD. 111, 118-119, (2007). This article discusses the duel nature of rap music both as a depiction of inner-city youth and as a main-stream commercial product.
the commercial speech regulation. In order to aid in the analysis of these issues this article will
discuss the history of rap beef through rap battles, the marketability and media coverage of rap
beef, types of “diss” songs, and specific examples of beef between artists and their
consequences. The main goal of this article is to address whether rap artist can be held liable for
their songs that diss other artists given the nature of modern technology and instant information,
and if not whether such songs can be regulated under a commercial speech theory.

Since “gangster” rap was popularized by artists like N.W.A and Ice-T, rap music has
been under fire but, much like the radical music of the decades prior that parents hated, it
survived. Today, rap music has grown into a full-fledged industry that is currently suffering, in
part, because of internet downloads and the severe decrease of record sales. This has lead to
strong competition among rap artists for market share in what is a struggling industry. This
competition, coupled with the “gangster” mentality, has lead to much conflict within the genre
and these tactics usually lead to a “beef” between rap artist, which many times lead to violence
on the streets, either between the rappers, their entourage, or even fans. Much of this conflict has
found its way into the recording studios and back onto the streets in the form of violence.

This violence has been perpetuated by rap artists via “beef” and diss tracks that call for
violence against other rappers, all while attempting to discredit and crush the careers of their
competition. Such irresponsible and materialistic attitudes totally ignore the violence it
perpetuates and has created a legal conundrum. Music as an art form has always gotten First

Amendment protection.  However, when applying legal analysis in the modern climate of instant information and the internet, it would seem that a reevaluation of that premise should be taken when looking at “diss” tracks. This is in large part because technology has made most facets of the industry instantaneous and has bridged the gap between performance and distribution that has protected rap from incitement and “fighting words” exceptions to the First Amendment. Given the bridge of this gap courts should begin the process of bridging the legal remedies for these “diss” tracks by categorizing them, under specific conditions, as incitement or “fighting words” which could lead to liability for rap artists. In addition to this assertion, a strong argument can be made for regulation of these tracks under the commercial speech theory because they are arguably a simple form of advertising.

II. RAP BATTLE ROOTS

To understand rap beef and diss tracks it is important to understand the origins of rap music. Rap music is part of a larger genre of music. That larger genre is called Hip Hop. To many, Hip Hop is more than music; it is culture, poetry, dancing, and painting from an urban perspective. Hip Hop music, arguably, began in the Bronx, New York, stemming from a mixture of gang culture, poverty, and immigration. Before Hip Hop and rap music became popular with the 1979 release of Sugar Hill Gang’s “Rapper’s Delight,” it was confined to the clubs and

6 Emmett George Price III, Hip Hop Culture 4-10 (2006).
7 The Sugar Hill Gang, Rapper’s Delight (Sugar Hill Records 1976).
street corners of the Bronx, where DJs toasted over instrumental music at house parties and clubs to get the crowd in a good mood.  

This practice eventually gave way to the “MC,” or master of ceremonies. With the popularity of DJs and MCs came competition. Rap artists began attempting to see who was the better lyricist, with or without the DJ, hence the rap battle or freestyle battle was born. 

This exercise in competition was usually impromptu rhyming involving disparaging remarks about the opponent while touting their own skill and superiority. This exercise gave credibility to the rapper that could “win” the competition. Generally, the winner was chosen by the “oohs” and “ahhs” of the crowd and more recently there have actually been rap battle competitions with judges and cash prizes. Many famous rappers, including the likes of Notorious B.I.G. and Eminem, have begun their careers in this fashion.

III. WHAT’S BEEF? IS IT MARKETABLE?

At some point, the lyrical competitions began to find their way to the recording studios. So the question becomes what is a “Diss song” or “Beef” for that matter? The term “diss” comes from the word disrespect. Put simply a diss song is one that disrespects another artist or person. Along the same line, a “beef” is simply a quarrel between artists that may or may not manifest

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10 Freestyle Battles and Rap Battles at Lets Beef, http://www.letsbeef.com (last visited Nov. 28, 2009). This website allows rappers to upload battle songs which are then ranked and the rappers are pitted against one another to see who is the best rapper.
itself on a recording, however, in the current state of rap music, it would seem that most rap “beef” finds its way to the recordings, whether it be for commercial or personal reasons.

One way that many artists stay in the tabloids and magazines is through beef. Everyone loves a quarrel as many Hip Hop magazines follow the beef religiously and some websites are dedicated specifically to the investigation of rap beef. Many rappers cash in on such beef because the controversy keeps both rappers in the forefront of these websites and magazines, and many fans are anxious to hear what the rappers say about one another. It has become evident that rap beef is good for business, it increases sales and exposure. This commercialization of rap beef has led some to question the sincerity and motive of the disputes.

With the competitive nature of rap and the disparaging nature of diss tracks there are several problems that have surfaced. As many artists begin to compete with one another their personal quarrels begin to find their way into the market, and rappers have become more and more cut throat in there diss songs. One example of this is Eminem’s beef with rapper Everlast. This beef began when Everlast (formally of Irish rap group House of Pain, which had some success in the early 90s with their song “Jump Around”) felt he was disrespected at a concert by Eminem because he failed to acknowledge him. After a few songs back and forth, Eminem

12 Hip Hop Beef, http://www.hiphopbeef.com (last visited Nov. 28, 2009). This website is dedicated to keeping up on all the latest beef in hip hop. Including, which beefs have been resolved and which are actively in dispute.
13 Mariel Concepcion, *Rick Ross vs. 50 Cent: Behind the Beef*, BILLBOARD, April 24, 2009, http://www.billboard.com/feature/rick-ross-vs-50-cent-behind-the-beef-1003966407.story#. This article addresses the increase in sales for both Rick Ross and 50 Cent after their beef commenced. The increase in sales is significantly more than 50% in their back catalog of albums. The other issue addressed in this article is that both rappers are on labels that are owned by Universal Music Group, which reaps the reward of the beef.
released the song “Quitter,”\(^\text{16}\) the lyrics of which ask the fans to commit acts of violence against
Everlast on his behalf.

“Alright listen /So this is what we ask of our fans/ If you ever see
Everlast/ Whoop his ass/ hit him with sticks, brick, rocks, throw
shit at him/ Kick him, spit on him, treat him like a ho/ bitch-slap
him/ Do it for me/ Do it for Fred, Do it for Limp . . . ./\(^\text{17}\)

A month after the release of this song Everlast was attacked at a show in Detroit\(^\text{18}\) that
left several security guards injured and much of the group’s equipment damaged after Everlast
was quickly escorted out of the venue in the middle of the group’s performance. Though this
incident cannot be linked directly to the song “Quitter,” a strong argument can be made that fans
acted on the song, especially since the attack happened in Eminem’s home town of Detroit. So
the question remains, does the First Amendment protect this type of speech?

**IV. 99 PROBLEMS BUT THE FIRST AMENDMENT AIN’T ONE**

The First Amendment does not protect all speech. The United States Supreme Court has
identified certain types of speech that do not warrant Constitutional protection. One of these
areas is speech that is likely to “incite lawless action.”\(^\text{19}\) In addition to incitement, the Court
established the “fighting words” doctrine which does not give protection to words that would
instigate a violent response. Lastly, there has been a separate category for what can be called
commercial speech, which, though still given some protection under the First Amendment, that
protection is greatly reduced on account of the fact that the speech only conveys a commercial
message. The Court has established a two-part test when addressing the incitement questions.

\(^{16}\) Id.
\(^{17}\) Id.
\(^{18}\) Andrew Dansby, *Violence Halts Everlast Show*, ROLLING STONE, Feb. 6, 2001,
First, is the speech directed at inciting imminent lawless action and, second, is the speech likely to incite such action? This two-part test, more commonly known as the Brandenburg Test replaced the older “clear and present danger” test.

A. Brandenburg: Incitement

The Brandenburg test, though stated as a two part test actually has three elements. First, the court must determine if the speech was explicitly or implicitly designed to encourage the occurrence of the unlawful act. Second, whether the unlawful act was sanctioned by, and a likely foreseeable result of the speech. Finally, whether the speech was directed to incite and likely to result in imminent lawless action. Many challenges to the protection of rap music fail based on the foreseeability and imminence issues. Many of these challenges have been for music that advocated violence against law enforcement. Some courts have dismissed the idea that music lyrics have any imminence simply by the nature of the recording, stating:

“. . . [M]usical lyrics and poetry cannot be construed to contain the requisite "call to action" for the elementary reason that they simply are not intended to be and should not be read literally on their face, nor judged by a standard of prose oratory. Reasonable persons understand musical lyrics and poetic conventions as the figurative expressions which they are. No rational person would or could believe otherwise nor would they mistake musical lyrics and poetry for literal commands or directives to immediate action. To

24 Id.
do so would indulge a fiction which neither common sense nor the First Amendment will permit.”

The court adds that this is especially true when the performance is “temporally remote from the listener.” With these types of statements it would seem that the court has made up its mind with regards to music liability.

1. Underground Mix Tapes in the Information Age: Imminence and Foreseeability?

The downturn in the music industry has had an effect on Hip Hop and it has pushed it underground again. The medium for this underground surge in Hip Hop is the underground mix tape. In essence, rap mix tapes are a way to stir up buzz for an upcoming album or unknown artist. They are sometimes sold on street corners or passed on by word of mouth, and the success of these mixed tapes has lead to some prominent rappers releasing tracks online for free. Mix tapes are usually the avenue for release of diss tracks, most likely because they are easy to release outside of the traditional record label structure. Some have called them the newspapers of rap beef, allowing fans to remain updated on who is feuding with whom, and what new artist is worth listening to.

26 Id.
27 Andre L. Smith, Other People’s Property: Hip-Hop’s Inherent Clashes With Property Laws and Its Ascendance as Global Counter Culture, 7 VA. SPORTS & ENT. L.J. 59, 70 (2007). Professor Smith discusses the how the original bootleg, or what I call the underground mix-tape, started with the creation of rap music on account of disregard by record companies of the genre. In addition, Professor Smith notes that the new bootleg is the internet download, which is largely attributed to the decline in corporate profits.
30 Id.
To put this in to a larger context, we live in an instant information age. Not only do we get instant information via the internet on important issues but, with the popularity of social networking sites like Twitter and Facebook, we now get information instantly from our friends, family, colleagues, and favorite artist. This trend has spread to Hip Hop and rap music via mix tapes; they are the “status updates” of beef. This fact blurs the bright line of imminence. The court seems to imply that because something is recorded, it is remote from the listener. However, in the age or modern technology this assumption seems to be less valid. An artist can create a song and post the song, for free, on their website or they can leak the track to underground mix tapes and listeners can hear it instantly.

The fact that we live in the instant information age, coupled with the direct call to action like Eminem’s song “Quitter,” leaves no alternative to literal interpretation. When this message is broadcast immediately to the masses the threat directed at one individual becomes imminent. As far as foreseeability is concerned, diss tracks, unlike subliminal messages or anti-law enforcement gangster rap, are specific attacks on one or a few individuals. To use a legal term, one can say that the artist’s attacks are “narrowly tailored.” This makes the class of people affected much smaller and easier to foresee. This is important because if the class is easier to foresee then the court might be more apt to allow liability for these types of songs.

31 Social networking sites such as www.twitter.com and www.facebook.com, give users the ability to post short messages that get sent to all their contacts that either sign up to receive the updates or have added the user as a “friend.” This technology has spread to many other areas including news, media, advertising, sports, and music. Many users post personal messages, music, and even links to articles and websites via these networking sites. 32 See McCollum, 249 Cal. Rptr. at 190. In this case, the court saw the message as being on that life is full of despair and suicide is a completely acceptable action.
B. Fighting Words on Wax

Another exception to First Amendment protection is the doctrine of “fighting words.” This doctrine stands for the proposition that words, “which by their very utterance inflict injury or tend to incite immediate breach of the peace.”\(^{33}\) The Court has said that “resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.”\(^{34}\) This test requires that the speech be conducted in a face to face manner, and that “men of common intelligence would understand [to] be words likely to cause an average addressee to fight.”\(^{35}\)

Though this might not seem to apply in the case of rap beef or diss tracks because of the deficiency in the first element of the test, it is important to apply the societal perspective on the issue. It would be a great error to blindly protect this type of speech simply because it is not face to face. This mentality of protection for music disregards the changes in our society and technology to the point that not only are individuals being injured, but our society and culture are suffering as well. As mentioned in the discussion of imminence, times have changed since the court established the test for the “fighting words” doctrine. Given the current state of technology and instant information, it is not difficult to foresee situations where this information can be communicated instantly. Mobile phones were not even invented when these doctrines were instituted by the Supreme Court. Today, an artist can record a song, upload it to the internet, and users can download those songs to their personal devices instantly.\(^{36}\)


\(^{34}\) ld.

\(^{35}\) ld. at 573.

\(^{36}\) Cellular phone technology has advanced to the point where iPhones and other devices have become like a personal computer, allowing users to browse the internet, send text messages, store media, view videos, and even record video and audio.
face-to-face statements and technology has not been completely bridged, it will not be long before this does occur under current trends. This deficiency does a great disservice to the community in that it allows rap artist to further their economic interest without thought or consideration for the violence that can manifest in the streets because of their actions.

As mentioned before, the precursor to rap diss tracks were rap battles, which were face to face and intended to belittle the opponent. What has transpired since then is troubling. Many rap beefs and diss tracks have lead to acts of violence on the streets. Many shootings and violent encounters have been linked to rap beef, some involving very prominent rap artists like 50 Cent and The Game. Aside from the rap artist that has a professional quarrel with another artist there are also legitimate gang members, or in some instances the gang has a whole, which put out music and albums dedicated to dissing or cohesively attacking rival gangs.

When looking more closely at the essence of rap diss song lyrics it is easy to see that they are the epitome of fighting words that would lead person of common intelligence to fight. One of the most popular and vicious rap battle tracks was released by Tupac Shakur featuring the Outlawz, entitled “Hit Um Up.” This song was directed at The Notorious B.I.G. after Tupac was shot and robbed entering a New York recording studio where The Notorious B.I.G. and

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37 Shaheem Reid, 50 Drops Game From G-Unit; Shots Fired At Radio Station, MTV NETWORKS, Feb. 28, 2005, http://www.mtv.com/news/articles/1497589/20050228/50_cent.jhtml. Rappers 50 Cent and The Game were both members of the group G-Unit, and they eventually had a falling out. During a radio interview about the incident, shots were fired that left one member of The Game’s entourage injured. This dispute eventually lead to many mix tapes and diss tracks.
38 See generally CRIPS, NATIONWIDE RIP RIDAZ (Quality Records, 1995); BLOODS & CRIPS, BANGIN ON WAX (Quality Records, 1993). These albums like are examples of gang music intended to “rally the troops” to commit acts of violence against rival gang members.
producer Sean Combs had been recording. Tupac believed that they were somehow involved in the shooting.  

“The First off, fuck your bitch/And the click you claim/ West side when we ride/ Come equipped with game/ You claim to be a player/ But I fucked your wife/ We bust on Bad Boys/ niggas fucked for life/ Plus Puffy tryin’ to see me weak/ Hearts I rip/ Biggie Smalls and Junior Mafia/ Some mark ass bitches/ . . .”

The song continues for several verses performed by members of The Outlawz that degrade members of The Notorious B.I.G.’s entourage and Bad Boy Records artists before ending with a spoken word threat from Tupac himself.

“We’re gonna kill all you motherfuckers./Now when I came out, I told you it was just about Biggie./Then everybody had to open their mouth with a mother fucking opinion/Well this is how we gonna do this:/ fuck Mobb Deep./fuck Biggie./fuck Bad Boy as a staff, record label, and as a mother fucking crew./And if you want to be down with Bad Boy./Then fuck you too.”

This rap diss track was released in June of 1996 and three months later, in September of 1996, Tupac Shakur was shot and killed after leaving a professional boxing match in Las Vegas. Six months after the death of Shakur, The Notorious B.I.G. was shot and killed leaving an album


41 Bad Boy Records, Founded by Sean “Diddy” Combs was the record label to which Notorious B.I.G. was signed to.
42 Just a brief note, Notorious B.I.G. is also commonly know and Bigge Smalls, or simply Biggie
43 Junior Mafia is a rap group that was put together by Notorious B.I.G. comprised of his friends from the neighborhood including the likes of Lil Kim, Capone, and Lil Cease.
44 See SHAKUR, supra note 39.
45 Id.
release party in Los Angeles.\textsuperscript{47} It is clear to see that the impact of certain types of lyrics greatly outweighs the small gap of face-to-face interaction, which will likely be bridged with technology.

\textit{C. Diss Tracks as Commercial Speech}

It is difficult to fathom the idea that these lyrics, as unpleasant and crass as they might be, should be regulated. However, the Court has allowed regulation of speech that it categorizes as “commercial speech.”\textsuperscript{48} Commercial speech has been defined as speech that “proposes a commercial transaction” and “related solely to the economic interests of the speaker and its audience.”\textsuperscript{49} When looking closely at rap diss songs it is easy to see that some may fall into this category.

As mentioned before, many diss tracks are distributed outside the traditional means, either via underground mix tapes or internet downloads. Many times these tracks are leaked onto the market free of charge in an attempt to promote a rapper’s upcoming album or to build support for a specific rapper.\textsuperscript{50} Even when looking at the content of most rap battle songs, they are in essence promoting themselves while degrading opponents.\textsuperscript{51}

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\textsuperscript{49} Id.
\textsuperscript{50} Evan Serpick, \textit{How Lil Wayne Became a Superstar: Mixtape Strategy Pays Off With New “Tha Cater Ill}, ROLLING STONE MAGAZINE, June 2008, available at \url{http://www.rollingstone.com/news/story/21128373/how_lil_wayne_became_a_superstar}. Artist Lil’ Wayne released over a hundred tracks prior to the release of his new album that went on to be the top selling album of 2008, according to the Billboard Music Charts.
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This is much like the formula for basic advertising. Many advertisements for products compare their product to other similar ones on the market. In this case, rap artists compare their product (rapping skill) to that of other artists in the genre. In fact, some rappers have been forced out of the market by rap diss tracks. Artists like Ja Rule have all but disappeared from the minds of the public after losing a rap battle with 50 Cent and Eminem.\footnote{Glenn Gamboa, \textit{Rappers Find ‘Gangsta’ Sells}, ORLANDO SENTINEL, Oct. 11, 2004, available at \url{http://www.orlandosentinel.com/news/custom/offbeat/nyc-etcov1011_0_6510051.story}.} In addition to advertising against artistic opponents, some rap artists have used diss tracks as a medium to challenge rap magazines and other sources in what can be described as negative campaigning:

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“Talking about I have motherfuckers calling your crib/ bitch you aint even got a fucking crib/ You aint even got a fucking phone /fucking bum/ Threatening to shut me down at your little fucking Source magazine if I come back then you would attack me/, bitch you attacked me first/ take it like a man and shut the fuck up/ and fuck your little magazine too I don’t need your little fucking magazine./ I got XXL number anyway/ And yall can’t stand it cause they’re getting bigger than yall/ oh, and by the way, how’d I look on the VMAs?”\footnote{EMINEM, \textit{NAIL IN THE COFFIN}, (Shady Records 2004).} \footnote{See Central Hudson, 447 U.S. at 557.}
\end{quote}

These types of lyrics, when broken down to their essence, are endorsements of a specific magazine over another. In rap music, particularly gangster rap, street credibility plays an important part in getting the public to purchase your product. These rap diss tracks focus on ruining an opponent’s street credibility in order corner their own piece of the market.

Simply being categorized as commercial speech is not enough to warrant regulation. There is also a four part test that a state must follow in order for the regulation to be valid.\footnote{See Central Hudson, 447 U.S. at 557.} First, whether the speech at issue concerns lawful activity and is not misleading; Second, whether the asserted government interest is substantial; Third, whether the regulation directly
advances the governmental interest asserted; and Fourth, whether it is not more extensive than is necessary to serve that interest. In order for rap diss tracks to be regulated by the state, each element must be met. Given the level of violence that has resulted from these rap beefs, the government would likely assert a public safety theory for regulating such speech. Public safety has traditionally been a substantial government interest. A regulation of these lyrics can directly advance this interest by reducing the amount of conflict in the Hip Hop community.

The most difficult element will be whether the regulation is narrowly tailored. The problems that will occur if a state attempts to regulate rap beef and diss track will be three fold. Identifying the type of lyrics to regulate, the parties involved, and the “stop snitchin” attitude of the Hip Hop community will create problems for states attempting to regulate rap beef. In order to regulate these rap beefs and diss tracks the state will have to narrow down the types of lyrics it will regulate.

One way to accomplish this is to regulate only lyrics that directly identify another person and call for violence against that person. The problem with this is that some diss tracks use what can be called “urban identification.” What this means is that people in the Hip Hop community, or of a certain geographical location, may be able to identify the disrespected party simply by the fact that they understand the slang of Hip Hop. If a rap artist uses analogy, or facts

55 See Central Hudson, 447 U.S. at 564.
57 “Stop Snitchin” in essences is a movement advocating that individuals not cooperate with law enforcement. It began as an unspoken rule among criminals that they would not help convict fellow criminals by giving information to law enforcement, however it has spread to many urban communities and its citizens.
58 Urban Identification can be described as identification by urban common knowledge. Many rap communities are closely knit communities that can identify places, events, and even people referenced in songs, simply by the mere fact that they are members of the same community. On a greater scale, Hip Hop fans have become well informed as to what is going on in the community as a whole and this ability to stay informed means that they also understand the subtle references in rap songs.
known to the community to identify the disrespected party, a court, or for that matter the state, may have difficulty in enforcing a regulation.

The problem of “Urban Identification” can be seen in the song “Who Shot Ya” by The Notorious B.I.G.\(^59\) Though producer Sean Combs and The Notorious B.I.G. claim the song was recorded well before Tupac Shakur was shot, many people, including Shakur himself, believed that the song was a diss track mocking him for the shooting and robbery that occurred at a New York recording studio.\(^60\) This is in stark contrast to songs like Eminem’s “Quitter” which plainly identify the intended party.

In order for the state to be able to regulate the lyrics in rap beef, the lyrics must be clear as to the intention, the party, and the action to be taken. This will allow the state to argue that there is foreseeability in the actions that might occur, much like Everlast being attacked at a show after Eminem asked fans to attack him. Though many in the Hip Hop community might take offense to the regulation of lyrics, it is the contention of this paper that such regulation will in fact make rap better. Anyone can make direct threats to another on a recording, but requiring rap artists to be more creative with their lyrics to avoid regulation can only increase the quality of rap music.

The other problem is more of a cultural, rather than logistical, problem. To regulate the lyrics people in the community will have to come forward with information regarding the songs that might be in violation of the regulation. In fact, it may even require that the identified party come forward. The problem presented here is the urban community’s fear and unwillingness to cooperate with law enforcement. Evidence of this fear can be found in the many “stop

\(^{59}\) **THE NOTORIOUS B.I.G., WHO SHOT YA?** (Bad Boy Records 1994).

\(^{60}\) See generally **TUPAC RESURRECTION** (Paramount Pictures 2003).
snitching” campaigns. This slogan is being plastered on t-shirts in the inner cities promoting this mentality of silence and unwillingness to cooperate.⁶¹

This mentality goes deeper than simply fashion; it has been around urban communities for decades arguably stemming from the communities’ fear of police. It is no secret that police brutality affects urban communities and that, coupled with the fear of retaliation from gang members, has made “stop snitching” into a full-fledged culture in the urban community. Anderson Cooper investigated the culture of “stop snitching” in an exposé on 60 Minutes, making the claim that some artists will refuse to cooperate with law enforcement because doing so would greatly damage their street credibility, and therefore their record sales.⁶²

The “stop snitching” mentality creates more reasons for regulation. Part of the problem is that crimes go unsolved. To this day, there have not been any convictions, or even suspects, in the shooting deaths of The Notorious B.I.G. or Tupac Shakur.⁶³ The problem is that because of “stop snitching” we cannot find and convict the perpetrators of these crimes. We do not know whether they are actually members of the rappers’ entourages, fans, gang members, or even a rap artist themselves. The legal community has a responsibility to find a way to stop these crimes and when traditional means like criminal convictions fail, creative responses are the only alternatives.

V. LOSS OF PROTECTION FOR LYRICS

In the current legal system, many rap lyrics are beginning to lose protection as art. The primary reason is that gang members are using lyrics as a way to shield their activities. It has

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⁶³See generally TUPAC RESURRECTION, supra note 60.
become a recent trend to allow rap lyrics into evidence against the accused in criminal trials.\textsuperscript{64} This is not to suggest that rap lyrics should continue to lose protection, only that the courts have a system in place to introduce such evidence, although admittedly only for a limited purpose. This illustrates that courts have begun to realize that rap lyrics can be, and sometimes are, more than an artistic expression, and they can show intent, motive, knowledge, and identity. This is important because lyrics can express more than just fiction, but real events occurring in real time.

These lyrics have been used to show that the accused is familiar with certain illegal activities, slang phrases, and past criminal acts.\textsuperscript{65} It has been argued that allowing this evidence at criminal trials would be like admitting the movie “\textit{The Godfather}”\textsuperscript{66} to show that Mario Puzo was a member of the mafia. However, the court has likened the admittance of such evidence as showing that Mario Puzo has knowledge of the nature and structure of a mafia organization, saying that the prejudicial nature of such evidence does not outweigh the probative value.\textsuperscript{67} This is an example of how the courts view rap lyrics and how there has been at least a small shift in their protection.

So, what would happen if an artist like Everlast brought a lawsuit against Eminem for his assault under a negligence theory? Would the court admit lyrics from the song “Quitter” as evidence in a civil trial? That remains to be seen and, with the “stop snitching” attitude, will probably never be seen, but a strong argument could be made for their induction. This theoretical example demonstrates that, in some instances, artists can be liable for their lyrics. Many artists are of the belief that they are not “role models” and that they can simply put out

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\textsuperscript{64} United States v. Foster, 939 F.2d. 445 (7th Cir. 1991).
\textsuperscript{65} \textit{Id} at 455.
\textsuperscript{66} \textit{THE GODFATHER} (Paramount Pictures 1972).
\textsuperscript{67} Foster, 939 F.2d at 456.
\end{flushright}
music with no regard for the consequence. There are severe consequences, and part of their mentality is due to the fact they have never been shown the consequences of their actions. There has never been any liability for their actions.

**CONCLUSION**

One thing to note in the summation of this topic is that, although an argument has been made for the regulation of certain rap lyrics, not all rap music is bad, nor will all result in actual physical violence. Rap songs, including diss tracks, when done appropriately in a strictly “artistic” manner, are, and should be considered, an art form. The problem is that many artists have become lazy in their use of their abilities with no thought about the impact that this might have on another person, or on the Hip Hop community as a whole.

The problem of beef in the Hip Hop community has caused much pain and heartache, including the loss of several extremely talented rap icons. It is plain to see the impact diss tracks have had on the Hip Hop community. If this trend continues it will become a problem that the legal community will be forced to address. There are solid arguments to be made on many fronts, including applying traditional First Amendment exceptions to diss tracks, the strongest being the idea that this speech is commercial in nature. The bottom line is that there is no other motivation for diss tracks other than personal advancement. There is no commentary on social issues and it is not motivated by a need to express oneself artistically. It is a comparison of two products gone wrong. This is in stark contrast to rap music that has traditionally been focused on social, economic, and political issues.

If rap artists do not take it upon themselves to protect their art form, it may become exposed to regulation and loss of First Amendment protection. This protection has already
started to fade with the use of lyrics in criminal trials and, barring some radical change among rap artists that use diss tracks, the veil surrounding rap music may be pierced. This might not be a bad thing for the rap community. It will force artists to take responsibility for their community and they will no longer be allowed to ignore their status as a role model to the community all the while profiting from it. If anything, it will make for better, more complex, and interesting rap songs that avoid the simplistic call for violence against their competitors, and it may save the industry in the process.

*Andrew Flores*