

***No Infringement Intended* — When Does a Beat Make You a Co-Writer?**

Hosts: Rusty Close and Austin Padgett

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Austin Padgett (00:13):

Come one and come all. Welcome to *No Infringement Intended*, an intellectual property podcast of our law firm, Troutman Pepper Locke. Hosted by the so-called 'Bad Boys of Intellectual Property', Austin Padgett – that's me – and the 2006 *Time Magazine* Person of the Year, Rusty Close.

Rusty Close (00:31):

It was a great day for me.

Austin Padgett (00:33):

I keep giving away all my jokes, but that's one of my favorites because it's the famous "You" mirrored cover.

Rusty Close:

I remember that.

Austin Padgett:

You can introduce anyone as the 2006 *Time Magazine* Person of the Year. All right, let's get back to it. While you're settling in for the episode, dear listener, make sure that you're subscribed. As always, give us five stars. That's the currency of the land. Particularly now that *Star Search* is back, I think five-star ratings are more important than ever. Rusty, quick side note, did you see that *Star Search* has returned on Netflix?

Rusty Close (01:02):

I was not aware of this. Who are the hosts? Anyone I would know?

Austin Padgett (01:06):

Jelly Roll is on there. Chrissy Teigen and Sarah Michelle Gellar.

Rusty Close (01:12):

Wow, okay. Might have to check it out.

Austin Padgett (01:15):

I forget who the actual host is. We just watched part of one episode. But yeah, I got to relive some of the highlights of my youth. Going back to Star Search back in the day, I don't know if you remember the big winner, Sam Harris. I think he won, maybe the first season.

Rusty Close (01:29):

Okay.

Austin Padgett (01:30):

Do you remember this guy?

Rusty Close:

I don't.

Austin Padgett:

Man, it kind of ties into our whole podcast because back in that episode of The Pitt, I gave you my taxonomy for the four types of mullets.

Rusty Close (01:41):

Of mullets, yeah.

Austin Padgett (01:42):

I should tell you that Sam Harris is a pure Mike Gundy. He's got the waterfall of curls in the back, but he kind of famously won by doing "Somewhere Over the Rainbow". I'll send you a clip of it because it's unbelievable what this guy does towards the end. He basically raises his hand and decides that to reach his high note, he's going to start several notes lower and slowly scoop up, while he raises his hand, like shivering. You're going to get moved by watching this thing one way or the other.

Rusty Close (02:16):

I almost want to do a pause in the recording so I can check it out now.

Austin Padgett (02:19):

It is pretty wild. There you go. Sam Harris for everyone out listening. This is not the Sam Harris of Sam Harris podcast. The author named Sam Harris is a totally different guy. This is the singer of "Somewhere Over the Rainbow" on Star Search, somewhere in the 80s. Before we start our episode, let's dip into the old mailbag again. We're running a little lean this time around, so mail in to get your questions out on the air. This time, Matt wants to know if our firm leadership still

recognizes how important this podcast is to so many people around the world. Rusty, what do you think? You still feeling the love from up top?

Rusty Close (02:57):

They've stopped sending us emails and thanking us for all the hard work that we're doing on this podcast. But I have a feeling that they still recognize, deep down, how instrumental this is to building up the brand and really getting the name of the firm out there.

Austin Padgett (03:14):

For sure. I think it's more of those like, "Oh wow, this is becoming embarrassing" type of situations.

Rusty Close (03:19):

Yeah, yeah, yeah. They're going to get tired of hearing from us.

Austin Padgett (03:22):

Yeah. It could impact their performance.

Rusty Close (03:24):

Right.

Austin Padgett (03:24):

We better just – we'll just be reasonable people now rather than just lavishing them like we were with praise and-

Rusty Close (03:31):

With the praise that they've earned. Yeah.

Austin Padgett (03:33):

Yeah. Basically now it's kind of like no notes, which is just as good.

Rusty Close (03:37):

Yeah. We're not big on being edited, so it's nice that we've moved to the no notes phase of the podcast.

Austin Padgett (03:43):

For sure. I'll leave it there for now. Mailbag closed. Again, feel free to send us something so we can answer some more questions here on the pod. Rusty, I guess we should talk about something. What do you have?

Rusty Close (03:56):

Yeah. I mean, we've established over the course of this that we both love music, but you're the actual musician of the duo. You're an entertainer, you're a raconteur. You like to entertain at parties and talk about commercial jingles and such.

Austin Padgett:

That is true.

Rusty Close:

I like to imagine that there were plenty of college parties or post-college parties. People are sitting around, they're having a good time. You've got an acoustic guitar in your hand and you're leading singalongs for all of these revelers at these parties. I'm thinking like Pearl Jam's "Daughter" or "Elderly Woman". Something along those lines that people are – it's easy for them to sing along to.

Austin Padgett (04:38):

Drop detuning at all times.

Rusty Close (04:40):

Exactly. Yeah. I mean, do I have that right? Has this happened in the past?

Austin Padgett (04:45):

You're going to be really disappointed in this in that, like anything, I have kind of a shtick that I do. Long story short, at one time I was told that the songwriters basically have one lobbyist in D.C. and that if they want to try to get anything done, this lobbyist finds out what the Congressperson's wedding song was and brings that songwriter up. They play the song in the office and then they talk about how important this piece of legislation is, that type of thing. It's that personal touch.

Rusty Close (05:17):

Sure. Yeah.

Austin Padgett (05:18):

I try to do kind of the same thing, and so I know just about every high school prom slow dance song that there is to know, across probably 15 to 20 years of time. What I try to suss out is what year did you graduate? So, I can sit there and have you join me in singing – maybe It's "All My Life" by K-Ci and JoJo.

Rusty Close (05:43):

Ooh, yeah.

Austin Padgett (05:45):

Maybe it's "Lady in Red" by Chris de Bergh.

Rusty Close (05:47):

Okay.

Austin Padgett (05:48):

I can kind of put some timeline around it and maybe figure out a song that you would know or that meant something to you and would take you back to one of the best times of your life.

Rusty Close (06:00):

I have to imagine. Is "Wonderwall" on that list? I mean, that seems like it would fit right in there.

Austin Padgett (06:05):

Oh, man. That is a great go-to on an acoustic guitar. Everyone knows that song for sure.

Rusty Close (06:10):

The other one that I think would be right in your wheelhouse is "Good Riddance", the Green Day song. You know, "I hope you had the time of your life." I mean, that's a classic.

Austin Padgett (06:18):

Well, that kind of goes into another theme of graduation songs.

Rusty Close (06:21):

Yeah, that's graduation.

Austin Padgett (06:23):

Yeah. For whatever reason, that was a highly selected graduation song around that period of time, for sure.

Rusty Close (06:30):

Well, I said songs that would be in your wheelhouse, but another one that I think might fit would be the classic sing along, "Wagon Wheel" by Old Crow Medicine Show. I mean, do you know that song? Can you play that song?

Austin Padgett (06:44):

I do know the song. I want to tell you, that is a song that we would sing our kids going to sleep. Kind of a slow lilting version of that one. That one and "Surfer Girl" by The Beach Boys. For whatever reason, the two songs that our kids would just love hearing and actually sing along to going to bed. Those were some of my favorites at tuck-in times. I do not remember a party where "Johnson City." I don't recall. Like I was saying, I'm still like, "Baby, baby, baby, baby." That type of thing. I'm trying to get that personal touch with somebody.

Rusty Close (07:20):

I love that. I mean, it won't surprise you to know that – and I wouldn't sing these to anybody else out loud – but I would sing Jason Isbell's "Outfit" to one of my daughters when it was time for her to go to bed. Big shock there. Well, I'm just going to still imagine you playing "Wagon Wheel" at parties. Yeah. But one thing about "Wagon Wheel", so it's an Old Crow Medicine show, but do you know who is listed as a co-writer of that song?

Austin Padgett (07:44):

I do not. No. I assume it's an Old Crow original.

Rusty Close (07:47):

It is, but you're certainly going to be familiar with the co-writer who's a man named Bob Dylan.

Austin Padgett (07:53):

Okay.

Rusty Close (07:53):

The story goes that-

Austin Padgett (07:55):

Is there anything he didn't write?

Rusty Close (07:56):

Yeah. I mean, I think that's where we start, right?

Austin Padgett (07:58):

Yeah.

Rusty Close (07:58):

As I understand it, in 1973, Dylan was filming a movie called "Pat Garrett and Billy the Kid". In a weird coincidence, we've had some bad weather here this past weekend, and I was reading Cameron Crowe's memoir. One of the first – he's 13, 14 years old – one of the first big interviews he got was with Kris Kristofferson, who was also in that movie. The interview took place right after he had wrapped filming on that movie. Just a strange – the universe comes at us in weird ways sometimes. But anyway, getting back to it. Dylan was in the movie – and I didn't look to see if Dylan's been in other movies. It surprised me he was even in any movies, but he was in that movie. But he also composed the score and the songs, one of which was "Knocking on Heaven's Door", which I'm sure you're familiar with.

Austin Padgett (08:51):

Yeah. Okay. I did not realize that was a soundtrack.

Rusty Close (08:55):

No, I would've never known that. But during those sessions, Dylan recorded an unfinished sketch of a song, and it was really just the chorus of a song that included "Rock me mama like a wagon wheel."

Austin Padgett (09:09):

Oh, interesting. Okay.

Rusty Close (09:10):

Again, I'm imagining you, some college party, acoustic guitar, leading the "Rock me mama, like a wagon wheel." I just can picture it in my mind, even though you say it never happened.

Austin Padgett (09:20):

Yeah. Next time we all get together, we'll make this happen in real life.

Rusty Close (09:24):

We might be too old for it now. Anyway, okay. There's that unfinished song. It's never officially released, but I mean, you probably know that if Dylan put it on a recording, there's a bootleg of it somewhere that's been circulated, right?

Austin Padgett (09:38):

Sure.

Rusty Close (09:39):

I'd say the lead member of Old Crow Medicine Show – I don't know if that's appropriate, but that's how I think of it – it's a guy named Ketch Secor.

(09:47):

He's working on some songs and he has a hold of that bootleg and he decides to finish the song or to use that chorus and build a song around it. But this isn't a situation like we've talked about maybe in our sampling episodes where it leads to a dispute after the fact. Ketch writes this song, but before it ever goes onto an album, he reaches out to Dylan and they sort out the songwriting credit. He does this proactively. I mean, it's Bob Dylan. He's probably glad to have a reason to reach out to him, but they ultimately settle on fifty-fifty split of authorship and publishing. They're co-writers of "Wagon Wheel". That got me thinking, are there any sort of guidelines or rules of thumb when it comes to songwriting credit? Is there a threshold you have to get over where you have contributed enough to be listed as a songwriter?

Austin Padgett (10:50):

Yeah. Man, that's a good question. This is kind of the classic problem in the arts, particularly music where it's oftentimes products of collaboration. There's no bright line test out there. You have to kind of look at cases – which are, in all candor, all over the map on stuff like this. Usually, you're looking for something like writing lyrics or a portion of the lyrics, a key portion of lyrics, creating or altering the melody or contributing to the chord progression. Something of material substance to creating the song. It's usually not production choices, although it can be in songs where the production choices are important. It's usually, it's not going to be typically playing an instrument on a recording by itself. If you're told what the song is, you're going to need to contribute like the hook or something. It's not just the mere playing.

(11:49):

Tempo or feel probably doesn't get you there. It's something of substance. This is the reason why you see a lot of different methods of how people give out credit. The fact that he was proactive, that's typically – that's the lawyer answer. Let's figure this out now, particularly while we might still love each other and get this worked out. Rather than putting this out on an album, inciting all sorts of problems when we could have figured this out for one – a lot cheaper and a

lot faster before anyone knows whether it's going to be a huge hit or not too is also helpful. So, there's that.

Rusty Close (12:28):

Yeah. I mean, I didn't go back and look, and I probably should have, but I think this is a situation where if you go to Spotify or whatever your streamer of choice is, and you pull up "Wagon Wheel", it's going to show up as an Old Crow Medicine Show song, and then you get to the end and you would see the songwriting credits, and that's where Dylan's name would appear. His name doesn't appear as the artist necessarily. It's Old Crow Medicine Show and title of the song, and then down in the writing credits is where his name would appear. Are there any sort of well-known or historical disputes over songwriting credits? I mean, I have to imagine this stuff comes up all the time.

Austin Padgett (13:09):

For sure. I mean, the most interesting are probably the arrangements that people had, like Lennon/McCartney, no matter who wrote the song, they're splitting the credit.

Rusty Close (13:20):

Jagger and Richards. Same kind of thing, right?

Austin Padgett (13:22):

Yeah. Paul McCartney has certainly had some words and I think has tried in some instances to change the structure of that arrangement for a few key songs. But that's the really interesting one to me is where people actually did go in and did the work beforehand and then you kind of try to learn, well, why did that go wrong? Is there any lesson to be learned from that as far as products of creation and creating things together? Yeah.

Rusty Close (13:49):

Probably the idea there, I think what you're saying is, look, we're going to be songwriting partners and there are some songs where I'm going to do the heavy lifting, there are some songs where you're going to do the heavy lifting, but our collaboration over time, it'll eventually even out such that we'll just share it on everything we do.

Austin Padgett (14:08):

Right.

Rusty Close (14:08):

Yeah.

Austin Padgett (14:08):

Okay. Then, I mean, yeah, personalities too. I mean, Kanye, for example, is kind of known to just give credit out to whoever's in the room and contributing. He's incentivizing creation that way and that type of collaboration of like, let's get together and let's create something. It's kind of a bizarre way of doing it, but he's freewheeling with it. I'm sure the collaborators love that. So, it is an interesting thing. There's definitely times when you take something and then there's questions of like, well, who owns that? I mean, you and I growing up had that famous show on VH1 "Behind the Music".

Rusty Close:

Love it.

Austin Padgett:

There was the one on Vanilla Ice.

Rusty Close (14:53):

Sure.

Austin Padgett (14:53):

He's trying to describe the difference between "Ice Ice Baby".

Rusty Close (14:58):

One of my favorite things that's ever appeared on television.

Austin Padgett (15:01):

Right. Yeah. I mean, he's literally – musically, he's saying, "Well, I have an eighth note, a pickup eighth note in my version compared to theirs," just completely dodging a lot of the question. If you look up songwriting on "Ice Ice Baby", you'll see the members of Queen and David Bowie are on there. It's very interesting, those types of disputes, for sure.

Rusty Close (15:24):

I love that stuff and trying to look at it after the fact. Now, you said you've never played "Wagon Wheel" Old Crow Medicine Show's song, sitting around at a party or campfire or anything like that. Would it change it if I said, "Have you ever played the Darius Rucker version?" Because I know - huge Hootie and the Blowfish fan – so this is a safe space. If you want to cop to that, we can do that too.

Austin Padgett (15:48):

Man, I will – it's not a hill I'm going to die on, to say, but particularly “Cracked Rear View”, that is a great record.

Rusty Close (15:58):

It is. It's not one that I'm super proud to say that about, but I mean, it is.

Austin Padgett (16:02):

Oh, man. I think I could sing just about every track on that record, for better or for worse. In all honesty, I did like some of the follow-up stuff. It kind of hit this weird kind of bluegrassy thing, which was very different at the time in I think two records later after that because I really liked the guitar work on “Cracked Rear View”. It is pop and it's just melody driven and it's so singable. Not only can you sing the songs, but you can sing the guitar solos on that whole record, which I think is actually a testament to great guitar playing. It's like he's probably not the most technical player in the world, but man, that dude could rip off a melody on the guitar that worked so well in the songs that just make them that much more listenable to me, after I get tired of the college kind of party beat that accompanies a lot of them.

Rusty Close (16:54):

They caught a completely bad rap at a time when it went from something that was popular among youth and college, but then you go over and your friend's parents are listening to it and it really sours you on it. But looking back, I think we can both appreciate that it's pretty good stuff overall.

Austin Padgett (17:14):

Yeah, for sure. There's a reason it still comes on at Publix just about every time I visit the grocery store.

Rusty Close (17:20):

Well, I'm glad to hear you celebrate the entire catalog, which is nice. I don't know that we all go to that level.

Austin Padgett (17:25):

Yeah. I mean, “Only Lonely on the Inside.” Dude, I feel every lyric of that song, man.

Rusty Close (17:32):

Maybe when we finish up here, you'll have to just throw it on for old time sakes.

Austin Padgett (17:36):

Yeah, absolutely. Yeah.

Rusty Close (17:38):

Well, so this situation we're thinking of or we're talking about here with Bob Dylan and then Ketch, to me is what I'd say like a traditional case of two people – they didn't necessarily set out to collaborate or create something together, but they contributed in sort of equal ways, in a way that's pretty clear that the final product is a result of both of their efforts. But I came across a situation that I would say is less traditional. It is more contemporary. For old folks like we're getting to be, it's a little harder to get my head around. As we explain all of this, I'm going to feel really old in lots of parts of it.

Austin Padgett (18:22):

Oh, I love this. Let's go.

Rusty Close (18:23):

I mean, do you create playlists to use at home to listen to with the kids?

Austin Padgett (18:29):

Yes. We have one master playlist that we all contribute to called "The Family Playlist".

Rusty Close (18:34):

Yeah. We have a similar one. It's "Girls' Songs" because I have three daughters. These are their songs. I'm guessing similar to you where it could be anything out there.

Austin Padgett (18:47):

Oh yeah. With our three, they all have very – so we get a lot of – I would tell you, it's about 700 songs deep at this point. 600 of those are probably mine. I dominate that. Whenever I hear a song, I'm like, "Oh, I should throw that on there." We put it on shuffle as we drive around or go along and they get really excited when they hear one of their songs because it's so rare statistically that one of their songs pops up, so it's hilarious to me. My older son, he loves soundtracks, so movie soundtracks we get a lot of. My daughter knows, has picked up just about everything in pop culture from the moment that I stopped paying attention. She's amazed when I actually know one of her songs, because we do not have much overlap in that.

(19:36):

It's literally like I turned off and that's when she got aware of pop culture and music and started picking it up and loving it. Then my youngest son loves novelty songs, so I won't even get into it. A lot of it's gross humor, but we survive it and it's pretty funny at the time because it comes out

of nowhere, particularly after a heart wrenching ballad. To hear “One Pound Fish”, I don’t know if you know that song.

Rusty Close (20:02):

I'm going to say thankfully I don't.

Austin Padgett (20:04):

Again, I'll send this to you and we'll catalog all the things that I'm sharing with you along the way.

Rusty Close (20:10):

The “Girls’ Songs” is not quite as long and is not as weighed down by my choices, but I've definitely used it as an opportunity to kind of like sprinkle in songs to brainwash them along the way.

Austin Padgett (20:25):

Oh, I like that. Okay. Yeah. You're subliminal. I like that approach. Mine's very heavy-handed. I make no apologies. There's a lot of '90s on there. There's a lot of '70s rock.

Rusty Close (20:38):

Yeah, yeah. It's like, "Oh wow, how'd 'Loving Cup' get on here?" That kind of thing.

Austin Padgett (20:43):

Right. Oh yeah. I mean, there are symphonic excerpts on there. I'm like, "You guys need to realize how important this work was in the development of music history."

Rusty Close (20:50):

Exactly. It's a good teaching opportunity.

Austin Padgett (20:52):

Yeah. They're like, "Dad, this is 17 minutes long."

Rusty Close (20:55):

They do that with my Phish songs. But we've got other ones that are themed. We've got “Summer Jams”, that's like '80s hair metal kind of thing.

Austin Padgett (21:04):

Nice.

Rusty Close (21:04):

“Girls’ Songs” is just across the board. One of the songs that's on there is a song called, or at least to me, I thought it was called “Savage Love” by a guy named Jason Derulo. The only reason I knew that it was by Jason Derulo is because early in the song – I'm going to kind of sing it, but he goes, "Jason Derulo." So, I was at least thinking, all right, well, I guess that's what this is.

Austin Padgett (21:28):

I love artists that have their name.

Rusty Close (21:30):

Yeah.

Austin Padgett (21:31):

I mean, such a classic.

Rusty Close (21:33):

It's a strong move for sure. Yeah. Do you have any idea what this song is?

Austin Padgett (21:38):

I have no idea. I know that my daughter knows this song because I've heard this guy's name before.

Rusty Close (21:44):

Well, hopefully we can add a clip and give the listeners something so they'll have some familiarity. One day we're listening to “Girls’ Songs”, and Savage Love comes on. For whatever reason, I'm paying a little bit more attention than usual at what's flashing across the screen as this comes on. It's not just “Savage Love”. It's “Savage Love (Laxed-Siren Beat)”. That gets my attention a little bit. It's by not just Jason Derulo. It is Jawsh, J-A-W-S-H, Jawsh 685 X Jason Derulo. Well, now my curiosity is really peaked, right? I've got to figure out what happened here.

Austin Padgett (22:35):

Is this the same song or is this a remix?

Rusty Close (22:37):

This is the song that I knew as “Savage Love”.

Austin Padgett (22:41):

Okay.

Rusty Close (22:41):

Yeah. So, I'm thinking, well, this is a mystery for the bad boys to dig into because there has to be some IP issues.

Austin Padgett (22:50):

Oh absolutely. Yeah. We'll get our forensics hats on on this one.

Rusty Close (22:53):

Yes, exactly. I'm going to need to get some hard drives sent over here. Well, first things first, who in the world is Jawsh 685? As I'm digging into this, he's actually a guy named Joshua – and bear with me on the pronunciation – but I believe it's Nanai. At the time the song was written, he was a teenager from Auckland, New Zealand.

Austin Padgett:

Strong. I like it.

Rusty Close (22:53):

Yeah. He's Jawsh 685 because 685 is the calling code for Samoa. So, it's a hat tip to his culture.

Austin Padgett (23:32):

Okay.

Rusty Close (23:32):

Okay. We're starting to get to the bottom of this. Now I'm going to start feeling really old as I try to explain this next bit, so bear with me. When Jawsh was in high school, he became really interested in this subculture called Siren Jams, and it's S-I-R-E-N, Siren Jams.

Austin Padgett (23:52):

Okay.

Rusty Close (23:54):

As I understand this, it's a highly specific subculture to Pacifica communities in Auckland and those surrounding areas. From what I've been able to discern, kids would strap these big siren, like think police siren or like the bullhorn that someone would use like at a swim meet. They would strap these to their bikes and they would rig them up with batteries and they would ride around playing really loud music through these speakers. So, this is siren culture, okay?

Austin Padgett (24:35):

Some call it a nuisance, but they're kids on bikes doing the things kids do.

Rusty Close (24:40):

Yes.

Austin Padgett (24:40):

They're celebrating their music that they like, I assume. Okay.

Rusty Close (24:45):

Yes, and that as we will learn, that they are creating as well.

Austin Padgett (24:50):

Oh, okay. Ah, I like that even better. Okay. Less of a nuisance.

Rusty Close (24:54):

Probably depending on eye of the beholders.

Austin Padgett (24:57):

It's perspective. I get it. Yeah, absolutely.

Rusty Close (25:00):

Again, I was not familiar with this particular subculture. Like I said, they start creating their own music to play on these bike sirens. He teaches himself how to mess around with whatever tools he can at his disposal to make this electronic music. He starts uploading his songs – I think you would characterize them as songs – to YouTube.

Austin Padgett (25:27):

Hold on real quick. On the siren – are they just plugging it into something to play the music or they're actually using the electronics of the siren to make-

Rusty Close (25:36):

The siren is just the speaker for our purposes.

Austin Padgett (25:39):

Like an amplification. Yeah, yeah. Got it. All right.

Rusty Close (25:41):

I can't say that it never factors into these songs, but for all intents and purposes-

Austin Padgett (25:45):

It got to impact the tone of what's coming out of that thing.

Rusty Close (25:47):

Well, and that's part of it is if you really start looking into this, it was like the higher the treble, almost like the worse it sounded was better.

Austin Padgett (25:58):

Now I'm like hooked. I've got to go do some research on this myself.

Rusty Close:

You might just find a subreddit.

Austin Padgett:

We'll just fly over there. Why don't we just fly over there?

Rusty Close:

Or we can do that. A field trip.

Austin Padgett:

I've always wanted to go visit.

Rusty Close (26:07):

I think that makes perfect sense. We'll get this approved.

Austin Padgett (26:09):

Right.

Rusty Close (26:09):

All right. He starts making his own music. He starts making these songs. When he's 16 – so we're talking about July of 2019 – he uploads his sixth video to YouTube, and that was “Laxed (Siren Beat)”.

Austin Padgett:

Okay. That's the connection with the song name.

Rusty Close:

That's the connection. “Siren Beat”, because it's a siren song. It's one of these siren songs. It's part of this subculture.

Austin Padgett (26:35):

Okay.

Rusty Close (26:36):

We're starting to see why “Savage Love” isn't just “Savage Love”. I've thrown a lot at you. Are you with me so far?

Austin Padgett (26:44):

I'm with you. This guy created a song. It's not “Savage Love” yet. Something's going to happen to it to make it become “Savage Love”.

Rusty Close:

Correct.

Austin Padgett:

But it is a siren song in that I like to imagine he's on a bike blaring this thing through a neighborhood in New Zealand.

Rusty Close (27:02):

Yes. I would say it's just instrumental. This is electronically created music, so it's not instrumental, but there are no words. This is literally just the underlying track. That's what he was creating.

Austin Padgett:

Got it. Okay.

Rusty Close:

I like to imagine your boys doing the same thing, rigging up their bikes with these sirens, hooking the batteries up to them and just terrorizing you around your property.

Austin Padgett (27:24):

Oh yeah. Yeah.

Rusty Close (27:28):

I may get in touch with them and bring this to their attention and see if it's something they're interested in.

Austin Padgett (27:30):

I'm putting a note not to let them listen to this episode.

Rusty Close (27:34):

Dad, what are these siren songs again?

Austin Padgett (27:36):

Yeah, exactly. This is going to bullhorn off of Alexa.

Rusty Close (27:41):

Yes, exactly.

Austin Padgett (27:42):

Yeah.

Rusty Close (27:42):

I'm going to need some wire strippers. I'm going to need some batteries.

Austin Padgett (27:46):

They'll find a way, man. These kids these days, they're more hands-on than you'd think the kids of the digital culture would be.

Rusty Close (27:52):

It's pretty unbelievable. All right. We've got a little background on Jawsh 685 down in Auckland, New Zealand with this sort of hyper localized subculture. How on earth does Jason Derulo, who's an artist in the U.S. – he's at least of some acclaim.

Austin Padgett (28:12):

Jason Derulo.

Rusty Close (28:14):

Exactly.

Austin Padgett (28:15):

I mean, self-proclaimed.

Rusty Close (28:15):

He was in the motion picture "Cats". He had a role in that.

Austin Padgett (28:19):

Did he really? Okay.

Rusty Close (28:20):

Yeah, that famously well-received movie.

Austin Padgett (28:22):

Right.

Rusty Close (28:24):

How on earth does he find Jawsh 685's "Laxed (Siren Beat)"? Well, this is where TikTok comes in.

Austin Padgett (28:34):

Ah, okay. Now-

Rusty Close (28:37):

Another opportunity for us to feel old.

Austin Padgett (28:39):

Yeah. I won't jump ahead, but I'm starting to get an idea.

Rusty Close (28:42):

Yeah. I mean, do you have and use TikTok? I mean, tell us about your extensive use of that app.

Austin Padgett (28:47):

Not extensive. I've certainly used it and it's not for us.

Rusty Close (28:54):

It is definitely not for us. Yeah, that is for sure. Well, somehow, some way – let's just chalk it up to algorithms – TikTok users find their way to Jawsh's "Laxed (Siren Beat)". Again, somehow, some way, they start using it as the soundtrack for a dance trend. It becomes known as the "hashtag culture challenge". Again, we're way outside of our depth here, but let's keep going. While his song is playing, the TikToker, I guess that's what we would call them, will do sort of this really simple dance that's kind of just maybe like some shoulder twitches and hand movements. Then all of a sudden, the screen would change and they'd be doing the same dance, but wearing some sort of traditional clothing representative of their ethnic background.

Austin Padgett (29:46):

Ah, that's cool. Okay, I like that.

Rusty Close (29:49):

In reading about it, it was like one of these truly non-toxic TikTok trends that took off. It became massively huge.

Austin Padgett (29:59):

As a quick side note, I mean, mad respect. We dump on these younger generations a lot, but the little things they come up with that are their things are so kind of nice.

Rusty Close (30:11):

Yeah.

Austin Padgett (30:12):

Like six, seven, that whole thing.

Rusty Close:

I don't know what you're talking about.

Austin Padgett:

Right. There was some, I think it's over now, but there were some clips of particularly collegiate women's basketball, where a bunch of kids would be at the game for a school event and the teams are at 65 points and someone's at the free throw line and these children are going – everybody's so excited about it. Everybody can get hyped up about it. I love that. It's not leaving people out. It's inviting everyone in to do this thing and get excited about the most arbitrary of things, but it's awesome.

Rusty Close (30:46):

It feels truly insane when you try to trace and track how it came about, but to see kids get so excited about something like that. I mean, so my middle daughter is 11 and I took her to a Hawks game and to see the look on her face when the scoreboard hit 67, and it was just me and her sitting there together, but she was so, like you're saying, her anticipation for this thing to happen was so... Stuff like that, it is pretty cool to see their excitement in those situations.

Austin Padgett (31:15):

Yeah. I'm just saying shout out to the generation. I know you don't get a lot of love from people my age often, but ...

Rusty Close (31:23):

It is hard to look at from the perspective of what is this and why did it come about? But I do like seeing it in practice.

Austin Padgett (31:29):

For sure.

Rusty Close (31:30):

Okay, we've got the culture challenge, and it takes off and his song becomes massively popular. Massively, massively popular. By the time that Jason Derulo – which we're going to get into in just a minute – by the time he releases his “Savage Love” rendition, Jawsh's track had been streamed over 40 million times.

Austin Padgett (31:56):

Wow, okay.

Rusty Close (31:57):

That's how I got on-

Austin Padgett (31:58):

You and I missed this apparently.

Rusty Close (32:00):

We miss a lot of stuff like this. Yeah. I got a feeling. But it showed up on plenty of people's radar, including Jason Derulo. I think that's the other thing is these moments happen so quickly. They flare up for a short time and are so popular, but then it is just kind of gone like a flash. They come and go so fast. But while this was going on, Jason Derulo – here's what they say – he dropped a few bars of what he said was a new song that he was calling “Savage Love”. Jason Derulo, he has 20 million TikTok followers. So, this isn't – again-

Austin Padgett (32:40):

This is a big scale that we're talking about.

Rusty Close (32:42):

This is a massive scale, right? What this is, is him singing over “Laxed (Siren Beat)”. All right. But when he puts it on TikTok, he just calls it, “Here's my new song, ‘Savage Love’.”

Austin Padgett (32:55):

Okay. No credit, no mention of sirens or bull horns.

Rusty Close (33:01):

Correct, correct. This isn't the entire song. It's just, like I said, it's just a few bars of it, but that's where things stand. This did not go unnoticed by Jawsh's fans. All right.

Austin Padgett (33:13):

Oh, sure. Right.

Rusty Close (33:14):

He is quickly called to the carpet. So, the next time he posts about it, he does give some credit to Jawsh for the underlying track. We're starting to recognize where this came from, but he's still calling it "Savage Love". Again, this is just mentioning it on TikTok. This is not an official release yet. Okay?

Austin Padgett (33:38):

Nice. Okay.

Rusty Close (33:41):

We're only talking about stuff that we can find kind of publicly reported and publicly sourced. We don't want to cast aspersions. We're trying to steer clear of any dispute between them. But as we understand things, in this same timeline – because again, this happens so quickly – Jawsh is negotiating with record labels and he's considering potential collaborations. But we have this kind of Pandora's Box situation where Derulo's already kind of put his song out there and not saying he's forcing Jawsh into a collaboration, but it is already out of the box. We've kind of got this situation here. There is reporting that prior to releasing snippets of the track, Derulo had reached out to Jawsh, and they were in discussions about collaborating. According to Jawsh, those discussions just kind of fell away and he just kind of stopped hearing from him – from Derulo.

(34:43):

Next thing he knows, the track or snippets of the track have been released onto TikTok. Now, when the song is officially released – so now we're in June 2020 – and when its official album or let's say label release, the title was "Savage Love (Laxed Siren Beat)", and it was credited to Jawsh 685 X - I don't know why - Jason Derulo. So, sometime in that time period, they work out songwriting credit. Let's just say the business aspects of the relationship. Okay?

Austin Padgett:

Right.

Rusty Close:

Now, I mentioned earlier that Jawsh's track, it is just a track. Then Jason Derulo wrote lyrics and is singing over that track. It reminded me a lot of our earlier episode about sampling. It seems like Biz Markie did a little bit more than just take an underlying track and add it to his song, but I'm wondering if you can help me understand why is this a co-writing situation and not a sampling situation?

Austin Padgett (36:01):

Yeah. Let me make sure I've got it right. So, Jawsh's version is just kind of the beat and music underneath.

Rusty Close (36:09):

Correct.

Austin Padgett (36:10):

Jason Derulo wrote the lyrics and the melody that he sings.

Rusty Close (36:16):

Correct.

Austin Padgett (36:17):

Okay. That is kind of a classic co-write situation.

Rusty Close (36:20):

Okay.

Austin Padgett (36:21):

Yeah. I think it's called topline. I've heard it referring to toplining where that is – it used to be actually pretty common for a composer to create music – they're not creating the song, they're just creating kind of the atmosphere that will go underneath the song. Somebody else who's good at songwriting, writing words and melodies, will come over the top and write the top line. That is the melody and the lyrics that go with it. The classic kind of split of a top line is fifty-fifty. That's when if somebody just kind of shorthands it and says, "Oh, well, topline," they're saying, "You get 50% because you did this part and I'll get 50% because I did that part."

Rusty Close (36:59):

That makes sense. Yeah. I mean, when you think about it, it really is half and half.

Austin Padgett (37:04):

Yeah. It's kind of this understanding of like, okay, well, the melody and words are very important and they're about 50% important where the rest of the song, everything underlying it that's adding all the atmosphere and any of the kind of musical cues and stuff like that, that's the other 50%. It's almost like that's kind of baked into this assumption of what the art is.

Rusty Close (37:27):

Okay. I mean, that part makes sense to me. I think we can take it out of the realm of sampling. That's just sort of a different art altogether. There is-

Austin Padgett (37:35):

Well, before you go there, I mean, I think to your point, I mean, that's in essence a long sample, right?

Rusty Close (37:41):

Right. Yeah, like a long, long sample.

Austin Padgett (37:44):

I mean, particularly in this instance where Jawsh, it doesn't sound like his intent was not for someone to come over and create a new song on top of that. Maybe that is part of the culture where it's like, oh, I created this to be shared in some way, maybe sampled and that sort of thing. You build off of it and I can say something by doing this to it and that sort of thing. But it doesn't sound like that was kind of the plan for this particular song he wrote to become the underlayment for a whole different song in its entirety.

Rusty Close (38:14):

Yeah. I mean, I think in that culture, those were the songs, right? I mean, it was the musical part without any lyrics or accompanying lyrics. From what I can gather, he had been in talks for people to essentially do what Derulo did. Okay. Well, yeah, if people wanted to use this as an underlying track and add theirs on top of it, the topline, then I'd be interested in that. But yeah, his original intent was, "I just created this because this is the kind of songs we create as part of this culture."

Austin Padgett (38:44):

Interesting, okay. Yeah.

Rusty Close (38:46):

There is some reporting that Derulo wanted Jawsh to be credited as a producer for the song. I guess in that case, when it showed up on Spotify, you would see Jason Derulo and whatever they ultimately decided the song title would be instead of both of their names. Then you get down to the fine print and perhaps see Jawsh credited as a producer. Does it sound like how it would work in that situation?

Austin Padgett (39:14):

If I'm Jawsh, that's not what I want, right?

Rusty Close (39:16):

Sure. Yeah, yeah.

Austin Padgett (39:17):

Yeah. I mean, a producer typically has a different role in the process. Coming up with basically the entire song other than the melody and words is not something that would typically get just a producer credit.

Rusty Close (39:31):

That's not enough credit for what you've contributed.

Austin Padgett (39:34):

Right. Also, the songwriting credit carries with it certain types of royalties and other permissions and things like that that are required. It's an enhanced part of it where the producer has a creative type of role, but it's not the same as a songwriter in the sense that it's not credited monetarily like that. You have to work that out between yourselves.

Rusty Close (39:57):

You are sort of paid for providing a service potentially that – I don't know, I wouldn't say work for hire, but sort of like that – as opposed to contributing to the overall artistic merit, whatever, the final product kind of thing.

Austin Padgett (40:12):

For sure.

Rusty Close (40:13):

Yeah. I think that's all helpful. I thought about this, if we go back to our original question of what rises to the level of a songwriting credit? Eh, that's a little bit of a gray area, but this is a situation where let's just assume they had set out to work together from the outset and if one of them created the underlying track and one of them created the lyrics and the topline stuff, that's actually a pretty traditional situation where you would have co-songwriters fifty-fifty.

Austin Padgett (40:42):

Yeah. Yeah, for sure. I mean, that's the traditional split and kind of traditional separation of roles between – and when I'm saying traditional, I mean like a hundred years ago of traditional – we're talking, going back to like Tin Pan Alley days. Okay, well, you're going to create this concept, and I'll come back in with this and maybe one of us will start the process, but we're going to meet in the middle, and our contributions are going to be taking us fifty-fifty. Yeah.

Rusty Close (41:10):

Yeah. No, I mean, I think that makes perfect sense. We should note there are two other songwriters listed and from what I can gather, they worked with Derulo on the lyrics aspect of it. Maybe the melody and those things. Jawsh did his thing all on his own. In a situation like that, maybe it's Jawsh gets 50% and he's listed as an artist in the title of a song or who this song is by, so to speak. Then maybe the other 50% of the songwriting credits split three ways or something like that. But I don't know the details there.

Austin Padgett (41:45):

Yeah. I mean, that brings up another important point here is that if he'd already created the recorded song, that's also like – we talked about this in the early Taylor Swift episode and a few other episodes since – that when it comes to music, there are two copyrights at issue. There's the underlying kind of song if you were to write it out on a sheet of paper of how you communicate it between people. Then there's the recording aspect of it where you have that singular embodiment of that song as well. If he's already created the song, which it sounds like Jason Derulo used what he'd already created. He didn't go back in the studio and recreate this-

Rusty Close:

Correct. As far as I know, that's right.

Austin Padgett:

And ride a bike around in a studio with a siren attached to it, a bunch of little circles. That's coming into play as well, because not only is he a songwriter, but he's a performing artist on the actual track.

Austin Padgett (42:35):

That's even more money potentially, I'm guessing, in the situation, but also kind of from a copyright perspective, more credit and involvement in the song.

Rusty Close (42:46):

Yeah. Well, I guess that makes complete sense as why his name is listed when it pops up on your playlist, you see his name there. That actually does make perfect sense.

Austin Padgett (42:55):

As opposed to the old Crow Medicine Show, that example you had earlier where they are the performing.

Rusty Close:

Correct.

Austin Padgett:

But they're also listed in writing along with Bob Dylan as far as who created the underlying song. Bob Dylan sadly doesn't appear on the track as far as I know.

Rusty Close (43:11):

I actually did some research to try to find out if they've ever performed together and for better or worse, they have not as far as I can tell.

Austin Padgett:

Not yet.

Rusty Close:

There's always time. There's always time. If we want to feel older than we already do, there's also a K-pop aspect to this entire story where BTS, who I had at least heard of, they did a remix of the song and that just took it into a altogether higher stratosphere in terms of popularities. We're not getting into that, but this is really an opportunity for us to show our age in talking about this situation.

Austin Padgett (43:51):

Truly. Yeah. I do know a few BTS songs, so I learn enough so I can embarrass my kids. That's my only objective.

Rusty Close (43:58):

Yeah. I do that with Michael McDonald songs and things like that.

Austin Padgett (44:03):

Right? I get it.

Rusty Close (44:04):

Anything we missed, anything, any additional takeaways other than maybe people our age stay off TikTok?

Austin Padgett (44:12):

I think that is the main warning here, but no, I think we've covered it pretty well.

Rusty Close (44:16):

Good deal. Well, do you want to take us out?

Austin Padgett (44:18):

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