‘Blurred Lines’ Verdict Creates Unpredictable Music Copyright Landscape

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by Jason Koransky, Associate

The recent verdict that Robin Thicke and Pharrell Williams’ hit “Blurred Lines” infringed the copyright to the late Motown legend Marvin Gaye’s composition “Got To Give It Up” has generated significant media attention.[1] And this coverage has certainly been compounded by the eye-popping $7.4 million in damages the California jury awarded Gaye’s heirs.

Controversy and debate have raged about whether the jury was correct, with the primary issue being whether Thicke and Williams actually ***copied*** “Got To Give It Up,” or were simply ***inspired*** by Gaye’s late-’70s soul/funk composition. Of course, copyright protection does not extend to a musical idea, genre, or overall “feel” of a song. Rather, copyright protects a musical expression fixed in a tangible medium — here, the written composition filed with the U.S. Copyright Office for “Got To Give It Up.” (Gaye’s estate does not own the copyright to the sound recording of “Got To Give It Up,” and thus could not assert that “Blurred Lines” infringed the recording.)

Thicke and Williams made this idea vs. expression dichotomy the primary issue in their complaint for a declaratory judgment of non-infringement: “Being reminiscent of a ‘sound’ is not copyright infringement. The intent in producing ‘Blurred Lines’ was to evoke an era. In reality, the Gaye defendants are claiming ownership of an entire genre, as opposed to a specific work . . . .”

The jury disagreed with this argument. Weighing evidence such as competing expert testimony, recordings of the compositions (interestingly, the judge only allowed the jury to hear a new recording of Gaye’s composition that was made for the litigation and which was based on the music

[1] *Williams v. Bridgeport Music, Inc.* (No. CV 13-06004-JAK, C.D. Calif.).

filed with the Copyright Office), and testimony from Thicke and Williams regarding the creation of "Blurred Lines," the jury found that Thicke and Williams incorporated too many elements of "Got To Give It Up" into "Blurred Lines," such that it crossed the line from "inspired by" to "copying."

Does this verdict represent a slippery slope in copyright law, in which songwriters now have grounds to plead infringement when another composition has a similar "feel" but does not actually copy a song? Further, could this decision extend to other media, such as film, literary works, or photography, in which new works are often inspired by those which precede them?

In terms of music, the concern for a lower infringement standard may not be unfounded, as new songs often incorporate elements or the feel of previously released works. Music is an oral tradition in which songs do not develop in a vacuum. Rather, songwriters create music inspired and influenced by the sounds with which they grew up, the teachers with whom they studied, the musicians with which they have performed and collaborated, and the sonic canvas that permeates day-to-day-life.

Mozart inspired Beethoven. Duke Ellington, Miles Davis, and John Coltrane inspired countless of their contemporaries and subsequent generations of jazz musicians. Prominent strains of The Beatles, Led Zeppelin, and Bob Dylan echo throughout pop, rock, and folk music. Simply put, creativity breeds creativity, and whether a songwriter consciously or unconsciously incorporates elements or a feel of another song into a new work, parts of new songs often sound like other songs. A great website exists at http://www.soundsjustlike.com on which a visitor can listen to examples of similarities between pop songs. Numerous other examples of song similarities across musical genres exist as well.

Music's tradition of sharing is a key factor to consider when analyzing the impact that the jury's verdict in the "Blurred Lines" case will have on music infringement litigation. However, this recent decision is not unprecedented. For example, in *Bright Tunes Music v. Harrisongs Music*, 420 F. Supp. 177 (S.D.N.Y. 1976), the court ruled that George Harrison's "My Sweet Lord" from 1970 infringed "He's So Fine" made famous by the Chiffons in 1962. The court found that Harrison "subconsciously" misappropriated two specific motifs of "He's So Fine" when he wrote "My Sweet Lord," and thus was liable for copyright infringement. (A comparison of the songs can he heard at https://www.youtube.com/watch?v=DVrtRi06F8Y.) That decision has been subject to criticism for the same reasons that the "Blurred Lines" verdict has been criticized – as improperly expanding the scope of protection offered by a copyright in a composition – yet it did not create a deluge of litigation. Nor did the case stifle in any measurable way musical creativity from society at large.

Potential monetary recovery will remain a primary consideration for songwriters as they decide to assert their copyrights against new songs. Gaye's heirs had substantial financial motivation to take the risk and assert their copyright against Thicke and Williams, as "Blurred Lines" was the top-selling song in 2013. If the song had not been so popular, it may never have become subject to litigation.

While a songwriter may believe they have written a song with the potential to become popular, Thicke and Williams almost certainly did not write, record, and release "Blurred Lines" knowing that it would be a huge hit, or that it would generate an estimated more than $16 million in profits. (In

fact, the song was allegedly written almost entirely by Williams in about an hour.)[2] Yet Williams testified at trial that "Blurred Lines" and "Got To Give It Up" have a similar "feel."[3] As such, this case could create a new level of scrutiny for copyright compliance for popular artists – or even up-and-coming and unknown artists – for songs that may have been consciously or even subconsciously inspired by other songs. A potential logistical burden exists on how to manage and administer a copyright "clearance" system with a seemingly broad infringement standard having generated so much attention from the "Blurred Lines" verdict.

Thicke and Williams' attorney has indicated that his clients will appeal the jury's verdict. Certainly, many would welcome a decision by the court in post-trial motions or by the Ninth Circuit to clarify whether the "Blurred Lines" verdict represents a new, lower standard for music copyright infringement, or if the jury gave Gaye's "Got To Give It Up" too broad a scope of copyright protection.

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[2] Trial testimony established this $16 million figure, and Williams testified how the song was written. *See* http://www.nytimes.com/2015/03/05/business/media/pharrell-williams-acknowledges-similarity-to-marvin-gaye-song-in-blurred-lines-case.html.

[3] *See id*.