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"Blurred Lines"

It seems settled, now, that the applicable law for the “Blurred Lines” trial was the copyright Act of 1909. It also seems settled, now, that if it sounds like copyright infringement, it probably is — no evidence required. **By Matthew B. Wenzlau | The Wenzlau Law Group, PLLC**



‘Blurred Lines’ case will lead to blurred copyright rulings

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It seems settled, now, that the applicable law for the “Blurred Lines” trial was the copyright Act of 1909. It also seems settled, now, that if it sounds like copyright infringement, it probably is — no evidence required.

Recently, the estate of Marvin Gaye proved that the sound recording of “Blurred Lines” impermissibly sampled the Marvin Gaye sound recording, “Got to Give it Up”. Though the trial court ruled that the Gaye sound recording was not admissible evidence, the Estate of Gaye proved to a jury that “Blurred Lines” was still infringement. The defendants lost and must now pay \$7.4 million in damages.

#### **The background**

“Got to Give it Up” was written and produced by Gaye and Art Stewart and between 1975 and 1976 in Los Angeles. The album, “Live at the London Palladium,” containing the song, was released on March 15, 1977, through a Motown subsidiary label. The lead sheets (written compositions) were deposited with the Copyright Office, but the sound recording was not. Notably the reasoning behind this series of events is that the Copyright Office was accepting the lead sheets as deposits but not the sound recordings.

“Blurred Lines” was written by Robin Thicke, T.I. and Pharrell Williams. The song was recorded, and released March 26, 2013 — approximately 36 years after the Gaye song was released. By the filing of the lawsuit, both parties stipulated that the song made \$16,675,690.<sup>1</sup>

#### **Arguments under the 1909 Act**

The 1909 Copyright Act allows a copyright period of 28 years, with protection for works that meet two requirements: the works must be published and affixed with a copyright notice.<sup>2</sup> If these two requirements were not met, the work would belong to the public domain.

The defendants in “Blurred Lines” asserted that because only the lead sheets were protectable under the 1909 Act, only the lead sheets could be used as evidence. The presiding judge agreed, limiting the estate to a performance, in court, of the accused infringing portions.

Naturally, the estate petitioned for reconsideration. In their motion for reconsideration, the estate argued that any action under the 1909 Act needs to produce a registration that demonstrates the work is a published work, ergo the sound recording is this demonstration. The estate's strongest argument was that the sound of the Gaye song is strongly accentuated by Gaye on the album, and it this accentuation that clearly shows the infringement by Thicke.<sup>3</sup>

In his pleadings, Thicke responded that the 1909 Act is stringently applicable, leaving the plaintiffs with their lead sheets as primary evidence. If the plaintiffs wished to assert that the recorded expressions of Gaye were copyrightable, they would have to prove that through the lead sheets, not the record. Furthermore, the plaintiffs lack of copyright ownership over the sound recordings is a specifically intended result of the 1909 Act, which intent should be upheld.<sup>4</sup>

### Old creativity versus new creativity

A newer emerging legal argument is the balance of protection for established works vs. new creativity. As the musical landscape becomes increasingly crowded, the number of works that may resemble each other increase. Whether the newer works translate into an infringing material is a necessary question that must be answered. The copyright laws share a common intent to protect creative works and their authors. The implied intent that such laws are to chill creativity is up for an even larger debate with this ruling.

### Conclusion

The estate of Gaye prevailed at trial. According to the lawyer for the Estate, the success of the trial hinged on two musicologists who testified as to the similarity of the works. Their expert opinions convinced the jury.<sup>5</sup>

The defendant's counsel is appealing, noting that as "silk and rayon" are a similar experience, but not similar products, "Blurred Lines" is a similar experience but a different piece of music.<sup>6</sup>

Noting this important and very visible trial, songwriters and record companies are going to have to vet songs that have a similar sound to other works. If artists are competing in similar genres, "Blurred Lines" claims could be commonplace. Noting that aggrieved parties can still prevail with limited evidence, these cases become even more difficult to predict. The blurred lines of creativity and the blurred laws of copyright have some work to do.

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### End Notes

1 (See <http://www.thewrap.com/blurred-lines-trial-reveals-pharrell-williams-robin-thicke-song-made-16-6-million/>).

2 (See <http://copyright.gov/history/1909act.pdf>).

3. (See Case 2:13-cv-06004-JAK-AGR; Filed 01/30/15; PLAINTIFFS' OPPOSITION TO COUNTER-CLAIMANTS' EX PARTE APPLICATION FOR CONTINUANCE OF TRIAL, RECONSIDERATION OF GRANTING MOTION IN LIMINE NO. 1-3 AND CERTIFICATION OF QUESTION FOR INTERLOCUTORY APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF SETH MILLER).

4. (See Case No. CV13-06004-JAK; Filed 01/29/15; COUNTER-CLAIMANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR EX PARTE APPLICATION FOR CONTINUANCE OF TRIAL, RECONSIDERATION OF GRANTING MOTION IN LIMINE NO. 1-3 AND CERTIFICATION OF QUESTION FOR INTERLOCUTORY APPEAL).

5. (See <http://www.hollywoodreporter.com/thr-esq/marvin-gaye-family-lawyer-how-780743>).

6. (See <http://www.hollywoodreporter.com/thr-esq/robin-thicke-pharrells-lawyer-appeal-780885>).

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