

Basic Concepts in Music Copyright

Music 253/CS 275A
Stanford University

Music copyright: Overview, 1

- **Basic concepts in US copyright law today**
 - Work as expression of **creativity**
 - **Fixed form** as governing iteration
 - **Terms** of fixation
 - **Derivative works**
 - **Fair use**
- **Jurisdictions**
 - *Authority*. Federal Copyright Act (1909)
 - States' rights *statutes*
 - *Court circuits* (2nd incl. NY; 9th incl. Calif.)

Music copyright: Overview, 2

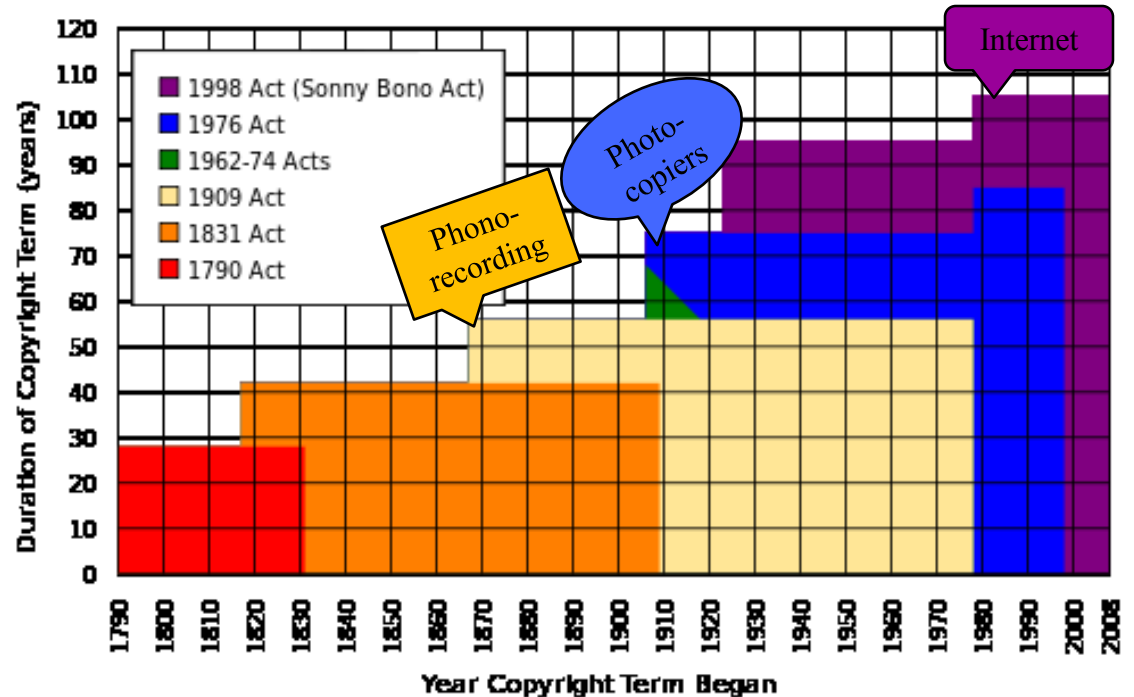
- International arena
 - Variable terms of fixation
 - Variability in basic concepts and primary instantiation
 - Variable importance of case law
- Modes of musical “creativity”
 - Audio
 - Printed music
 - Genetic data of music???? [patent law]
- Collective and serial authorship
- Quantitative vs qualitative measures of creativity

Music copyright: Overview, 3

- **Content disputes:**
 - Lack of authorization to reproduce
 - Defenses:
 - Inability to locate owner
 - Ignorance of the law
 - Musical plagiarism
- Where did music copyright come from?
- Where is it going?

Terms of US copyright

- Creativity
- Fixation
- **Terms of fixation**
- Derivative works
- Fair use



Life expectancy, 1790: 34.5 years

Copyright term: 27 years

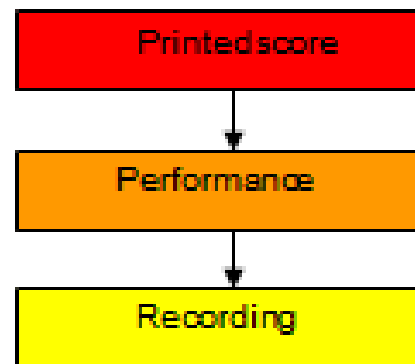
Life expectancy, 2010: 77.8 years

Copyright term: 105 years

Effect of “grandfathering”

Fixed form *vis-à-vis* derivative uses

- Model of fixed form: a book [□] The straight-line view (procedural)
 - Book = crystallization of “creativity”
- Model of a derivative work: a book translation



Fixed form and derivative uses

- Model of fixed form: a book
 - Book = crystalization of “creativity”
 - Model of a derivative work: a book translation
- Another model of fixed form: a musical play, opera, etc.
 - Text owned by dramatist
 - Music owned by composer
 - The work is performed but not published
 - Audience member X records the performance and puts it on YouTube.*
 - Audience member Y makes an arrangement of a few pieces from the work and uploads his audio files to a website.**

Fair use

- Concept allowing use of short quotations of copyrighted material for **academic** and **non-commercial** purposes
- Fair use in general:
 - U. Texas—<http://copyright.lib.utexas.edu/copypol2.html>
 - Stanford charts and tools for fair use:
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-a.html
- Fair use in music:
 - <http://copyright.musiclibraryassoc.org/Resources/CopyrightAndFairUse>
 - MLA online resources (links):
<http://copyright.musiclibraryassoc.org/Resources/OnlineResources>

Organization of judicial system

- *Authority*. Federal Copyright Act (1909)
- States' rights *statutes*
- *Court circuits*
 - 2nd circuit includes New York
 - 9th circuit includes California
- US Supreme Court
 - Declines most cases in music
 - 2011: ASCAP vs US (from 2nd circuit):
 - Does downloading a song constitute a performance?
 - 1994: 2LiveCrew parody allowed (“Pretty Woman”)

Other approaches

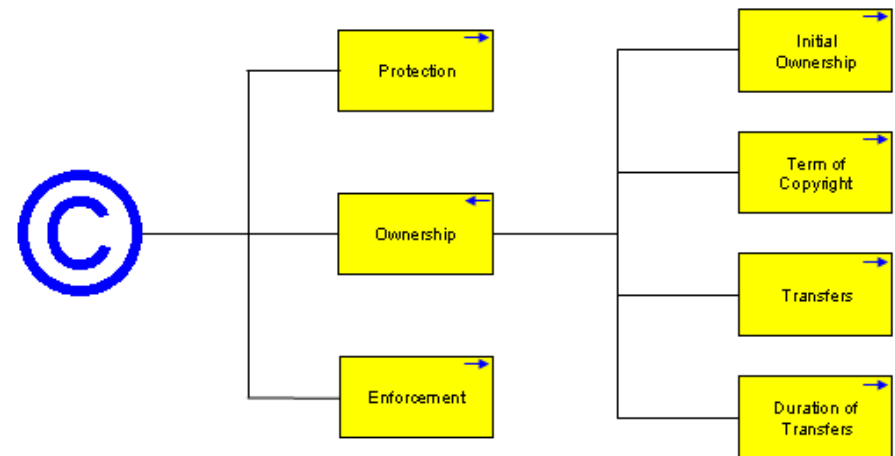
- Creative commons: Terms and permissions navigator:

<http://navigator.carolon.net/700x525/CopyrightNavigator4.HTM>

- Good for certain kinds of personal IP
- Less good for institutional use
- A few findings in favor of CC

- GNU Public License

- MIT license



Quick reference on copyright

US copyright

Complex: wikipedia

<https://en.wikipedia.org/wiki/Copyright>

Simple: Columbia U. quick guide

<https://copyright.columbia.edu/basics/copyright-quick-guide.html>

International copyright

- By country:
 - Wikipedia:
[https://en.wikipedia.org/wiki/Category:Copyright law by country](https://en.wikipedia.org/wiki/Category:Copyright_law_by_country)
 - Berne Convention:
https://en.wikipedia.org/wiki/Berne_Convention

Case law in music

US, UK:

- cumulative argument
- printed work always primary

Europe:

- argue from first principles every time
- primacy varies (print, sound, first performance)

Music Copyright Infringement Resources

<http://mcir.usc.edu/cases/Pages/default.html>

- Impact of audio on music copyright in the US
- Case arguments and decisions, 1844 to present
 - (1) **Madonna** (Coffey v. Warner/Chappell, US) **2005: claim dismissed** [grounds: vocal expression, pitch contour, syncopation]
 - (2) **Elton John** (Hobbs v. John, UK) **2013: claim dismissed** [grounds: titles both begin with N, and other similarities]
 - (3) **Justin Bieber** (Copeland vs. Bieber) **2015:** [grounds: normal audience might find songs similar]: **under appeal**

In the docket: “Blurred Lines”

- Marvin Gaye (1977) vs Pharrell Wms, Robin Thicke (2013)
- Current judgment in Gaye’s favor; **under appeal**
- Issues:
 - Similarity of “sound” [sound not protectable], “look and feel”
 - Lots of details
 - Plaintiffs created audio rendition to show similarities
 - Expert witness submitted musical transcriptions
 - Different media
 - Lots of money at stake: \$7.4 millions