Basic Concepts in Music Copyright

Music 253/CS 275A
Stanford University
Music copyright: Overview

- 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, cont.

- **Content disputes:**
  - Lack of authorization to reproduce
    - Defenses:
      - Inability to locate owner
      - Ignorance of the law
  - Musical plagiarism (copyright infringement)

- **Contractual disputes**

- 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
  - Book = crystalization of “creativity”
- Model of a derivative work: a book translation
  - The straight-line view (procedural)

In a simpler time…
Fixed form and derivative uses

- Models of **fixed form**
  - Book = crystalization of “creativity”
  - Derivative work: a book translation
  - Sound recording, video = chrystalizations of creativity OR derivation

- Fragmentary instances: **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: https://guides.lib.utexas.edu/copyright/fairuse
  - Stanford charts and tools for fair use:
    - https://fairuse.stanford.edu/

- Fair use in music:
  - Music Library Association:
    - https://www.musiclibraryassoc.org/mpage/copyright_ps_fairuse
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
Where we’ve been

- **Sound apps**
  - Temporal or
  - Sounding pitch

- **Score apps**
  - Spatial org
  - Written pitch
Music representation vs copyright law

- **Differentiation of**
  - Sound
  - Notation
  - Logical information

- All manifestations on music considered **interchangeable**

- Based on sanctity of **“the work”**
Most contentious recent case: “Blurred Lines”

- Marvin Gaye (1977) vs Pharrell Wms, Robin Thicke (2013)
- **Appeal failed:** August 2018
- Standing law favors Marvin Gaye [estate] and protectability of “style”
- **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 million
Impact of audio on music copyright in the US

Case arguments and decisions, 1844 to present

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

New address (2019):

https://blogs.law.gwu.edu/mcir/
## Case law (music) around the world

### US, UK:
- cumulative argument
- *printed work always primary*

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

### Elsewhere:
- Laws more recently adopted
- Terms of copyright often just as long as here
- May be applied more selectively
- India: most cases related to Bollywood
- China (PRC): most cases related to re-streamed downloads
Digital world: Who owns music?

- Business entity (author/composer/record company)
- Society (open source)
- Rights society (licensed)
- A cultural institution (cultural property)
- Your teacher or school (pedagogical property)