

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 in/Music out (human interpretation of written music)



Kyrie eleison (I)
Adagio

Flauto traverso 1
Flauto traverso 2
Oboe d'amore 1
Oboe d'amore 2
Fagotti
Violino 1
Violino 2
Viola
SOPRANO 1
SOPRANO 2
ALTO
TENORE
BASSO
Continuo

B-Minor Mass (Bach): Dresden manuscript > MuseData (data) > MuseData (score)

Music copyright: Overview, 2

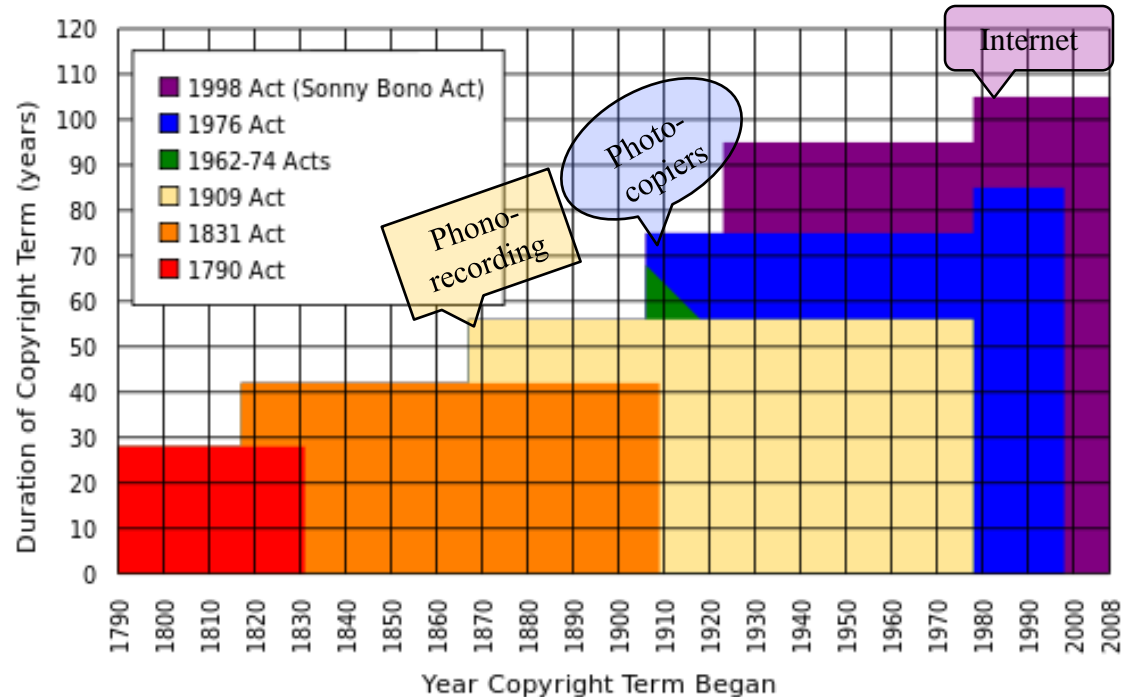
- International arena
 - Variable terms of fixation
 - Variability in basic concepts and primary instantiation
 - Variable importance of case law
- Modes of musical “creativity”
 - Audio
 - Printed music
 - Genetic data of music???? [patent law]
- Collective and serial authorship
- Quantitative vs qualitative 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?
 - Historical cases: Handel,
- Where is it going?

Basic concepts in US copyright

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



Life expectancy, 1790: 34.5 years

Copyright term: 27 years

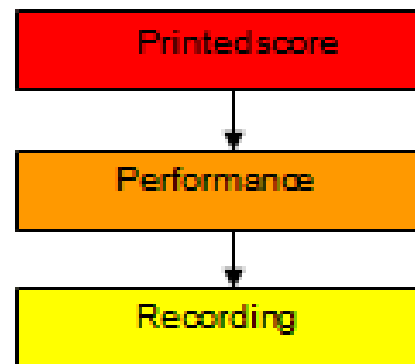
Life expectancy, 2010: 77.8 years

Copyright term: 105 years

Effect of “grandfathering”

Fixed form and derivative uses: Old model

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



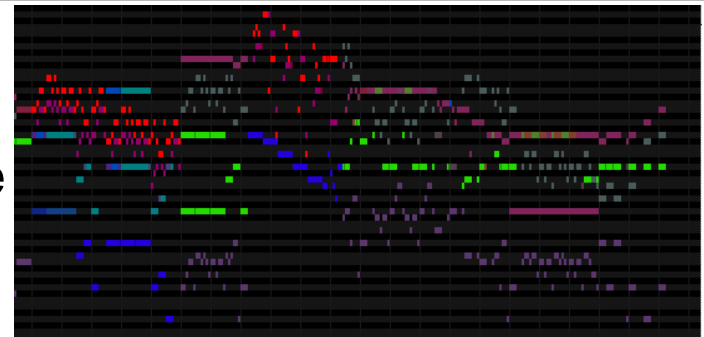
Fixed form and derivative uses

- 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.**

Analytical uses of musical data

□ Levels of completeness

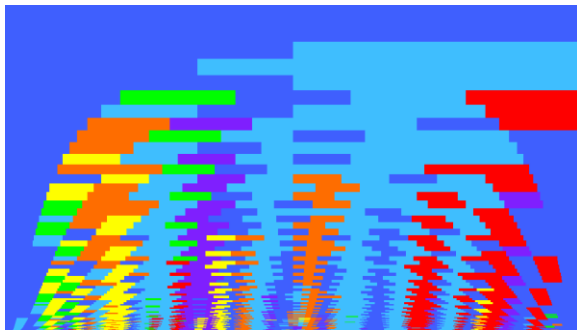
- Number is arbitrary
- Nature **depends** on intended use
- All representations are **selective**



□ End uses and end users

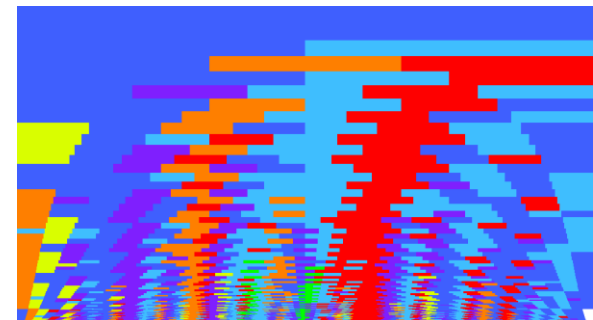
- Use as is (Musical realization via hardware or software)
- Modify for **user-defined purpose**
- Convert to a different format for third-party users*

Graphics by Craig Stuart Sapp



WTC I/1

harmonic analyses
derived from
MuseData via
Chork, Key, and
Quality programs
(Sapp)



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”)

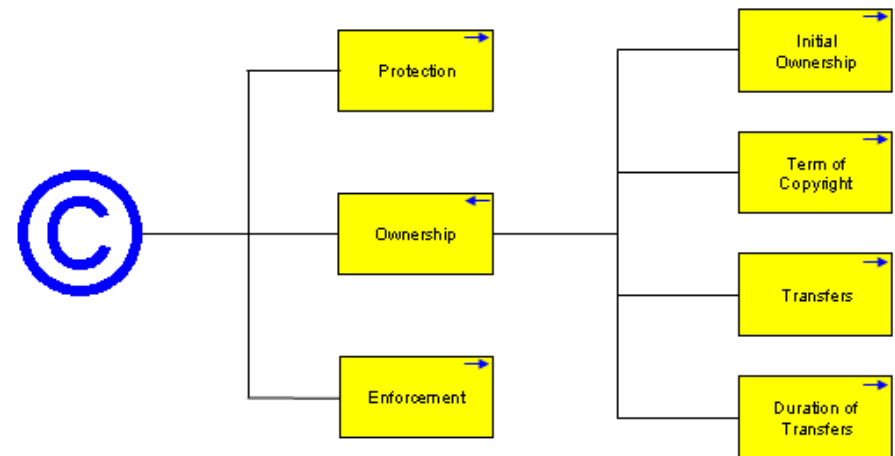
Other approaches

- 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



Patent, Trademark, Copyright

- Organization, US
 - Patent and Trademark Office
 - U. S. Copyright Office (part of Library of Congress)
 - Life of author + 95 years (your grandchildren will be old)
 - Law constantly being modified
 - Focus almost entirely on works protected in Hollywood or New York
- Copyright outside US: varies by country
 - France: author retains all rights, no fair use
 - Germany: some rights for “born as audio”
 - UK: highly articulated rules for performance rights (and more)
 - India, China, many more: life of author + 70 years

Regional variations in enforcement

The chart below shows the most-popular 25 jurisdictions for case filings in the final four months of 2012.

Rank	Court	Patent	Copyright	Trademark	Total
1	C.D.Cal.	12%	19%	15%	14%
2	E.D.Tex.	23%	0%	1%	12%
3	D.Del.	23%	0%	0%	12%
4	N.D.Ill.	3%	7%	6%	5%
5	S.D.N.Y.	2%	4%	7%	4%
6	N.D.Cal.	4%	3%	3%	3%
7	S.D.Fla.	3%	1%	6%	3%
8	E.D.Va.	2%	5%	2%	3%
9	M.D.Fla.	1%	6%	4%	3%
10	D.N.J.	2%	3%	3%	3%
11	D.Mass.	1%	3%	2%	2%
12	E.D.Pa.	1%	3%	2%	2%
13	N.D.Ga.	1%	3%	3%	2%
14	D.Ariz.	0%	3%	3%	2%
15	S.D.Cal.	2%	0%	3%	2%
16	E.D.Mich.	1%	2%	3%	2%
17	D.Colo.	1%	3%	1%	1%
18	N.D.Tex.	1%	1%	2%	1%
19	E.D.Mo.	0%	3%	1%	1%
20	S.D.Ohio	1%	2%	1%	1%
21	N.D.Ohio	1%	1%	1%	1%
22	D.Minn.	1%	1%	1%	1%
23	W.D.Wash.	1%	1%	1%	1%
24	E.D.N.Y.	1%	1%	2%	1%
25	D.Nev.	1%	0%	2%	1%

Thanks to LexMachina for this data.

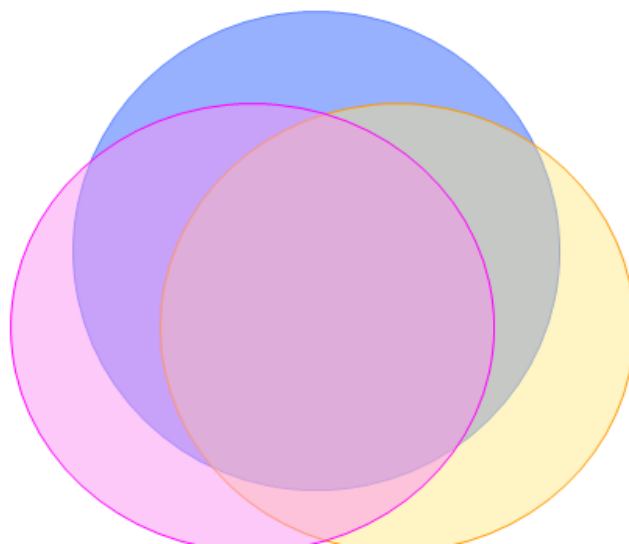
Where we've been: © still does not go here

□ Sound apps

- Temporal or
- Sounding pitch

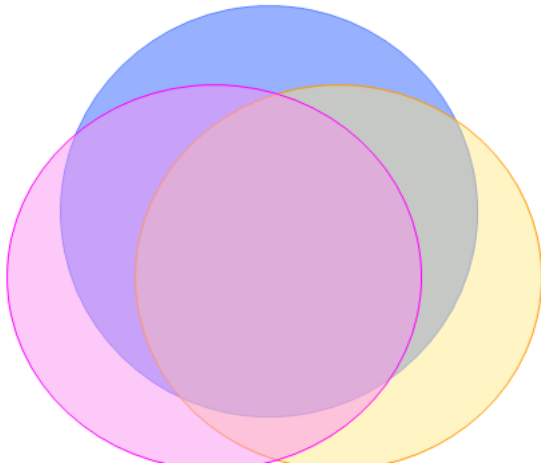
□ Score apps

- Spatial org
- Written pitch



Logical information (for analysis): no clue

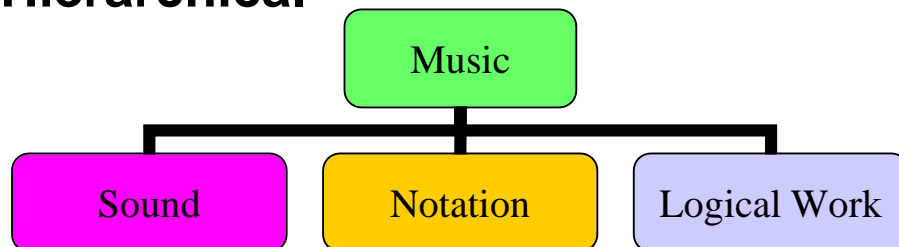
- No necessary requirements for
 - Sound description
 - Page description



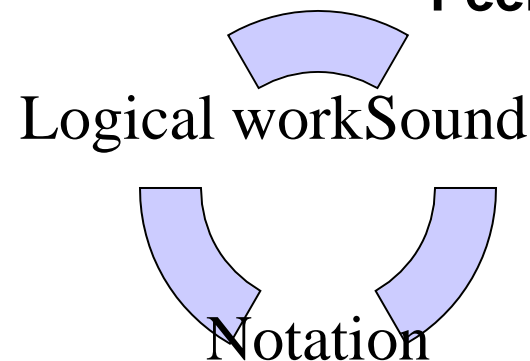
- Possible requirements
 - Gestural information
 - Selective details of notation or sound
 - Cues to formal structure
 - Accentual info

Geometries of Domain Relationships

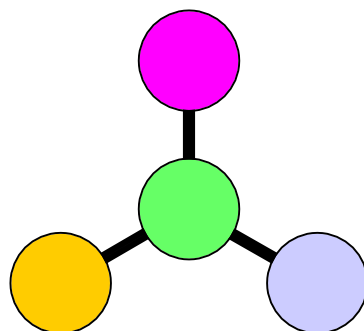
Hierarchical



Peer-to-Peer



Solar



Venn Diagram

