

From Silent Film to YouTube: Musical Identity, Music Copyright, and Film Music

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Overview

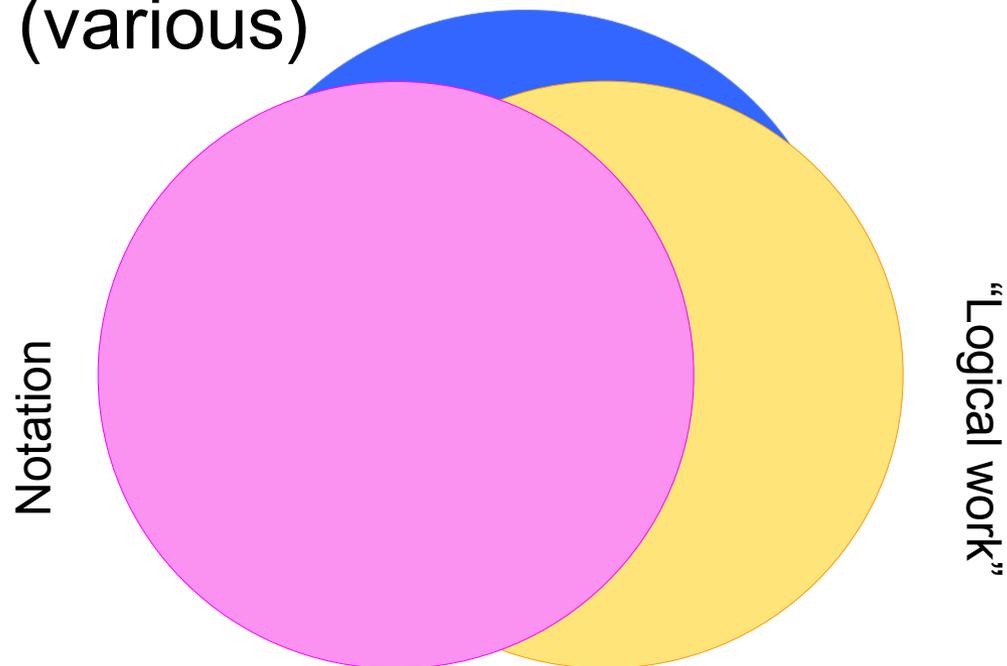
- Musical ontologies
- Fixed form in a digital environment
- Using copyrighted works
- Film music as intellectual property
- Cases and claims



MUSICAL ONTOLOGIES

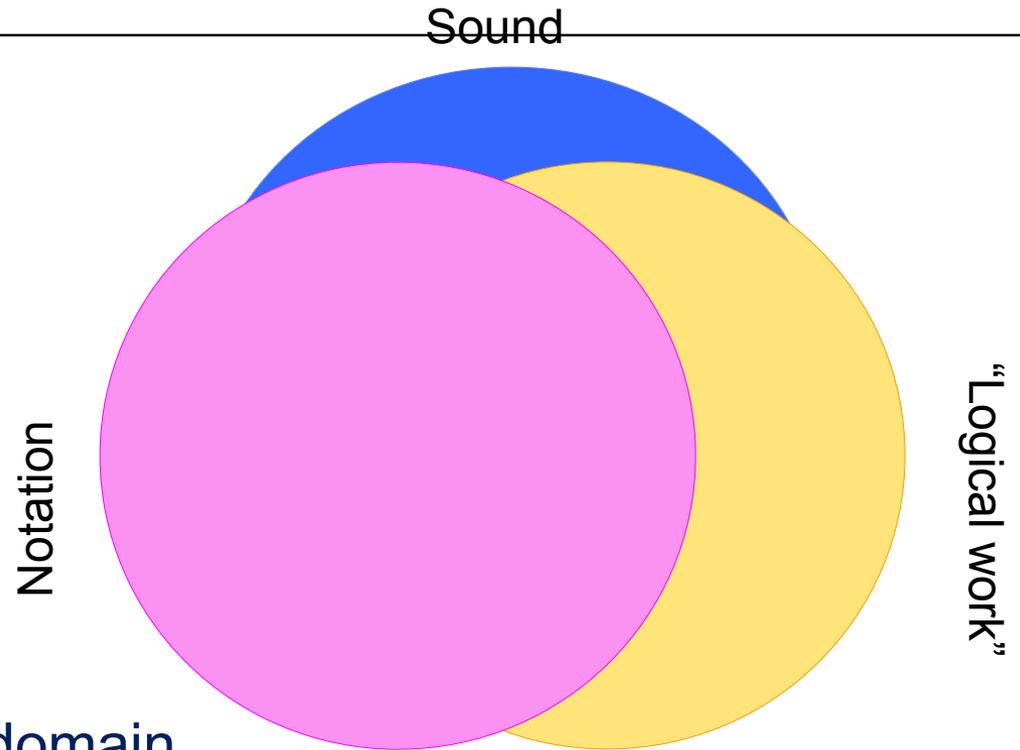
Types of digitization

- Sound content (audio, MIDI)
- Graphical content (scores) Sound
- Symbolic data (various)



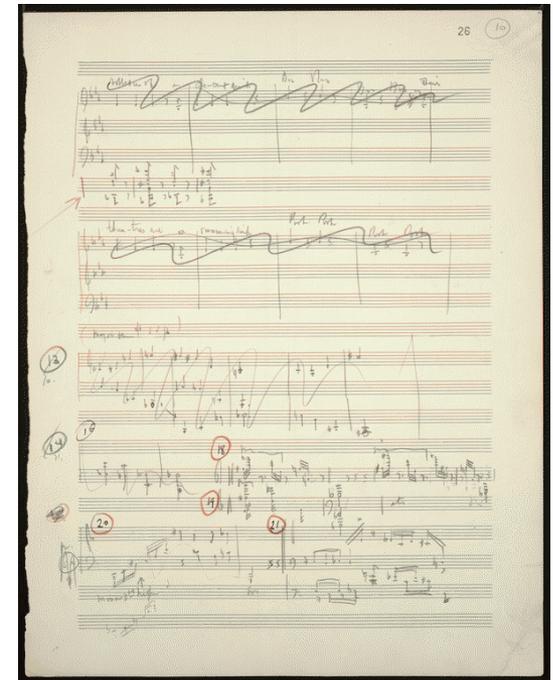
Unique features of each domain

- Sound domain
 - Timbre
 - Tempo
- Graphics domain
 - Layout
 - Gestural information
- Logical domain
 - accent
- *If film*, **synchronization** domain
 - -time values for coordinating music with video



Practical aspects of digitalization

- **Time:** Operas and oratorios (2-/3-hour works) take about 6 months to encode, proofread, lay out, and print.
- **Allowable uses:** safest sources are
 - Out-of-copyright material
 - New editions
- **Source material:** scarce





FIXED FORM IN A DIGITAL ENVIRONMENT

(Musical) Copyright concepts

- **1909: US Copyright Act** adopted
 - Provides protection based on concept of **fixed form**
 - Grew out of **legacy control** of the dissemination of printed material made from **printing plates**
 - Belonged in 16th century to **printers' guilds**
 - **Rights drift**, by assignment, to publishers
 - **Analogues** to print receive coverage
 - Piano rolls, recordings, and films



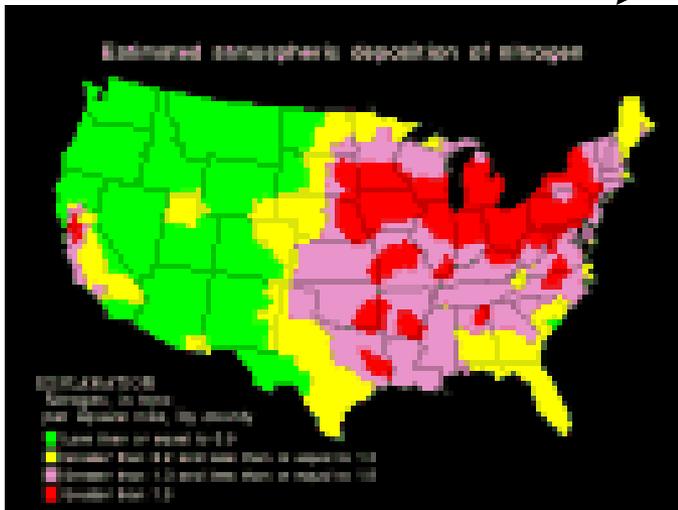
G. Henle Verlag

Copyright Aims

- What does copyright promote?
 - Creativity
- What does copyright protect?
 - Right to reproduce work
- What does copyright **require**?
 - A **fixed** registered **instantiation** of the work

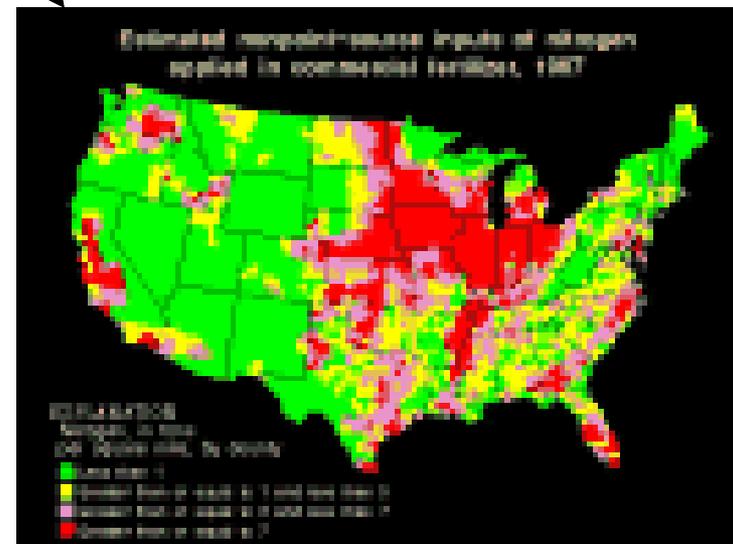
Data varies across domains

Entity: the US



Identity #1:

The atmospheric nitrogen map of the US



Identity #2:

The ground nitrogen map of the US

The Great web of Content and its Rights

The Protected (Musical) Work

The Protected Film

Media used in distribution

Publication

Recording

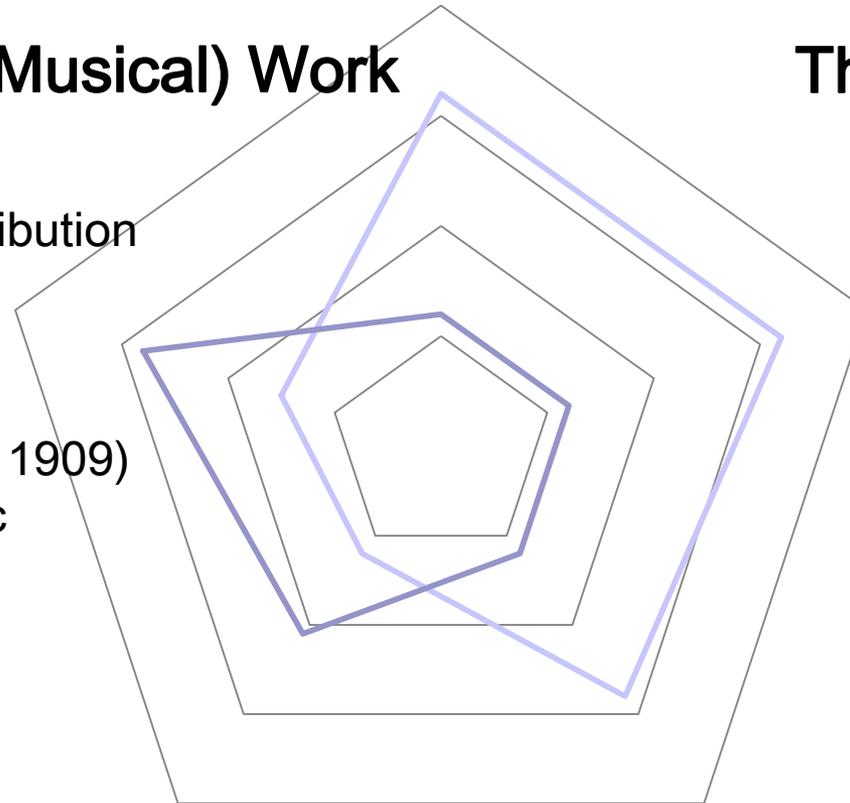
Distribution

Radio (from 1909)

Sheet music

Piano rolls

Recordings



.....

**Synchronization
rights**

(may belong to music
publisher)

New informational content

- Sound (moving)
- Images (moving)
- **Synchronization information**

Sam Fox Photoplay Edition Vol. 1 (2)

PIANO **Furioso** (Broad Confession, Still Rooms, etc.) J. S. ZAMECNIK

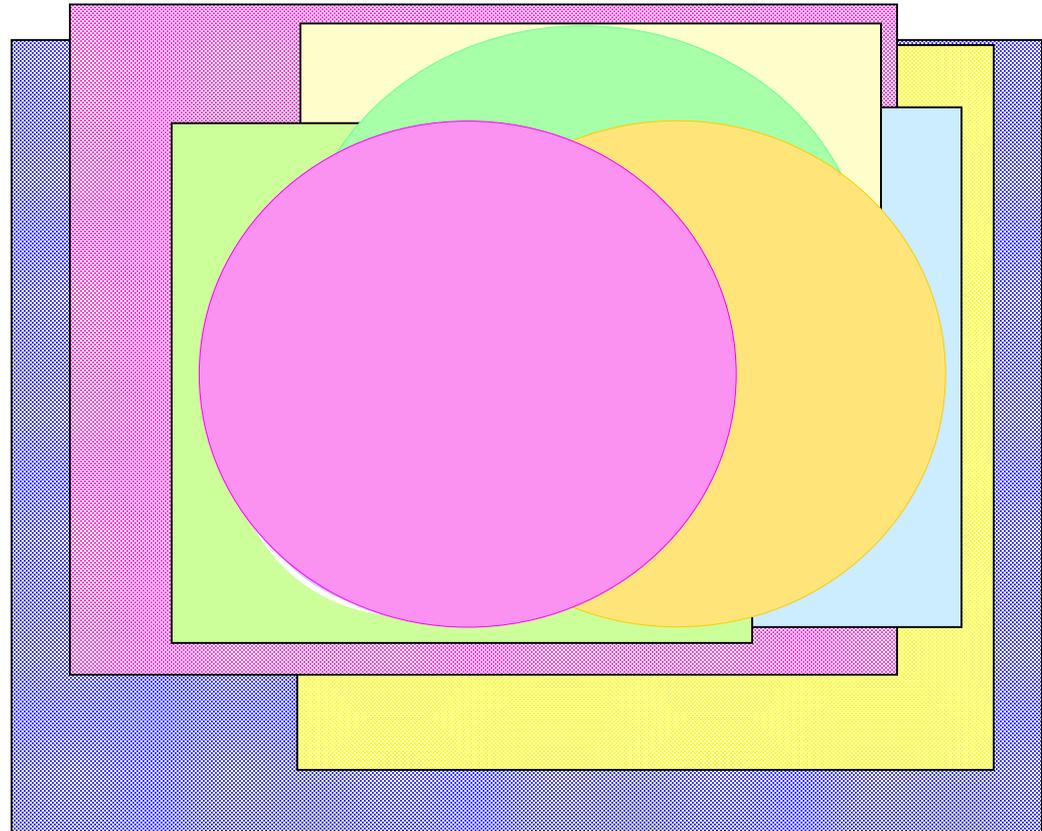
Allegro *f*

Copyright MUMFESS to Sam Fox Pub. Co., Cleveland, O., U.S.A.
Synchronized Copyright Renewed.
Printed in U.S.A.

SHOT VII	SHOT VIII	SHOT IX	SHOT X	SHOT XI	SHOT XII	
A ₁	B ₁	A ₁	B ₁			
11	12	13	14	15	16	17
1/4	1/4	1/4	1/4	1/4	1/4	1/4
1/4	1/4	1/4	1/4	1/4	1/4	1/4
0 1 2 3 4	0 1 2 3 4	0 1 2 3 4	0 1 2 3 4	0 1 2 3 4	0 1 2 3 4	0 1 2 3 4

Film as a container

- Sound information
- Graphical information
- Symbolic content information
- **Container information**
(Smiraglia et al.)



Art of the Container

Music *liberates* time.

Art of the performance.

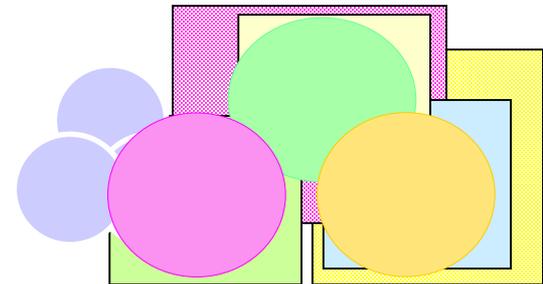


Photo © 2002 John Storey. Permission pending.

(Sarah Hughes, 2002 Olympics)

Container *freezes* time.

Art of the container



Synchronization as container art

Casablanca (1942)



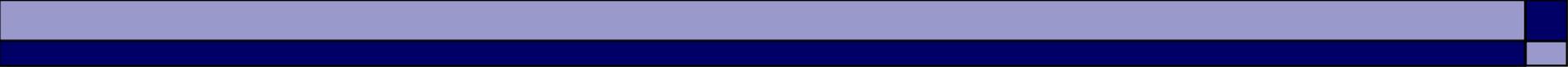
“As time goes by,” Herman Hupfeld, 1931 (#1)

Max Steiner, Warner Bros.

- With songs by M.K. Jerome (d. 1977)



Hollywood polyphony (#2)



USING COPYRIGHTED WORKS

Lack of Clarification

- **Case law** (US) only occasionally touches film music
- **Film music** is normally the property of the **film producer**

Duration of Copyright (US)

- Print legislation models to be observed
- Duration pre-1998 (excluding many complexities)
 - 1923-49: 28 plus max 28 years = 56 years (now **95 years**)
 - 1950-63: 28 plus 67 years = **95 years**
 - 1964-77: renewal automatic; thus **95 years**
 - Pre-1978, never published: expired in **2002**
 - 1978 to present: expires in **2047**

Factors complicating Duration

- **Multiple** authors
- **Neighboring** rights (multiple countries involved)
- **Mixed** material
- **Transfer** of rights

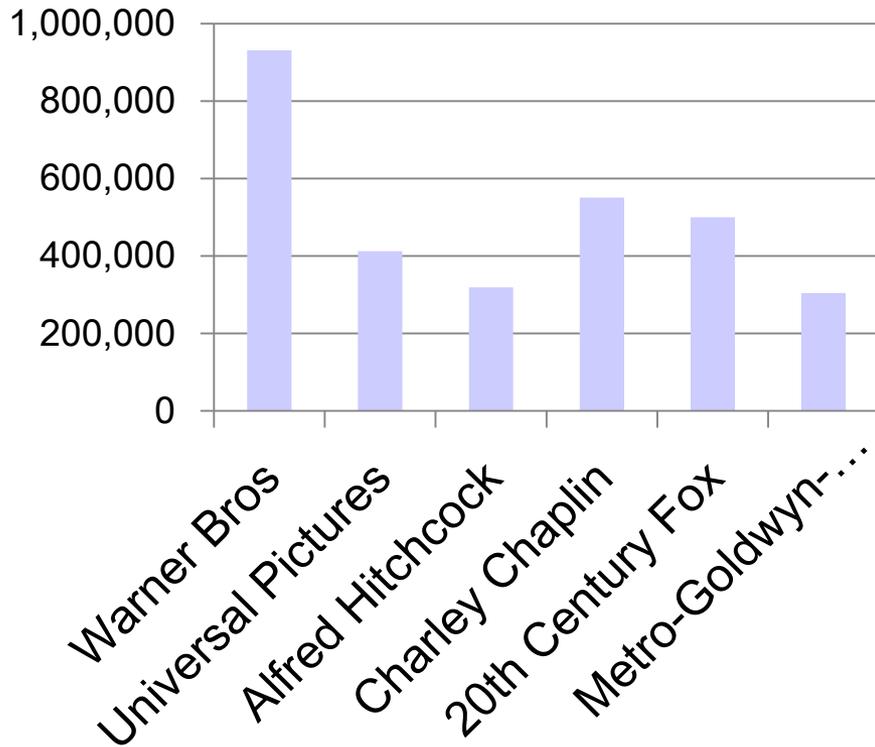
How not to infringe YouTube and copyright

...It is illegal even if

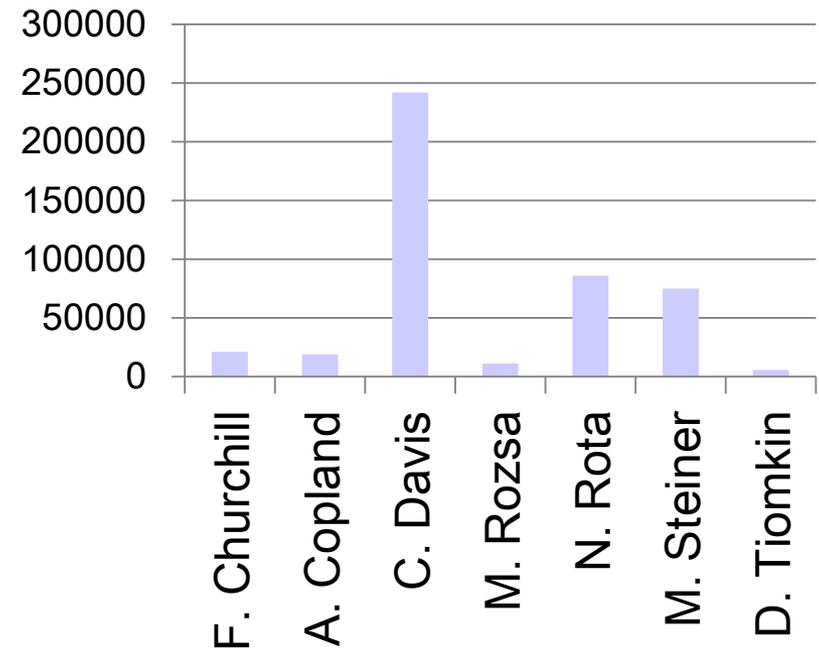
- You taped it from a broadcast
- You only used a little bit
- You credited the creator
- You edited your video
- Do something completely **original**
- Use only **your own** creations
- If you do not have the owner's permission, don't post it....

YouTube holdings statistics (2/20/09)

Studios represented



Film music composers represented





FILM MUSIC AS INTELLECTUAL PROPERTY

When/How was the music composed?

- **Commissioned** by film producer (work made for hire)
- **Previously extant** (newly arranged)
- **Synthesized** (or electro-acoustic)
- **Retrospective** (esp. silent films)
- **Pastiche** of previously existed works

Previously extant/public domain music

“Out-of-Copyright” Music

- Many Disney cartoons, e.g.
- *Fantasia* (1940) credits
 - J.S. Bach (d. 1750, Germany)
 - Tchaikovsky (d. 1893, Russia)
 - Paul Dukas (d. 1935, France)
 - Igor Stravinsky (d. 1971, USA);
 - Rite of Spring 1913 (full score, Paris 1921)
 - L. v Beethoven (d. 1827, Austria)
 - Ponchielli (d. 1886, Italy)
 - Mussorgsky (d. 1881, Russia)
 - Schubert (d. 1828, Austria)



The “Sorcerer’s Apprentice” scene (Dukas)

Previously composed “Film” Music

In-copyright music (not always credited)

- × Other Disney cartoons
- × *Bambi* (1942)
 - + “Love is a song that never ends ” [by **Frank Churchill ; d. 1942**] and 12 other songs” © Wonderland Music Co. 1953/1978
 - + Additional works by others found in later revised versions of film
 - + Churchill not credited for music in 25 other films for which he wrote music; see posthumous credits in ASCAP database (300 songs credited to him)



Bambi history:

US releases, 1942 and after
Elsewhere, 45 releases through
1987



An early film-music generator

Electro-acoustic film music

...As used in Hitchcock's
The Birds (1963)



Oskar Sala's *Trautonium*



Bernard Hermann a customary collaborator

Electronically enhanced film music

Synthetic Voices

- Simulation of castrato achieved by blending male countertenor and female voices
 - × Derek Lee Ragin
 - Ewa Małas-Godlewska

“Lascia ch’io pianga” from Handel’s *Rinaldo* (1711)

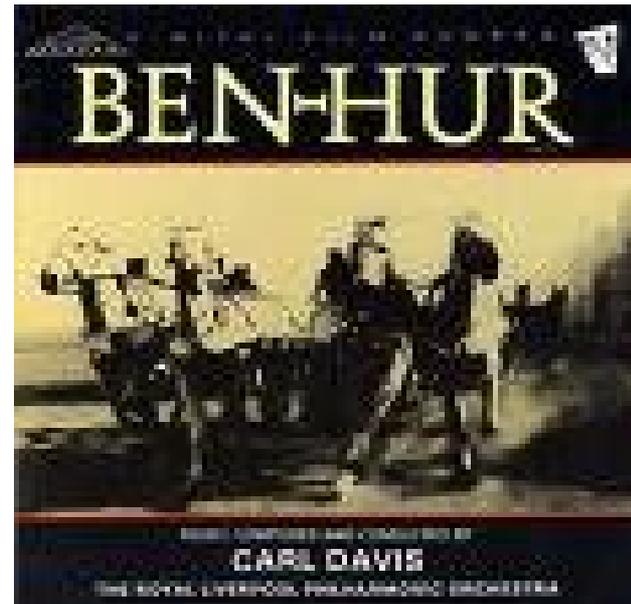
As in *Farinelli*
(Belgium, 1994)



Retrospective FiLM music

Carl Davis: Ben Hur

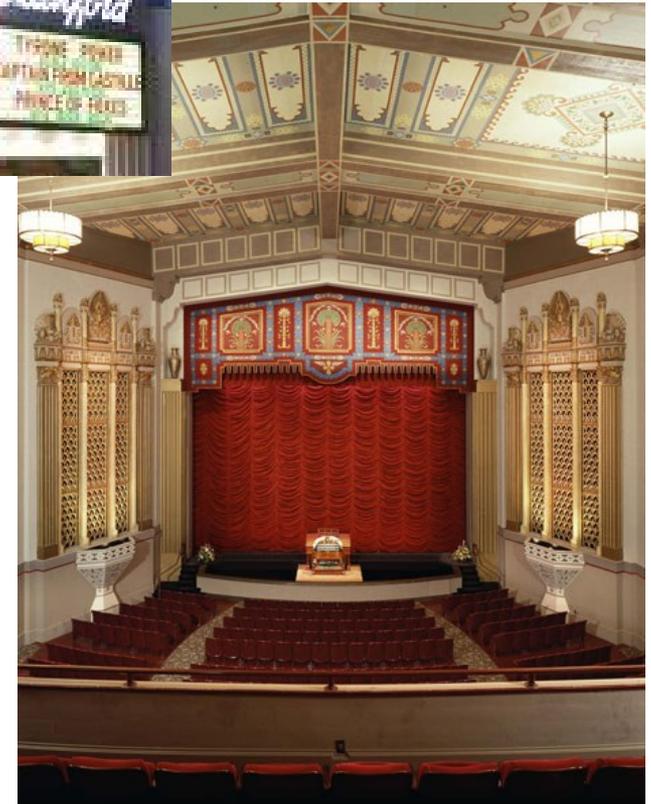
- Silent film (1925)
- Score by William Axt (d. 1959), 1931
- (recent realization by Gillian Anderson)
- Score by Miklos Rozsa (d. 1995), 1959
- Score by Carl Davis, 1987



Live music realization for silent films

Stanford Theater Foundation

- Improvised organ music from cue sheets: Dennis James et al.





CASES AND CLAIMS

Derivative work claim

It's a Wonderful Life (1946)

Frank Capra (d. 1991), producer

- RKO-Liberty studio
- Music by **Dimitri Tiomkin** (d. 1979), except “Buffalo Girls”
- Copyright not renewed after 28 years
- 1974-1993: in **public domain**



The Alamo (1960)

Rights Recapture



- 1993 claim (rested on 1991 decision by Supreme Court)
- Claimed by Republic Pictures because the underlying story was still protected.
- Rights **now held by Paramount**

Retrospective music plus transfer

- Film (1928)/silent

MUSIC CUE SHEET "THE CIRCUS"

Duration	Description of use	Title of work	Composer	Publisher
Reel 1 1 m.00	Instrumental and Vocal background	"Swing High little girl"	Charles Chaplin	MS Original music specially composed
2 m.17	Instrumental background	"Horse Music" & "Incidental Music"	"	"
1 m.39	"	"Around the Side-shows"	"	"
0 m.39	"	"Recit" & "Chase"	"	"
1 m.11	"	"	"	"
1 m.48	"	"	"	"
1 m.01	"	"Mirror Music"	"	"
Ex25x 2 m.25	"	"Chase Music", Mechanical Figures", "Chase Music"	"	"
0 m.31	"	"Mirror Music"	"	"

Reel 2				
1 m.04	"	"Vanishing Lady"	"	"
2 m.15	"	"Fanfare" & "Chase"	"	"
0 m.51	"	"	"	"
0 m.40	"	"	"	"
1 m.40	"	"His Try-out"	"	"
3 m.50	"	"An Irish Echo"	"	"
Reel 3				
3 m.17	"	"H is Try-out"	"	"
4 m.19	"	"Barber Shop Music"	"	"
0 m.14	"	"Hale Music"	"	"
2 m.10	"	"An Irish Echo"	"	"



- New score—late Sixties
- The work can only be screened with the new score.

Rights = \$1800/Eastman House

Forced choice of music

Napoleon (1927)

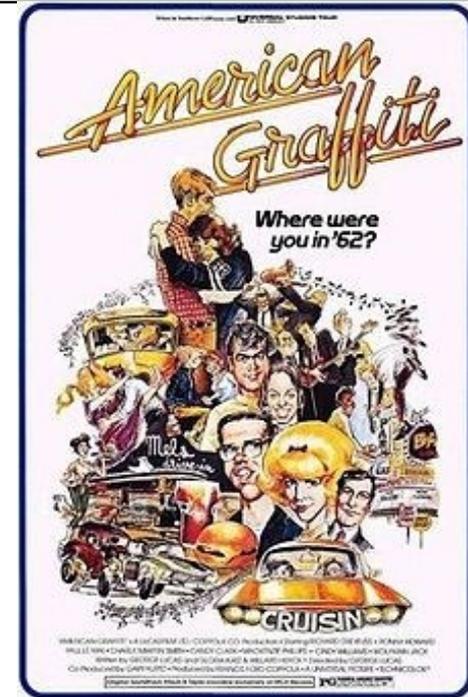


- Original production: Paris
 - Music by Alfred **Honegger** (d. 1955)
- 1981 restoration of original
 - UK: new music by **Carl Davis**
 - US: new music by Francis Ford and **Carmine Coppola** (d. 1991)
- **Only the Coppola version can be screened in the US.**

Pastiche sound tracks

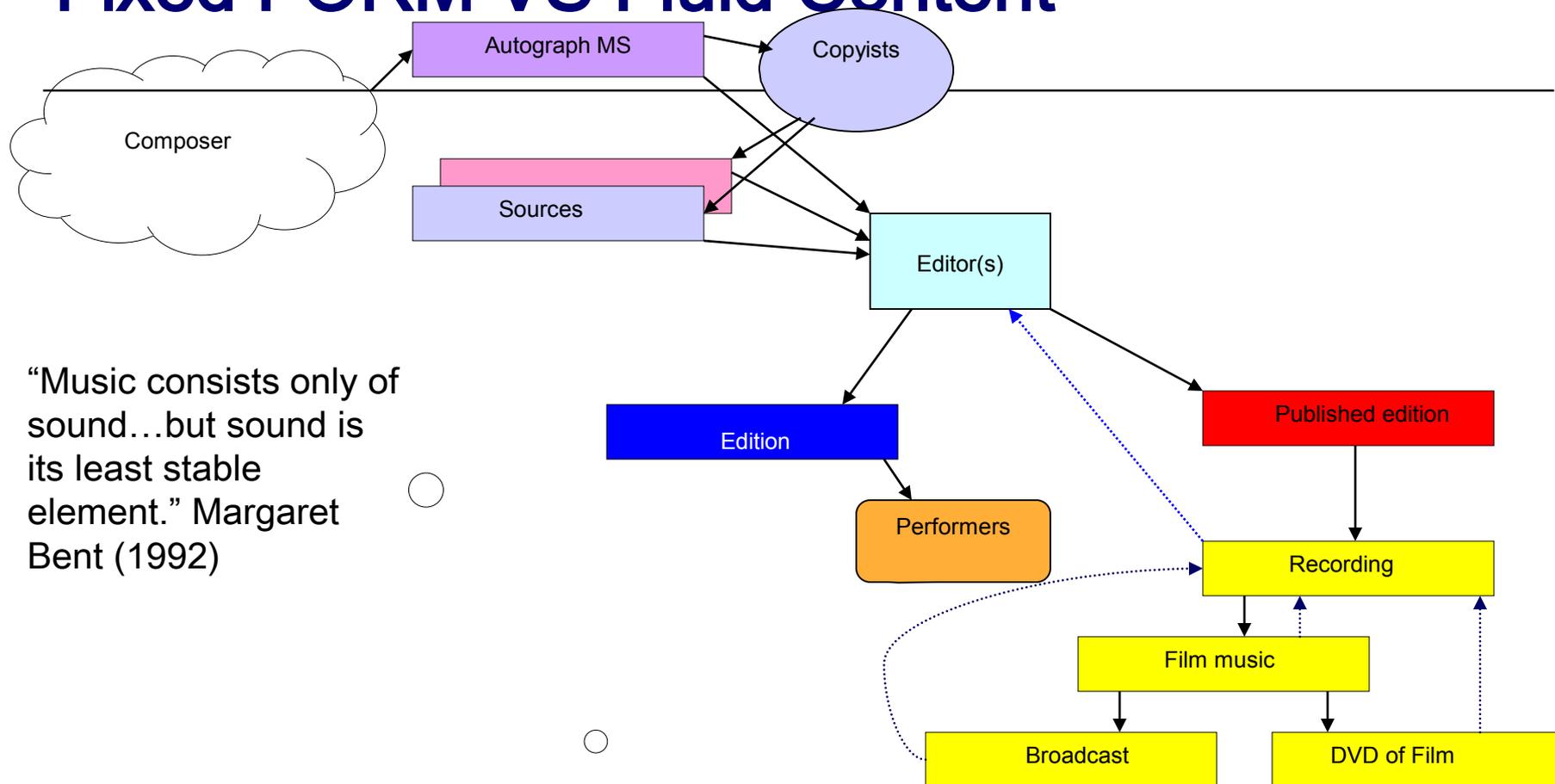
American Graffiti (1973) Lucasfilm

- **55 pre-existing numbers:**
 - “I only have eyes for you” (Flamingos, 1959)
 - “Why do fools fall in love?” Frankie Lymon (1956)
 - “The Great Pretender” (Platters, 1959)
- Cost of all rights: \$80,000
- Musical supervision by Karin Green



- Excluded Elvis Presley
- Later excluded: “She’s so fine” (Chiffons, 1964; successfully sued Beatles for “My sweet Lord” melody)

Fixed FORM VS Fluid Content



“Music consists only of sound...but sound is its least stable element.” Margaret Bent (1992)

Ontological problem: **What is a musical work?**

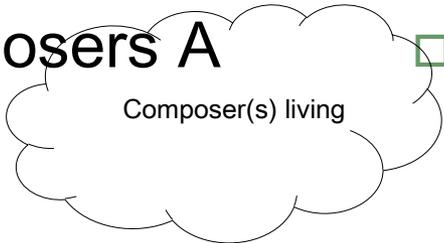
Colliding Claims

Unnamed, Undated (PBS)

- Music: Composers A and B

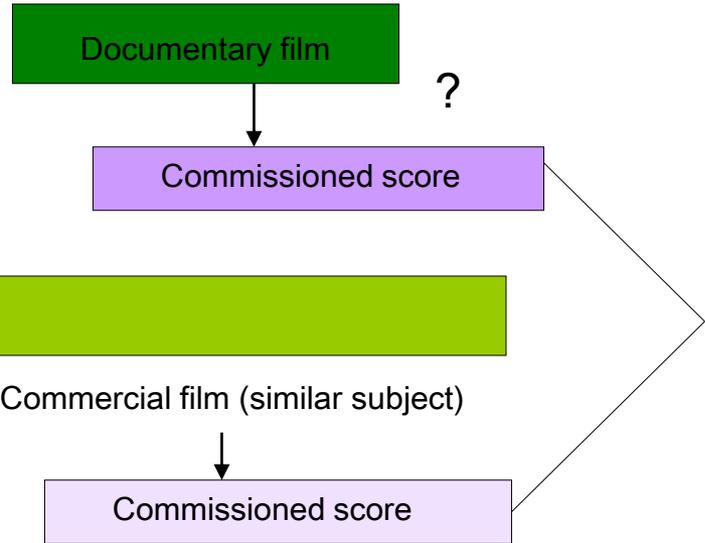
Superimposition of Melodies:
Ma Este Még Boldog Vagyok/Perhaps
(Eszty Heim) (Aldo Francetti)

Complaining Work (Ma Este Még...) = stems up, blue note heads
Defending Work (Perhaps) = stems down, red note heads
Unions Between Complaining = black note heads and Defending Melodies



Unnamed (1996)

- Music: Composer X



Heim vs. Universal Pictures
(1946)

Dvorak: Humoresque (1894)