

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**

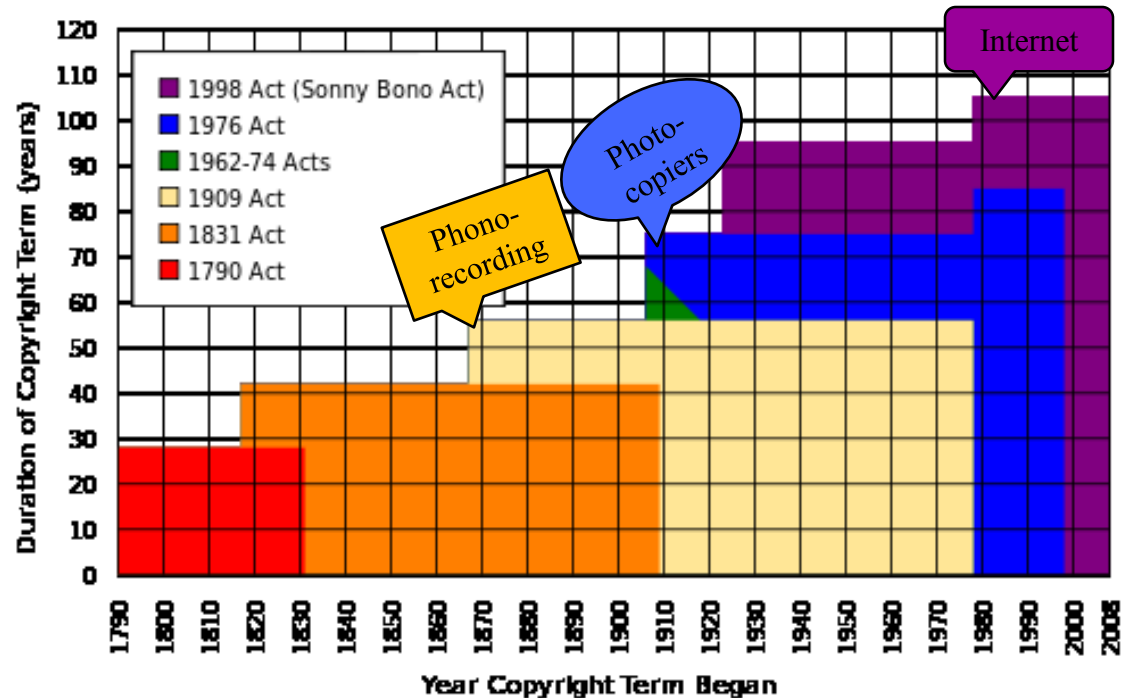
- **Jurisdictions**
 - *Authority*: Federal Copyright Act (1909)
 - States' rights *statutes*
 - *Court circuits* (2nd incl. NY; 9th incl. Calif.)

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

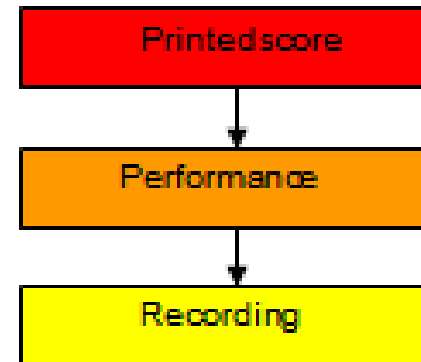
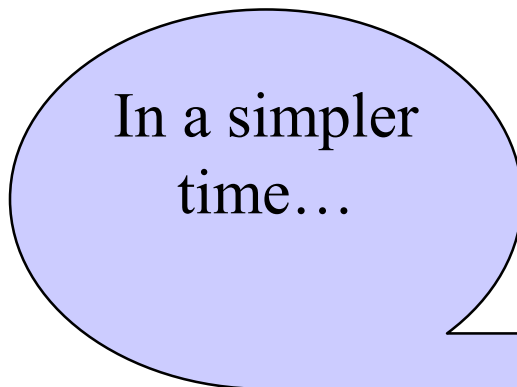
Copyright term: 105 years

Effect of “grandfathering”

Fixed form *vis-à-vis* derivative uses

- Model of fixed form: a book
 - Book = crystallization of “creativity”
- Model of a derivative work: a book translation

- The straight-line view (procedural)



Fixed form and derivative uses

- Models of **fixed form**
 - Book = crystallization of “creativity”
 - Derivative work: a book translation
 - Sound recording, video = crystallizations 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

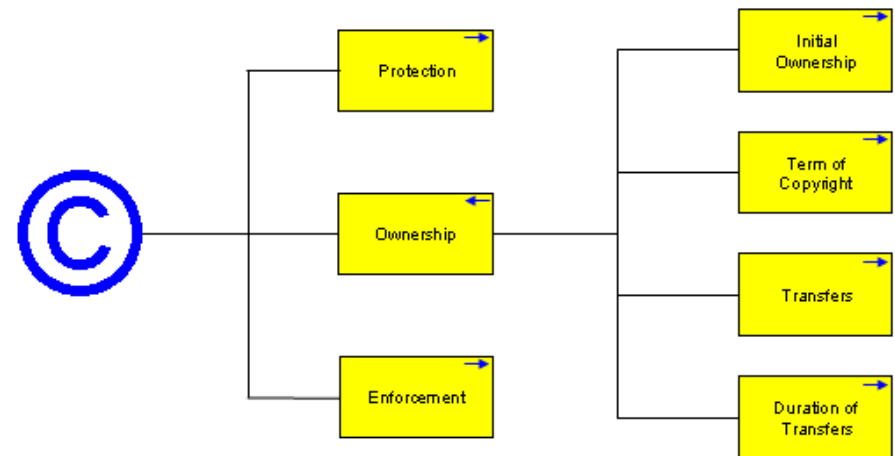
- Creative commons: Terms and permissions navigator:

<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



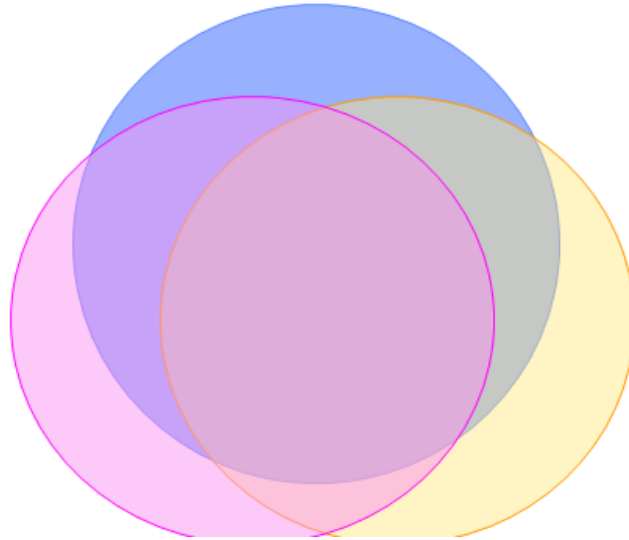
Where we've been

□ 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

Music Copyright Infringement Resource

<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**
- 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)