

Basic Concepts in Music Copyright

MUSIC 253/CS 275A

STANFORD UNIVERSITY

Music copyright (US): 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

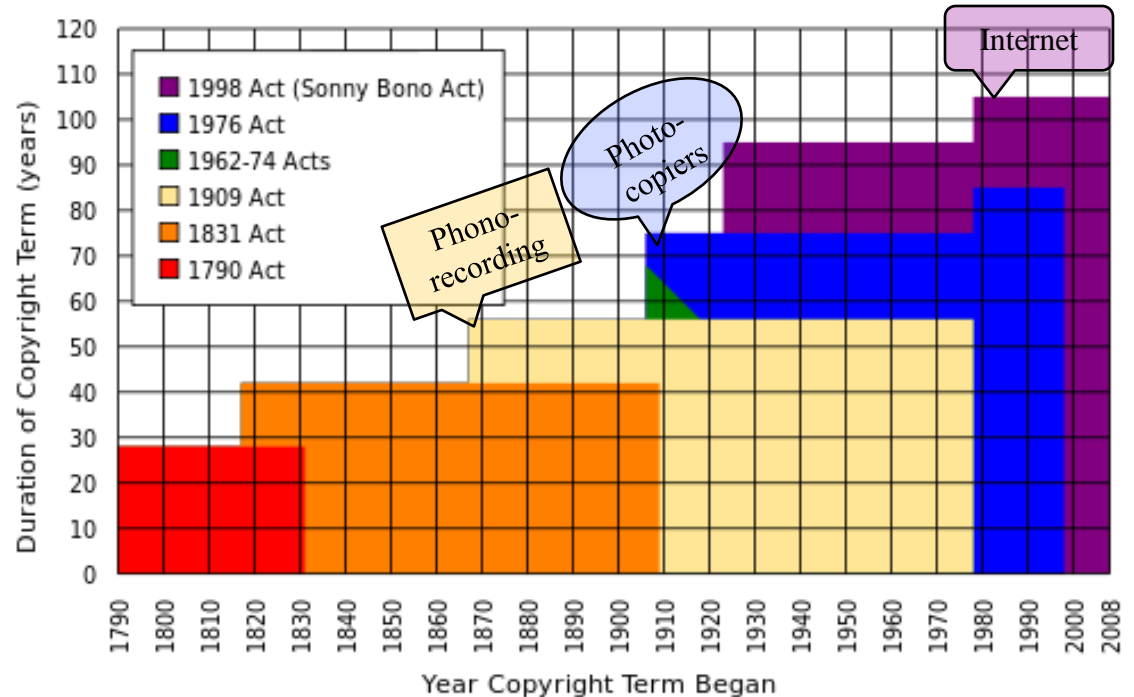
Creativity

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

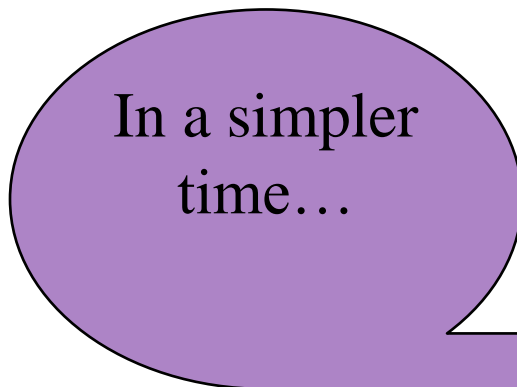
Effect of “grandfathering”

Fixed form *vis-à-vis* derivative uses

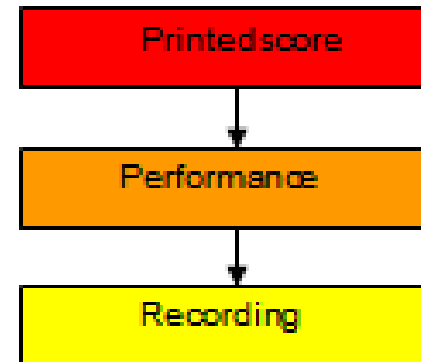
Model of fixed form: a book

- **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/BlankCustom.asp?page=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

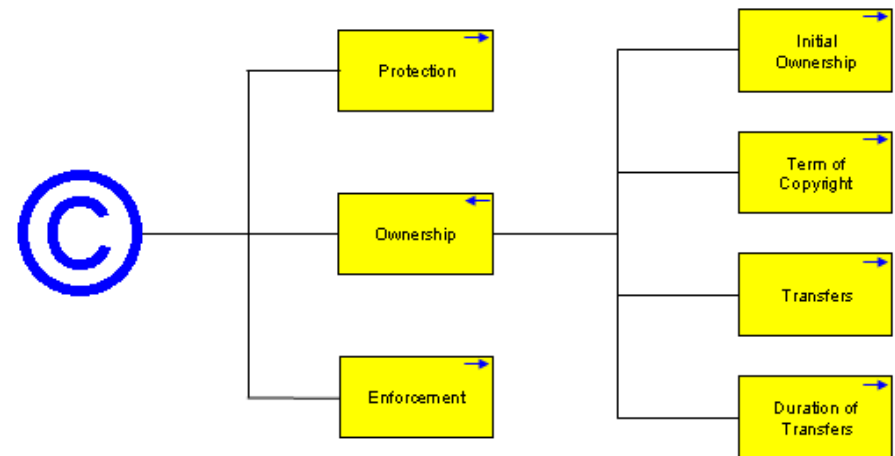
Creative commons: Terms and permissions navigator:

<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



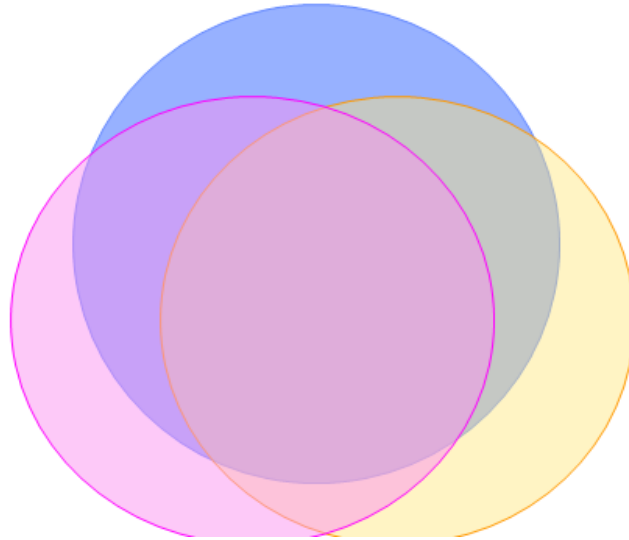
Where we've been [unexamined]

Sound apps

- Temporal org
- 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**”

International overview

- US: Sound *or* notation
- UK: Sound *and* notation
- Germany: no sound protection

Most contentious recent case: “Blurred Lines”

Marvin Gaye (1977) Estate 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

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)