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** = 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 = crystalizations 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”


**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
(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)