

# Basic Concepts in Music Copyright

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MUSIC 253/CS 275A

STANFORD UNIVERSITY



# Music copyright (US): Overview

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## 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* (2<sup>nd</sup> incl. NY; 9<sup>th</sup> incl. Calif.)

# Music copyright: Overview, cont.

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## **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

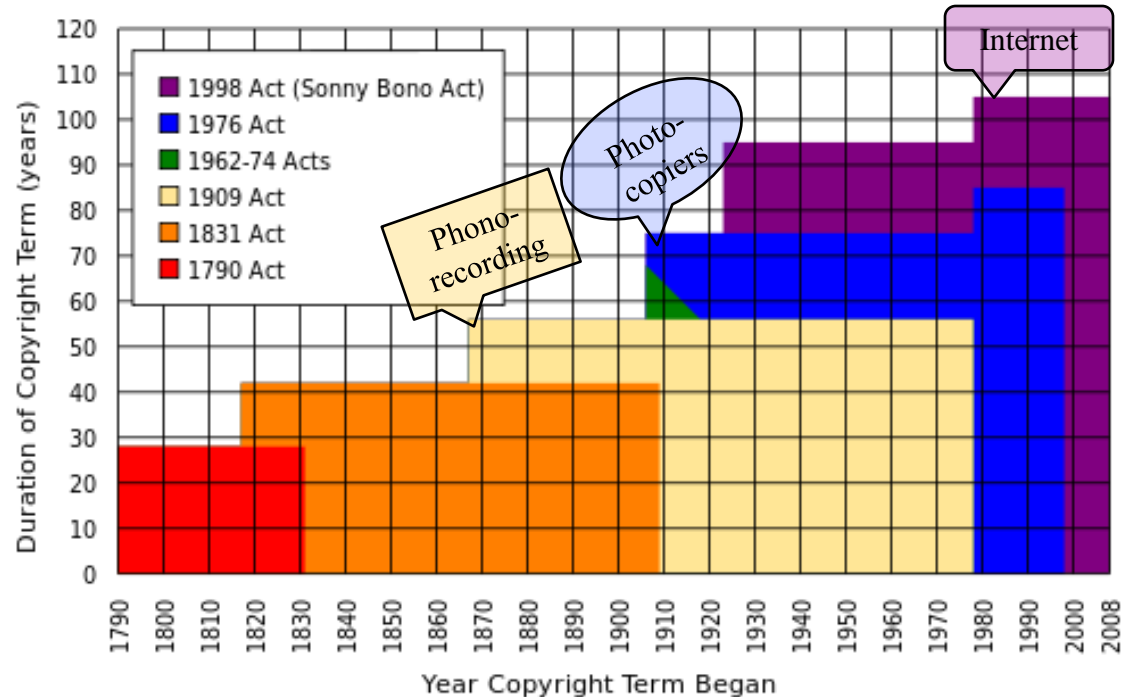
Creativity

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”

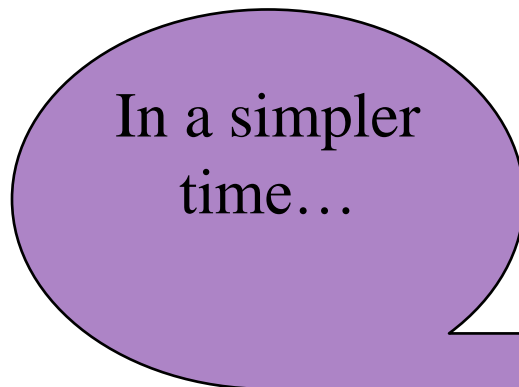
# Fixed form *vis-à-vis* derivative uses

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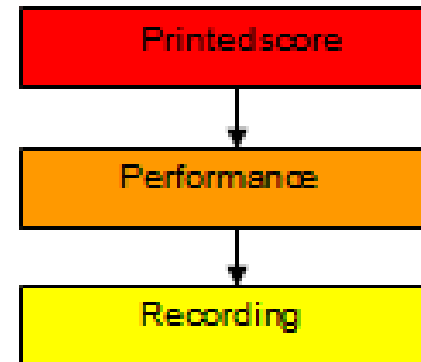
Model of fixed form: a book

- **Book** = crystalization of “creativity”

Model of a derivative work: **a book translation**



- The straight-line view (procedural)



# Fixed form and derivative uses

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## 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

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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](https://www.musiclibraryassoc.org/BlankCustom.asp?page=copyright_ps_fairuse)

# Organization of judicial system

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*Authority:* Federal Copyright Act (1909)

States' rights *statutes*

*Court circuits*

- 2<sup>nd</sup> circuit includes New York
- 9<sup>th</sup> circuit includes California

US Supreme Court

- Declines most cases in **music**
  - 2011: ASCAP vs US (from 2<sup>nd</sup> circuit):
    - Does downloading a song constitute a performance?
- 1994: 2LiveCrew **parody** allowed (“Pretty Woman”)



# Other approaches

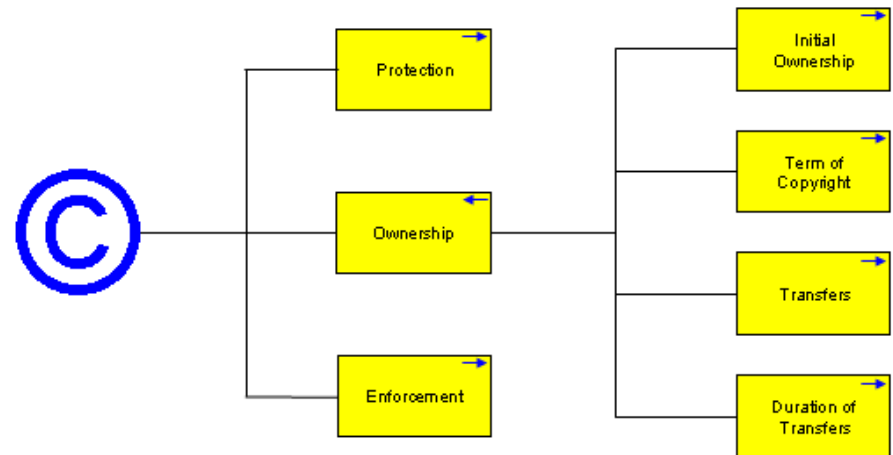
**Creative commons:** Terms and permissions navigator:

<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]

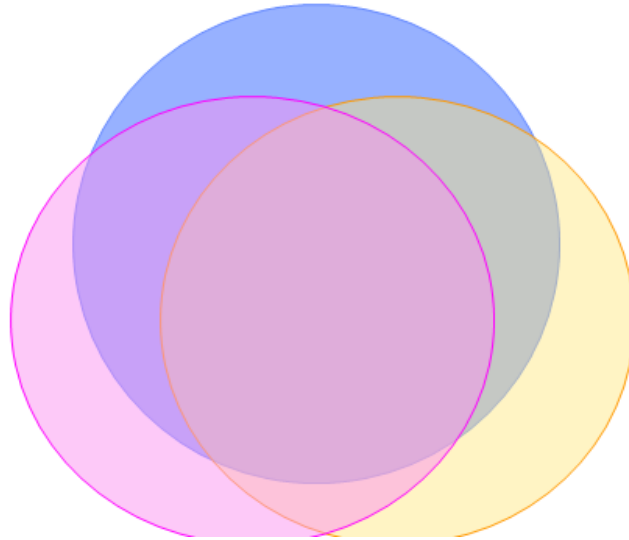
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## *Sound apps*

- Temporal org
- Sounding pitch

## *Score apps*

- Spatial org
- Written pitch



# Music representation vs copyright law

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## 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”

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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

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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

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## 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?

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- Business entity (author/composer/record company)
- Society (open source)
- Rights society (licensed)
- A cultural institution (cultural property)
- Your teacher or school (pedagogical property)
- **Who owns a virtual voice?**