

# Music as written, music as heard in music-infringement litigation

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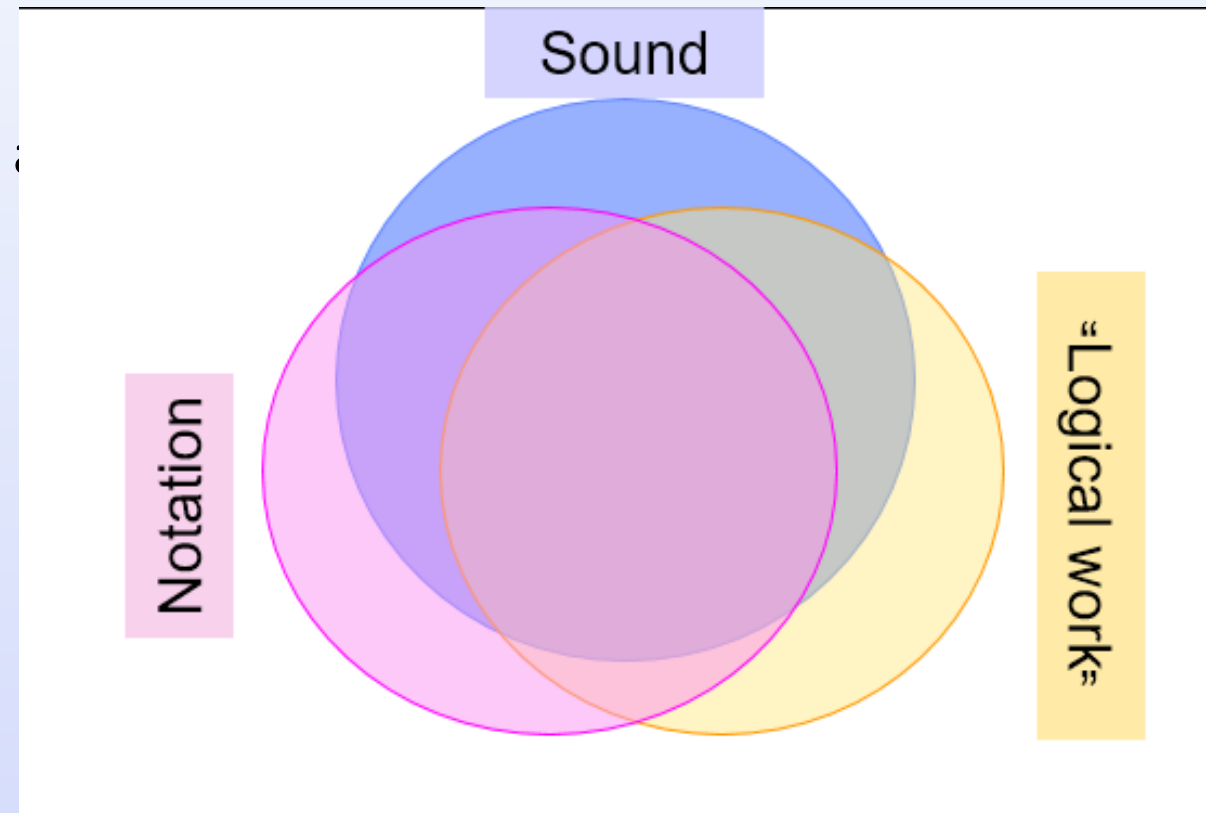
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# Structural problems in musical IP

- **Domain confusion**
  - Lack of differentiation between notation and sound as primary/sound as primary
- **Inherent conflict**
  - Sound vs. bases for judgment

**Music exists only in sound BUT  
Sound is its **least stable** element**



Domains of musical substance

# Domain conflict in copyright evaluation

## Notation-based evaluation

- **Melody**
- **Harmony**
- **Rhythm**
- **Instrumentation**

Properties of **composition**

## Sound-based evaluation

- **Tempo**
- **Dynamics**
- **Timbre/sonority/genre**
- **Beat/genre**

Properties of **performance**

# Domain conflict in copyright evaluation

## Notation-based evaluation

- Melody
- Harmony
- Rhythm
- Instrumentation



Properties of **composition**  
Judgment of **readers**

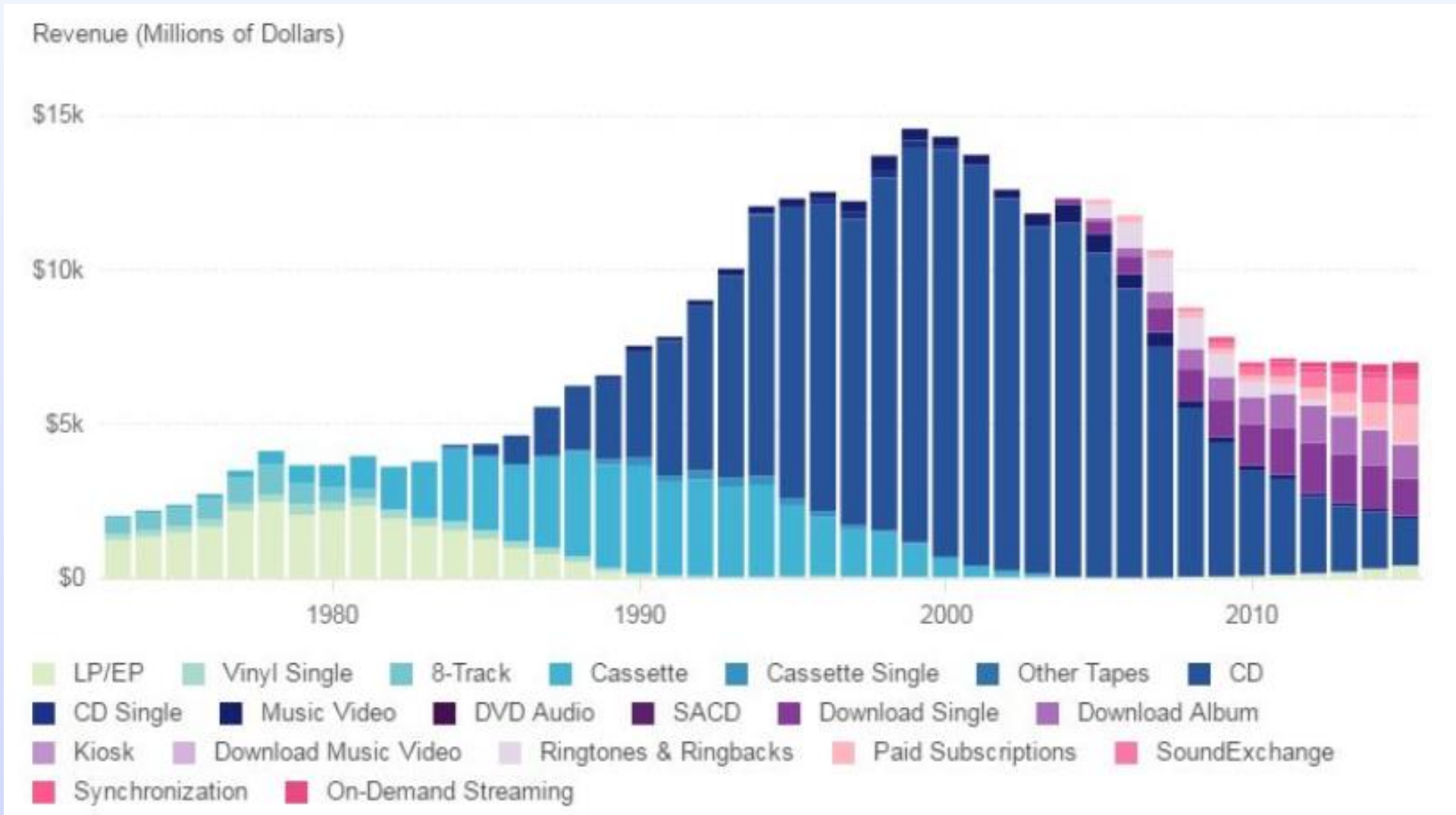
## Sound-based evaluation

- Tempo
- Dynamics
- Timbre/sonority/genre
- Beat/genre



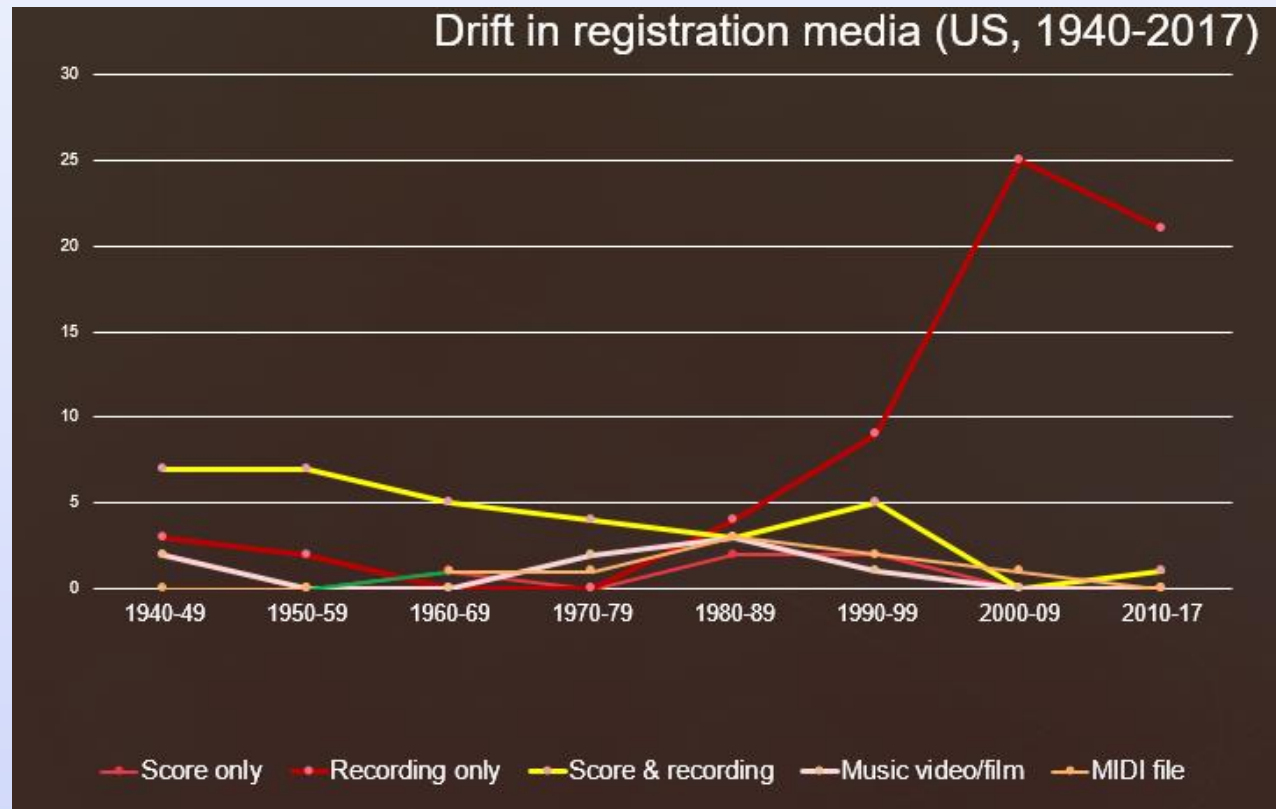
Properties of **performance**  
Judgment of **listeners**

# Revenue by delivery medium (RIAA 2016)



# Changing bases for registration

Sound vs notation in registrations



# >Satin Doll (reg. 1953; lit. 1993)

- Estate of Duke Ellington vs. Estate of Billy Strayhorn
- Concrete vs universal
- Ostensible Issue: scope of copyrights in derivative works
- The nature of jazz/swing/blues/bebop
  - Harmony, melody, rhythm integral
  - Tempo, timbres, dynamics collaborative/spontaneous
- **Registration trail: lead sheet vs full sheet version**

# Satin Doll: Ellington estate vs Strayhorn estate

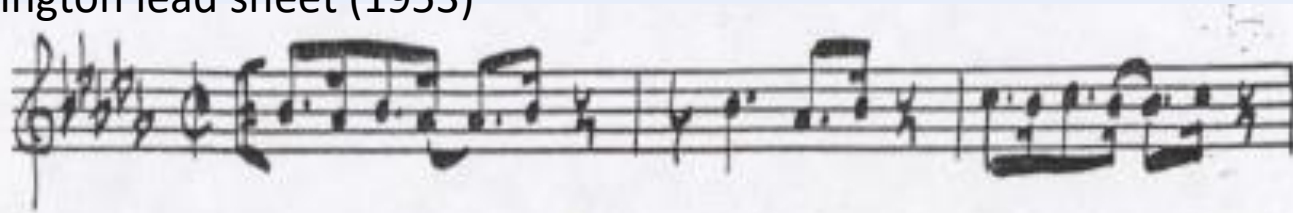
**Non-synchronous evidence**



<https://www.kapwing.com/5e6973da1a00da0015b9360e/studio/editor>

# Satin Doll (Tempo Music vs. Famous Music, 1993): Ellington estate vs Strayhorn estate

Ellington lead sheet (1953)



Claim of interest in **added harmony**  
and **revised melody**.

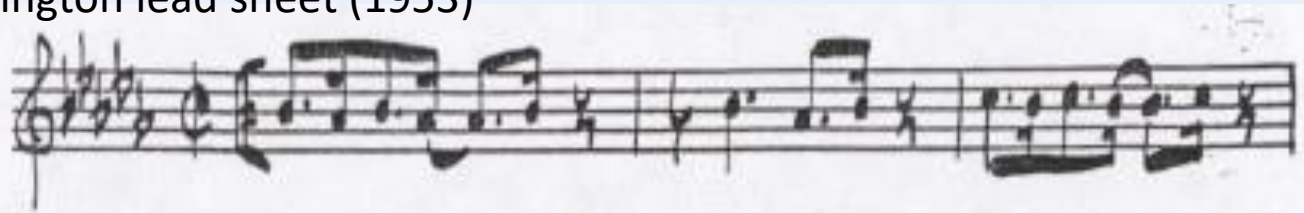
Strayhorn realization, 1958, Tempo Music

Lyrics by Johnny Mercer

A musical score for "Satin Doll" showing a piano realization. It includes a vocal line with lyrics, a piano accompaniment on a grand staff (treble and bass clefs), and a series of chord symbols above the vocal line: Dm7, G7, Dm7, G7, Em7, A7, Em7, A7. The lyrics are: "Cig - arette hold - er, which was in, a - ver her should - er, she digs me". The piano accompaniment features complex harmonic textures with many beamed notes and chords.

# Satin Doll (Tempo Music vs. Famous Music, 1993): Ellington estate vs Strayhorn estate

Ellington lead sheet (1953)



Claim of interest in **added harmony**  
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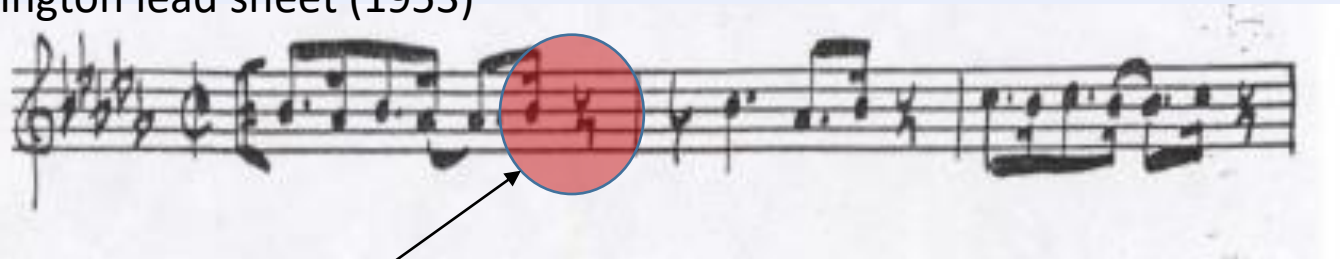
Strayhorn realization, 1958, Tempo Music

Lyrics by Johnny Mercer

A musical score for "Satin Doll" showing a piano arrangement. It includes a vocal line with lyrics, a piano accompaniment on a grand staff (treble and bass clefs), and a series of chords written above the vocal line. The chords are: Dm7, G7, Dm7, G7, Em7, A7, Em7, and A7. The lyrics are: "Cig - arette hold - er, which was in, a - ver her should - er, she digs me". The piano accompaniment features a steady eighth-note bass line and a more complex treble line with various chords and melodic fragments.

# Satin Doll (Tempo Music vs. Famous Music, 1993): Ellington estate vs Strayhorn estate

Ellington lead sheet (1953)



Claim of interest in **added harmony**  
and **revised melody**.

**Revised melody**

Strayhorn realization, 1958, Tempo Music

A black and white photograph of a handwritten musical score for "Satin Doll" by Duke Ellington and Billy Strayhorn. The score is on a single staff in treble clef, with a key signature of two flats and a 4/4 time signature. A red circle highlights a specific note in the melody, which is a quarter note G4. An arrow points from this circle to the corresponding note in the Ellington lead sheet above. The score includes lyrics: "Cig - arette hold - er, which was me, a - ter her should - er, she digs me". Above the staff, there are chord symbols: Dm7, G7, Dm7, G7, Em7, A7, Em7, A7. Below the staff, there are additional musical notations, including a bass line and a piano accompaniment.

Lyrics by Johnny Mercer

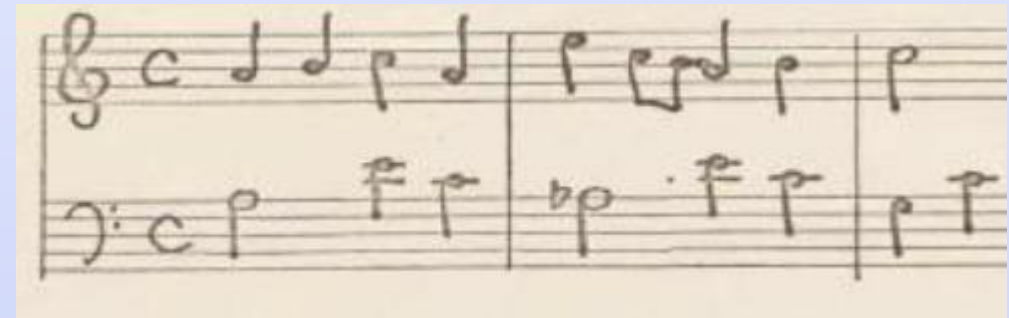
Similar issues in  
**Michael Skidmore vs. Led Zeppelin (2014-2020):**  
“Taurus” (1968) vs. “Stairway to Heaven” (1971)

- Judgment in LZ’s favor on 3/9/20 by Ninth Circuit meeting *en banc*:
- *Finding: only commonality a descending chromatic bass line (a minor)*

*Subject of dispute: First 2.5 bars of music*



10 Matches in RISM, notably Gibbons and Weelkes

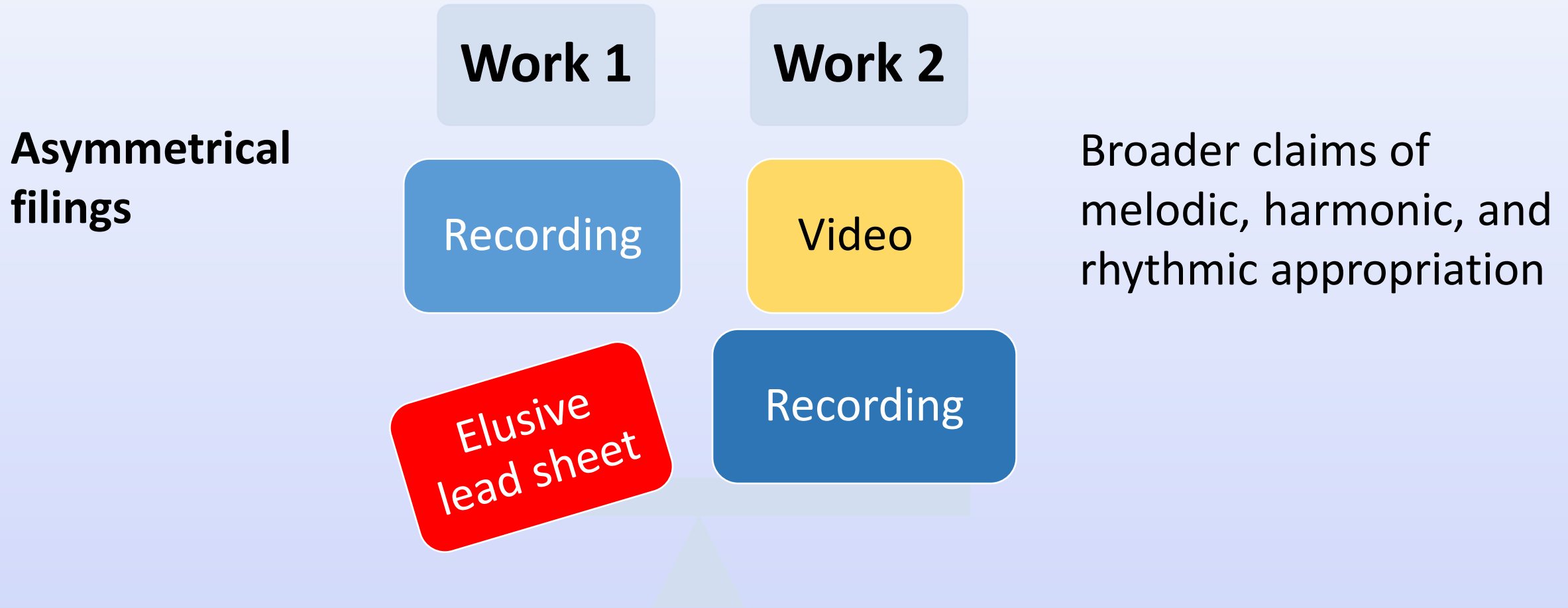


# New action on the **inverse ratio rule**

- Allowed earlier obscure works to **claim infringement** by currently famous groups
- **Threshold** for finding of infringement **lowered if** alleged infringer can be shown to have had **access** to the earlier work.
- Changed examination technique: required new rendition of music as filed in copyright registration

**News flash: both provisions overturned on March 9, 2020**

# Similar issues in Griffin vs Sheeran (2016—): “Let’s get it on” (1973) vs. “Thinking out loud”



**Critical issue:**

**Which features are **interdependent**, which **independent**...and when**

- **Interdependency** of harmony, melody, and rhythm
- These relationships vary with
  - Repertory
  - Medium
  - Era
  - **Sound-based vs notation-based judgments**
- Possible **independence** of sound and notation instantiations