

COPYRIGHT LAW

STREET LAW LESSON #2

ICE BREAKER

WHAT IS ON “ROSE” YOU HAVE EXPERIENCED THIS WEEK?

INTRO TO COPYRIGHT

- ❑ What comes to mind when you hear the word “copyright”?
- ❑ What type of material does copyright protect?
- ❑ What are some famous copyrighted works?
- ❑ What happens to a person who violates someone’s copyright?

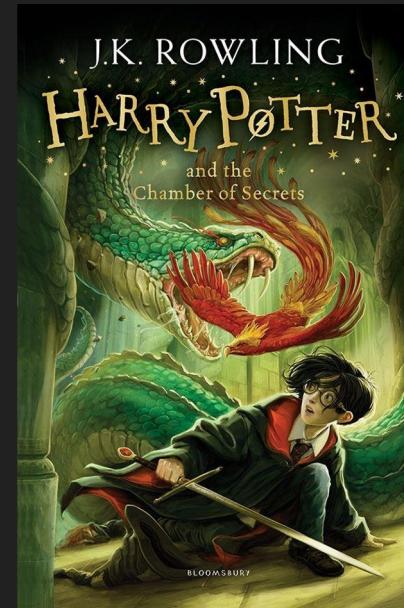
DEFINING COPYRIGHT

A set of **rights** granted to owners of **original works** of **authorship** that are **fixed in a tangible medium of expression**.

What is protected?

Original works:

- Movies
- Songs
- Books
- Dances
- Photos



What is a violation?

- Direct Infringement = An unauthorized use/copying of copyrighted materials.
- Defenses
 - Independent creation
 - Fair use
 - Licensing



Activity: Music Samples

Sample #1: MTUME – ‘JUICY FRUIT’



- ❑ What famous New York hip-hop artist from the 90's sampled this song?
 - ❑ Diddy
 - ❑ Tupac
 - ❑ Notorious B.I.G.

THE NOTORIOUS B.I.G.

[GREATEST HITS]



**'JUICY' –
THE NOTORIOUS B.I.G.**

Sample #2: Santana - Maria Maria



- ❑ DJ Khaled sampled this song in his hit song _____
- ❑ Wild Thoughts
- ❑ Staying Alive
- ❑ Popstar

‘WILD
THOUGHTS’ –
DJ KHALED,
RIHANNA,
BRYSON
TILLER



Thoughts?

- ❑ Is it “right” to take someone else’s music/content and put it into your own?
- ❑ How would you feel if someone took the music/content you created and used it for his own purpose, whether in another song, a TV show, or a movie?
- ❑ Is this legal? Why or why not?

DEFINING COPYRIGHT

A set of **rights** granted to owners of **original works** of **authorship** that are **fixed in a tangible medium of expression.**

What is the copyright law?

- ❑ Federal Law
- ❑ US Constitution grants Congress the power:
 - ❑ “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”

Article 1, Section 8, Clause 8

What is the purpose of copyright protection?

Based on the language of the Copyright Clause, what do you think was the drafters' intent in creating copyright law?



Copyright Purpose

- The purpose of copyright law is to create an economic incentive that encourages people to create arts that will benefit society at large.

What rights does the law protect?

- ❑ Exclusive rights:
 - ❑ To reproduce copyrighted work
 - ❑ To prepare derivative works of copyrighted work
 - ❑ To distribute copies of copyrighted work
 - ❑ To perform copyrighted work
 - ❑ To display copyrighted work

Fair Use Defense

- ❑ Use of copyrighted works permitted for criticism, comment, news reporting, teaching, scholarship, or research
- ❑ Even if not one of above, may be fair use if following factors weigh in favor of artist:
 - ❑ 1) purpose and character,
 - ❑ 2) nature of work
 - ❑ 3) amount of work
 - ❑ 4) market harm

Copyright Case

- ❑ 1) The plaintiff must establish that they held a copyright to a work
- ❑ 2) The plaintiff must also prove that the defendant copied their work
- ❑ 3) The defendant can:
 - ❑ Claim fair use
 - ❑ Deny copying ("I did not have access" or "I made this independently")
- ❑ 4) Judge weighs each person's argument and can order:
 - ❑ Damages
 - ❑ Injunction

HYPOTHETICAL COPYRIGHT CASE



- Robin Thicke, a popular pop artist, released a song called “Blurred Lines“ the song is wildly successful. The estate of another famous singer, Marvin Gaye, sues Robin Thicke, they argue that Thicke’s song is an unauthorized use of “Got to Give it Up” a popular song from the 70’s, and Thicke did not ask for permission to use their song. Thicke argues that he did not violate the copyright act. The case goes to court.

HYPOTHETICAL CASE EXERCISE

Thicke's Lawyers

- ❑ You are Thicke's lawyer on the case arguments would you make to the judge to establish that you did not violate the copyright act?
- ❑ Consider:
 - ❑ Can they establish your client had access to the song?
 - ❑ Can you establish that Thicke made the song independently?
 - ❑ Could this be fair use?

Gaye's Lawyers

- ❑ You are Gaye's lawyer what arguments would you make to the judge to establish that there was a copyright violation?
- ❑ Consider:
 - ❑ How can you establish that Thicke copied your client's song?
 - ❑ Would you like an injunction or damages?

Instructions

- ❑ Take 10 mins to develop your arguments for your client
- ❑ Each side will take turns making an argument for their client
- ❑ Respond to any specific questions you are asked, but also make your arguments.

Debrief

- ❑ How did you decide what arguments to make?
- ❑ Did you believe that your client was guilty? Did that affect your ability to make arguments on their behalf?



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Lets hear it:

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Case for infringement

Robin Thicke had gone on the record [in an interview with GQ Magazine](#) recalling being in the studio with Pharrell Williams. "I told him that one of my favorite songs of all time was Marvin Gaye's *Got to Give It Up*. I was like, "Damn, we should make something like that, something with that groove."

The document requesting a jury trial on behalf of the Gaye family claims that *Blurred Lines* copies "quantatively and qualitatively distinct, important, and recognizable portions of *Got To Give It Up*", which "greatly enhances the musical and financial value of *Blurred Lines*".

The Gaye family's musicologist Judith Finell suggested that there was a "constellation" of "at least eight" similarities between the two songs:

1. signature phrase - a ten-note vocal melody to the lyrics "I used to go out to parties" which is replicated in *Blurred Lines* to the lyrics "and that's why I'm gon' take a good girl"
2. hooks - the four notes in *Got To Give It Up* sung to the lyrics "Keep on dancin'", and in *Blurred Lines* to the lyrics "take a good girl"
3. hooks with backup vocals - similarities to "melodic backup vocal parts that accompany the respective songs' supposed "hooks""
4. "Theme X" - a four-note melody in *Got To Give It Up* sung in the bacK-up vocals to the lyrics "Dancin' lady" and in *Blurred Lines* to the lyrics "If you can't hear" and "okay now he was close"
5. backup hooks - the last three notes of Theme X and the lyrics "hey hey hey" in *Blurred Lines*
6. bass melodies - a four-bar bass melody in each song and similar descending bass melodies
7. keyboard parts - keyboard rhythms and keyboard pitches in both songs
8. unusual percussion choices - cowbell parts and the use of an open hi-hat cymbal in each song

In addition, Finell identified four "additional distinctive similarities":

1. "scoring and arrangement choices" that "use the same instrumentation"
2. the use of "distinctive falsetto" in the vocal parts
3. the omission of a guitar
4. the inclusion of "party noises"

Case against infringement

Williams and Thicke's musicologist, Sandy Wilbur, argued that there are no substantial similarities between the melodies, rhythms, harmonies, structures and lyrics of the two songs, and disputed all of the individual arguments advanced by Finell.

Wilbur argued that many of Finell's alleged similarities, such as cowbell, hand percussion, drum set parts, background vocals and keyboard parts, were based on the sound recording and were not evident in the sheet music deposited with the US Copyright Office. *Got To Give It Up* was recorded before 1st January 1978. a significant date in US copyright law. Before this date, the 1909 US Copyright Act was in force, and only afforded protection to representation of compositions in sheet music form, deposited with the US Copyright Office. Thus, any similarities between the two songs could only be drawn from the contents of the [sheet music copy](#) and not the sound recordings.

One of the strongest arguments advanced by the defence was the fact that "there are no two consecutive notes in any of the melodic examples in the Finell Report that have the same pitch, the same duration, and the same placement in the measure in *Blurred [Lines]* and *[Got To] Give [It Up]*".

They further argued that the similarities argued by the Gaye family's musicologist "do not reflect material that is original to *[Got To] Give [It Up]*" - suggesting that all of the musical elements in question are common in music and unprotectable. The similarities "only extend to compositional devices or ideas, not the specific expression of those devices or ideas".

They cite the song *Low Rider* by War (1975) as employing the cowbell percussion and offbeat electric piano chords, and others of the elements claimed to be infringing *Got To Give It Up*. Curtis Mayfield's 1972 song *Superfly* also contains a cowbell, falsetto vocals and bass and percussive similarities to *Got To Give It Up*.

Result

‘Blurred Lines’ Copyright Suit Against Robin Thicke, Pharrell Ends in \$5M Judgment

Legal saga with Marvin Gaye’s family concludes with final judgment

BY ALTHEA LEGASPI

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Writing Prompt

❓ Do you believe that the copyright law encourages creation as the constitution says or do you think it limits creation?