

Legal case: Williams v. Gaye Lawsuit

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1. Introduction

This essay aims at analysing a legal case, the Williams v. Gaye one, and discussing the effects of the legal implications for the music industry in general. With the help of different online resources such as magazines and blogs covering the essentials of the lawsuit, the details and information from the legal case itself, and the law theories from scientific articles, different sides of the legal case will be explored, getting into topics like substantial similarity, intellectual property and copyright infringement.

Has Marvin Gaye's family started a new trend of filing lawsuits against artists who have similar sounding songs? Where is the line between inspiration and actual copyright infringement? Should Thicke and Williams have asked for clearance or payed the Gayes a license before releasing 'Blurred Lines'? These are all questions that will be discussed in this particular essay.

2. Legal case description and its implications for the wider industry

The Williams v. Gaye case started in 2013, when Marvin Gaye's family filed a lawsuit against Robin Thicke and Pharrell Williams for copying the style and feel of Gaye's 1977 "Got to Give it Up" hit with "Blurred Lines". The US and UK number one hit "Blurred Lines" was released in 2013 and created a revenue of sixteen and a half million dollars split between the artists and Universal Music Group. Although Thicke mentioned that he was inspired by Marvin Gaye's music, in 2015 he claimed (together with Williams) that both songs simply shared some similarities, but that it was not a case of copyright infringement. Pharrell Williams is also known for writing songs that are inspired by Motown's genre of music, which Marvin Gaye was signed to. (Music Business Worldwide, 2018; Wallis, 2018)

There were many different opinions during the time of this case, one of them being judge Milan D. Smith, Jr.'s opinion stating that the similarities between both songs were more than substantial, he claimed there was too much evidence supporting the Gayes' claim of copyright infringement to be able to accept the other party's claim that the similarity was insufficient. On the other hand, judge Jacqueline Nguyen found that the similarities were subjective since the harmony, melody and rythm of both songs differed. Judge Nguyen stated that the Gayes' win would have negative effects on the music industry, creating a time where every artist could potentially be sued for copyright infringement, since every artist takes inspiration from his or

her musical influences, often creating a similar feel (even without meaning for it to happen). J. Michael Keyes, an attorney working in the music industry, commented that even though both songs have a similar sound, the actual music elements such as structure and composition were not substantially similar enough for it to be copyright infringement. (Stutz, 2018)

Musicologist Finell and Dr. Monson, working for the Gayes, defended that “Blurred Lines” had many different similarities to “Got to Give it Up”, a few examples being the speaking and rapping parts of the songs, the hooks and bass melodies. This gave the judges enough reason to decide that there was evidence present to support the Gayes’ argument, making it harder for the other party to claim that the similarity was not substantial. But then the question rises whether or not those elements are protectable. Dr. Monson mentioned the cowbell, background vocals and other unprotectable elements as part of the substantial similarity, when those did not qualify as copyrightable elements. (Quinn, 2018; Williams v. Gaye, 2018)

The Williams v. Gaye case finally came to an end in 2018, with the court’s decision ruling in the Gayes’ favour. Although Williams and Thicke were supposed to pay the other party over seven million dollars in 2015, the amount decreased in the final decision, bringing it back to five million. Robin Thicke, Pharrell Williams and More Water from Nazareth (Williams’ publishing company) have to collectively pay three million dollars to the Gaye family, and Thicke will have to pay an extra two million himself to the family since it is his song that is infringing copyright. The rapper, T.I. and Interscope Records were cleared and were found not guilty of infringement. On top of this payment, it was decided that from now on the Gaye family will be receiving fifty percent from all of the songwriting royalties from Williams’ and Thicke’s “Blurred Lines” song. The interesting fact is that if the Thicke party had asked the Gayes for a license before releasing the song, the profits and value of the song would probably also have been split fifty-fifty. (Music Business Worldwide, 2018; Sutherland, 2018; Wallis, 2018; Williams v. Gaye, 2018)

This case grabbed the attention of many artists, who felt threatened by the possible outcome of the lawsuit, fearing for their own careers, worrying if their music resembled songs from other artists too much. For one of Thicke and Williams’ appeals, over 200 artists and songwriters showed support “including the likes of John Oates, Jason Mraz and members of Linkin Park – who argued the verdict “threatens to punish songwriters for creating new music that is inspired by prior works”” (Sutherland, 2018).

Musicologist Sandy Wilbur, who testified on behalf of Williams and Thicke stated that more and more people are searching for legal and expert advice before releasing a song, scared that their song sounds too much like another one. Her job as a forensic musicologist consists of comparing two songs, figuring out if there is any objective similarity and determining if it is likely to be qualified as unfair copying in court. She examines the song's lyrics, the rhythm and harmonies among other protectable elements in copyright law. Instead of looking at these elements, the jury made its decision based on the similar feel and sounds that appeared in both songs, which are elements that cannot be protected, since both songs fall into the same genre and will therefore automatically have a comparable feel to it. "'Blurred Lines' clearly shares the same 'groove' or musical genre as 'Got to Give It Up,' which everyone agrees is an unprotected idea" (Williams v. Gaye, 2018, p. 61). People feel that their work will not be looked at objectively anymore if they were to be sued, even if the composition, the melody and the song structure are completely different, if there is a chance that the decision will be made based on the feel or groove that the song has, it will be hard to defend themselves, since new music is usually somewhat inspired by past music. More artists are clearing and pre-clearing their songs, meaning that they credit another song's author even if they only take a considerably small element from another song and add their own and original instrumentation to it, creating a completely different song, just to make sure they do not get sued. This does mean that the author of the new song will potentially miss out on profits, having to hand over a percentage to the artist from whom they took inspiration. (Hermann, 2018)

Wilbur claimed that "there were not two consecutive melody notes that were the same [as 'Got to Give It Up'] in any part of the song" (Hermann, 2018). In her opinion, the melody, harmony and rhythm did not carry sufficient substantial similarity to consider copyright infringement.

As can be appreciated in Table 1, the structure of both songs is quite different, whereas "Blurred Lines" goes from one verse to pre-chorus, to chorus and then repeats the process; "Got to Give it Up" does not seem to have a chorus, jumping back and forth from verse A to verse B which include some slight variations. While "Blurred Lines" only plays A and E chord progressions, "Got to Give it Up" alternates more between the bluesy 7th chords in A, B, D and E. Both songs may share the same feel and groove, but structure wise they are completely different. (Hermann, 2018)

Table 1: Structure of “Blurred Lines” and “Got to Give it Up”

BLURRED	Measure #	Chords	GIVE	Measure #	Chords
Intro	1 - 8	A - E	Intro	1 - 8	A7
Verse 1	9-16	A - E	Verse 1A	9-16	A7
Pre-Chorus	17-24	A - E	Verse 1B	17-24	D7E7A7B7 x2
Chorus	25-40	A - E	Verse 2A	25-32	A7
		A - E	Verse 2B	33-40	D7E7A7B7 x2
Verse 2	41-48	A - E	Verse 3A	41-48	A7
Pre-Chorus	49-56	A - E	Verse 3C	49-56	A7
Chorus	57-72	A - E	Verse 3B	57-64	D7E7A7B7 x2
		A - E	Break	65-88	A7
Rap	73-88	A - E			Am7
		A - E			Dm Am A7
Break	89-96		Verse 4B	89-96	D7E7A7B7 x2
Verse 3	97-104	A - E	Hook (repeat)	97-112	A7
Chorus	105-120	A - E			
		A - E			
Intro (repeat-fade)	121-128	A - E			

(Hermann, 2018)

3. Copyright law and further analysis of the case

Music is something that artists can protect through copyright, preventing other people from using it for commercial purposes without the author’s permission, making sure the artist gets paid fairly. Intellectual property can be defined as ““patents, copyrights, trademarks and related interests” (Field, 2006, p. 3). By registering their works, artists can ensure payments for the works from royalties and giving away licenses to other people and businesses so that they do not infringe on copyright. Since the Copyright Act of 1976, a few changes have been made, one of the most important ones being the duration of copyright. The duration of a copyrighted work increased from fifty to seventy years after the last living author of a piece of music passes away. Since 1972 and under the same copyright act, audio recordings are protected by both composition and recording copyright. (Brownlee, 1996; Field, 2006; Gorman, 1978; Lund, 2012).

Marvin Gaye’s song “Got to Give it Up” was composed and released before the Copyright Act of 1976 was effective and in use, therefore falling under the protection of the Copyright Act of 1909, which protects only the compositional copyright of a song, not the recording.

On the other hand, “Blurred Lines” by Pharrell Williams and Robin Thicke, was composed and released after the latest copyright act, protecting both the compositional copyright and the sound recording. Since Marvin Gaye’s sound recording of the song was not protected by copyright law, the recording was excluded from judgement, leaving only the music composition for judgement.

The Copyright Act of 1976 was created to grow along with the new technological and media developments of the 20th century. Under the previous Copyright Act of 1909, a work was not protected by copyright law until it was actually published and reproduced. Only then would an author’s work be credited and correctly compensated with royalties, in the case of music. The copyright was of limited time, specifically twenty-eight years, with the option to renew the copyright at the end of that period for another twenty-eight years. This meant that a piece of work could lose its copyright throughout the life of the author, which could then mean that multiple works could expire at different points in his/her life if the author was not tracking everything he or she had created. If this happened it would have meant that the author was not entitled to royalties anymore and that anyone was allowed to use their work for commercial purposes. “Copyright in a musical composition conferred the exclusive right to perform it in public for profit, to make an arrangement of the music for such performance, and to make the first recording of the composition; after the copyright owner permitted the making of such first recording, other recording artists could make their own recordings (with their own musical arrangements) upon filing notice and paying a royalty normally calculated at two cents per record” (Gorman, 1978, p. 863). So if Thicke and Williams’ intention had been to actually copy or adjust Marvin Gaye’s song and make it their own version, the “Blurred Lines” authors might have been better off paying the Gayes a license for using the “Got to Give it Up” author’s material. (Gorman, 1978; William v. Gaye, 2018)

Under the Copyright Act of 1976, the work is protected by federal copyright law the moment the author starts writing it. If a musical composition is performed publicly, it will be an infringement, except in some cases, such as for educational purposes in a classroom setting. Just like with the previous copyright act, in this one other artists are also allowed to make their own interpretation of a published work, as long as that person obtains the necessary licenses for it. If that person takes segments from the actual song from the original author (also known as dubbing), that would still be an infringement, it has to be a new version, even if it is simply re-recording the segment. An idea or a concept is an

element which cannot be copyrighted; this is closely linked to the concept of the feel of a song or its groove, which was crucial in the jury's decision for the outcome of the Williams v. Gaye case. (Gorman, 1978; William v. Gaye, 2018)

In the case that an artist sues another one for copyright infringement, the plaintiff has to be able to prove that "(1) he or she owns the copyright in the infringed work, and (2) the defendant copied protected elements of the copyrighted work" (William v. Gaye, 2018, p. 16). Point two can be proved by looking for substantial similarity and investigating if the defendant had a high degree of access to the copyrighted work. The Thicke party admitted that they had easy access to Marvin Gaye's song, which does not work in their favour when looking at the inverse ratio rule (the more access can be proven, the less relevant substantial similarity gets, and viceversa). But the point is to decide whether what the defendant supposedly took is enough to be classified as illegal copying. Courts often admit proof of copying as the substantial similarity, when in fact, what was copied was not enough to be considered unlawful (simple example: two songs using the phrase "I love you". It is copied but it is such a common expression that it cannot be considered as an illegal copy, it is not unique to the original author). (Lemley, 2010; Lund, 2012; Williams v. Gaye, 2018)

Some elements that cannot be protected and that are similar in both songs is having repeated notes in a musical composition, including word painting and parlando in the song (spoken or rapped segments), the bass line (it is a generic bass line in that genre) and the topic. This is why expert testimony should always be allowed, to make the jury aware of the technicalities of the case, showing them which elements are protectable and which ones are unprotectable; then it is up to the jury (the ordinary observer) to decide whether or not the copying was lawful or unlawful. (Lemley, 2010; Lund, 2012; Williams v. Gaye, 2018)

4. Conclusion

This case is the perfect example to show how complex the legal environment in the music industry currently is. Creativity and freedom of expression are very subjective things, there can always be someone who claims that someone stole his or her idea, that someone copied this or that. There is a very fine line between inspiration and actual copying. While it makes sense that artists take inspiration from previously published works or experiment

with common sounds from a certain genre, they should be careful not to copy too much and not to take a unique element from an artist without giving credit to the author. Artists should think twice before releasing a song, making sure it is as original as possible, and getting the necessary clearance and licenses when necessary. To many people it is still unclear if the Williams v. Gaye case ended the right way, but in the case that a lawsuit is filed against an artist, the jury should always be educated by the experts and musicologists' testimony to be able to make the decision if a song is infringing copyright or not (deciding when there is enough substantial similarity). This decision should be based on the copying of protectable elements only, not unprotectable ones like the ones discussed earlier in the essay.

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