



SBTY7002

**CASE STUDY ABOUT
THE VERVE
'BITTER SWEET SYMPHONY'**

LEGAL & BUSINESS AFFAIRS

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Copyright generally is a complex subject but in terms of music, it is much more complicated since opinions can quickly diverge. In general, PRS for music (2019) says that “a musical work begins automatically once a piece of music is created and documented or recorded”. By registering copyright for a song produced for personal or non-commercial purposes, it can be secured for up to 70 years after the death of the creator and further if someone as writers, movie producers or web designers wants to use this song, they need to request permission (Katers n.d.).

More precisely, there are legally even two different types of copyright, the first one is the classic one, the encircled C, which “applies to the composition, musical score, lyrics, as well as any artwork or cover designs” and the second one is the encircled P, which “applies to the sound recording itself”. In the case of using work of others, meaning using “samples of music by other authors”, it is very significant to ask for permission beforehand, otherwise, there is the possibility of getting sued. (Music Copyright 2004)

Yet if an artist is inspired by a certain song and then writes a similar song thereupon, can one immediately assume that it was stolen? In other words, where do you set the line between an inspiration and a stolen idea? Since there are rather no precise provisions in such a situation, the best possible solution would be that the two parties may come to an agreement, if not a case like this usually comes to court, further, this could be much more expensive. The topic of copyright fraud itself will be discussed in more detail in the following with a specific case analysing the song “Bitter Sweet Symphony”.

Almost everyone knows the popular song "Bitter Sweet Symphony" from the band The Verve which was released in June 1997, but what generally may not be clear to the listeners is that it is a controversial topic about the actual author of this song.

In the Verve’s album “Urban Hymns” the credits from the composition of "Bitter Sweet Symphony" do not include the band, instead it includes no other than Mick Jagger and Keith Richards and further, it is only mentioned with an additional line that the lyrics come from Richard Ashcroft, the Verve’s lead singer. Besides that, the CD booklet describes that the song is

“performed by the Andrew Oldham Orchestra” and not by the Verve (Fricke 1998).

But how can it occur that other artists are named as authors and not the band the album is actually from?

The fundamental problem behind all this is that “the instrumental backing was partially sampled from a symphonic version of the Rolling Stones song "The Last Time," recorded in 1965 by the Andrew Oldham Orchestra” (Runtagh 2016).

In music, sampling means that part of a recording is used for a new song and a sample can consist of different sounds such as rhythm, melody or speech. The first-time sampling became a term was around 1970 when the well-known digital synthesizer Fairlight CMI was created. Further, another term which is connected to a sample and which should be mentioned is a loop. Basically, a loop is a “portion of the recording play back over and over again”. (Howell 2005)

Generally, sampling has influenced all genres of music but it has mainly made pop, hip hop and electronic music what it is today. However, sampling, in general, has a major drawback “due to confusion surrounding the legal clearance of samples, artists often find themselves embroiled in disputes with rights owners over the use of even the smallest snippet”. In other words, the best option is to get permission through a license before using a sample in order to avoid prosecution or other legal issues. (Meiselman 2016)

In order to create a new song, the Verve used almost fifty tracks of instrumentation because “in fact, the song’s signature swirling orchestral melody was recorded and arranged by the Verve; the sample from the instrumental record is largely buried under other tracks in the chorus” (The Verve Live 2005).

Although, now that it is clear what sampling means, it must be logical that the basic idea of "Bitter Sweet Symphony" does not actually come from the Verve, in fact, it is from the Rolling

Stones or more precisely from Mick Jagger and Keith Richards. Richard Ashcroft, the Verve's lead singer, even admitted that he looped four bars from the cover version of the original Rolling Stones' song and started working on "Bitter Sweet Symphony". However, Ashcroft generally sees it a bit differently as he explains that they used their own string players, percussion and guitars and emphasizes, among other things, that it is apparently all about a four-bar sample that turned into 'Bitter Sweet Symphony', which, of course, he does not approve of (Fricke 1998).

For a more detailed analysis of this case, it is necessary to see what actually occurred at all. So to speak, Richard Ashcroft approached and looped the cover version of the song "The Last Time" by the Andrew Oldham Orchestra and then used it as a sample to create "Bitter Sweet Symphony" (Runtagh 2016). In other words, with the use of the Andrew Oldham Orchestra strings, the basic idea for "Bitter Sweet Symphony" was born (Prato n.d.). However, "The Last Time" is originally from the Rolling Stones, that published the song in 1965 on their album "Out Of Our Heads", which makes them legally the copyright holders of the Andrew Oldham Orchestra cover version as well (Sendra n.d.). It is therefore understandable that for this reason, the copyright dispute is going back to the Rolling Stones or better said to Mick Jagger and Keith Richards since these two are the actual authors of the song.

Though Ashcroft knew that he had used the song as a sample and for this case, the Verve wanted to clarify the rights for the sample with their manager from the record label Hut Recordings, therefore, they negotiated with the record company Decca Records, which was Rolling Stones' record label. The Verve then actually bargained to get a license to be allowed using a six-part sample from the Oldham recording with Decca Records. (The Verve Live 2005)

If this is known, one assumes that the Verve actually did everything right, since before they released "Bitter Sweet Symphony", they first cleared the rights for it. But what happened then could not be foreseen because after the Verve released the album they got a complaint from

the Rolling Stones' manager, Allen Klein, saying that the Verve broke the agreement and used a bigger part of the song "The Last Time". (The Verve Live 2005)

After that complaint, the two parties had again had to come to an agreement and this basically led to a so-called fifty-fifty deal between the Verve and the Rolling Stones. As the Verve's bassist, Simon Jones (n.d., cited by DC 2009) explained that they "were told it was going to be a 50/50 split". Further, Jones (n.d., cited by DC 2009) stated that they "saw how well the record was doing" so, "they rang up and said that they want 100% or take it out of the shops". Of course, from that point on, the Verve's hands were tied because they had not had many options apart to accept that Mick Jagger and Keith Richards would get 100% of the rights or go to court with the whole case. Furthermore, Mick Jagger and Keith Richards received all the writing credits and Allen Klein got the publishing rights (Oconnor 1999).

But before Mick Jagger and Keith Richards got the writing credits and Klein the publishing credits of "Bitter Sweet Symphony", Ken Berry, head of EMI Records, tried to negotiate with Klein in favour of the Verve. Klein (n.d., cited by Wilkening 2015), however, said that "there's no sampling of our music" and that they "just don't believe in it". A day or two later Klein then called Berry to tell him that he was ready to make an exception as he knew that the Verve was in a bind. Klein's offer was that Ashcroft would hand over his lyrics rights to ABKCO, Allen Klein's company, and that the firm would become the sole publisher of "Bitter Sweet Symphony". This deal was concluded and Ashcroft received a thousand dollars for it. (Wilkening 2015)

Recently Ashcroft (n.d., cited by Radio X 2018) explained that at the time Klein was around there still was the possibility of people intimidating people by being a gangster in the music industry. With this saying, it can be seen that there is the possibility that Ashcroft might have been "intimidated into accepting the conditions of his lawsuit". (Radio X 2018)

Further, Ashcroft (March, cited by Beaumont 2017) stated that he "was forced to sign Bitter

Sweet Symphony away for one dollar, including the lyrics as well” and further that he “was held to ransom”.

In addition, it is known that Klein spoke to the music photographer Mick Rock on the phone that day on which the deal was made and Klein (n.d., cited by Wilkening 2015) mentioned that he “was very bad today”. Thus, one can already interpret here very well that Klein knew exactly that all this was not correct. But in the end, he got away with it and even very well as to date “Bitter Sweet Symphony” continues to be “one of ABKCO’s best-earning compositions”. (Wilkening 2015)

However, about 18 months later a new charge was brought against the Verve, which came from Andrew Loog Oldham, the actual owner of the orchestral recordings because apparently, he never got any money from the first license deal with Decca Records. As already mentioned that Virgin, the Verve’s record company, and the band themselves believed that Decca possessed the recording of Mr. Oldham's version that he composed and played so, the Verve paid Decca an agreed royalty before "Bitter Sweet Symphony" was even released to avoid copyright problems beforehand (Willcock 1999).

Of course, the band and the record company thought they were off the hook with this payment but yet again they did not seem to be. Because of this, Oldham “sued the band in 1999 for \$1.7 million in mechanical royalties” (Runtagh 2016).

Andrew Loog Oldham managed the Rolling Stones between 1963 to 1967 and further produced a few albums during this period so, after he heard of “Bitter Sweet Symphony” he filed a suit against the Verve for sampling the song “The Last Time” and therefore wanted money for the mechanical royalties as he still owns the orchestral recording (Oconnor 1999). In Oldham's words, apparently, he has never seen a share in this case, which he is, however, legally entitled to. The Verve’s spokesperson (n.d., cited by Oconnor 1999) stated that “money has been paid out that Loog Oldham hasn’t received, and that’s what the problem is”. In other words, the Verve assumed that the issue was over when they gave Mick Jagger and Keith Richards shares

and also overwrote their publishing rights to the Rolling Stones' manager, as they probably also assumed they were giving Oldham some of it.

After the Verve had already lost everything anyway, in other words, they have lost the songwriting rights to Mick Jagger and Keith Richards as well as the lyrics and publishing rights to Allen Klein and to his company, further, Oldham also got money for the sound recording rights from the orchestra recordings. So to speak the Verve was already on the ground but that was still not enough because Nike wanted to utilize the song "Bitter Sweet Symphony" for a commercial but the Verve refused as they did not want their songs generally to be taken for advertisement. However, Nike bought a license from Allen Klein that allowed Nike to use the song for advertising. In short, not only did the Verve not earn almost nothing from their biggest hit, no, the song was even used against their will for a commercial. (The Verve Live 2005)

Ashcroft (n.d., cited by The Verve Live 2005) states that „the last thing in the world I wanted was for one of my songs to be used in a commercial“. Further, the money the Verve earned from Nike's advertising through the performance royalties was donated "to the British Red Cross Landmines Appeal and to Youth 2000, a charity benefiting the homeless in London" by the Verve (Fricke 1998).

Runtagh (2016) states that "the saga of "Bittersweet Symphony" can either be viewed as a cautionary tale or one of the most unjust chapters in musical copyright history".

Generally, the problem is that "the Verve had cleared the rights to sample the recording from Decca Records but they hadn't thought about getting permission for the underlying composition until after the fact". Indeed, the whole contradiction, in this case, is that the segment used from the cover version of the song "The Last Time" did not really sound like the original Stones song, rather, the one who actually wrote the riff was the arranger David Whitaker but he was not even performed as a composer. (The Verve Live 2005)

One of Whitaker's career jumps was when he was asked to arrange two songs for the Andrew Oldham Orchestra and he could remember Andrew personally handing over the two songs saying, "that the recording session was booked for that same evening at Decca Studio Number Two" and that "he wanted both of them to be ready for then" (SOS 2001). This is how the cover version of "The Last Time" was created and arranged by David Whitaker.

If you look at it that way, do Mick Jagger and Keith Richards even deserve the rights to the song? But further what would have been the alternative for the Verve? Would it have been useful to take this whole case in front of the judge?

They didn't really have many possibilities except, as mentioned before, either to completely remove the song or to give the rights away. Of course, they could have solved the whole case in court, but it would most likely have been much too expensive and one could not know how it would have ended anyway. But generally speaking, the Verve would have had a chance, since they had agreed on a license with Decca Records before.

Until today ABKCO controls the songwriting copyright for "The Last Time" (Oconnor 1999) and recently Ashcroft emphasized that he is "coming for that money", meaning that for Ashcroft this topic is apparently not over yet (Moore 2018). Furthermore, Ashcroft (n.d., cited by Radio X 2018) stated that he "filtered it down what happened back in '97 – a gangster stole 50% of something that's worth at least a hundred million dollars already" and that he basically will never forget that.

The orchestral part Ashcroft used as a basic idea to write "Bitter Sweet Symphony" is generally not recognizable as a Rolling Stones song unless you know the story behind it as the melody completely differs. Additionally, what to mention about this case is that the Rolling Stone's song "The Last Time" was stolen as well from the Staple Singers record and Keith Richards has even admitted that he borrowed the idea from them. In short, the Rolling Stones wrote a song, which was actually based on the song idea of the Staple Singers, then the Andrew Oldham

Orchestra covered "The Last Time" from the Rolling Stones with a new orchestral arrangement, further, Richard Ashcroft used a sample from the cover to create "Bitter Sweet Symphony". That means that Jagger and Richards earn themselves a huge amount of money on a song they did not even write as the idea of their song was stolen as well. Actually, the Staple Singer should get the rights overwritten by all of them, because in consequence all ideas are based on their song. (Ethan 2009)

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