

Media, Entertainment, and First Amendment Newsletter, May 2018

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Fox News v. TVEyes Shows Fair-Use Defense Remains Risky Business

“It seems to me that if there were any logic to our language, trust would be a four letter word.” TVEyes must have felt just like Tom Cruise’s character in *Risky Business* after trusting that the Second Circuit, which had recently found that Google’s Google Books platform constituted copyright fair use, would find that TVEyes’ distribution of copyrighted television clips was likewise a fair use. In Fox News Network’s suit against the media-monitoring service, TVEyes argued that its searchable database for television programming was “the audio-visual analog to [] Google Books,” and that its fair-use defense should succeed for the same reasons Google’s had in the Second Circuit’s *Authors Guild, Inc. v. Google, Inc.* decision (hereinafter *Google Books*). But the Second Circuit reached the opposite conclusion, holding that TVEyes’ service was not a fair use of Fox’s protected content. The Court’s holding confirms that fair use is unpredictable, and can be a risky—and expensive—defense for an accused infringer to rely on. But it also demonstrates that fair use does have limits, which is good news for content owners.

TVEyes Creates a Searchable Database of Television Clips

Advertised as a “search engine for television,” TVEyes provides subscribers—journalists, government and political organizations, the military, corporations, and non-profits—a searchable database of television content. TVEyes continuously records broadcasts from over 1,400 channels, transcribes them using closed-captioned text feeds and speech-to-text software, and consolidates the transcripts into a text-searchable database. For about \$500 per month, subscribers can search the database using keywords to find and play relevant television clips of up to 10 minutes.

To read the full article, click [here](#).

The Blurred Line Between Inspiration and Infringement: *Williams v. Gaye*

In *Williams v. Gaye*, the high-profile copyright dispute between the heirs of Motown legend Marvin Gaye and the creators of the 2013 chart-topper “Blurred Lines,” a Ninth Circuit panel consisting of Judges Milan Smith, Mary Murguia, and Jacqueline Nguyen recently left undisturbed a jury’s 2015 verdict that “Blurred Lines” infringed on the copyright of Gaye’s 1977 work, “Got To Give It Up.” Although the 2-1 decision largely sidestepped the key doctrinal issues at the core of the case—deferring instead to the jury’s verdict and ruling predominantly on procedural grounds – this decision is nevertheless likely to have a significant impact on copyright litigation in the music industry going forward.

Marvin Gaye released the hit song “Got To Give It Up” in 1977. Decades later, Pharrell Williams, Robin Thicke, and Clifford Harris, Jr. (better known as the rapper “T.I.”) released the chart-topping single “Blurred Lines,” which captures a similar sound and employs comparable stylistic elements to those in “Got To Give It Up.” The similarity may not have been a pure coincidence; Thicke himself acknowledged Gaye as a musical inspiration, and during the “Blurred Lines” studio sessions, Thicke reportedly told Pharrell Williams, “[w]e should make something like [Got To Give It Up], something with that groove.”

To read the full article, click [here](#).