

Wesley Lewis in Bloomberg Law: Taylor Swift Ruling Could 'Open Floodgates' for Copyright Suits

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Haynes Boone Associate Wesley Lewis talked with *Bloomberg Law* about how a newly revived copyright lawsuit against Taylor Swift could signify that the threshold for the types of works that receive copyright protection in the United States is even lower than previously thought.

Here is an excerpt:

The court reinstated claims that Swift's refrain of "Cause the players gonna play, play, play, play, play / And the haters gonna hate, hate, hate, hate, hate" in her 2014 hit "Shake It Off" ripped off Sean Hall and Nathan Butler's 2001 song, which features the lyrics "Playas, they gonna play / And haters, they gonna hate."

The U.S. Court of Appeals for the Ninth Circuit panel said in *Hall v. Swift* that the trial court wrongly acted as the "final judge of the worth of an expressive work." Originality is normally a question of fact that judges can't decide on the pleadings, the court said.

Yet while Hall and Butler's case is "flimsy" on the merits, the Ninth Circuit probably made the right decision, Wesley Lewis, a copyright attorney at Haynes Boone, said. A fact-finder, not a judge, should decide whether a work is creative enough to have copyright protection, which is what happened in copyright lawsuits against Katy Perry and Led Zeppelin.

"This might be an interesting preview of how the Ninth Circuit is approaching that legal question. I think this is part of a trend we're seeing in copyright cases where the bar is getting progressively lower," Lewis said.

Lewis questioned the brevity of the Ninth Circuit's opinion and "vague" instructions to the lower court on remand.

"That just leads to more questions than answers once the case goes back," he said. "There has to be a balancing test, but I feel like this has lowered the bar more on what is considered original and creative than what I think the bar really is. It's one court, but the Ninth is very influential."

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