The Blurred Line between Inspiration and Infringement: Williams v. Gaye

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In *Williams v. Gaye*,[1] 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."

Upon the song's release, the Gaye family and Bridgeport Music, the owner of the copyright in the Funkadelic song "Sexy Ways," both alleged that "Blurred Lines" infringed on their respective copyrights. Thicke, Williams, and Harris preemptively brought suit against both the Gayes and Bridgeport Music, seeking declarations of non-infringement. Despite their stated reluctance to sue and admiration for both Gaye and Funkadelic, Plaintiffs may have been encouraged to act preemptively in part due to Bridgeport's litigious reputation;[2] facing presumptively inevitable litigation, Plaintiffs' decision to take the offensive at least gave them the opportunity to select the forum of their choice. Predictably, Defendants countersued for infringement. In 2015, a jury found that "Blurred Lines" and "Got To Give It Up" were substantially similar, and the district court entered a judgment awarding the Gayes more than $5 million in damages and a running royalty of 50 percent of future songwriter and publishing revenues.

Both parties appealed. Much of the briefing and argument in the Ninth Circuit focused on the disputed importance of the song's "lead sheet" on deposit at the Copyright Office and the extent to which the sound recording of "Got To Give It Up" could permissibly inform the substantial similarity inquiry. Importantly, because "Got To Give It Up" was released before the effective date of the 1976 Copyright Act, the song is governed by the earlier Copyright Act of 1909. As a result, only the musical composition is protected—not, as is the case for songs governed by the 1976 Act, both the composition and sound recording. As the Ninth Circuit observed, it is unclear, therefore, "whether copyright protection for musical compositions under the 1909 Act extends only to the four corners of the sheet music deposited with the United States Copyright Office, or whether the commercial sound recordings of the compositions are admissible to shed light on the scope of the underlying copyright."

In March, the Ninth Circuit affirmed the jury verdict "on narrow grounds," relying significantly on the procedural posture of the case. While the panel held that "Got To Give It Up" was entitled to broad copyright protection, it nevertheless accepted, without deciding, the district court's determination that the scope of Defendants' copyright was limited to the lead sheet on deposit with the Copyright Office. As a result of the Court's deferential and procedure-heavy approach, the majority's opinion gave virtually no guidance on one of the core issues of the case: the line between permissible levels of inspiration and infringing copying of musical works.

Judge Jacquelyn Nguyen dissented, arguing that the majority's ruling "strikes a devastating blow to future musicians and composers everywhere" by essentially allowing de facto copyrights in musical "grooves" or styles. Nguyen observed that the two songs have different lyrics, melodies, harmonies, and rhymes, and although "juries are entitled to rely on properly supported expert opinion," the defendants' expert did not successfully establish a legally sufficient basis for a finding of infringement. Instead, Judge Nguyen noted, the Gayes' expert improperly "cherry-picked brief snippets" to opine that there was a 'constellation' of elements that, while individually unprotectable, could support a finding of substantial similarity when taken together.

This decision is likely to have a number of repercussions throughout the music industry. First, musicians and producers may now be more circumspect in their statements regarding musical inspiration and influences, lest such admissions subject them to allegations of infringement. Furthermore, as Judge Nguyen's dissent suggests, the ruling may inspire litigious copyright holders to assert weak infringement claims to protect musical styles based on a song's overall "groove" or style. The majority, in a footnote, sought to allay fears regarding the impact of the decision, suggesting that "going forward, a number of the contentious issues presented in this case will occur with less frequency with the passage of time." But, while it is true that the unsettled evidentiary role of sound recordings in litigation under the 1909 Act will likely become less significant as more works are governed by the 1976 Act, Judge Nguyen's concern regarding the overexpansive application of copyright protections to musical styles is likely to remain relevant to claims governed by either act. Although the precise impact of this case will likely remain unclear for some time, the question that it raises regarding the difference between inspiration and infringement is certainly not going anywhere.

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[1] *Williams v. Gaye*, No. 15-56880 (9th Cir. Mar. 21, 2018).

[2] As Plaintiffs alleged in their complaint, Bridgeport is "in the business of trolling for opportunities to threaten to sue and to sue musicians, performers, producers and others in the music industry for infringement of its copyrights."