Copyright: Infringement v. Homage

Pharrell Williams, et al. v. Bridgeport Music Inc., et. al.

March 26, 2015

The music industry did not get far into 2015 before delivering a blockbuster copyright case. Pharrell Williams' and Robin Thicke's 2013 hit *Blurred Lines* was in fact only 50% their hit, according to a jury verdict in mid-March that found in favor of Marvin Gaye's children. As co-owners of his original 1977 hit, *Got to Give it Up*, Gaye's children successfully argued that Williams and Thicke had copied numerous aspects of their father's song and had infringed the copyright in the 1977 hit. The jury accepted the Gaye family's contention that if *Got to Give It Up* had been properly licensed, the family would have received royalties of 50% of the $8 million in *Blurred Lines* revenue. Additionally, Williams and Thicke were forced to surrender $3.4 million of their earned profits from *Blurred Lines* sales.

Ironically, the lawsuit was commenced by Williams and Thicke themselves, who originally sought a preemptive ruling that *Blurred Lines* "shared no similarities"[1] with *Got to Give It Up* after receiving complaints from members of the Gaye family. The Gayes, as defendants, successfully litigated a counter-claim, arguing that the songs were substantially similar and that they were owed $25 million in royalties, profits, and statutory damages. Williams and Thicke lived up to their reputations as performers while on the stand, doing their best to persuade the jury to re-interpret copyright law as excluding the "feel" or "sound"[2] of music, and taking the opportunity to sing to the jury.

While much has been made of the spotlight on Thicke's admitted drug use in the studio, the blatantly inconsistent statements regarding exactly how much influence Gaye had on Williams and Thicke during the writing process, and the whopping total award of $7.3 million to the Gaye family, the suit also illustrated the importance of both copyright compliance and honoring fiduciary duties. Among the "*et al.*" plaintiffs was EMI April, Inc. ("EMI"), against whom the Gaye family asserted breach of contract and breach of fiduciary duty claims. Though the Gaye family owns the valid copyright registrations for *Got to Give It Up*, they had assigned the rights to administer and protect those copyrights to EMI. EMI was a co-publisher and co-owner of Williams' musical compositions through an affiliate, creating a direct conflict of interest. According to the Gaye family, EMI had breached its agreement, "including the covenants of good faith and fair dealing, and its fiduciary duties to the Gaye family by not only failing and refusing to pursue the infringements identified herein, but actively attempting to interfere with and thwart the Gaye family's pursuit of these claims."[3]

While there is no shortage of intrigue surrounding the *Blurred Lines* decision, perhaps the most instructive lesson to be drawn from the jury's special verdict is that creating music "reminiscent"[4] of an era or paying homage to the genre-creating greats of past decades may not hold as a defense to copyright infringement. Despite criticism that this case has further blurred the line between inspiration and infringement, the analysis for determining the substantial similarity needed to prove copyright infringement was adhered to, and the points of similarity presented to the jury were both clear and abundant. Despite plaintiff's successful bid to keep a direct audio comparison of both songs out of the court room, a stripped down audio recording of *Got to Give it Up* and expert testimony was enough to highlight the similarities between the two songs.

The jury agreed with the Gayes' counter-claim that the infringement went far beyond replicating a "feel" or "sound" and in fact contained numerous substantially similar compositional elements, such as the main vocal and instrumental themes, the hooks, and the keyboard and bass lines, among other things. Certainly, interviews in which Thicke repeatedly recounted a story about writing the song while listening to *Got to Give It Up* did not help his case. Those interviews appeared in both *GQ* and *Billboard*, fully disclosing Thicke's enjoyment of *Got to Give It Up* and claiming that after he proposed to Williams that they create "something with that [same] groove" that *Got to Give It Up* had, it only took about an hour to write and record it.[5] (Such disclosures speak to the necessity of coaching clients on the legal significance of both their words and actions, which will likely come to bear on subsequent litigation.) Despite the plaintiffs' insistence that everything that falls within a genre will inevitably sound similar to the song(s) that created that genre in the first place, the jury found that the line of copyright infringement is as bright as ever and that *Blurred Lines* was not simply similar, but substantially similar.

Any interested "ordinary observers" may find a direct comparison of *Blurred Lines* and *Got to Give It Up* here.

For more information on copyright law and intellectual property licensing, please contact a member of our copyright practice.

Footnotes.

1. Complaint for Declaratory Relief at ¶ 1, *Pharrell Williams, et al. v. Bridgeport Music Inc., et. al.*, No. 13-06004 (N.D. Cal. Aug. 15, 2013).

2. *Id.* at ¶ 2.

3. Defendants' First Amended Counterclaims at ¶ 10, *Pharrell Williams, et al. v. Bridgeport Music Inc., et. al.*, No. 13-06004 (N.D. Cal. Oct. 30, 2013).

4. Complaint for Declaratory Relief at ¶ 2.

5. Defendants' First Amended Counterclaims at ¶ 10.