A California jury recently found that pop stars Pharrel Williams and Robin Thicke, with their 2013 hit song “Blurred Lines,” infringed the copyright of Marvin Gaye’s 1977 song “Got To Give It Up.” The jury held Williams and Thicke liable for $7.4 Million. Ironically, it was the pop stars who initiated the litigation against the Gaye estate, not the other way around.

The copyrighted work at issue in the “Blurred Lines” case was Gaye’s musical work, “Got To Give It Up.” A musical work copyright attaches to the actual composition (which is usually expressed in sheet music, as it was in this case), while an entirely separate copyright attaches to any sound recording made of that composition. Gaye’s sound recording was not at issue in the case. Further, before trial, the judge ruled that Gaye’s sound recording contained elements not present in the original musical composition, so the jury was not supposed to hear Gaye’s recorded soundtrack. Rather, the jury was charged with comparing the sheet music of “Got To Give It Up” with the “Blurred Lines” sound recording (including the percussive elements). Therefore, all of the mash-ups and side-by-side comparisons of the two recordings floating around the Internet are largely irrelevant in terms of how the case was decided.

In interviews given before the start of the lawsuit, Williams and Thicke admitted that their song was meant as an homage to Marvin Gaye. Those admissions would haunt them during the case.

- First, it eliminated the Gaye estate’s need to prove Williams and Thicke had access to Gaye’s song. This is an essential element to prove copyright infringement, and is not usually as easy pointing to explicit statements, such as the ones Williams and Thicke made.
- Second, it likely influenced the jury’s impression of the similarity of the two works.

The pop stars attempted to draw a distinction between exact copying and sharing the same “feel” or “vibe” because the pop stars sought to evoke an “era,” not blatantly copy Gaye’s song. However, no legal distinctions or magic words trigger liability in this realm. It is up to each side to explain what it is about a song that makes it pleasing to the ordinary listener. This explanation is easier when the melody, lyrics, or “hook” of the song is at issue, but this was not the case with “Blurred Lines.” The lawyer for the Gaye estate pointed to similarities in rhythm, tempo, and other musical elements.

The case likely will have the largest impact on artists seeking to pay tribute to a previous work or distinct genre. However, given the recycled and recyclable nature of any creative work, the case is relevant to the creation of even the “most original” works. Of course, more explicit borrowing will lead to higher risk factors. When in doubt, it is advisable to seek a license or, at a minimum, acknowledge a songwriting credit to creators of a previous work.

If you have any questions about the case or how it may impact your business, please contact one of our copyright attorneys.

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