


[IP News](#) | [IP Management](#) | [Patents](#) | [Copyright](#) | [Trademark](#) | [IPFrontline International](#)
[Home](#) » [Copyright](#) » Pharell Williams and Robin Thicke told they "Got To Give It Up"

Pharell Williams and Robin Thicke told they "Got To Give It Up"

 Posted on May 18, 2015 by IPFrontline in [Copyright](#)

By Dayrel S. Sewell, JD, MPH and Ivan Ng, Esq.



In March 2015, a federal jury in Los Angeles ordered Robin Thicke and Pharrell Williams, singers of the hit song "Blurred Lines," to pay over \$7 million in damages and earned profits to the family of Marvin Gaye, singer of the chart-topping 1977 song "Got To Give It Up," after determining that the two were guilty of copyright infringement. *See Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.*, 2015 WL 1476803 (C.D. Cal. Mar. 10, 2015). The verdict adds increasing uncertainty for the music industry with the finding of substantial similarity between the two songs, and hence copyright infringement, but its ramifications may have also spawned a shift in copyright infringement litigation that puts musicians and record labels on alert.

Throughout the 8-day trial, the jury was given a variety of evidence, ranging from sheet music to a performance by Robin Thicke himself while seated in the witness stand, and expert witness accounts on the similarities and differences between the two songs. The jury was instructed to base its decision on the sheet music rather than the entire recording of "Got To Give It Up". Because of particular copyright laws, Marvin Gaye's song, written by Gaye in 1976 and released in 1977, is governed by the Copyright Act of 1909. Under this particular Act, the only part of Gaye's song protected under copyright law is the composition of the song represented in the sheet music, rather than the actual sound recording containing the song. As a 1909 Act work, the copyright did not extend to the sound recording.¹ However, in order to allow the jury to actually compare the two songs while preserving the Act of 1909 and avoiding prejudice to Thicke and Williams, Judge John A. Kronstadt allowed specific parts of the recording to be played after it was edited with unprotected parts removed. After consideration of all of the evidence provided, including a redacted and altered version of Marvin Gaye's recording, the jury concluded that there was indeed substantial similarity between "Blurred Lines" and "Got To Give It Up."

Search Articles

To search, type and hit enter

Unique experts.



Recent Posts

[KIPO declares Invention Week Singapore and China to embark on trade mark cooperation](#)
[Section 337 investigation of recombinant factor VIII products](#)
[Croatia joins DesignView](#)
[Iceland soon to join Designview](#)

Categories

[Copyright](#) (21)

[Intellectual Property Management](#) (3,688)

[IPFrontline International](#) (325)

[IPFL auf Deutsch](#) (107)

[IPFL en Español](#) (64)

[IPFL en Français](#) (50)

[IPFrontline Canada](#) (104)

[Patents](#) (5,300)

[Trademark](#) (34)

[Uncategorized](#) (8)

[World Intellectual Property News](#) (6,160)

[News](#) (1,293)

[People](#) (4,867)



The test for copyright infringement relied on whether a reasonable and average lay observer would recognize an alleged infringing piece of work as having been appropriated from a copyrighted work. The jury had to decide whether the two songs were similar enough in any way to establish some evidence of copying. The jury was not to give any weight to the amount of elements that were dissimilar or those dissimilar elements themselves. This particular instruction proves challenging in that it is a perspicacious analysis to accurately explain to jurors and just as difficult, if not harder, for jurors to properly apply. The music industry argues that this current test severely limits and restricts an artist's ability to create music. In this particular case, the jury relied heavily on the composition of the sheet music in reaching a decision of infringement. From the sheet music, along with conflicting testimonies on the similarities and differences of the two songs, the jury concluded that the two songs were sufficiently similar. However, what the jury precisely found to be similar remains unknown. There are many elements in all music that are not embodied by the sheet music, including tone, mood, style, and feel, yet play an integral part in forming the identity of the song. These elements simply cannot be seen on a piece of paper. These essential aspects of a song help to create expressive, original works, but at times are non-dispositive in such analyses for copyright infringement.

A song, as seen in this case, can be considered infringing if there is similarity in notes although the song as a whole is arguably unique and new. Such reality rattles the music industry cage, and sends a message that greater care is to be taken when authoring expression of ideas not to run afoul of copyrighted works. Blurred lines need to become clearer lines when it comes to channeling the style and feel of a particular musical era or genre and copyright infringement.² However, what impact will this have on the efficacy of copyright law and the protection it provides or the trouble it can cause for artists? Our government, including the judiciary branch, is a system of checks and balances. Legal determinations provide a framework in which—in patent terms—we lawfully have freedom to operate. Musicians, along with the rest of society, routinely need to be kept abreast of the current state of the law.

The verdict in this case is another such 'check and balance'. The ruling gives rise to critical issues on how music is protected and what constitutes an infringing work. The analysis requires a finding of a substantial similarity between a part of the infringing work and a qualitatively important part of the original work; quantity is non-dispositive. However, in the eyes of an ordinary and reasonable juror, the definitions of "substantial similarity" and "qualitatively important" become rather *blurred* and the ability to ignore quantity is distorted. It is inherently difficult for an ordinary observer to overlook supposedly "qualitatively unimportant" similarities and differences in two songs and instead dive into elements of a song that the court does deem "qualitatively important." Two songs may have sheet music with similar notes, while the songs as a whole sound dissimilar. There is a want for solid guidance on whether the court would consider the notes on the sheet would qualify as "qualitatively important." Alternatively, two songs can have notes on paper that are completely different while the two songs in their entirety may sound similar or have a similar feel.

How can an artist—inspired by a genre or style of music—create a song without running into infringement issues? To be forewarned is to be forearmed. While there is no guarantee, it starts with the informal test of infringement, that is one knows it when one hears and/or sees it. Thereafter, authors should seek qualified counsel to advise them of potential legal

issues prior to deciding on a course of action. In each jury trial, jurors often make conclusions based on their heart and what they feel based on opening statements – similar notes may be copyright infringement for one song and not the other, while similar musical instruments used in two songs can lead to infringement in one case and not the next case. This “Blurred Lines” case is far from over, as the Gaye family has already filed an appeal to bring previously dropped parties back into the matter while Thicke and Williams have also collectively filed a motion for a judgment as a matter of law and for declaratory relief, or alternatively, a new trial.³ Notwithstanding, this case brings forth several, illuminating considerations for the music industry.

¹ Under the 1909 Copyright Act, sound recordings were not protected under the federal copyright law. They were protected, if at all, under state law. See United States Copyright Office, Sound Recordings as Works Made for Hire,

[HTTP://WWW.COPYRIGHT.GOV/DOCS/REGSTAT52500.HTML](http://www.copyright.gov/docs/regstat52500.html) (accessed on May 8, 2015).

² Robin Thicke stated in an interview prior to the trial, which the Gaye family used as evidence, “Pharrell and I were in the studio and I told him that one of my favorite songs of all time was Marvin Gaye’s ‘Got to Give it Up... I was like, ‘Damn, we should make something like that, something with that groove...”

See <http://www.nydailynews.com/entertainment/music-arts/marvin-gaye-family-sues-robin-thicke-blurred-lines-article-1.1502055> (accessed on May 8, 2015).

³ On May 1, 2015, Pharrell Williams and Robin Thicke filed a motion for a new trial on the grounds that the March 2015 verdict was unsupported by any evidence, let alone proper evidence, and was a result of prejudicial evidentiary and legal errors. See *Pharrell Williams, et al. v. Bridgeport Music, Inc., et al.*, 2:13-cv-06004-JAK-AGR, Dkt. No. 378 (C.D. Cal. 2013).

Dayrel S. Sewell, JD, MPH is a registered U.S. Patent Attorney, admitted to the U.S. Supreme Court, and Managing Principal of the **LAW FIRM OF DAYREL SEWELL, PLLC** <http://sewellnylaw.com> based in New York City. In addition to intellectual property, the law firm specializes in client service and other areas of law. The firm may be contacted at: info@sewellnylaw.com.

Ivan Ng, Esq. is admitted to practice law in New York and Massachusetts.

Blurred Lines copyright Got To Give It Up Pharrell Williams

Pharrell Williams v. Bridgeport Music Robin Thicke

About IPFrontline (7768 Articles)

IPFrontline is a web magazine about intellectual property. The IPFrontline electronic newsletter lands in more than 15,000 e-mail boxes every week, ensuring timely delivery of top news stories and articles appearing in IPFrontline online.

www.ipfrontline.com

[← Previous article](#)

[Next article →](#)

Recent Posts

KIPO declares Invention Week

Contact

IPFrontline

Receive our Weekly Newsletter

Subscribe Now



- [Contact Form](#)
- [Article Submission Form](#)
- [Subscribe](#)



Singapore and China to
embark on trade mark
cooperation