

# **MUSIC PANEL**

**Lay Listeners, Sheet Music, & Chord Progressions:  
The Future of Copyright Infringement  
Analysis in Music**

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***IS YOUR FORENSIC PRACTICE GETTING BUSIER,  
OR IS IT BUSINESS AS USUAL?  
MUCH BUSIER***

I do around 350 - 400 jobs per year, mostly preventative  
(Ad agencies, Film companies, music producers, record companies)

But I have been getting calls about every other day recently, about possible sampling, copyright infringement, and other music-related issues or from lawyers who represent hitmakers who have been sued.

In 2019 - Received about 22 form inquires, at minimum 50 phone inquiries, did 12 preliminary musicological analyses, 7 sample analyses & a few continuing litigation reports

95% settle so trial by jury is rare

## **MY JOB AS A FORENSIC MUSICOLOGIST IS TO DO THE FOLLOWING:**

1. Compare two or more works, examine the similar sections. Are the similarities obvious to the lay listener? important to the work as a whole? original? substantially similar? strikingly similar?
2. Transcribe the similar parts, transpose into the same key for ease of comparison, examine melodic, harmonic, lyric, rhythmic, and structural elements. Prioritize and examine closely those elements that are important to the work. In Hip Hop, rhythm is often more important than melody but the rhythms of the words, accent patterns and intonation might be important if they are the same in two works
3. Prior art: Do the similarities exist in earlier works? Are the similarities common musical building blocks, common phrases, ideas, titles, simple common chords and rhythms that are not protected?
4. What is original? Can it be “owned” so nobody else can ever use it?
5. What genre is it, does it use common elements in that genre?
6. Different kinds of works require different analysis: Rap is rhythmic words set to a rhythm track with certain types of rhymes, intonation, emphasis and must be examined differently - though any melodic and harmonic elements in the track should be considered as well.
7. Sample analysis requires a different process of de-composing and re-composing the sound elements to determine if the one at issue was taken from an original recording, de minimum, interpolation, or not able to tell
8. EXPLAIN THE MUSICAL FACTS IN MUSICAL WORKS (USING GRAPHS, VISUAL AIDS, ETC. BUT NOT MISLEADING MASHUPS) SO THE AVERAGE NON-MUSICAL PERSON CAN UNDERSTAND WHAT THEY ARE HEARING.  
THAT IS THE MOST IMPORTANT JOB OF A FORENSIC MUSICOLOGIST

# NO. OF MUSIC CASES LISTED IN *MUSIC COPYRIGHT INFRINGEMENT RESOURCE*

<https://blogs.law.gwu.edu/mcir/>

2019	13	Katy Perry lost to Joyful Noise
2018	15	Tom Petty v Sam Smith, Blurred Lines Appeal lost
2017	14	Joyful Noise v Katy Perry, Ed Sheeran settled “Amazing” v Photograph, “Happy Birthday” settled with Warner Bros
2016	23	We Shall Overcome – PD or owned,
2015	8	Marvin Gaye’s family won v Blurred Lines
2014	5	Tuff America v Warner Bros (sample of one word “oh”), Led Zeppelin case
2013	2	Blurred Lines v Marvin Gaye
2012	8	Black Keys v Home Depot and Pizza Hit (drums sound
2011	3	
2010	5	
2009	8	
2008	2	
2007	6	Armour v Knowles “Got A Little Bit of Love For You” v “Baby Boy”
2006	1	
2005	8	
2004	8	
2003	4	
2001	3	
2000	3	Eisley Brothers v Michael Bolton (music and lyric phrase “Love is a Wonderful Thing”)

**BEING INFLUENCED, INSPIRED AND COPYING EARLIER MUSICAL WORKS HAS BEEN A COMMON AND ACCEPTED PART OF THE CREATIVE PROCESS FOR CENTURIES. THERE ARE NO VIRGIN BIRTHS IN MUSIC -WE LEARN FROM THE PAST**

**CASES THAT HAVE AFFECTED THE CREATIVE PROCESS:**

1) Beach Boys “Surfin’ USA” (1963) v Chuck Berry “Sweet Little Sixteen” (1958)

**First major plagiarism case in Rock Music history**

2) George Harrison “My Sweet Lord” (1970) v The Chiffons/Mack “He’s So Fine” (1962)

**First “unconscious plagiarism”**

3) John Fogerty “Old Man Down The Road” (1985) v Creedence Clearwater “Run Through The Jungle” Fantasy Records (1970) This went to the Supreme Court

**First case of accusation of copying yourself & attorneys fees to the prevailing party**

4) Vanilla Ice “Ice Ice Baby” (1989) v Queen and David Bowie “Under Pressure” (1981)

**Sample**

5. De la Soul “transmitting Live from Mars” (1989) v The Turtles “You Showed Me” (1969)

Record companies put on alert to pay for samples or pay \$\$\$\$ after the fact

**Many started using “interpolations” instead**

6. 2 Live Crew “Pretty Woman (1989) v Roy Orbison “Oh, Pretty Woman” (1964) went to the Supreme Court

**fair use / parody could be used as a defense even on commercially released recording**

7. Robin Thicke and Pharrell Williams “Blurred Lines” (2013) v “Got To Give It Up” Marvin Gaye family (1977)

**This case blurred the line between what is and what is not permissible. (Only similarities were feel, vibe, groove)**

8. Led Zeppelin “Stairway to Heaven” (1971) v Spirit “Taurus” (1968) (CASE BROUGHT IN 2014)

**Confusion about which law will apply: Effort to apply 1976 Copyright Act to a song falling under the 1909 Act**

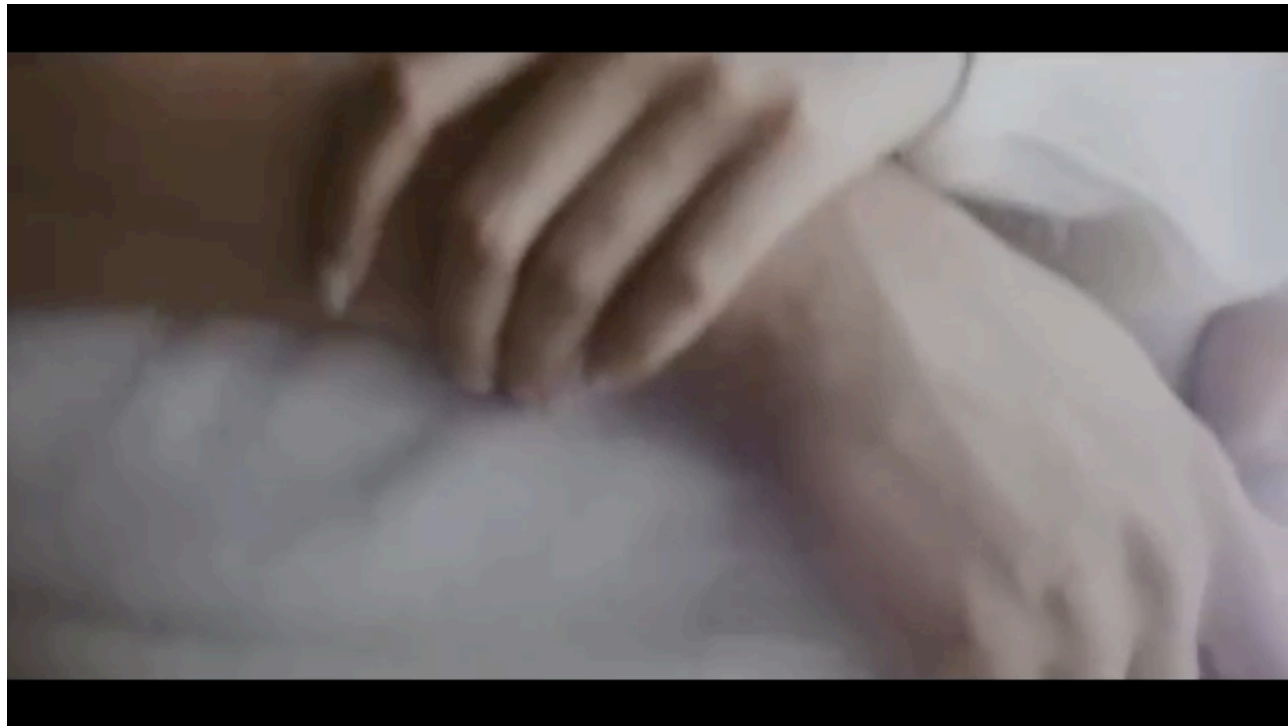
9. Mark Ronson “Uptown Funk” (2014) v Gap Band, Sequence, Zap, Young Girls, etc.

14 weeks at #1. Second best selling digital single in post sampling era.

**Even if some weak cases, it is often easier to settle than go to court.**

**\$\$\$ ECONOMICS - ALONG WITH LICENSING MUSICAL WORKS, LITIGATION IS ANOTHER REVENUE STREAM**

# TECHNOLOGY AND THE SONGWRITING PROCESS



“HALO” BEYONCE



“ALREADY GONE” KELLY CLARKSON

9 A Bm 10 F#m 11 D 12

Halo Re-mem-ber those walls\_ I built\_ Well, ba-by, they're tum - bl-ing down\_ And they did-n't e-ven put up a fight\_ They did-n't e-ven make a sound

9 A E(sus4) 10 E 11 F#m 12 D

Already Gone Re-mem-ber all the things we wan-ted Now all our me-mo-ries, they're haun-ted We were al-ways meant to say good-bye\_

13 N.C. A Bm 14 F#m 15 D 16

Halo I found a way to let you win\_ But I ne-ver real-ly had\_ a doubt\_ Stan-ding in the light of your ha - lo\_ I got my an-gel now

13 A E(sus4) 14 E 15 F#m 16 D

Already Gone E-ven with-out fists held\_ high, Ne-ver would have worked out\_ right, yeah We were ne-ver meant for do\_ or die\_

## MIXING GENRES - COUNTRY / HIP HOP / TRAP



Lil Naz X bought the track in 2018 from [BeatStars.com](https://www.beatstars.com) for \$30. It was created by YoungKio who used 808 drums with a sample from “34 Ghosts 4” by Nine Inch Nails with limited distribution. After it hit, negotiated to pay more and YoungKio signed to UMG



*Do all of these recent judgments seem like a natural extension of everything you've experienced in your musicology practice previously, or do any of them break with that experience?*

A world of samples and 3rd party track libraries are proliferating

Jury Trials are exceedingly unpredictable and the results can have serious and unintended consequences.

Music copyright infringement cases are often extremely complex and it would be better to have a knowledgeable panel or an musicology expert assigned to the judge in these kinds of cases

However, from a Preventative and defensive standpoint, my rule is this:

**“IF YOUR WORK POINTS *SPECIFICALLY* TO  
AN ARTIST, MUSICAL WORK, GROUP, OR IF YOU USED A  
REFERENCE TRACK, OR ASKED FOR A QUOTE TO LICENSE A PIECE  
YOU COULD HAVE A PROBLEM”**

**In these cases, I highlight the problematic areas that need  
to be changed in order for me to clear the musical work.**

