

The BLURRED LINES ARE REALLY NOT SO BLURRY.

By Bill Pere

We've all heard by now that a jury decided that "Blurred Lines" by Alan Thicke and Pharrell Williams was an infringement on the song "Got to Give It Up" by Marvin Gaye, and awarded 7.3 million dollars in damages. You've probably also heard lots of voices on either side saying that the verdict was right or wrong. There really is no issue here. The verdict wrong because the jury untrained in music law, received no less than 47 pages of instructions from the judge, (see them here: <http://www.scribd.com/doc/258437531/Pharrell-Williams-Robin-Thicke-v-Gaye-jury-instructions-Blurred-Lines-trial-pdf#scribd>) which were in many cases unclear, complicated or contradictory. So it is no surprise that the jury disregarded their instructions and the laws that applied to the case, and it did not help that they reportedly did not "like" the behavior of defendants.

But legally, this was pretty straightforward. Yes, the two songs sound extremely similar. No question about that. However, they were supposed sound similar. And making them very similar in the way that it was done here does NOT constitute any type of copyright infringement. Period.

There are two different kinds of copyrights that belong to a song. The first is actual SONG copyright, which is just melody + lyric (the 'c' copyright). That is the legal definition of a song, and that is all that Marvin Gaye claimed when he submitted his lead sheet for registration. All the other parts associated with a song, i.e. bass line, percussion, string and keyboard parts, vocal harmonies, etc, are all part of the arrangement/production and are a separate copyright (a 'derivative work'). This can be a written score of all the parts, or it can be covered by the 'p' copyright, which is the physical sound recording.

When we hear all of those other parts together, it creates a 'feel', a groove, a style, a vibe, a particular texture of sound that most typical listeners have in their mind is "the song". Not only is that not "the song" (it's one arrangement of the song), but all of those aforementioned items are not copyrightable (a point correctly argued by the attorney for Thicke/Pharrell). You can't copyright a feel, a vibe, a texture, a tempo, a key, a title, and idea, a lyrical cadence, etc. Thus, it is no surprise that many RECORDINGS can sound quite similar because of the aggregate effect of the arrangement, but are in fact the sum of different parts. It is certainly possible to have an infringement of an arrangement IF one or more key parts are "substantially similar". But as will be shown below, that was not the case here either.

In this case, there is no question that the words and melody between the two songs is different, thus there CAN'T be a copyright infringement of the SONG. (even though the jury said differently, largely because of the confusing nature of the instructions they received). The case was brought because the arrangements have a similar feel/vibe. However, the jury was instructed to base their decision only on the sheet music (lyrics/melody with chords) and NOT on the sounds of the recording (i.e. not on elements of arrangement). This is the key point that the jury ignored, because untrained listeners tend to think that everything they hear is "the song", rather than a song set to a particular arrangement.

"Blurred Lines" contains the phrase "Shake your rump, get down, get up-a," while Gaye's song includes the line, "Move it up, turn it 'round, shake it down" and that's as it gets in terms of similarity. Not even close. Both recordings have a background sounds as if they were cut at a party and "Blurred Lines" has several WOO!s, which is a clear nod to Gaye's style. But as musicologist Joe Bennet puts it:

"While "Blurred Lines" might lack imagination, Thick and Williams ultimately only seem guilty of stealing a vibe. And if vibes are now considered intellectual property, let us swiftly prepare for every idiom of popular music to go crashing into juridical oblivion. Because music is a continuum of ungovernable hybridity, a dialogue between generations where the aesthetic inheritance gets handed down and passed around in every direction. To try and adjudicate influence seems as impossible as it does insane. Is that the precedent being set here."

The important point is that many of the elements that give "Blurred Lines" and "Got to Give It Up" a similar "sound"—the cow bell, the keyboard, the falsetto, similar tempo and instrumentation, —are not copyrighted. Gaye submitted only the sheet music for copyright, because it would be ridiculous to claim ownership on musical elements that were in use long before Marvin Gaye entered the scene. The Gaye family's original claim was that the bass line in "Blurred Lines" (totally different from the one in "Got to Give you Up") and the "defining funk of the cowbell accents" were copied. They weren't, as we see below from an analysis by Joe Bennett:

"The two basslines are transcribed below with transposed 'Blurred Lines' into the same key as 'Got To Give It Up' here for ease of comparison, and notated them in A minor (no sharps or flats) partly for simplicity and partly because both basslines are built on notes of the home key's minor pentatonic scale. This 'normalisation' is intended to highlight any similarities that might otherwise be disguised by transcribing 'Blurred Lines' in the original key – that is, I'm giving Gaye's side the best possible chance of proving their assertion that the bassline has been copied.

The image shows two staves of musical notation in 4/4 time, both in A minor. The top staff represents the bassline of "Blurred Lines" and the bottom staff represents the bassline of "Got to Give It Up". Both are transcribed in A minor for comparison. The notation includes various rhythmic patterns and note values.

Got To Give It Up (Marvin Gaye) – transcribed from bar 5 [0:14]. This bassline employs substantial rhythmic variations throughout the song.

The image shows two staves of musical notation in 4/4 time, in A minor. The top staff represents the bassline of "Got to Give It Up". The notation shows a variety of rhythmic patterns and note values, including eighth and sixteenth notes, and rests.

Blurred Lines (Robin Thicke). This 8-bar bass line is looped throughout the song.

When compared note for note like this, the dissimilarity is obvious. These basslines use different notes, rhythms and phrasing from each other. They're even taken from different musical scales. Thicke's bass notes are all taken from the mixolydian mode; the Gaye bassline is based around the pentatonic minor scale.

The image shows a musical staff with a treble clef and a 4/4 time signature. The title "Cowbell" is written above the staff. The notation consists of a series of eighth notes and rests, representing a cowbell riff. The notes are primarily on the G and A lines of the staff.

Now let's look at that cowbell. Gaye uses the following cowbell riff, which plays pretty consistently through the track.

Thicke's song has more cowbell. I've notated both parts below. The upper one (panned right in the mix) plays a specific pattern, with a different rhythm from the Gaye song; the lower one (panned left) plays an off-beat, periodically during the track. like a reggae 'skank guitar' groove. reggae 'skank guitar' groove.

The image shows two staves of musical notation for a 2-bar cowbell loop in 4/4 time. The top staff is labeled 'Cowbell 1' and the bottom staff is labeled 'Cowbell 2'. Both staves show rhythmic patterns with accents on the first and third beats of each bar. Cowbell 1 has a slight variation on the fourth beat of the second bar.

Blurred Lines (Robin Thicke) – 2-bar cowbell loop. Cowbell 1 varies this pattern slightly on beat 4 at times.

So, those are the facts, at least regarding compositional note choices. Now let's get back to the first accusation in the press release:

Thicke and company not only [copied] Gaye's distinct bass line...

If this is true, and Thicke's team actually 'copied the bass line', then they changed most of the pitches, moved lots of notes around, and deleted some notes. Or put another way, they wrote an original bassline.

[Thicke has copied] the defining funk of the cowbell accents.

What exactly is 'the defining funk'? Most of the accents in 'Blurred Lines' do not appear on the same beats of the bar as in the Gaye song, which by any reasonable rhythmic definition makes them different accents. Or put another way, they are an original compositional idea.

So if the note-to-note musical dissimilarities are so obvious, why did this press release bother to accuse Thicke et al of plagiarism? Clearly Gaye's family thought they had a case. I think the reason is that the tracks do sound similar. Indeed, I don't doubt Thicke's production team deliberately used 'Got To Give It Up' as a style template to create the sound and feel of 'Blurred Lines'. The instrumentation and tempos are pretty much the same, and there are many notable arrangement decisions in the Gaye song (for example, playing the bassline on an electric piano) that occur in 'Blurred Lines'. In fact, Thicke himself stated publicly in a GQ interview that his team wrote 'Blurred Lines' using 'Got To Give It Up' as inspiration.

Thus, from all the above it is clear that this is simply an incorrect verdict. There was no copyright infringement of any kind. What is as disturbing as the precedent that this can set is the fact that even the New York Times displayed a terrible ignorance of copyright law and the process of songwriting in a March 11 article written by John Carmanca (view it online, titled: **What's Wrong With the 'Blurred Lines' Copyright Ruling**, http://www.nytimes.com/2015/03/12/arts/music/whats-wrong-with-the-blurred-lines-copyright-ruling.html?_r=0)

While this article recognizes that the verdict is wrong, it does so for the wrong reasons, essentially saying that copyright laws have to be changed because songs are now "written" by producers, and the arrangement is the song. The ridiculousness of this is evident when we consider the following:

Let's say you write a song, (i.e. words + melody) and you release in initial recording, so you have the song copyright and the arrangement copyright. Your song becomes popular and is covered 100 times by other artists, across a variety of styles. There is a jazz version, a disco version, a country version, an electronica version, an instrumental, a church choral version, and a school band version. (Paul McCartney's "Yesterday" has more than 1,000 versions). This means that your song now has 100 different arrangements that are derived from your original. Thus you get 100 royalty streams, while each arranger of each of the 100 versions gets only the one royalty stream associated with use of his/her one version. This explains why producers want to claim a piece of the songwriting pie – because it generates multiple streams, rather than just one. However arranging is not songwriting. It is true that in most modern pop, the "track" is primarily the production and with words and melody being unimportant afterthoughts, there simply as a performance vehicle. However, arrangement/production/performance is not the song. They deserve to be respected for the skill and creativity that they represent, but they are not the song.

If copyright laws were revised to make the arrangement part of the "song", then when those 99 other arrangements are created, who gets paid? Why would the producer of the first version get paid from a totally separate arrangement that they had nothing to do with? The current copyright laws make the distinction between the song and the arrangement, and that keeps it clear as to who owns what and who gets paid for what. Production is not and should never be considered the same as songwriting, and it is sad to see the New York Times printing articles like this.

Bottom line: If you like a song and want one of your songs to emulate that feel/vibe/texture, don't be afraid to do it, as long as your words, melody and individual parts are original. If the aggregate sound like something else and that's what you want, go for it... but do keep a little of the uniqueness of 'you' in whatever you record. Better yet, make yourself the one that others want to imitate.

Grammy-Winning songwriter Bill Pere was named one of the "Top 50 Innovators, Groundbreakers and Guiding Lights of the Music Industry" by Music Connection Magazine. With more than 30 years in the music business working with top industry pros as a songwriter, performer, recording artist and educator, Bill is well known for his superbly crafted lyrics, with lasting impact. Bill has released 16 CDs, and is President of the Connecticut Songwriters Association. He is an Official Connecticut State Troubadour, and is the Founder and Executive Director of the LUNCH Ensemble (www.lunchensemble.com). Twice named Connecticut Songwriter of the Year, Bill is a qualified MBTI practitioner, trained by the Association for Psychological Type. He is a member of CMEA and MENC, and as Director of the Connecticut Songwriting Academy, he helps develop young talent in songwriting, performing, and learning about the music business. Bill's song analyses and critiques are among the best in the industry. Bill has a graduate degree in Molecular Biology, an ARC Science teaching certification, and he has received two awards for Outstanding contribution to Music Education.

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