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Why Copyright Infringement Became Pop's Big Problem, According to the 'Blurred Lines' Musicologist

By **Lauretta Charlton**

The next phase of the "Blurred Lines" saga has arrived. On Monday, Pharrell Williams, Robin Thicke, and T.I. **filed a long-rumored notice to appeal** (http://www.thewrap.com/robin-thicke-pharrell-williams-appeal-blurred-lines-copyright-infringement-lawsuit/) a March verdict ordering them to pay $7.4 million (later reduced to $5.3 million) to Marvin Gaye's family for copyright infringement of the late singer's 1977 classic "Got to Give It Up." The ruling befuddled experts like Jeff Peretz, who argued the decision to punish the trio for paying "**homage** (http://losangeles.cbslocal.com/2015/03/04/pharrell-williams-takes-stand-in-blurred-lines-lawsuit/) " set a dangerous precedent.

"When you make a recording that has samples on it, somebody reaches out to the person who owns the copyright for those masters and cuts a deal. There are already rules," Peretz **told Vulture** (http://www.vulture.com/2015/03/what-the-blurred-lines-ruling-means-for-music.html) earlier this year. "The area where there are no rules — and that's what's changing as a result of this case — is when somebody like Pharrell goes and reconstructs the rhythm of a track to create a very similar song *without* sampling."

Consider the song "I Am a Man of Constant Sorrow," a traditional American folk tune with at least 50 versions (including Dylan's from 1963). It was allegedly first published around 1913 by a Kentucky fiddler named Dick Burnett under the title "Farewell Song," but Burnett **couldn't be sure he had written it** (http://americansongwriter.com/2011/06/behind-the-song-man-of-constant-sorrow/) . Historians suggest the song dates back to the early-19th-century English hymn "Christ's Suffering," was adapted by the Baptist church, and eventually became the traditional Appalachian folk song we know today. Burnett's version was the first to be documented in the U.S., but its origins are a tangled web of reinterpretations and edits that may or may not lead back to the same source material. (Producer T Bone Burnett, something of an American-roots-music expert, seems to think the song dates **back to Plato** (http://www.huffingtonpost.com/t-bone-burnett/o-brother-where-art-thou_b_933414.html) .) This was a time when the production of records began en masse, creating new opportunities for songwriters like Burnett — **a blind orphan who played music with a tin cup tied to his leg for change** (https://books.google.com/books?id=0q6gSVs2QyQC&pg=PA123&lpg=PA123&dq=Songs+Sung+By+R.+D.+BURNETT.+The+blind+man&source=bl&ots=2KJ3zt3qt6&sig=U9TKJdpeCzRjgxkXaSoTzpMKSvA&hl=en&sa=X&ved=0ahUKEw — to earn a living.

Believe it or not, Burnett's story has something in common with young musicians and producers today, many of whom are self-taught and eager to take advantage of new technology that can bring their music to the largest possible audience. But there's also the matter of source material — where it's found, how it's used, and who gets credit for it, at a time when songcraft can mean repurposing the work of others, oftentimes without additional musicians.

Judith Finell — a Berkeley-educated musicologist who runs a boutique music consulting firm out of Bronxville, New York — is one of the experts who **took the stand** (http://www.latimes.com/local/lanow/la-me-ln-expert-blurred-lines-trial-20150226-story.html) during phase one of the "Blurred Lines" case. Vulture caught up with Finell to discuss the complicated state of copyright infringement in music today, in hopes of understanding why these disputes are popping up now more than ever.

In the YouTube era, a bass line from a random sci-fi soundtrack could end up on a No. 1 hit.

Unlike in the 1970s, when George Harrison was found guilty of "subconsciously plagiarizing" the Chiffons' "He's So Fine" on "My Sweet Lord," a songwriter denying awareness of music they supposedly ripped off is more complicated in the YouTube age, particularly when the copied work in question comes from lesser-known creators. Historically, as a protection against copyright complaints, record companies were taught to return unsolicited recordings to make it clear they hadn't been exposed to it. "Now one doesn't have to go through a publisher or recording label or manager to receive materials," says Finell. "Now some musician or potential defendant can be sitting around looking at YouTube clips or other forms of electronic conveyance and be exposed to some piece of music by some obscure person who has absolutely no worldwide fame, and no recognition of his name or her name, and then suddenly it ends up on some record, or a portion of it gets sampled and it mysteriously — but not so mysteriously — ends up on somebody else's recording."

This explains why Osama Fahmy, nephew of Egyptian composer Baligh Hamdi, **thought he had a case against Jay Z** (http://www.theguardian.com/music/2015/oct/21/jay-z-wins-copyright-infringement-case-big-pimpin-sample) , whose 1999 hit "Big Pimpin'" Fahmy argued illegally sampled his uncle's 1957 song "Khosara Khosara" (a judge recently threw the case out). Or why, earlier this week, Cutting Edge Music **filed a complaint** (http://www.nytimes.com/2015/12/10/business/media/suit-claims-weeknd-song-infringes-on-copyright-of-film-soundtrack.html?em_pos=large&emc=edit_nn_20151210&nl=morning-briefing&nlid=53065288&_r=0) against the Weeknd for stealing a bass line from a little-known 2013 sci-fi soundtrack — which Weeknd producer DJ Mano even admitted — on his No. 1 hit "The Hills." But the supposed victims of this phenomenon aren't limited to obscure no-names. In November, Brooklyn noise-pop duo Sleigh Bells **accused** (http://www.vulture.com/2015/11/sleigh-bells-demi-lovato-copyright-interview.html) Demi Lovato of sampling their songs "Infinity Guitars" and "Riot Rhythm" without permission, too.

Everyone wants to hit the copyright-infringement jackpot, but few have what it takes to sustain a court case.

Just before Sam Smith won Song of the Year and Record of the Year Grammys for "Stay With Me," **news broke** (http://www.vulture.com/2015/01/sam-smith-will-have-to-pay-tom-petty-royalties.html) that Smith and his label Capitol had agreed to give Tom Petty and "I Won't Back Down" co-writer Jeff Lynne partial songwriting credits on "Stay With Me," given the apparent (but totally "coincidental") similarities to Petty's 1989 hit. "The Sam Smith case was pretty standard," says Finell. "The time that Petty decided to strike was pretty obvious in terms of the recent nomination for a Grammy. You'd have to have been on another planet not to have realized why it was set up that way."

As songs rise on the charts, the number of phone calls Finell's office receives skyrockets, and she often gets multiple calls from different parties complaining about the same song. This is happening more and more often than in the past (thank the internet). "This one will say 'that big song used my bass line.' Another one is saying, 'I submitted a song like that to a record label four years ago with some of the same lyrics.' People are just watching and they think it's a big bonus, but they don't realize how much it costs — time, money, energy, and everything else — to bring about a lawsuit and sustain it through the federal court."

Most musicians don't have the kinds of finances needed to go up against a large company like Universal in a copyright dispute, and without those resources, major labels can squash a complaint before it ever really gets off the ground. The Petty-Smith case wasn't precedent-setting, says Finell, but "it could have destroyed Smith's career if it had waged on. And it certainly would have harmed his credibility as an artist. I don't know if they agreed that it had been imitated or not, because the musical similarities weren't universe-shaking as far as I could tell, but it was certainly a very smart move to move ahead."

User-friendly technology has led to a DIY revolution, but that's part of the problem too.

In the '60s, reel-to-reel sampling involved physically manipulating tape loops from one original source to another. In the more user-friendly digital environment, all you have to do is push a button — technology that changed sample-based genres like hip-hop, and subsequently led to **1991's Grand Upright case** (http://www.racism.org/index.php?option=com_content&view=article&id=1446:legaltreatmentdigitalsampling&catid=55&Itemid=178&showall=&limitstart=1) . In it, judge Kevin Thomas Duffy, who quoted the Eighth Commandment ("Thou Shalt Not Steal") at the top of his decision, ruled that Biz Markie's "Alone Again" had infringed on the copyright of Irish singer-songwriter Gilbert O'Sullivan's "Alone Again (Naturally)." Markie took very small portions of O'Sullivan's song and looped it continuously, but Duffy's ruling basically said, "There's nothing that's too small not to be protected," Finell recalls. "You made another recording, and you're going to pay for it. That completely changed things because the myth in the recording industry was if it were very short, only a few notes and a few beats, they could get away with it. This made it clear that they could not."

Flash forward to 2006, when Girl Talk (a.k.a. Gregg Gillis) released his groundbreaking mashup album *Night Ripper*, a kaleidoscopic menagerie of samples recontextualized for the internet's hungry, genre-ambivalent masses. Gillis weaved Top 40 with classic rock, Southern rap and indie "hits," bridging the divide between college-radio snobbery and Big Pop, and in the process making it cool to be a fan of both Merzbow and Britney Spears. Gillis argued that his music was transformative enough to be protected under fair use, and told **Pitchfork** (http://pitchfork.com/features/interviews/6415-girl-talk/) one of the things that inspired him to create music in the mp3 era was seeing "that guys could just get up there and have no traditional music ability and be in a band." That DIY ethos, in addition to shirking Duffy's ruling, created another concern.

"Once one understood how to use the software, that went hand-in-hand with musicians being less and less educated musically," says Finell. "So today, you have very professional, popular music artists who are very successful who have produced many, many recordings and made lots of money, but when you question them in terms of how they created something because there's a question of whether or not they utilized third-party materials, for the most part they cannot explain what they've done. They have absolutely no musical education in any traditional sense. They do not read music. They are not able to describe what they've done in a way that would enable one to unravel and understand how the music was constructed. Music has become more or less an assembly of other people's materials in certain spheres of popular music, and that's fertile ground for a lot of copyright-infringement issues."

She uses the example of the American Songbook. When that was being written by the likes George Gershwin and Cole Porter, "people sat at their piano, wrote the words, wrote the melody, and wrote their scores." If necessary, they had a copyist who polished it for publication, but they had the training to know what was written and what was theirs. "It becomes more complicated when someone says, 'Well, that song just feels like my song.' Well, what does that mean? How do you enforce that?"