

THE TRIALS OF ED SHEERAN

Who owns a groove?

BY JOHN SEABROOK



One day in 1973, Edward Townsend, a singer-songwriter who'd had a minor hit with the 1958 ballad "For Your Love," invited a friend, the R. & B. superstar Marvin Gaye, to his home in Los Angeles, to hear some new tunes. Sitting at the piano, Townsend played a four-chord progression in the key of E-flat major while singing a melody that harked back to his doo-wop days. Townsend, then forty-three, had recently been released from rehab, and the song was a plea to a higher power to help him stay sober. "I've been really tryin' baby, tryin' to hold back this feeling for so long" was one of the lines.

Gaye, who was suffering from writer's

block after the huge success of "What's Going On," for Motown Records, in 1971, heard his friend's song as a hymn to sex. Together, they created "Let's Get It On."

Motown's music-publishing company, Jobete, took fifty per cent of the song's copyright. Gaye and Townsend agreed to split their share of the composition's future earnings. Gaye recorded the song in L.A., in March, 1973, with members of the Funk Brothers, Motown's house band, who added the wah-wah guitar introduction and the song's undeniable groove, in which the second and fourth chords are anticipated—slightly in front of the beat. Gaye, in addition to his soaring vocal, played keyboard on the record.

Ed Sheeran denies illegally copying Ed Townsend and Marvin Gaye's song.

The song, Gaye's first No. 1, was one of the biggest hits of the year. It became a foundational track in the quiet storm of seventies R. & B. and soul, and has remained an evergreen—a steady earner.

"Let's Get It On" launched a new phase in Gaye's career; four years later, his song "Got to Give It Up" also reached No. 1. Before his death, a filicide by Marvin Gaye, Sr., in 1984, Gaye had a final smash with "Sexual Healing."

Townsend's career peaked with "Let's Get It On." He fell back into alcohol abuse, acquired a cocaine habit, and ended up living on the streets of Los Angeles. He eventually beat his addictions, and, near the end of his life, devoted himself to helping others on the street. He died in 2003, at the age of seventy-four.

In February, 2014, an English singer-songwriter named Amy Wadge visited the pop star Ed Sheeran at his home in Suffolk. Wadge was an old friend and a frequent collaborator. Sheeran's paternal grandfather had recently died, and his maternal grandmother was in a wheelchair, following cancer surgery. Sheeran and Wadge had a long talk that evening about enduring love.

Sheeran excused himself to shower before dinner with his parents, who live nearby, and Wadge picked up one of his acoustic guitars (a gift from Harry Styles) and began strumming a four-chord progression in D major. Sheeran heard it when he came out of the shower, and called out, "We need to do something with that!"

After dinner, Wadge and Sheeran returned home and continued writing in Sheeran's kitchen. The first line, "When your legs don't work like they used to," referred to his grandmother's condition. By midnight, "Thinking Out Loud" was finished. Sheeran recorded the song, in which the second and fourth chords are anticipated, just in time to include it on his second album, "Multiply."

As a writer, Sheeran is known for his speed and facility. He can toss off four or five songs a day when he's recording an album. His EP "No. 5 Collaborations Project" led to a deal with Atlantic Records, a Warner Music label, when he was nineteen. He writes ballads as well as bangers; he also raps. He has collaborated with artists including Taylor Swift, Rita Ora, and Justin Bieber. His

songs are popular partly because they are so accessible. It's as if you already know them.

Sheeran usually performs solo with a guitar—without costume changes, dancers, or pyrotechnics—backed only by looped tracks that he makes with a pedal as he plays. The two-year-long tour for his 2019 album, “Divide,” took in more than seven hundred and seventy-five million dollars, making it the second-highest-grossing tour of all time. Now, at thirty-two, he is one of the wealthiest people in the U.K.

“Thinking Out Loud,” released in September, 2014, was one of the first songs to be streamed half a billion times on Spotify; it has since passed 2.2 billion streams. It won the 2015 Grammy for Song of the Year, and its success shot Sheeran into the thin air of the world's top hitmakers. The song also became a favorite at his concerts.

In a YouTube video of a Sheeran show in Zurich in November, 2014, the artist, playing an electric guitar, smoothly transitions from “Thinking Out Loud” to “Let's Get It On” and back to “Thinking,” without changing chords or the harmonic rhythm—the syncopated cadence at which chords are played. He smiles a bit mischievously. The crowd loves it.

Most pop songs are made out of other pop songs. Many are constructed on three- or four-chord progressions, and have a near-identical blueprint—intro, verse, chorus, bridge, outro. Other than words and melody, not much in a composition is protected by copyright. As the Australian comedy trio Axis of Awesome demonstrates in a video that went viral, any number of pop songs can fit inside the same four chords. For this reason, the property lines of popular music are hard to draw. Inspiration, imitation, homage, and pastiche are all at play. Often, the trick is to sound new and old at the same time. But at what point do influence and interpolation become appropriation and plagiarism?

In 2019, the hitmaker Pharrell Williams spoke with the producer Rick Rubin, for a filmed conversation about creativity. Williams described his reaction to hearing a song that makes him feel something he hasn't felt before: “I'm going to have to reverse engineer the feeling in order to get to the chord struc-

ture.” He did just that with “Blurred Lines,” his 2013 hit with Robin Thicke, for which he seemed to metabolize almost every aspect of Marvin Gaye's 1977 hit “Got to Give It Up,” including the crowd noises and the cowbell.

But, according to a jury in Los Angeles, Williams went too far. In 2015, it found that the composers of “Blurred Lines” had illegally copied Gaye's song. The songwriters were ultimately forced to pay the Gaye family \$5.3 million, and to share half the song's future publishing royalties. The verdict was a victory for the copyright attorney Richard Busch. Afterward, more than two hundred producers and other people in the music business signed an amicus brief predicting that, if the verdict was upheld, they would be forced to work “always with one foot in the recording studio and one foot in the courtroom.” It was upheld anyway, in a 2–1 vote, in 2018. The dissenting judge on the Ninth Circuit Court of Appeals, Jacqueline Nguyen, described the ruling as “a devastating blow to future musicians and composers everywhere,” because it allowed “the Gayes to accomplish what no one has before: copyright a musical style.”

Many people correctly predicted that the “Blurred Lines” ruling would trigger a wave of frivolous infringement cases. “I can't tell you how many calls we get after the Grammys,” Judith Finell, who was the Gaye family's expert musicologist in the “Blurred Lines” case, told me. “Mostly from lawyers wanting to see if their client's claim of infringement is winnable.”

Taylor Swift, the Weeknd, and Justin Bieber are only a few of the artists who have been subject to recent allegations of infringement. The composers of Dua Lipa's 2020 hit “Levitating” are being sued on both coasts: In Los Angeles, the reggae band Artikal Sound System is claiming that the song copied its 2017 track “Live Your Life.” In the Southern District of New York, L. Russell Brown and Sandy Linzer believe that “Levitating” infringes on two songs they wrote, “Wiggle and Giggle All Night,” from 1979, and “Don Diablo,” from the following year.

Two influential decisions in California's Ninth Circuit in the past few years have repaired some of the “Blurred Lines” damage. In 2020, the appeals court confirmed a jury's verdict that Led Zeppelin's “Stairway to Heaven” did not infringe on “Taurus,” by the late-sixties

rock band Spirit, because the descending A-minor figure in “Taurus” consisted of “common musical elements” that can't be copyrighted. In 2020, a district judge in Los Angeles overturned a verdict that found Katy Perry's “Dark Horse” had infringed on eight notes from “Joyful Noise,” an obscure song by the Christian artist Flame. The judge's decision was upheld on appeal.

This spring, a high-stakes copyright trial took place in New York City. The issue in *Griffin v. Sheeran* was whether Sheeran and Wadge had illegally copied from “Let's Get It On” in creating “Thinking Out Loud.” The larger issues were how much songwriters like Sheeran should be allowed to borrow from earlier works, and the opaque and antiquated process by which the law determines what part of a pop song the composer actually owns.

Music copyright, which became law in the United States in 1831, allows composers to establish the “metes and bounds” of their intellectual property, just as mechanical inventors do in obtaining patents. But a patent is granted only after examiners have determined, by way of an investigation, that an invention is truly new and useful. A music copyright is more like a virtual rubber stamp that a musician gets automatically as soon as a song is “fixed in a tangible medium of expression.” If the song is a hit and the musician is sued—because “where there's a hit, there's a writ,” as an old adage goes—it is up to the courts to figure out how original the work is.

Copyright makes it commercially viable to be an artist. But painters can't claim ownership of a color, and songwriters can't monopolize notes or, for that matter, common chord progressions, modes, or rhythms. A composer is entitled to own only a particular expression or arrangement of a musical idea, not the idea itself. (The concept of an arpeggio, or of counterpoint, cannot be copyrighted.) The question is how to legally separate the two. The law, which represents the Apollonian side of human experience—the rational, analytical, and intellectual—is a leaky sieve for containing the Dionysian elements of music: the irrational, abstract, and emotional parts.

“Songwriters almost never steal melodies from one another on purpose,” Joe

Bennett, a professor of forensic musicology at Berklee College of Music, told me. “In almost every case, the copying is inadvertent.” Still, outright theft does happen—compare Johnny Cash’s “Folsom Prison Blues,” from 1955, to Gordon Jenkins’s 1953 song “Crescent City Blues.” Cash ultimately paid Jenkins seventy-five thousand dollars (which now amounts to some six hundred and sixty thousand) for lifting his melody and some of his lyrics.

Bennett explained that songwriters can be found liable for infringement of copyright even if the infringement was “subconsciously accomplished.” The phrase comes from the judge in a 1976 case, which found that George Harrison had unknowingly but unlawfully copied the Chiffons’ 1963 song “He’s So Fine” in his 1970 hit “My Sweet Lord.” The two melodies are virtually identical.

“Also known as ‘cryptomnesia,’” Bennett added. He defined the term as “a forgotten memory that is mistaken for an original idea.” Pop music is bursting with cryptomnesiacs.

Before the Internet, lack of access was the standard defense against a claim of subconscious copying: the composer couldn’t possibly have heard the accuser’s obscure song. At music publishers’ offices, assistants were instructed to return unsolicited recordings unopened, so that the sender couldn’t argue later that his work had been filched. But platforms like SoundCloud, Spotify, and TikTok have severely curtailed that defense. Finell, the musicologist, told me, “Some kid will come to me and say, ‘I just heard the latest Beyoncé song, and she stole my drum track!’ I say, ‘How did Beyoncé get to hear a drum track that you composed in your garage?’ ‘Well, I put it out on social media, and I have a hundred thousand followers. One of them could work with Jay-Z!’”

Can a style or a vibe ever be infringed on, if not all that much in pop is really new? True, some homages to past styles are more brazen than others: Bruno Mars and Mark Ronson took eighties funk grooves from the Gap Band’s “Oops Upside Your Head” and made them part

of the Grammy-winning song “Uptown Funk” without asking for permission. After the “Blurred Lines” verdict, a number of songwriters were added to the song’s credits.

The music industry was recently shaken by “Heart on My Sleeve,” a song featuring a duet between a fake Drake and a fake the Weeknd, in which both vocals were created, using generative A.I., by an anonymous user called Ghostface. Artists and rights holders are concerned that their creations will be used to train A.I. generators that will eventually replace them. Faced with that possibility, rights holders are likely to seek more protection for

style, even though doing so could make it harder for artists to do their work without infringing.

Ed Townsend had two sons, Clef Michael and David, born to his wife, Cherrigale, and a daughter, also named Cherrigale, born in Los Angeles in 1960 to a singer, who gave the child up for adoption at birth. The adoptive family, the Griffins, changed the baby’s name to Kathryn. When Kathryn was a child, her adoptive mother would point at a hysterectomy scar on her stomach and say, “This is where you came from.”

Kathryn showed an aptitude for music, which made her parents nervous. “My whole life, I wanted to play piano, flute, piccolo,” she told me. The family moved from L.A. to Hattiesburg, Mississippi: “They didn’t want me in the music industry, because they were afraid I’d find out who my father was and fall into the life he did.”

Griffin fell anyway. She became addicted to crack cocaine and got into sex work to support her habit. She was trafficked, she told me, and after escaping her abusers she lived for a time in a “cardboard condominium” under a bridge. She speaks in a hoarse Southern drawl; in spite of her past, she laughs a lot.

In 1986, when Griffin was twenty-six, her grandfather, a Christian minister, told her that she was adopted. Her mother then confessed that her biological father was a famous musician. Griffin called an acquaintance, Hubert Laws, the jazz musician. “Have you ever heard of a man

named Ed Townsend?” she asked. Laws replied, “Everybody knows who Ed Townsend is!” Griffin said, “Well, I don’t!”

She recalled reaching Townsend by phone for the first time: “I said, ‘This is your daughter.’ He said, ‘I have looked for you your entire life.’” But he had been searching for a Cherrigale, not a Kathryn.

Townsend left Griffin a third of his “Let’s Get It On” royalties. (In the nineteen-eighties, he had sold part of his share of the song’s publishing copyright to Jobete.) She promised to protect his legacy. Griffin got sober in 2003, the year Townsend died. She began counselling women in prison in Houston who had been sex workers; she is now an expert in human-trafficking victims’ rights. Griffin estimates that she has rescued more than a thousand women from “the life.” When her half brother David died, in 2005, he left Griffin his share of his father’s royalties, as did her aunt Helen McDonald, in 2020.

Early in 2015, friends of Griffin alerted her to the similarities between “Let’s Get It On” and a new song called “Thinking Out Loud.” “They said, ‘This British guy, he just changed the words and kept all the music!’” she told me. Griffin listened to both: “And I went, ‘Oh, my God. Wow.’”

Griffin tried to notify Sony/ATV Music Publishing, the behemoth that had recently acquired the Jobete catalogue. But no one at Sony returned her calls. “Let’s Get It On” was in the American Songbook. Shouldn’t Sony want to protect its I.P. from infringement? Then Griffin figured it out: Sony was probably conflicted because it was also the publisher of “Thinking Out Loud,” along with much of the rest of Sheeran’s catalogue.

Sony eventually asked two musicologists to investigate the claim. Both advised the company that there was no infringement, as did a third musicologist, whom Sheeran had hired in the U.K. Still, it seemed to Griffin that no one at Sony was looking after her interests or her father’s legacy. (Sony says that it often finds itself on both sides of infringement suits, and that it remains neutral in these cases.)

Griffin found lawyers, Pat Frank and Keisha Rice, in Tallahassee, Florida. They contacted Alexander Stewart, a professor of music at the University of Vermont. Stewart heard enough similar-



ties between the two songs to write a report saying that Sheeran and Wadge were infringing on Gaye and Townsend. In 2017, Griffin's attorneys filed a civil suit in New York, where Sony is headquartered, which charged that "the melodic, harmonic, and rhythmic compositions of 'Thinking' are substantially and /or strikingly similar" to "Let's Get It On." As with "Blurred Lines," the claim focussed not on obvious similarities in the songs' melodies or lyrics but on compositional elements associated with the rhythmic harmony—the groove.

On a Monday a few weeks ago, shortly after 11 A.M., Judge Louis L. Stanton, who is ninety-five years old, took his place at the bench in a federal courtroom in downtown Manhattan. The plaintiff, now Kathryn Griffin Townsend, was seated next to her attorneys. She wore a dark-green dress, a long black coat, and an expression of sombre resolve. Her daughter Skye was also in attendance.

In music-copyright trials, similarities are assessed by two kinds of people: expert listeners and lay ones. The elite ears belong to forensic musicologists, who are often academics with advanced degrees. They hear music intellectually, in quantifiable component parts: tempo, amplitude, arrangement. The musicologists offer supposedly objective analyses of the "musical fingerprints" of songs, but they manage to arrive at opposite conclusions, depending on which side is employing them—generally for around five hundred dollars an hour. The lay listeners on the jury, who are a kind of proxy for pop music's audience, temper the experts' testimony with what their own ears tell them.

In federal court, this methodology is known as the Arnstein test. It derives from *Arnstein v. Porter*—a famous 1946 case that was heard during New York's heyday as a songwriting town—involving Cole Porter, the Broadway composer, and Ira B. Arnstein, a writer of Yiddish folk songs and light opera, who became convinced that many of the biggest hits of the era had been stolen from him. The songwriter accused Porter of copying the melodies in "Night and Day" and "My Heart Belongs to Daddy," among other songs, from sheet music kept in a trunk in his shabby Upper West Side apartment, possibly aided by a duplicitous landlord. Arnstein ultimately lost the case, as he

lost every case in his long career as a copyright troll. However, as Gary Rosen notes in his book "Unfair to Genius," from 2012, "It is within American jurisprudence and not popular music that the name Ira B. Arnstein reverberates." He adds, "If only he could have collected a royalty on the case law that bears his name."

Fourteen prospective lay listeners were called into the Griffin v. Sheeran jury box, and Judge Stanton asked whether anything prevented them from rendering impartial judgment.

"'Perfect' was my wedding song," a young woman said.

"My teen-age daughters love Ed Sheeran," another said. "I don't know his music."

Both women were eventually rejected during voir dire, as was a young man who said that he was pursuing a doctorate in musicology at Columbia University. Even though he was probably the best-qualified potential juror to decide the case, he clearly wasn't a lay listener. The final seven-person jury included a lawyer, a special-ed teacher, a dramaturge, an amateur singer, a recent college graduate, and a guy who'd played trumpet in middle school.

Because "Let's Get It On," or "L.G.O.," as the legal documents refer to the song, was recorded before 1978, it is governed by the 1909 Copyright Act, which stipulated that, in order for a musical work

to be registered for copyright, a written composition must be submitted to the U.S. Copyright Office, in Washington, as the "deposit copy." (It wasn't until the 1976 Copyright Act, which went into effect on January 1, 1978, that sound recordings were admissible as deposit copies.)

In both the "Blurred Lines" and "Stairway to Heaven" cases, the jury was not permitted to listen to any pre-1978 recording. The jurors in Griffin v. Sheeran could listen to the recording of Sheeran's song, but they had to rely on the five pages of sheet music for "Let's Get It On," a skeletal transcription that contained lyrics, melody, chords, and a notation of where the syncopated beats fall. Gaye's piano and the Funk Brothers' additions to the groove, such as the bass line, weren't on the deposit copy. Gaye, who didn't read music, probably never even saw the transcription. (Sheeran can't read music, either, a fact that he readily admitted on the stand.) The only versions of "L.G.O." that the jury could listen to were the experts' MIDI audio files, which were made from the sheet music using musical software, and sung by a computer-generated voice. The tinny, wheedling sound of the synthesized music and the high-pitched android vocal made a classic soul song sound utterly soulless.

Almost all the major African American contributions to American music—



KUPER

"Sir, did you order the special meal?"

ragtime, jazz, swing, hip-hop—were built on rhythmic innovations that weren't transcribed in sheet music and copyrighted. (The bent third and seventh blue notes that lie at the heart of the blues can't even be written in twelve-note chromatic-scale notation.) Ingrid Monson, the Quincy Jones Professor of African American Music at Harvard, who also served as an expert witness for the Gaye family in the "Blurred Lines" trial, told me, "There could be no copyright system less suited to rewarding the creativity of African American music than the one we have. It was obviously modelled on classical music, and on the idea that a real piece of music, one that was worthy of copyright, would be written in notation."

Even though the Copyright Office now allows recordings to be submitted in place of transcriptions, melody and lyrics remain the most important elements of a musical copyright involving a song's composition, partly because they can be seen by judges and juries on paper. The focus on protecting the topline seems out of step with the dominance in contemporary pop of the track—the harmonic and rhythmic bed for a song, usually made by a producer on a digital workstation—which frequently precedes melodies and lyrics. It's often the track that makes a song sound unique.

Kathryn Griffin Townsend isn't the first person to accuse Ed Sheeran of copying a song. In 2017, on the advice of counsel, Sheeran settled an infringement claim brought by the writers of "Amazing," a song performed by Matt Cardle, an "X Factor" winner, who maintained Sheeran's 2014 hit "Photograph"

infringed on their track. Infringement claims are often resolved this way. In 2015, Sam Smith settled amicably with Tom Petty over the similarity between the chorus hook in Smith's song "Stay with Me" and that in Petty's "I Won't Back Down." In 2021, Olivia Rodrigo offered the band Paramore a writing credit and a share of the profits from her song "Good 4 You," whose hook sounds a lot like the pre-chorus of Paramore's "Misery Business."

But Sheeran came to feel that settling (reportedly for five million dollars) made him a target for copyright trolls. "Shape of You," a 2017 Sheeran megahit, was the subject of multiple disputes. He amicably resolved one, with the songwriters of TLC's hit "No Scrubs," for borrowing its melody. (While writing the song, he'd referred to it as "the TLC song.") He initiated and won another case, brought in the U.K., against Sami Chokri, a British songwriter and grime artist, who'd asserted that Sheeran's "Shape of You" had stolen the chorus from his 2015 song "Oh Why." The magistrate who decided the case in Sheeran's favor ordered Chokri to pay more than nine hundred thousand pounds, to cover Sheeran's legal fees.

In a BBC Two "Newsnight" interview that aired in the U.K. after the victory, Sheeran and his co-writer John McDaid, of Snow Patrol, talked about the "extraordinary strain" of the lawsuit on their creativity and mental health. "The best feeling in the world is the euphoria around the first idea of writing a great song," Sheeran said, perhaps recalling that night in the kitchen with Wadge. "The first spark, where you go, 'This is special—we can't spoil this.'" He went

on, "But that feeling has now turned into 'Oh, wait, let's stand back for a minute, have we touched anything?' You find yourself in the moment second-guessing yourself." As a precaution, Sheeran added, he films all his songwriting sessions, should a claim later arise.

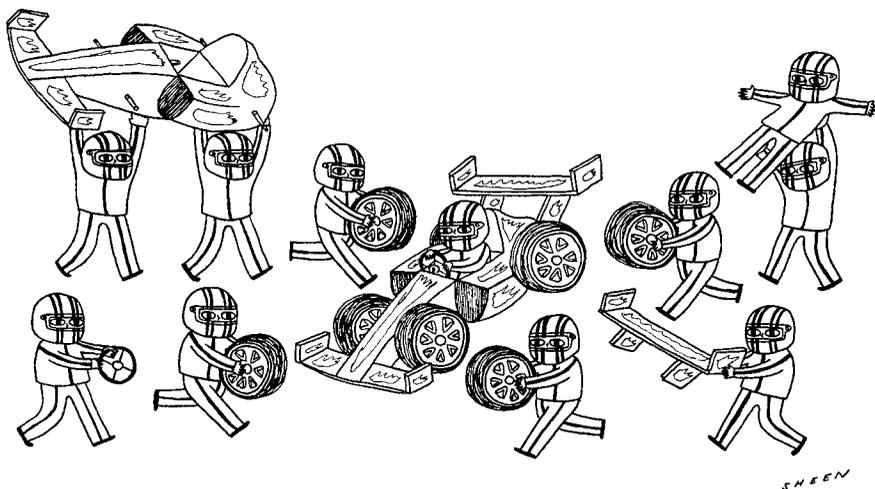
"This is not about money," Sheeran said. "It's about heart, honesty, and integrity. Win or lose, we had to go to court—we had to stand up for what we thought was right."

Sheeran decided to go to court rather than settle with Griffin for the same reason. He testified that his songwriter and artist friends were urging him to fight, saying, "You have to win this for us." These days, Sheeran observed, "it's just something that happens. When you write songs and they're successful, someone comes after you." He also said that, if he lost this case, he was going to quit music. "I'm finished," he declared. "I'm done."

Sheeran arrived in court the day after jury selection. He wore a dark-navy suit with double vents in the back, and a blue necktie with small white polka dots, but he still managed to look scruffy, like a subway busker turned banker. He sat at the defense table, where, in the course of seven days, the spectators behind him—a mix of copyright attorneys, music journalists, and superfans—could study his distinctive copper-colored coif.

Townsend sat just in front of Sheeran, at the plaintiff's table. Her coat, a gift from the musician George Clinton, had the word "INTEGRITY" emblazoned on the back, directly in Sheeran's line of sight. Townsend's legal team included the civil-rights lawyer Ben Crump, a personal friend, who represented George Floyd's family after Floyd's murder, and worked with Keisha Rice on the Trayvon Martin wrongful-death case. This would be his first music-copyright trial.

A few weeks earlier, Crump had held a press conference outside the courthouse. With Townsend standing next to him, he'd said, "It is important that we understand that this is part of a larger issue. Far too many times in history, Black artists have created some of the most miraculous music in the world, only to see white artists come and usurp that music and reap untold fortunes while these Black artists and their families derive nothing from their genius."



But surely the Yorkshire-born Sheeran wasn't solely responsible for the shameful exploitation of Black artists within the U.S. music industry? As Jennifer Jenkins, a copyright-law professor at Duke, put it to me, "Sheeran isn't Pat Boone covering songs by Little Richard, and he isn't Alan Freed taking credit for Chuck Berry's 'Maybeline' without writing a single note." Nevertheless, Crump called on Sheeran to "do the right thing" and settle with Griffin before the trial started. Otherwise, Crump thundered, "let's get it on!"

In his opening statement, Crump called for "credit where credit is due," but he stopped short of accusing Sheeran of appropriating Black music. He characterized the video of Sheeran's Zurich concert as a "smoking gun."

"Maya Angelou tells us that when a person shows you who they are, it's our duty to believe them," Crump declared. "When someone provides you a voluntary confession, believe them."

Ilene Farkas, a copyright specialist at the powerhouse firm Pryor Cashman, who along with Donald Zakarin led Sheeran's legal team, delivered the defense's opening. She said that the only similarities between the two songs were a common chord progression and an equally common syncopated rhythm. The plaintiffs, she argued, "cannot own these common musical elements."

On the stand, Townsend described her feelings about Sony's failure to respond to her inquiries. "I feel they've been so negligent," she said, her voice thick with emotion. "And I promised my father I would protect his work and artistry." She went on, "I have nothing against Mr. Sheeran personally. I think he's a great artist with a great future. I am simply trying to protect my father's legacy."

After lunch, the plaintiffs called Sheeran to the stand, where Rice questioned him. Sheeran testified to hearing "L.G.O." for the first time in an Austin Powers movie, but denied copying it.

Rice asked Sheeran about his song "Take It Back," which boasts about stealing rap lyrics:

You'll find me ripping the writtens
Out of the pages they sit in
And never once I get bitten
Because plagiarism is hidden

"Are those your lyrics?" Rice asked.

"Can I just give context?" Sheeran replied.

"If I need more context, I'll certainly ask," Rice said.

"I feel like you don't want me to answer because you know what I'm going to say is going to make a lot of sense," Sheeran said.

Finally, the plaintiffs played the Zurich video, which they saw as their strongest single piece of evidence. (The admissibility of the video as evidence had been the subject of much legal maneuvering by the defense, who appeared keen not to see it played.) Sheeran watched from the witness box, his moon face expressionless. Afterward, he remarked, with some heat, "Quite frankly, if I had done what you're accusing me of doing, I would be an idiot to stand on a stage in front of twenty thousand people and show that."

Sheeran is a master of the mashup. At shows, he often interpolates his songs and other people's songs, as a kind of musical party trick; he sometimes takes requests from the audience. Throughout his time on the stand, he entertained the jury and spectators by demonstrating this with an acoustic guitar that his team placed within reach of the witness box. At one point, he started singing "Thinking Out Loud," transitioned into Shania Twain's "You're Still the One," then into Bob Dylan's "Just Like a Woman," and finished with Van Morrison's "Crazy Love." Recordings of Sheeran's mashups were played: "Take It Back" with "Superstition," by Stevie Wonder, and "Ain't No Sunshine," by Bill Withers.

"You can kind of play most pop songs over most pop songs," Sheeran told the room. It was persuasive testimony, but it also helped explain why Sheeran's songs sound familiar—they're not so different from many other songs.

In the "Blurred Lines" trial, Judith Finell devoted much of her testimony to a PowerPoint presentation. Average listeners have a hard time comparing two songs aurally, she told me: "The first song doesn't stay in their memory when the second song starts playing." But, she added, "people do retain visual information." Her presentation used a time-stamped map of intervals in the two songs which showed "significant simi-

larities" by way of color-coded charts. To critics, her presentation was all smoke and mirrors, designed to trick the jury into thinking that a collection of unproctable elements was forensic proof that "Blurred Lines" was stained with Marvin Gaye's musical DNA.

Townsend's expert, Alexander Stewart, had also prepared a slide show, and his presentation focussed on three areas of similarity between the songs. These were several melody fragments; the syncopated rhythm that anticipated the second and fourth chords; and the progression, which Stewart claimed was, in the Roman nomenclature of chords, a I-iii-IV-V progression. He testified that, of all the songs that came before "L.G.O.," he could find only one—a version of "Georgy Girl" recorded by "a rather obscure Mexican bandleader" in 1966—that employed the same combination of chord progression and syncopation. He estimated that seventy per cent of the "musical value" of Sheeran's song was derived from Gaye and Townsend's.

Lawrence Ferrara, a professor of music at N.Y.U., was the forensic musicologist for the defense. He pointed out that the chord progression Ed Townsend had played for Gaye was so common that it was in elementary music-method books such as "How to Play Rock 'n' Roll Piano," published in 1967. He claimed that six songs had the same progression and rhythm as "L.G.O.," including Holland-Dozier-Holland's "You Lost the Sweetest Boy" (1963), sung by Mary Wells, and the Mexican recording of "Georgy Girl." (In the Seekers' hit version, the expert noted, the guitar is anticipated, but the bass plays *on* the beat.) If Sheeran were found to have illegally copied "Let's Get It On," then the rights holders of those earlier songs could claim that "L.G.O." had infringed on them, resulting in a circular firing squad of lawsuits. Ferrara variously characterized parts of Stewart's testimony as "farcical," "absurd," and "ludicrous."

Sheeran also commented on Stewart's presentation. "I think what he's doing is criminal," he said. "I don't know why he's allowed to be an expert." What annoyed Sheeran most was that Stewart heard an F-sharp minor chord at the beginning of "Thinking Out Loud." This would make it identical to the I-iii-IV-V progression in "L.G.O.," if

Sheeran's song were transposed to E-flat. But, in fact, Sheeran said, Stewart was wrong: the chord was a D over F-sharp—a D-major first inversion, which Sheeran demonstrated by strumming both progressions.

"I know what I'm playing on guitar," he said. "It's me playing it."

"And how do you know Dr. Stewart is wrong?" Farkas asked.

"I wrote it, and I play it every week, a lot," Sheeran said.

The other third of Ed Townsend's third of the "Let's Get It On" royalties, which was once owned by his son Michael, now belongs to Structured Asset Sales, an L.A.-based company founded by the financier David Pullman. Pullman is a pioneer in packaging song catalogues as investment-grade securities, a common practice today. Essentially, an investor buys a share and reaps a portion of future earnings from royalties, licensing, and new technologies like streaming. Pullman created the first of these securities, Bowie Bonds, in collaboration with David Bowie, in 1997. He has worked on similar deals for catalogues belonging to the estates of James Brown, the Isley Brothers, and Holland-Dozier-Holland, among others.

Pullman filed a separate hundred-million-dollar suit against Sony in 2018. In another legal action, he is seeking to capitalize on an amicus brief filed by the Copyright Office in the "Stairway to Heaven" case, which noted that there could be "multiple, distinct copyrightable works that are all versions of the same song." This opened up the possibility of refileing a sound recording with the Copyright Office as a new arrangement, which would be covered by the rules of the 1976 Copyright Act. After reading the brief, Pullman submitted the recording of "L.G.O." and sued Sheeran again, based on substantial similarities that were not reflected in the original deposit copy. Sheeran might well spend the rest of his life defending his tender evocation of enduring love against an implacable opponent whose name, like Arnstein's, is embedded in New York case law. (To "Pullmanize" someone is to legally remove an unwanted owner from a co-op building, named for the process that Pullman's fellow-owners on

West Sixty-fourth Street went through in state court in 2001.)

Pullman now lives in an art-filled villa high atop Hollywood, with an unbeatable view of the city from his trapezoidal pool. As a music investor, he favors evergreens. In his estimation, there are so many more infringement cases these days not because of frivolous lawsuits but because of bolder instances of theft. "It used to be, you'd find a song that wasn't that big a hit," he said, in his rapid-fire speaking style. "Now they'll take hits. You have a better chance of having a hit if you take a giant hit. Why? Because people already recognize it!"

In Pullman's opinion, Sheeran is a serial infringer: "Why does he write songs so quickly? Maybe it's because parts of them are already written." He mentioned the Zurich video: "He seamlessly goes into 'Let's Get It On'—did you pick that song out of a hat? Out of sixty million registered songs, why do you pick that song? It's a tell." He recalled the well-known story of Paul McCartney going around and asking people if the melody of "Yesterday," which had come to him in a dream, was in fact remembered from another song. Today, Pullman said, it's "infringe now, worry about it later."

Pullman said that he would consider settling for a respectful sum: "I don't understand why someone wants to go through so many trials. Every case against him will just get stronger."

When I saw Kathryn Griffin Townsend in the courthouse cafeteria before closing arguments, she looked rested and happy. "Win, lose, or draw, it doesn't matter, because we won," she told me. "Now people know what happened. And they'll think before they do it again." She added, "This has never been about money."

Ilene Farkas, who closed for the defense, noted that we were all here because, exactly fifty years ago, Ed Townsend sat down at his piano and played Marvin Gaye four chords. Townsend had been free to use them to make a song, just as Sheeran should be. "Do we have to tell the eleven-year-old next Ed Sheeran that they better find out who owns that chord progression?" she asked.

Ben Crump reminded the jurors that this Ed Sheeran had threatened to quit music if they decided against him: a

heavy burden. Millions of Sheeran fans would despise them, and the promoters and stadium owners involved in Sheeran's forthcoming world tour for his new album, "Subtract," would be on the hook for the cancelled shows. "That's simply a threat to try to play on your emotions," Crump said. "I promise you, no matter what your verdict is, he won't be done with music." The lawyer observed that Sheeran is, above all, a performer. "Don't be charmed," he said. "I'm sure if Ed Townsend was alive and in this court, he would have been just as charming."

The jury deliberated for less than three hours before handing its verdict to Judge Stanton: Sheeran and Wadge had independently created "Thinking Out Loud"; they had not infringed on "Let's Get It On."

Sheeran, who had missed his paternal grandmother's funeral to testify, emotionally embraced Farkas and Zakarin. Wadge wept. The music executives looked pleased. The trial had given both songs streaming bumps.

Outside, on Worth Street, the pop star read a statement. "It looks like I'm not going to have to retire from my day job," Sheeran said. However, "I am unbelievably frustrated that baseless claims like this are allowed to go to court at all." He hoped that now he and his fellow-songwriters could "all just go back to making music." (Judge Stanton dismissed the first of Pullman's lawsuits a week later.) Then his artfully tousled head disappeared into a black S.U.V. and was gone.

Townsend did not seem at all downhearted by the verdict. She had honored her promise to her father, she told me, which was "to protect his intellectual property." She'd embraced Sheeran in the courtroom after the verdict, and they'd chatted briefly. "All I ever wanted to do was talk to you about this," she said she'd told him. "I'm sorry it took all this to make that happen."

Townsend went on to say that Sheeran had offered her tickets to his upcoming concert at NRG Stadium, in Houston. She ended up declining the offer, opting to attend her grandson's pre-K graduation instead. At the show, "Thinking Out Loud" came midway through. "Let's Get It On" did not make the set list. ♦

WEB DISPLAY



Ed Sheeran denies illegally copying Ed Townsend and Marvin Gaye’s song.

Photo illustration by Mark Harris; Source photographs from Getty

URL slug

[magazine/2023/06/05/ed-sheeran-copyright-infringement-lawsuit-marvin-gaye](#)

SITE

The Case For and Against Ed Sheeran

The pop singer’s trial for copyright infringement of Marvin Gaye and Ed Townsend’s “Let’s Get It On” highlights how hard it is to draw the property lines of pop.

SOCIAL

The Case For and Against Ed Sheeran

The pop singer’s trial for copyright infringement of Marvin Gaye and Ed Townsend’s “Let’s Get It On” highlights how hard it is to draw the property lines of pop.

SEO

The Case For and Against Ed Sheeran

Ed Sheeran’s trial for copyright infringement of Marvin Gaye and Ed Townsend’s “Let’s Get It On” highlights how hard it is to draw the property lines of pop, John Seabrook writes.

inline



r42454

Ed Sheeran leaves a Southern District of New York courthouse on April 26th, after testifying in Griffin v. Sheeran.

Photograph by Luiz C. Ribeiro / New York Daily News / TNS / Alamy

Inline audio clips

Audio clips will be added as inline clickable links.

Credits: Robin Thicke, T.I., and Pharrell Williams, “Blurred Lines” (Star Trak); Johnny Cash, “Folsom Prison Blues” (Sun Label Group); The Chiffons “He’s So Fine” (Capitol Records); Marvin Gaye, “Let’s Get It On” (Motown Record Company); Cory Daye, “Wiggle and Giggle All Night” (Featherbed Music); Tom Petty, “I Won’t Back Down” (MCA Records); George Harrison, “My Sweet Lord” (G.H. Estate); Gordon Jenkins, “Crescent City Blues” (Universal Music); Miguel Bosé, “Don Diablo” (Sony Music); Sami Switch, “Oh Why” (Sami Switch); The Gap Band, “Oops Upside Your Head” (One Media); Sam Smith, “Stay with Me” (Capitol Records); Paramore, “Misery Business” (Atlantic Recording); Ed Sheeran, “Shape of You” (Asylum Records); Bruno Mars, “Uptown Funk” (Kobalt Music); Matt Cardle, “Amazing” (Columbia); Dua Lipa, “Levitating” (Warner Records UK); TLC, “No Scrubs” (LaFace Records); Katy Perry and Juicy J, “Dark Horse” (Capitol Records); Olivia Rodrigo, “Good 4 U” (Geffen Records); Ed Sheeran, “Photograph” (Asylum Records UK); Ed Sheeran, “Thinking Out Loud” (Asylum Records UK); Led Zeppelin, “Stairway to Heaven” (Mythgem); Marvin Gaye, “Got to Give It Up” (Motown Records); Flame, “Joyful Noise” (Cross Movement Records); Spirit, “Taurus” (Sony Music); Artikal Sound System, “Live Your Life” (Controlled Substance Sound Labs).