

## Copyright Law's Blurred Lines in Music

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### I. Introduction

Copyright law is based on a concept that seems inherent in human nature. The childlike accusation that someone “copied” another’s intellectual work or artistic creation may hold logical weight in elementary classrooms and playgrounds, but in the legal realm, such claims are nuanced and complex. Some even criticize copyright law in its entirety, claiming it stifles creativity and society’s progress. One specific area within copyright law becomes increasingly problematic when exploring these criticisms: music. This largely stems from music’s subjective and elusive nature as intellectual property. If someone creates a commercially successful song after stealing eight notes from an existing song, can one reasonably argue that the song’s success was due to intellectual theft? What if the same instrumentation is used with completely different lyrics, melody, form, harmony, or rhythm? The line of infringement is difficult to find when music is vastly multidimensional, and the success of a song is hard to attribute.

Given these difficulties, U.S. copyright law is vague, leading to uncertain and problematic legal precedents. The lack of legal rigor in U.S. copyright law, specifically regarding music, raises concerns. After providing the necessary legal and musical context, the necessity for a bright-line test<sup>1</sup> will become evident. A subsequent analysis of *Williams v. Gaye*, a trial regarding the Robin Thicke and Pharrell Williams song *Blurred Lines*,<sup>2</sup> will further implicate the lack of rigor in copyright law before making suggestions for improvement. Implementing a more objective comparison would assist in clarifying the legality of music as intellectual property.

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<sup>1</sup> See generally Merriam-Webster Dictionary, *Bright-Line Definition* (Mar. 2025), [merriam-webster.com/dictionary/bright-line](https://www.merriam-webster.com/dictionary/bright-line).

<sup>2</sup> Robin Thicke, *Blurred Lines*, on Blurred Lines (Star Trak LLC 2013).

## II. Music Copyright Overview

The Copyright Act of 1976 is the most recent and comprehensive revision to copyright law.<sup>3</sup> The Act sets basic rules for copyright provisions and for fair use, an important exception to copyright ownership.<sup>4</sup> The Act also specifies the interval of time a work is eligible for copyright protection. This interval was previously the author or composer's lifetime plus an additional fifty years, and was later increased to seventy years in the Copyright Term Extension Act, also known as the Mickey Mouse Protection Act.<sup>5</sup>

As mentioned, fair use is one of the most important exemptions to copyright law. The exemption requires four characteristics to be considered: the "purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes," the "nature of the copyrighted work," the "amount and substantiality of the portion used concerning the copyrighted work as a whole," and the "effect of the use upon the potential market for or value of the copyrighted work."<sup>6</sup> Fair use allows copyrighted work to be parodied, researched, criticized, and taught without legal repercussions. This provides a foundation for creativity, innovation, and education. In music, this includes agency for comedic parodies, criticism, and scholarly endeavors.

## III. *Williams v. Gaye*

In 2013, Robin Thicke released the number one international single of the year, *Blurred Lines*.<sup>7</sup> After public instances of Thicke citing Marvin Gaye's 1977 song *Got to Give It Up*<sup>8</sup> as

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<sup>3</sup> The Copyright Act of 1976, 17 U.S.C. §§ 102–115 (1976).

<sup>4</sup> *Id.*

<sup>5</sup> The Copyright Term Extension Act, 17 U.S.C. § 302 (1978).

<sup>6</sup> 17 U.S.C. § 107 (1976).

<sup>7</sup> Plácido Domingo & Frances Moore, *IFI Digital Music Report 2014: Lighting Up New Markets* 15 (2014).

<sup>8</sup> Marvin Gaye, *Got to Give It Up* (UMG Recordings, Inc. 1983).

inspiration,<sup>9</sup> Marvin Gaye's children—Frankie Christian Gaye, Nona Marvisa Gaye, and Marvin Gaye III—sued the cowriters of the song, Thicke and Pharrell Williams.<sup>10</sup> Gaye's estate argued that multiple elements, including the hook,<sup>11</sup> keyboard, and bass melodies, shared “substantial similarities” with *Got to Give It Up*.<sup>12</sup> Williams and Thicke argued that no substantial similarities can be noticed when comparing sheet music for the songs.<sup>13</sup>

Despite the songs having no definitive similarities in key, rhythm, melody, or form, in March 2015, the jury ruled in favor of Gaye's estate, awarding them \$7.4 million in damages. On appeal, Judge Nguyen's dissenting opinion noted that this decision was based on the “feel” of the song rather than any distinctive elements.<sup>14</sup> The “feel” of a song is a term that does not exist in the study of music theory and analysis, but despite this, the case established legal precedence where the “feel” of a song holds intellectual merit and exclusivity.<sup>15</sup> Williams and Thicke later appealed the decision in *Williams v. Bridgeport Music*, but were unsuccessful, and the district court's decision was upheld.<sup>16</sup>

#### IV. Analysis

*Williams v. Gaye* is a substantive example of why music copyright law lacks sufficient, equitably adjudicated precedence and definitive legal boundaries. In an interview, Thicke pointed out that the two songs “are in different keys” and “anyone who reads music” can play them and see the difference.<sup>17</sup> The only tangible similarities between the songs are the use of cowbells,

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<sup>9</sup> Stelios Phili, *Robin Thicke on That Banned Video, Collaborating with 2 Chainz and Kendrick Lamar, and His New Film*, GQ (May 2013), [gq.com/story/robin-thicke-interview-blurred-lines-music-video-collaborating-with-2-chainz-and-kendrick-lamar-mercy](http://gq.com/story/robin-thicke-interview-blurred-lines-music-video-collaborating-with-2-chainz-and-kendrick-lamar-mercy).

<sup>10</sup> *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018).

<sup>11</sup> For a simple definition of a hook, see generally Tero Potila, *What is the Hook of a Song: Comprehensive Guide*, Soundtrap (June 2024), [soundtrap.com/content/blog/what-is-song-hook](http://soundtrap.com/content/blog/what-is-song-hook).

<sup>12</sup> *Williams v. Gaye*, 895 F.3d at 1117.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1119.

<sup>16</sup> *Williams v. Bridgeport Music Inc.*, No. 1:2014mc00073 (S.D.N.Y. 2014).

<sup>17</sup> Emerald Morrow, *Pharrell Talks About Battle Over ‘Blurred Lines’*, Associated Press (Sept. 2013), [apnews.com/music-f6f80c0a8a0b472bad52ff5f5d685e15](http://apnews.com/music-f6f80c0a8a0b472bad52ff5f5d685e15).

shouts, and syncopated rhythms.<sup>18</sup> These musical elements are not original to *Got to Give It Up*, and they can be found abundantly in music preceding and following Gaye's song.

Thicke is right—the key of a song dictates its entire skeleton, telling the musician what chords and notes to use, which in turn affects harmony and melody.<sup>19</sup> Despite Gaye's estate claiming that the music shared “substantial similarities,” no notable similarities can be observed when looking at the sheet music. Sheet music and instrumental analysis provide an objective view of what is being heard. This alone should have proved that Gaye's copyright entitlement was not being infringed upon. The estate's claims rest solely on the subjective argument that they sound similar; as Judge Nyguen pointed out in his dissenting opinion, the decision was based on the “feel” of the song.<sup>20</sup>

The precedent set by this case is not only elusive but potentially detrimental. Entire genres exist because they have a similar “feel.” Does this mean that songs can only exist individually as exclusive “feels”? Can one song not have the same “feel” as another without infringing on its creator's intellectual property rights? This point may raise the question of how “feel” is defined, which introduces another issue—the complete subjectivity of this precedent. As previously mentioned, the term has no concrete definition or reproducible logic. What makes *Blurred Lines* a special case regarding how this should induce copyright infringement?

These issues highlight the need for a bright-line test when analyzing musical copyright infringement. The basic elements of music must be understood to understand the suggestion for a bright-line test. According to music theorist Dr. Robert Hutchinson, the basic elements of music are melody, harmony, rhythm, timbre, texture, articulation, dynamics, and register.<sup>21</sup> Factors such

<sup>18</sup> For a simple definition of syncopated rhythms, *see generally* Merriam-Webster Dictionary, *Syncopation Definition* (Feb. 2025), [merriam-webster.com/dictionary/syncopation](https://merriam-webster.com/dictionary/syncopation).

<sup>19</sup> For a simple definition of a key signature, *see* Susana Pérez Posada, *Key Signatures in Music: A Comprehensive Guide*, Skoove (Feb. 2025), [skoove.com/blog/key-signatures-beginners-guide](https://skoove.com/blog/key-signatures-beginners-guide).

<sup>20</sup> *Williams v. Gaye*, 895 F.3d at 1119.

<sup>21</sup> Robert Hutchinson, *Music Theory For the 21st-Century Classroom* § 15.1 (2017).

as harmony, texture, articulation, dynamics, and register seldom occur uniquely. Thus, the bright-line test should only consider melodic content and lyrics.<sup>22</sup> Melodic content can be defined as a motif, or a combination of melody and rhythm that repeats throughout a piece of music. A motif is what you hum when a song is stuck in your head. Motifs and lyrics are the only things that make songs unique in the modern era. In the '70s hit *Dancing Queen* by pop quartet ABBA, the motif in the chorus is a perfect example of something that repeats throughout the song and has musical distinction; if someone were to steal this motif, a clear violation of copyright would occur.<sup>23</sup> Including motifs and lyrics in a bright-line test would provide a more objective basis for comparison.

## V. Conclusion

By establishing a bright-line test, U.S. copyright law should explicitly state that only motific material and lyrics are significant infringements of copyright law. This distinction would prevent further mistakes in legal rulings and precedent cases such as *Williams v. Gaye*. Subsequently, this will give American artists and creators confidence that their art will not be unlawfully claimed as infringement. These assurances would help copyright's original goal to protect artists and spur artistic and intellectual innovation.<sup>24</sup>

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<sup>22</sup> For a simple definition of a motif, see generally BBC Maestro, *What is a Motif in Music* (July 2022), [bbcmaestro.com/blog/what-is-a-motif-in-music](http://bbcmaestro.com/blog/what-is-a-motif-in-music).

<sup>23</sup> Abba, *Dancing Queen*, on Arrival (Polar Music Int'l AB 1976).

<sup>24</sup> Betsy Rosenblatt, *Moral Rights Basics*, Berkman Klein Ctr., Harv. L. Sch. (Mar. 1998) [cyber.harvard.edu/property/library/moralprimer.html](http://cyber.harvard.edu/property/library/moralprimer.html).