Intellectual Property: “Blurred Lines” & Basic Concepts of Copyright

Spring 2015

CS 340

Case Study: “Blurred Lines”

Marvin Gaye’s “Got to Give it Up” (1977)
Robin Thicke, featuring TI and Pharrell “Blurred Lines” (2013)

https://www.youtube.com/watch?v=kDnymX8cHg
https://www.youtube.com/watch?v=yyDUC1LUXSU

OPINION:
From just hearing the songs, is “Blurred Lines” an impermissible copying of Gaye’s “Got to Give It Up”?
A. Yes
B. No
C. Maybe
“Blurred Lines” & “Got to Give It Up”: Similarities and Differences discussion

- Is there direct sampling?
- Are Thicke, Pharrell and Ti playing the “sheet music” from “Got to Give It Up”?
- What similarities do you hear?
- What differences do you hear?

Rights of a COPYRIGHT holder

- **Exclusive** right of the holder to
  - Reproduce
  - Create derivative works
  - Distribute copies
  - Perform and display the work publicly (… for sound, to transmit recording)

View of work product as author’s property

Should there be rights given to this?

- Value added by your efforts: John Locke’s labor-desert theory (ex. A farmer, crops & animals)
- Property theory in general: Utilitarianism, greater good
- Hegel’s Personality theory, IP protection as an expression of self
US legal background for IP

- US Constitution, Article 1, § 8
  
  "The Congress shall have the Power ..."

  To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

- What happens after the time for protection elapses?

In the Constitution, what is the length of time of protection for IP?

A. 10 years
B. 14 years
C. Forever
D. Life
E. “Limited times”

Societal debates on IP

1. The difficulty of ‘owning an idea,’ Thomas Jefferson, p. 107
2. *Is the protection promoting progress or limiting progress?*
   - Suitability: Ex. John Phillips Sousa’s view on recorded “canned music” circa 1913
3. What constitutes a reasonable “limited time”?
   - Continuous increase in term length, p. 117
4. The digital dilemma
Which theory is interested in protecting intellectual property for "the greater good"?

A. Locke's labor desert  
B. Hegel's personality theory  
C. Utilitarianism theory  
D. All of the above  
E. None of the above

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Blurred Lines legal proceedings

- Original lawsuit was filed by Thicke, Williams & TI against Gaye's family.
  - Thicke et al. sought a declaratory judgment that “Blurred Lines” did not infringe as “being reminiscent” doesn’t infringe.
    - [http://www.hollywoodreporter.com/sites/default/files/custom/Documents/ESQ/Robin_Thicke_Complaint%20for%20Declaratory%20Relief%202013.08.15.pdf](http://www.hollywoodreporter.com/sites/default/files/custom/Documents/ESQ/Robin_Thicke_Complaint%20for%20Declaratory%20Relief%202013.08.15.pdf)
- Gaye's family filed a countersuit claiming infringement & documented Thicke's admission.

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Blurred Lines legal proceedings (cont’d)

- At trial, the jury did not get to hear a comparison of the two recordings like we did. The judge ruled that the jury would only hear a live musician playing Gaye's song (as Motown owns the rights to the recording not Gaye's family).
- On March 10, 2015, the jury returned a verdict against Thicke & Williams awarding more than $7.3 million to Gaye's family. Song has earned a profit of $17 million so far.
- Watch: [https://www.youtube.com/watch?v=wj86CJMqKE&s=em](https://www.youtube.com/watch?v=wj86CJMqKE&s=em)
Excellent Q & A with Combat Jack

Reggie Ossé – a.k.a. Combat Jack, prominent hip hop attorney

Important Questions:
• Where did Pharrell and Robin Thicke go wrong?
  – What should they have done/paid?
• Is this a dangerous precedent for music?
(Expect test questions from this interview)

What’s Next for “Blurred Lines”


• Possible injunction to stop sale of song while other issues are worked out.

Which of the following is an exclusive right of a copyright holder?

A. Reproduction
B. Create derivatives
C. Distribution
D. Performance/display/transmit
E. All of the above
F. None of the above
4 kinds of protection for IP

1. Copyright - as a "literary" work
2. Patent – an invention or process
3. Trademark - as a representation
4. Trade secret – confidential process/technique for competitive advantage

What is being protected?

• With intellectual property we are protecting the "creative expression" of the work.
  – The creative expression includes:
    • organization of ideas
    • presentation
    • characters and events
• Facts, ideas, concepts, processes and methods of operation cannot be copyrighted (lack of creative expression)
• Specific processes can be patented, but not everything that processes can get a patent.
  – For example, no one can patent the concept of a word processor.
    • Microsoft does have numerous patents for Word (specific processes inside the software.)

Why can’t discovered facts be copyrighted?

A. Facts do not contain creativity
B. Facts did not “originate” with the author.
C. All of the above
Copyright Law

• Copyright law changed substantially in 1978.
• A copyright now occurs as the work is completed, fixed in a tangible medium.
  – The work does not have to be published.
  – The work does not have to be registered.
• Although there’s no requirement to register, registration provides some great benefits.
  Excellent FAQ: http://copyright.gov/circs/circ01.pdf

Things to know about Copyright Law:

• To what does having a copyright entitle the holder?
  – 4 rights, list on a previous slide (slide 7)
• Who can claim a copyright?
• Current duration of a copyright? Two possibilities:
  – Usual: Life + 70 years
  – Work for hire: earlier of 95 years after pub. or 120 years after creation
• There is no “international” copyright.
• A copyright does not give absolute protection - some “copying” allow for fair use.

When you pay someone to create a creative work and you retain the copyright, that is known as

A. Extortion
B. Indentured servitude
C. Bribery
D. Work for Hire
E. Fair Use
Copyright Basics

Not every work gets/can get a copyright. A work must meet the COPYRIGHTABLE WORK TEST.

The test examines the work. The work must be:

1. Original
2. Work of Authorship
3. Fixed in a tangible medium

Requirement #1: work is Original

What original means:

- Authored
- Independently created (not merely copied from other works)
  - Acuff Rose Music v. Jostens, songwriters claim
  - Discovery of facts and phenomena cannot be copyrighted (those did not original with author), but presentation can be
- with a minimum creativity req.
  - Very minimal std.

Fact patterns/cases on Originality:

Examples from McJohn's Intellectual Property
- Discovered letter
- Dino facts
- Picture this
- Translation
- Sports facts
- Wrigley Field
- A Book about a Show about Nothing
Key points for Original standard:

- So far, we’ve examined fact patterns about the **originality** test
  - *Looking for independently created work & with a minimum of creativity*
- Fact patterns showed the need for
  - Work to be original to the author and/or author added new elements
  - Human involvement (not to be a “slavish copy”)
    - Unedited security camera footage

The Originality requirement is met with

A. Novelty
B. Uniqueness
C. Author creation
D. All of the above

Requirement #2:
It’s a **work of authorship**

- Think of this as a subject matter test. Is copyright the correct kind of protection for this work?
- Requirement of human involvement
  - Works produced by mechanical process or random process without human involvement do not qualify
- Typical works of authorship:
  - literary, musical, dramatic, pantomimes/choreographic, graphic & sculpture, movies, sound recordings, architectural
Works of Authorship: other points

- There is no standard of artistic merit
  - Doodles, fine literature, oil paintings, and phone camera photos are all eligible
- Courts look for human involvement
  - Human author
- Conversations, practical jokes are NOT copyrightable unless there is some intent to publish
  - See *Estate of Hemingway* case

Works of Authorship fact patterns:

- IMs
- Whale songs
- “Photo-shopped”
- Elephant

A selfie would likely be a work of authorship.

A. Yes
B. No
Requirement #3: **Fixation**

3. **Fixed in a tangible medium of expression**
   - Embodied in a copy
   - Writings in tangible medium
     - Definition of fixed is viewed broadly: books, notes, recording, electronic media, etc.
   - Until fixed in tangible medium, not protected by ©
   - Again, this means © begins when fixed

**Fixed fact patterns:**

- Short Story
- Idea for story
- Musician
- Improv

A photo only stored electronically would meet fixation.

A. Yes  
B. No