

THE LIMITS OF MUSIC COPYRIGHT: LESSONS FROM RECENT US COURT DECISIONS

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Abstract

The American judiciary has played a pivotal role in delineating the scope of protection available under music copyright. In recent years, courts have increasingly recognised the need to limit copyright to genuine expressions of creativity, ensuring that fundamental musical elements remain within the public domain. This paper examines key decisions, including Williams v. Gaye and Ed Sheeran v Structured Asset Sales, which reflect a judicial shift towards safeguarding the commons of musical ideas. It argues that this recalibration is crucial for sustaining innovation and artistic freedom in the contemporary music industry. By analysing the evolution of legal doctrine and its broader policy implications, this paper outlines the trajectory of maintaining a balanced copyright system in the United States and how other jurisdictions can be influenced by this trajectory

Keywords: Music copyright, idea-expression dichotomy, public domain, US courts, *Ed Sheeran v Structured Asset Sales*, *Williams v. Gaye*

1.0 INTRODUCTION

“If that happens, I’m done, I’m stopping,”¹⁷³ said Ed Sheeran, threatening to quit music if he had lost that case, during his headline-making copyright trial over his hit song ‘Thinking Out Loud’. He wasn’t just venting frustration, he was voicing a deeper concern felt by many artists today: ‘Can you really be sued for using common musical elements?’

That trial, filed by the heirs of Ed Townsend (co-writer of Marvin Gaye’s Let’s Get It On), ended with a decisive win for Sheeran. But more importantly, it laid a precedent that’s already shaping how courts view copyright claims in music [in the United States and soon to influence other jurisdictions]. In the past few months, two major rulings have reinforced the same principles. Both Mariah Carey and Dua Lipa successfully defended their smash hits ‘All I Want for

¹⁷³ August Brown, ‘Ed Sheeran says he’ll quit music if found guilty in Marvin Gaye copyright trial’ Los Angeles Times (3 May 2023) <https://www.latimes.com/entertainment-arts/music/story/2023-05-03/ed-sheeran-quit-music-if-loses-marvin-gaye-copyright-trial> accessed 16 April 2025

Christmas Is You'¹⁷⁴ and 'Levitating' against copyright infringement claims. And in both cases, courts took a firm stance: basic musical ideas like chord progressions, rhythm patterns, simple hooks, and thematic words are not protected by copyright. In Carey's case, the judge dismissed the lawsuit entirely, stating that the so-called similarities were merely a "jumble" of familiar Christmas tropes "mistletoe," "Santa Claus," predictable phrases, and scattered pitches that appear in countless holiday songs.

Lipa's defense, on the other hand, was bolstered by Sheeran's 2024 case, where the U.S. Second Circuit held that "*basic musical building blocks like notes, rhythms, and chords are generally not copyrightable.*"¹⁷⁵ That precedent became key in dismantling claims brought against Levitating for allegedly copying two disco-era tracks from the late '70s and early '80s. As more artists face lawsuits over musical elements that are widely used and creatively unavoidable, courts seem increasingly willing to draw a clear line between genuine copying and coincidental similarity.

In this paper, I break down that trend explaining how judges are reaffirming the boundaries of music copyright, why some elements will always remain in the public domain, and what this shift means for music generally.

2.0 UNDERSTANDING COPYRIGHT IN MUSIC

Copyright law in the United States protects "original works of authorship fixed in a tangible medium of expression".¹⁷⁶ However, it does not protect ideas, techniques, or the essential "building blocks" everyone uses especially critical in music, where creativity often relies on shared traditions like scales, rhythms, and harmonies. So what exactly does copyright protect in music? To answer that, we need to start with a basic but powerful concept in copyright law: 'the idea-expression dichotomy'- ideas themselves aren't protectable only the original expression of those ideas is.

In music, this means no one can own a G major chord, a 4/4 rhythm, or the word "love." But the unique way an artist assembles chords, rhythms, and lyrics into a song can be protected if it

¹⁷⁴ Gil Kaufman, 'Mariah Carey Copyright Lawsuit Over "All I Want For Christmas Is You" Dismissed' Billboard (3 November 2023) <https://www.billboard.com/pro/mariah-carey-all-i-want-for-christmas-lawsuit-dismissed-2/> accessed 16 April 2025

¹⁷⁵ Skidmore (Trustee for Randy Craig Wolfe) v Led Zeppelin, 952 F.3d 1051, 1075–76 (9th Cir, 2020)

¹⁷⁶ Copyright Act of 1976, 17 USC § 102(a) (1976).

shows enough originality. Think of it like language: no one owns the word "love," but a distinctive poem about love can be protected.

What's Protectable and What's Not?

Let's break it down:

Protectable Elements (if original):

- i. A distinct melody crafted in a unique sequence
- ii. Lyrics that express emotions, narratives, or imagery in an original way
- iii. The arrangement or production decisions that give a song its unique structure or texture
- iv. Unique combinations of instruments, vocal stylings, and progressions

Unprotectable Elements (common to most music):

Chord progressions (I–V–vi–IV, anyone? It's the backbone of countless pop songs)

- v. Scales and modes (major, minor, pentatonic, etc.)
- vi. Basic rhythms and meters (like 4/4 or syncopated drum patterns)
- vii. Short phrases or hooks that are generic or widely used ("I love you," "let's dance," etc.)
- viii. Themes or tropes common to a genre (e.g., heartbreak in country, partying in hip-hop, or snow in Christmas music)

Courts increasingly recognize that basic elements belong to the public domain, they're the shared "grammar" of music. So, when a lawsuit alleges copying simply because two songs both have a descending scale or the word "love" in the chorus, courts are skeptical. These are treated as coincidental similarities or public domain material not evidence of copyright infringement.

3.0 THE LEGAL STANDARD: ORIGINALITY AND SUBSTANTIAL SIMILARITY

To prove copyright infringement, two major elements must be established:

- **Originality:** The work must be independently created and show at least a minimal degree of creativity.¹⁷⁷ So, the bar isn't "never-before-seen genius" it's more like, "Did you make this, and did you inject some creative choices into it?" That's why things like facts, the alphabet, or basic musical scales aren't protected they lack creative originality.
- **Substantial Similarity:** There must be a substantial similarity in protected expression between the two works.

¹⁷⁷ Feist Publications, Inc., v. Rural Telephone Service Co., 499 U.S. 340 (1991).

Courts often use a two-part test:

- Extrinsic test: Objective analysis comparing elements like melody, lyrics, structure.
- Intrinsic test: Subjective impression whether an ordinary listener thinks the two works are substantially similar.

However, only protectable elements count. Even if two songs “feel” alike, if they share only generic ingredients (like a common chord progression or phrase), that’s not legally significant. Additionally, courts often consider whether the alleged infringer had access to the original work. Without proof of access, even strong similarity may not suffice unless the similarity is so overwhelming that independent creation seems impossible.¹⁷⁸

In Sheeran’s trial, plaintiffs pointed to similar chords and groove, but the court rejected the argument, noting that these were standard musical tropes. The real question courts ask is: Did the defendant copy something only the plaintiff could’ve created? If not, there’s no infringement.

4.0 KEY CASES REINFORCING THESE LIMITS

Recent years have seen several high-profile rulings reshape the landscape of music copyright. Here’s a closer look at two pivotal cases that illustrate the evolution and this current trend:

a. **Williams v. Gaye: The "Blurred Lines" Case**

In one of the most controversial rulings, the family of Marvin Gaye sued Pharrell Williams and Robin Thicke, alleging that Blurred Lines copied the "feel" of Got to Give It Up. At trial, the jury examined specific elements—signature phrases, hooks, basslines, harmonic structures and ruled in favor of Gaye’s family, awarding \$7.4 million (later reduced). Critics argued this verdict blurred (pun intended) the crucial line between copying a style and copying a specific expression. Judge Jacqueline Nguyen dissented, warning the ruling "strikes a devastating blow to future musicians and composers."¹⁷⁹ Rather than finding that specific protectable elements were copied, the jury seemed to penalize Williams and Thicke for emulating a general vibe, a problematic precedent.

b. **Ed Sheeran’s “Thinking Out Loud” v. “Let’s Get It On”**

¹⁷⁸ Plateau Publishing & Anor v Adophy (1986) 4 NWLR (Pt 34) 205, 615–16

¹⁷⁹ Wikipedia, ‘Pharrell Williams v. Bridgeport Music’ (Wikipedia, 17 April 2025) https://en.wikipedia.org/wiki/Pharrell_Williams_v._Bridgeport_Music accessed 18 April 2025

In 2023, Ed Sheeran was taken to trial by the heirs of Ed Townsend (co-writer of Let's Get It On) over allegations that his ballad Thinking Out Loud copied key elements of Marvin Gaye's hit. The plaintiffs focused on similar chord progressions and rhythmic patterns.

Sheeran vigorously defended his work, even bringing a guitar to court to demonstrate how the chords were common and widely used. Lawrence Ferrara, an expert musicologist, provided a contradictory report on behalf of Sheeran, stating that the songs do not share any significant structural, harmonic, rhythmic, melodic, or lyrical similarities. And that any similarities between the two songs represented an expression that was common prior to the creation of Let's Get It On, listing over 30 songs using the same chord progression, all written prior to 'Let's Get It On'. Sheeran's argument was therefore that the songs are not substantially similar because the similar elements are commonplace and therefore not protected by copyright.¹⁸⁰

The jury agreed, delivering a verdict in Sheeran's favor, finding no substantial similarity. . They found that Sheeran's Thinking Out Loud had been created independently and therefore did not infringe the copyright of Let's Get It On. And as such, the suit failed as Independent Creation is a complete defence of copyright infringement

The court reaffirmed that chord progressions, even when forming the harmonic backbone of a song, are not protectable on their own. The victory solidified the turning point already laid in the 'Dark Horse' case, signaling courts' growing reluctance to allow copyright claims based on shared musical tropes rather than distinctive expression.

Taken together, these two cases reveal a broader judicial trend: a move away from protecting musical "vibes" and toward reaffirming traditional copyright boundaries. Courts are recognizing that music by its very nature recycles, remixes, and revisits common elements. Protecting those elements would stifle creativity, not foster it. As noted by Pharell Williams, 'If we lose our freedom to be inspired, we're going to look up one day and the entertainment industry as we know it will be frozen in litigation'. Hence, copyright must strike the right balance between protecting against copying and allowing creators to build upon and take inspiration from previous works.

¹⁸⁰ Callie Ahlgrim, 'Ed Sheeran Says He'd Quit Music If Found Guilty in Copyright Trial' Business Insider (2 May 2023) <https://www.businessinsider.com/ed-sheeran-may-quit-music-if-found-guilty-copyright-trial-2023-5> accessed 17 April 2025

4.1 THE EMERGING TREND: A RETURN TO COMMON SENSE

The judicial system is clearly moving toward a more balanced view of music copyright. After the turbulence of cases like *Blurred Lines*, courts are showing a renewed commitment to protecting original creative expression without stifling creativity through overreach.

Three key points are emerging:

- Common musical elements remain in the public domain: Chord progressions, basic rhythms, common phrases, and genre tropes are free for all to use.
- Originality matters more than similarity: Courts demand proof that an artist copied something unique and protectable not just that two songs feel alike.
- Independent creation is a strong defense: Demonstrating that a work was created independently, without copying, can defeat even strong claims of similarity.

This emerging judicial philosophy supports creativity rather than constraining it. Musicians can continue building on familiar traditions without fear of endless litigation over shared musical language.

4.2 THE FUTURE OF MUSIC COPYRIGHT

As courts continue to reinforce the boundary between protected originality and the public domain, the question naturally arises: what comes next? Will this trend hold? Or will new complexities especially from digital innovation reignite the debate?

If recent decisions are any guide, the judicial appetite for expansive music copyright claims is cooling. U.S. Courts are increasingly unwilling to grant monopolies over musical “building blocks” that belong to the public domain. This trajectory reflects a deeper shift one that recognizes how dangerous it can be to overprotect creativity, particularly in a medium as inherently collaborative and derivative as music.

5.0 CONCLUSION

At its heart, this legal trend toward reinforcing the uncopyrightability of basic musical elements reflects a simple but powerful truth: **not everything in music can or should be owned.** Creativity relies on a shared musical language scales, rhythms, progressions, phrases that countless artists use to tell their own stories in their own voices.

By drawing clearer boundaries between protectable expression and the universal grammar of music, courts are helping safeguard that shared inheritance. This isn't a loss for originality, it's a win for the ecosystem that makes originality possible in the first place.

In reaffirming that not all similarities amount to infringement, the legal system is stepping up to preserve the commons a space where influence, homage, and iteration can coexist without legal peril. The future of music law lies in balance: **protecting true creativity while ensuring that no artist can lock away the raw ingredients of sound.** That's not just good law, it is a good music.