

Did The 9th Circuit "Blur the Lines" in its Latest Music Copyright Case?

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by J. Michael Keyes



As we entered the first full day of the equinox yesterday, a split panel of the Ninth Circuit Court of Appeals handed the heirs of Marvin Gaye a decisive victory that will no doubt leave them with a spring in their steps. The Court affirmed the jury verdict and multi-million dollar damage award in the Gayes' copyright infringement suit against Pharrell Williams and Robin Thicke. If you were hoping the Ninth Circuit would take this opportunity to wade deeply into the swirling waters of music copyright protection and infringement, the majority decision

will leave you thirsting for more. If you're looking for a fiery dissent that sings to a different tune, you will not be disappointed. If you're looking for a takeaway or two from this 80+ page decision, look no further than the rest of this blog post.

Here are the key facts: Marvin Gaye's family owns the copyright in the song "Got to Give It Up." In 2012, Pharrell Williams and Robin Thicke (along with a cast of others) wrote and published the song "Blurred Lines," which ended up being the best-selling single on the planet in 2013. Gaye's family claimed infringement, Thicke & Co. denied it, and litigation ensued. The infringement issue was ultimately decided by the jury, and it sided with the Gayes. The end result was a multi-million dollar damage award in their favor. A mash-up/comparison of the two songs can be found [here](#).

On appeal, Williams and Thicke asked the Ninth Circuit to overturn the jury verdict arguing that as a matter of law, the similarities between the two songs do not constitute

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infringement. Instead, they argued, the similarities simply related to the “style” or “genre” of the two songs, as opposed to any “protectable” expression owned by the Gayes. Had the majority entertained the argument advanced by Thicke, it would have required the Court to grapple with the finer nuances of music copyright, which the majority refused to do. Instead, it affirmed the jury’s verdict by concluding that the Gayes were entitled to “broad” protection for the work and that “there is no one magical combination of factors that will automatically substantiate a musical infringement suit.” The majority essentially deferred to the jury’s findings and upheld the infringement verdict against Williams and Thicke.

The dissenting opinion, authored by Judge Jacqueline Nguyen, is not just some waning coda at the end of the majority opinion—it’s a magnum opus copyright *tour de force*. Her opening motif starts as follows:

The majority allows the Gayes to accomplish what no one has before: copyright a musical style. “Blurred Lines” and “Got to Give It Up” are not objectively similar. They differ in melody, harmony, and rhythm. Yet by refusing to compare the two works, the majority establishes a dangerous precedent that strikes a devastating blow to future musicians and composers everywhere.

Thereafter, this same theme is played in variations. Judge Nguyen gives a masterclass on the law of music copyright. She dives into the thicket of past precedent and a variety of musical concepts such as the signature phrase, pitch and rhythm, and discusses melismas, word painting, and parlandos. After her exhaustive analysis, she ultimately concludes that the songs simply share a similar “groove,” which is not protected by copyright.

It’s not clear what Williams and Thicke intend to do at this point. With Judge Nguyen’s harmonious dissent playing so forcefully in the background, though, they do not “Got To Give It Up” just yet.