



PROGRAM MATERIALS

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Striking the Right Chord: Navigating the Music Copyright Law Landscape

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5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
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Striking the Right Chord: Navigating the Music Copyright Law Landscape

Kirby Drake

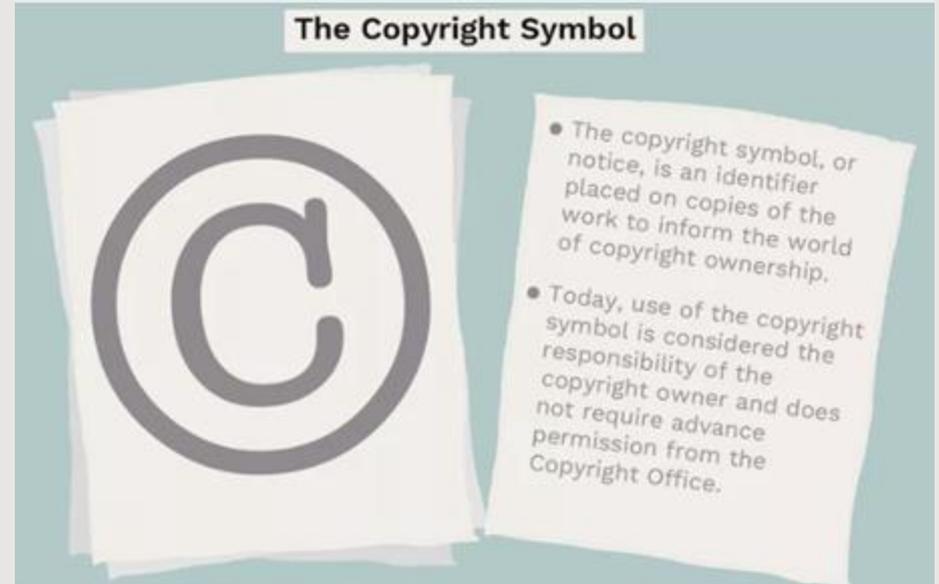
Kirby Drake Law PLLC

“The copyright bargain: a balance between protection for the artist and rights for the consumer”

- Robin Gross

What is a Copyright?

- Protects “original” works “fixed in any tangible medium of expression”
- “Original” means work was independently created and not copied from other works
- Covers only the original expression not ideas or unoriginal compilations
- Focus on the form in which the ideas are expressed



Copyright Overview

- Automatically attaches to work when it is fixed in a tangible medium of expression
 - Must register if copyright holder wants to bring action for infringement
 - Registration also can provide for statutory damages and attorneys' fees and sometimes prima facie evidence of copyright validity
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Copyright Overview

- Works created after 1977 – term is life plus 70 years for natural authors and 95 years after publication for works of corporate authorship
 - Non-renewable
 - Can be transferrable (such as through assignment)
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Copyrightable Subject Matter

- Never covers purely functional or useful articles, never covers discoveries or inventions
- 17 U.S.C. 102 identifies as works of authorship: (1) literary works; (2) musical works including any accompanying words; (3) dramatic works including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works



Musical Works

- A musician that composes or writes a song is an author of musical work
- Can include elements like a melody, harmony, or rhythm
- This is separate from a sound recording, which is the recording of the musical work (CD, digital file etc.)

Ex. “Happy Birthday to You”, an opera, symphony, theme music to Jeopardy



Dramatic Works (incl. Accompanying music)

- “Any work in which performed actions, speech, or incident, or all three, convey theme, thoughts, or character to an audience.”
- A dramatic work refers to how an opera or play is performed to an audience.

Ex. plays, operas, ballets, screenplays, teleplays, radio plays, and pantomimes



Sound Recordings

- Protects the specific recorded performance of a work, separate from the copyright for the underlying song itself.
- Performance by the artist, including engineers' contributions.

Ex. Person singing song or playing a musical instrument.



Copyright Rights (17 U.S.C. 106)

- **Reproduce copyrighted work in copies or phonorecords**
 - **Prepare derivative works based upon the copyrighted work**
 - Distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
 - **In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly**
 - In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly
 - **In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission**
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Copyright Rights (17 U.S.C. 106) - Music

- Reproduce copyrighted work in copies or phonorecords
 - Copies – material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device
 - Copyright in song = make copies in sheet music or make phonorecords on tape or CDs
 - Distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending
 - Copy the work even if not the entire work or a copy that is similar but not identical
 - Must show defendant copied from the copyrighted work, defendant took protected material, and defendant's work was substantially similar to the copyrighted work
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Copyright Rights (17 U.S.C. 106) - Music

- Prepare derivative works based upon the copyrighted work
 - Derivative work - “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted”
 - No derivative work unless a new copyrightable work is made (i.e., speeding up play of video game not a new copyrightable work in most cases). Derivative work must be substantially similar to original work.
-

Copyright Rights (17 U.S.C. 106) - Music

- Perform the copyrighted work publicly
 - Only applies to public performances – location open to the public, more people are present than family and social acquaintances, or if the work is transmitted to the public. 17 U.S.C. 101.
 - Perform is more broad than everyday meaning under 17 U.S.C. 101 – can include playing a CD, watching television, having the radio on; applies to more than the performing arts (i.e., reading a letter aloud)
 - In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission
 - This was added to cover rebroadcasting by cable companies
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Limits on Exclusive Rights

- Even if covered in exclusive rights, must determine if one has done enough to violate the right
- There must be copying AND it must be enough copying AND it must be copying of material subject to the copyright
- Substantial similarity – test for copyright infringement; can vary depending on the medium (i.e., music v. computer programs); whether appropriation is sufficient to amount to infringement
- *De minimis* copying is not infringement



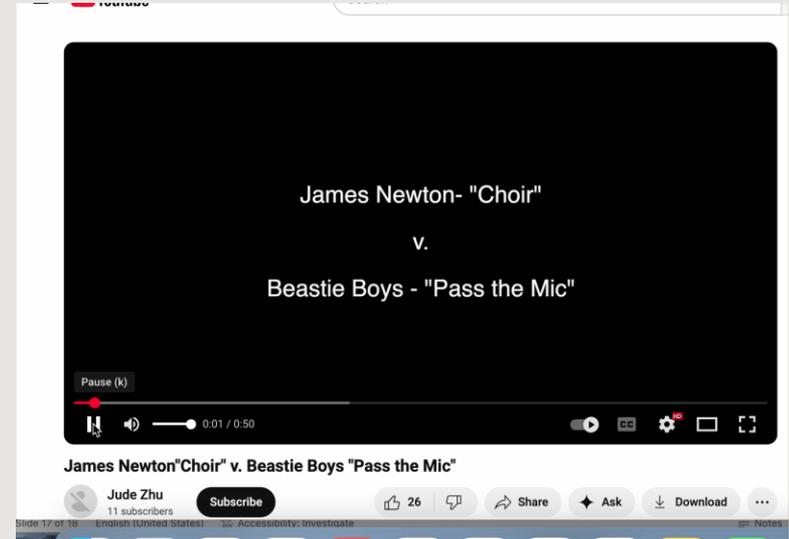
Fair Use (17 U.S.C. 107)

- Use by reproduction in copies or phonorecords
- For purposes such as criticism, comment, news reporting, or research
- Factors to be considered (burden of proof stays with defendant)
 - Purpose and character of the use – whether of commercial nature or for non-profit educational purposes; good faith; transformative purpose
 - Nature of copyrighted work – is it creative? Is it published? Is it factual?
 - Amount and substantiality of the portion used in relation to work as a whole – may depend on significance of work, amount used, whether use is transformative
 - Effect of use upon potential market for or value of the copyrighted work – could it have been licensed? Was it licensed? Is infringing work meant to be a substitute for copyrighted work?



Newton v. Diamond (9th Cir. 2004)

- Newton was a flutist and composed song “Choir”; Beastie Boys licensed portions of sound recording for their song “Pass the Mic” from EMC Records; did not get license for underlying composition (three notes sung over a background C note played on flute)
- No reasonable juror could find the sampled portion to be a quantitatively or qualitatively significant portion of the composition as a whole (2% of 4 ½ minute sound recording)



Another De Minimus Example

- Kanye West “Gold Digger” allegedly used an unauthorized sample from “Bumpin’ Bus Stop” (1975).
- Case eventually dismissed on grounds that the sample used was ‘de minimis’—too short to count as copyright infringement.

Direct Sample of Vocals / Lyrics 19 Votes

| Track | Sample Location |
|--|---|
| Gold Digger Kanye West feat. Jamie Foxx Late Registration Roc-A-Fella 2005 | Sample appears at 0:32 (and throughout) |
| Bumpin' Bus Stop Thunder and Lightning Bumpin' Bus Stop Private Stock 1974 | Sample appears at 0:12 |

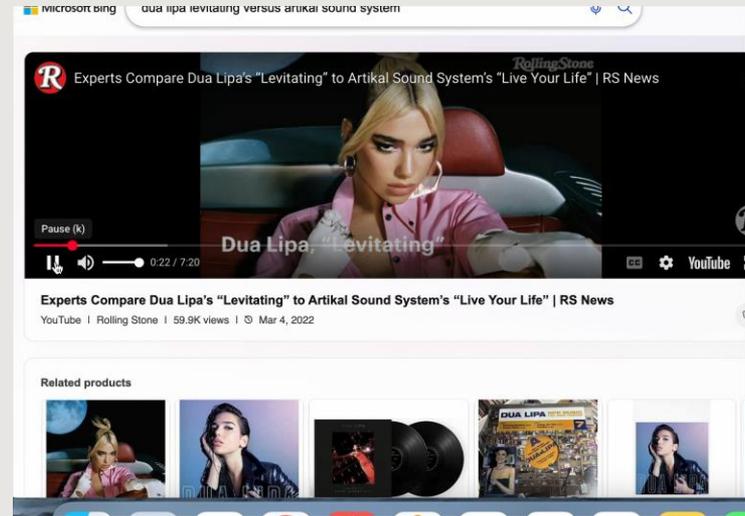
Download this Track Buy on Vinyl/CD

Producers: Kanye West, Jon Brion

Producer: Richard Delvy

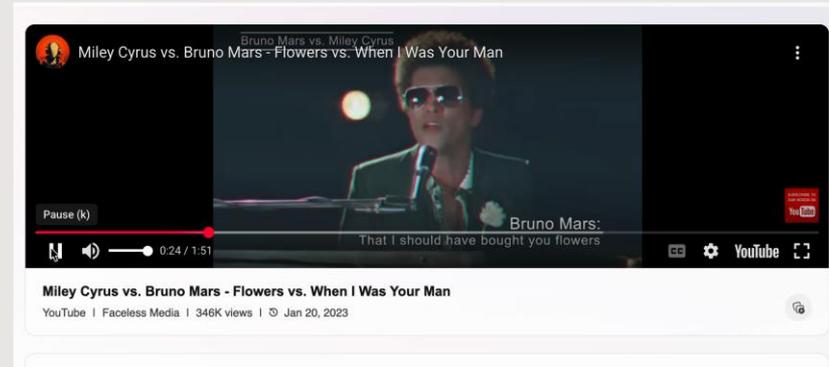
Cope et al. v. Dua Lipa et al. (C.D. Ca 2023)

- Plaintiffs are members of the band Artikal Sound System
- Accused Dua Lipa of copying their song “Live Your Life” in creating her song “Levitating”
- Case eventually dismissed in June of 2023 due to insufficient amount of evidence provided that Dua Lipa had “access” to the song “Live Your Life”



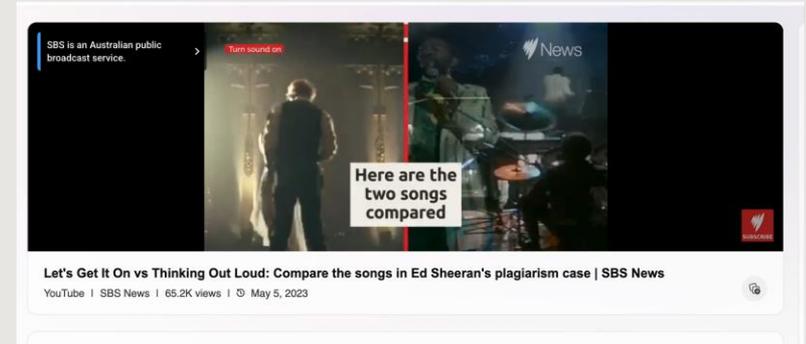
Tempo Music Investments v. Miley Cyrus

- Bruno Mars “When I Was Your Man” Vs. Miley Cyrus “Flowers”
 - Alleges that "the opening vocal line from the chorus of 'Flowers' begins and ends on the same chords as the opening vocal line in “When I Was Your Man” and duplicates multiple “melodic, harmonic, and lyrical elements” from Bruno Mar’s track
 - Case is ongoing
-



Townsend v. Sheeran

- Ed Sheeran sued in 2017 by the heirs of Ed Townsend, co-writer of “*Let’s Get It On*” with Marvin Gaye
 - Claimed copying of chord progression, melody, harmony, and rhythm ("heart") of Gaye’s song
 - Sheeran won after trial in 2023
 - During trial, Sheeran performed parts of live in court, explaining how song was written with Amy Wadge in 2014 after hearing her play a few chords in another room
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Gray v. Perry

- Marcus Gray sued Katy Perry in 2014, alleging she copied an eight-note riff from his song "Joyful Noise"
 - Jury initially found infringement in 2019
 - 9th Circuit later ruled that the musical elements (the eight-note ostinato) were not original enough to be protected by copyright, thereby nullifying the \$2.8 million jury award from 2019
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Suno AI – Copyright and AI

- Group of independent songwriters initiated a lawsuit against Suno AI (music generation platform) in an Illinois federal court (10/17/25)
 - Alleges that Suno AI used songwriters' copyrighted works to train its AI music generation models
 - Reflects broader industry unease about the deployment of training datasets that include copyrighted content.
-



QUESTIONS?

Kirby Drake

Kirby Drake Law PLLC

kirby@kirbydrakelaw.com

www.kirbydrakelaw.com



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