



Blurring the Lines: The Impact of *Williams v. Gaye* on Music Composition

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I. INTRODUCTION[†]

Copyright law has long held an important influence on musical compositions. Stemming back to the Statute of Anne, the first public copyright statute, musical compositions have been afforded some level of copyright protection.¹ At first, this protection was limited to sheet music, but was later expanded to all traditional notions of musical compositions, including sound recordings.² Under the current copyright statutory scheme, a musical work is afforded two types of copyright: one for the underlying composition, and one for the digital sound recording.³

Even with these expansions, however, music copyright law has long been subjected to criticisms by musicians and the musical community. The primary complaint is that the law is too disjointed.⁴ Due to inconsistencies

[†] The recent passage of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, H.R. 1551 115th Cong. (2018) will not directly impact any of the arguments made or conclusions drawn in this paper. Moving forward, this law should address a majority of the inconsistencies in the federal statutory framework discussed herein and may provide a definitive solution to the legal ambiguities surrounding federal copyright law.

¹ See Jonathan Little, *History of Copyright: a chronology in relation to music* (last visited Apr. 22, 2018), <http://eprints.chi.ac.uk/2350/1/Little%2C%20J.%20D.%2C%20History%20of%20Copyright%20-%20%20A%20Chronology.pdf>, [<https://perma.cc/PY5P-RHRY>].

² See *id.*

³ See *id.*

⁴ *A Study on the Desirability of and Means for Bringing Sound Recordings Fixed Before February 15, 1972, Under Federal Jurisdiction*, COPYRIGHT.GOV (last visited Apr. 22, 2018), <https://www.copyright.gov/docs/sound/>, [<https://perma.cc/4NFQ-SD6Y>].

in the federal statutory framework, musical copyrights receive different lengths of protection, which are determined by the type of copyright (composition or sound recording) and when the work was first published. For musical compositions, the determining date is January 1, 1978.⁵ Works created before this date are subject to a different and much more complex statutory scheme, whereas those created after this date have a much more streamlined framework. Similarly, February 15, 1972 serves as the key date regarding the copyright of sound recordings.⁶ Like musical compositions, sound recordings created before this date are subject to more statutory complexities.⁷

The complexity of the musical copyright statutory scheme has led to a multitude of lawsuits in which courts are forced to apply a rather disjointed framework to the facts of each case.⁸ Over the years, this reality has spurred several high-profile cases, whereby a musical artist has been sued for infringing on the copyright of another artist. The most recent of these cases was *Williams v. Gaye*, a case decided by the 9th Circuit on March 18, 2018.⁹ Commonly referred to as the “Blurred Lines” case, the case involved an alleged infringement by musical artists Pharrell Williams, Robin Thicke, and Clifford Harris (known professionally as T.I.) on a previous work of artist Marvin Gaye.

Aptly named, the “Blurred Lines” case is now blurring the lines of rather well-settled copyright doctrine and is sending shockwaves through the musical community. While it is unclear what the ultimate impact of *Williams* will be on the music industry, it has, at the very minimum, put artists and publishers on notice as to how they should approach musical composition to avoid legal issues. Section II of this paper will discuss the contextual background of *Williams*. Next, Section III will examine the initial lawsuit, and preliminary reactions to the decision. Section IV will review the 9th Circuit’s decision. Finally, Section V will discuss some of the potential impacts of this case on the music industry.

⁵ Sandra Enimil, *Copyright duration for musical compositions and sound recordings*, THE OHIO STATE UNIVERSITY LIBRARIES (May 15, 2013), <https://library.osu.edu/blogs/copyright/2013/05/15/198/>, [<https://perma.cc/SDP3-JSTX>].

⁶ *Id.*

⁷ *See id.*

⁸ *See id.*

⁹ *Williams v. Gaye*, 885 F.3d 1150 (9th Cir. 2018)

II. CONTEXTUAL BACKGROUND OF CASE

A. *Got to Give It Up*

Marvin Gaye first released the song, “Got to Give It Up,” in 1977 as a single from the album, *Live At London Palladium*.¹⁰ Inspired by artists Johnnie Taylor’s highly popular “Disco Lady,” Gaye wrote “Got to Give It Up” as a parody to the disco craze that was sweeping the music industry.¹¹ The song contained some unique musical elements, including background conversations, the banging on a grapefruit bottle, and the use of a “hotel sheet” (a piece of polystyrene that would make a wobbly sound when shaken)¹² The song became an instant hit, topping the *Billboard* Hot 100, the R&B Singles Charts, and various other disco charts.¹³ “Got to Give It Up” was later covered and sampled by a variety of artists, with the most prominent cover being performed by Aaliyah feat. Slick Rick in 1996 and sample being “Shake Your Body (Down to the Ground)” by the Jacksons in 1978.¹⁴ In addition, the song remains heavily featured in music and television, and can be heard in films such as *Boogie Nights* (1998), *Charlie’s Angels* (2000), *Barbershop* (2002) and *Eat Pray Love* (2010). Notable television uses include *The Wire* (2002), *Scrubs* (2003, 2010), and *True Blood* (2014).¹⁵

B. *Blurred Lines*

“Blurred Lines” was a song released by Pharrell Williams, Robin Thicke, and T.I. in 2013 as a single on the Robin Thicke album of the same name.¹⁶ Primarily produced by Williams through his record company Star

¹⁰ *Got to Give It Up*, ALLMUSIC (last visited Apr. 30, 2018), <https://www.allmusic.com/song/got-to-give-it-up-mt0030492705/variations>, [https://perma.cc/RD4W-6KCH].

¹¹ *Got to Give It Up*, SONGFACTS (last visited Apr. 30, 2018), <http://www.songfacts.com/detail.php?id=6368>, [https://perma.cc/4ZLNJ-ZQMH].

¹² *Id.*

¹³ Joel Whitburn, *Top R&B/Hip-Hop Singles: 1942–2004* 108, 225 (2004).

¹⁴ *Got to Give It Up by Marvin Gaye – Samples, Covers and Remixes*, WHOSAMPLED (last visited Apr. 30, 2018), <https://www.whosampled.com/Marvin-Gaye/Got-to-Give-It-Up/>, [https://perma.cc/QFP9-TXXV].

¹⁵ *Marvin Gaye*, IMDB (last visited Apr. 18, 2018), <https://www.imdb.com/name/nm0310848/#soundtrack>, [https://perma.cc/QVT8-UY9H].

¹⁶ *Blurred Lines*, ALLMUSIC (last visited Apr. 30, 2018), <https://www.discogs.com/label/19189-Star-Trak-Entertainment>, [https://perma.cc/76CK-TTJY].

Trak Entertainment,¹⁷ the song was heavily influenced by “Got to Give It Up”. This influence can primarily be heard in the song’s percussions, which were designed to invoke a similar feel to the unique musical effects that Gaye first created thirty-six years prior.¹⁸ According to Thicke, the entire song only took a few hours to produce.¹⁹ Coupled with the release of the song was a highly controversial music video, which featured scantily clad models dancing around Williams, Thicke, and T.I. as they performed the song. The video became a viral hit on video streaming websites,²⁰ and both the song and music video instantly became a source of controversy, as many advocacy groups sought to ban the song due to the provocative video and sexually suggestive lyrics.²¹ This controversy, however, only enabled the song to grow in popularity. “Blurred Lines” soon became a commercial success, topping the *Billboard* Top 100 in June²² for 12 consecutive weeks.²³ “Blurred Lines” later went on to become one of the best-selling singles ever, with over 14.8 million dollars in sales by the end of 2014.²⁴

III. THE INITIAL LAWSUIT

On August 13, 2015, a preliminary complaint was filed in the Central District of California by Williams, Thicke, and Harris.²⁵ The complaint was filed against the heirs of Marvin Gaye (the Gaye family)²⁶ with the purpose

¹⁷ *Star Trak Entertainment*, DISCOGS, <https://www.discogs.com/label/19189-Star-Trak-Entertainment>, (last visited Apr. 30, 2018), (on file with the Harvard Law School Library), [<https://perma.cc/CUK5-RPY3>].

¹⁸ See Stelios Phili, *Robin Thicke on That Banned Video, Collaborating with 2 Chainz and Kendrick Lamar, and His New Film*, GQ (May 6, 2013), available at <https://www.gq.com/story/robin-thicke-interview-blurred-lines-music-video-collaborating-with-2-chainz-and-kendrick-lamar-mercy>, [<https://perma.cc/H949-BVA9>].

¹⁹ *Id.*

²⁰ *See id.*

²¹ *See id.*

²² Gary Trust, *Robin Thicke’s ‘Blurred Lines’ Hits No. 1 on Hot 100*, BILLBOARD, Jun. 12, 2013, available at <https://www.billboard.com/articles/news/1566519/robin-thickes-blurred-lines-hits-no-1-on-hot-100>, [<https://perma.cc/A98D-MBWW>].

²³ *Id.*

²⁴ *IFBI Digital Music Report 2014*, Int’l Fed’n of the Phonographic Indus. (2014), <http://ifpi.org/downloads/Digital-Music-Report-2014.pdf>, [<https://perma.cc/E36R-M4SF>].

²⁵ Complaint for Declaratory Relief, *Williams v. Bridgeport Music, Inc.*, No. CV13-06004-JAK (AGRx) (C.D. Cal. Aug. 15, 2013), ECF No. 1.

²⁶ *See id.* at 6. The claim was also brought against Bridgeport Music Inc., an organization that holds the rights to the song catalog of George Clinton. In this case, the complaint was specifically for a declaratory judgement that *Blurred Lines*

of obtaining a declaratory judgement from the court that stated “Blurred Lines” did not infringe on “Got to Give it Up.”²⁷ The motivation behind seeking a declaratory judgement, according to one music industry attorney, was to preserve the reputation of Pharrell Williams as an artist and producer.²⁸ Essentially, Williams was aware that he might be sued by the Gaye family, and wanted to control the narrative of the lawsuit to the best of his ability.²⁹ By filing the lawsuit in the Central District of California, the hub of the music industry, Williams could also establish precedent that would enable future artists to preemptively halt frivolous infringement claims.³⁰

The Gaye family filed a counter-claim against the trio of artists for copyright infringement. The court denied summary judgment, primarily because the two parties provided conflicting expert reports.³¹ These experts, primarily musicologists, provided different opinions on whether “Blurred Lines” had infringed “Got to Give It Up.”³² As such, the court reasoned that a genuine issue of material fact existed and determined that granting summary judgement would be the inappropriate outcome.³³

At trial, the jury was instructed to determine whether infringement on the underlying musical composition of “Got to Give It Up” had occurred. They were to make their analysis based only on the sheet music Gaye had recorded with the Copyright Office in 1977.³⁴ No actual sound recordings of the songs were to be used or relied upon by the jury, as the judge had ruled them inadmissible as evidence.³⁵ This inadmissibility was due to the inconsistencies in federal copyright law.³⁶ “Got to Give it Up,” which was published before 1978, was subjected to the Copyright Act of 1909, and not

did not infringe on the copyright of the Clinton song *Sexy Ways*. The specifics of this song and the decision of the court are not the focus of this article, and will thus not be discussed.

²⁷ See *id.*

²⁸ See Ed Christman, “Blurred Lines” Verdict: How It Started, Why It Backfired on Robin Thicke and Why Songwriters Should Be Nervous, *BILLBOARD*, Mar. 13, 2015, available at <http://www.billboard.com/articles/business/6502023/blurred-lines-verdict-how-it-started-why-it-backfired-on-robin-thicke-and>, [https://perma.cc/APL4-NVCC].

²⁹ See *id.*

³⁰ *Id.*

³¹ See *Williams v. Bridgeport Music, Inc.*, No. LACV1306004JAK (AGR_x), 2015 WL 4479500, at 1 (C.D. Cal. July 14, 2015), *aff’d sub nom. Williams v. Gaye*, 885 F.3d 1150 (9th Cir. 2018).

³² See *id.* at 5.

³³ See *id.*

³⁴ See *id.*

³⁵ See *id.*

³⁶ See Section I *supra*.

the Copyright Act of 1976.³⁷ Under this older statutory framework, the creation of a sound recording did not constitute an adequate form of publication for copyright protection purposes. Instead, a musician had to deposit the sheet music with the Copyright Office in order to receive copyright protection and had to follow different procedural processes to receive protection on the recording.³⁸ The Gaye family failed to offer evidence that proved the sound recording was entitled to copyright protection. Accordingly, the judge ruled that the sound recordings would not be at issue on trial, nor could they be admitted as evidence by either party.³⁹

When the jury returned its verdict, it found by a preponderance of the evidence that Williams and Thicke had infringed on Gaye's copyright.⁴⁰ As a result of this finding, the jury awarded the Gaye family \$4 million in damages and \$3.37 million in profits.⁴¹ The judge later reduced both of these amounts, but both sides nonetheless appealed the decision.⁴²

Many artists, reporters, and other music industry insiders felt that the jury had erred when it issued its decision. Never before had a copyright infringement been determined simply because the "groove" of two songs sounded similar.⁴³ Such a finding was simply beyond the scope of ordinary

³⁷ Megan Coane and Maximillian Verrelli, *Blurring Lines? The Practical Implications of Williams v. Bridgeport Music*, AMERICANBAR.ORG, Feb. 2 2016, https://www.americanbar.org/publications/landslide/2015-16/january-february/blurring_lines_the_practical_implications_of_williams_v_bridgeport_music.html#14, (on file with the Harvard Law School Library), [<https://perma.cc/7A8J-2RNZ>].

³⁸ *See id.*

³⁹ *Id.*

⁴⁰ *See Williams v. Bridgeport Music, Inc.*, No. LA CV13-06004 JAK (AGRX), 2015 WL 4479500, at 1 (C.D. Cal. July 14, 2015), *aff'd sub nom. Williams v. Gaye*, 885 F.3d 1150 (9th Cir. 2018).

⁴¹ *See id.*

⁴² The court also overturned the jury verdict regarding Harris' lack of culpability in the case, but this issue is outside the scope of this paper, and will not be addressed further. Harris was later found to be not liable by the Ninth Circuit, who found that the court acted improperly by overturning the jury verdict. *See Williams v. Gaye*, 885 F.3d 1150, 1175 (9th Cir. 2018).

⁴³ Tim Wu, *Why the "Blurred Lines" Copyright Verdict Should Be Thrown Out*, NEWYORKER (Mar. 12, 2015), <https://www.newyorker.com/culture/culture-desk/why-the-blurred-lines-copyright-verdict-should-be-thrown-out>, [<https://perma.cc/DBF2-WBPF>].

9th Circuit jurisprudence⁴⁴ or any preceding copyright litigation cases in other circuits.⁴⁵

Experts predicted that the results of the “Blurred Lines” case would be overturned on appeal. The primary consensus was that many errors had occurred during the preliminary trial. First, they felt the issue should have never gone to trial, and the judge should have ruled on the case during the motion for summary judgement.⁴⁶ These industry experts felt that Williams’ lawyers had erred by not appealing the denial of summary judgement before the case fully to trial, due to the unpredictability of jury verdicts.⁴⁷ Juries are especially unpredictable in music copyright cases, where musical experts on both sides often barrage unsophisticated juries with musical technicalities and analogies that make it hard to discern the issues actually being litigated.⁴⁸ Furthermore, some experts felt the jury instructions were improper, as the judge may have mistakenly failed to distinguish what is permissible and impermissible use of copyrighted works.⁴⁹ Lastly, others felt the jury may have reached beyond the scope of the evidence available to them by subconsciously incorporating the sound recordings of the two songs in their decision making.⁵⁰ In doing so, the jury, according to some, reached a verdict that was not supported by the weight of the evidence.

IV. THE APPELLATE DECISION

A. *Majority Decision*

On appeal, the majority rejected Williams’s argument that the district judge had acted improperly by failing to issue a summary judgment and subsequently not granting a new trial.⁵¹ Once the trial began, Williams lost his right to appeal the issue unless “the district court made an error of law that, if not made, would have required the district court to grant the mo-

⁴⁴ Megan Coane and Maximillian Verrelli, *Blurring Lines? The Practical Implications of Williams v. Bridgeport Music*, AMERICANBAR.ORG (Feb. 2016), https://www.americanbar.org/publications/landslide/2015-16/january-february/blurring_lines_the_practical_implications_of_williams_v_bridgeport_music.html#14, [<https://perma.cc/5S7Z-ER2N>].

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See id.*

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *Id.*

⁵¹ *Williams v. Gaye*, 885 F.3d 1150, 1166 (9th Cir. 2018)

tion.”⁵² The court also found that the denial of a new trial was appropriate because the jury instructions were proper, the court properly admitted evidence, and the verdict was supported by the weight of the facts.⁵³ Great deference was given to both the decisions and findings of the judge and jury during the trial.⁵⁴ Further, the court reaffirmed the notion that musical compositions are not confined to a narrow range of expression and that a party need only find substantial similarity—not virtual identity—to substantiate a copyright infringement claim.⁵⁵

Overall, the 9th Circuit opinion primarily focused on various procedural elements of the district court trial. As a result, the opinion offered little to no substantive precedent for future musical copyright infringement claims aside from reaffirming the fact that music is subjected to a broader range of copyright protection that will ultimately be decided at the discretion of the factfinder. The court did not resolve the question of whether sound recordings can be used as evidence in cases involving songs subjected to the 1909 Copyright Act. Rather, it stated that ambiguity made the trial judge’s decision to bar the evidence a proper decision, but elected not to address the question because the case was not going to be remanded for a new trial.⁵⁶

B. Dissent

Unlike the majority opinion, Judge Jacqueline Nguyen’s dissent focused much more on the musical elements of the two songs, and criticized the majority for essentially bucking the actual issue at hand by deciding the case on procedural grounds. Nguyen chastised the majority for its analysis of the musical elements of the song, claiming that the majority failed to dictate what particular elements of the song should have received copyright protection.⁵⁷ Judge Nguyen then went further, claiming that even if all of the individual musical elements at issue were afforded copyright protection, the aggregation of those elements would not make “Blurred Lines” substantially similar to “Got to Give It Up.”⁵⁸ As such, the case should have been resolved by the district court as a matter of law and the trial should not have

⁵² *Id.*

⁵³ *Id.* at 1167–74.

⁵⁴ *Id.*

⁵⁵ *Id.* at 1164–65.

⁵⁶ *See id.* at 1166.

⁵⁷ *See id.* at 1186.

⁵⁸ *Id.* at 1191.

reached a jury verdict.⁵⁹ According to Nguyen, The case should have been dismissed in favor of Williams and Thicke before it even went to trial.⁶⁰

Judge Nguyen offered some powerful words to the majority, and by extension to the musical community, by stating “the majority establishe[d] a dangerous precedent that strikes a devastating blow to future musicians and composers everywhere.”⁶¹ In her view, she felt the majority allowed a musical style, or “groove” to be copyrighted. “Groove,” according to Nguyen, is an unprotectable idea, and yet the majority made it so that all future artists “find a diminished store of ideas on which to build their works.”⁶² Further, Nguyen speculated that while the opinion may be seen as a “win” for the Gaye family, their victory will be short lived, as the Marvin Gaye catalog is now exposed to similar copyright infringement cases.⁶³

V. FUTURE IMPACT OF CASE

The impact of the “Blurred Lines” case on the music industry is unclear, and experts are divided as to whether it will stifle musical creativity moving forward. Some agree with Judge Nguyen’s dissent that a chilling effect will occur due to a potential increase in frivolous infringement claims by “copyright trolls.”⁶⁴ These “copyright trolls” would acquire the copyrights of older music, and then sue artists for infringement with the hopes of forcing a settlement. Many artists would agree to these settlements, as they often are less expensive than the costs of litigating the issue in court.⁶⁵ Further, the threat of litigation may incline new musical artists to obtain unnecessary licenses and other permissions that they feel will protect them from these lawsuits. Given the costs associated with these licenses and other permissions, and the legal liability they may nonetheless face, many artists may simply elect to forgo entering the music industry entirely.⁶⁶

⁵⁹ *Id.* at 1194

⁶⁰ *See id.* at 1196.

⁶¹ *Id.* at 1183.

⁶² *Id.* at 1186.

⁶³ *Id.* at 1196.

⁶⁴ See Scott Graham, *Ninth Circuit Upholds \$5M ‘Blurred Lines’ Verdict Against Thicke, Pharrell*, LAW.COM, Mar. 21, 2018, available at <https://www.law.com/therecorder/2018/03/21/ninth-circuit-upholds-5m-blurred-lines-verdict-against-thicke-pharrell/>, [<https://perma.cc/R4D7-JWDU>].

⁶⁵ *See id.*

⁶⁶ See Adrienne Gibbs, *Marvin Gaye’s Family Wins ‘Blurred Lines’ Appeal; Pharrell, Robin Thicke Must Pay*, FORBES, Mar. 21, 2018, available at <https://www.forbes.com/sites/adriennegibbs/2018/03/21/marvin-gaye-wins-blurred-lines-lawsuit-pharrell-robin-thicke-t-i-off-hook/#4be7b4bf689b>, [<https://perma.cc/DKB2-ZDGH>].

Meanwhile, other industry experts are not too worried about the actual outcome of the case, but were nonetheless disappointed with the 9th Circuit's decision to base a majority of its opinion on procedural postures. As noted previously, the decision of *Williams v. Gaye* offers little to no precedent moving forward, much to the chagrin of music copyright lawyers.⁶⁷ As one commentator put it, the 9th Circuit essentially skirted the real issue at stake by “not resolv[ing] the question of whether the scope of Gaye’s copyrights was limited to the sheet music. . . .”⁶⁸ This issue is becoming especially important as the 9th Circuit is beginning to see an uptick of copyright cases in its dockets, and lawyers want to prepare their legal strategies accordingly.⁶⁹

While musical copyright cases have always frequented the 9th Circuit due to the music and entertainment industry’s presence in Los Angeles, the recent increase in cases can be partially attributed to the Supreme Court ruling *Petrella v. MGM*.⁷⁰ *Petrella* held that laches cannot be used as an equitable defense for instances of copyright infringement and that the three-year statute of limitations of a copyright infringement claim resets after each instance of infringement.⁷¹ For musical works, this would include each commercial use of a song that has potentially infringed on another musical work. As a result of this ruling, artists are now afforded the opportunity to litigate claims that may have otherwise expired, and this holds especially true to songs that still remain popular decades after their initial releases.

In addition to *Petrella*, developments in music and digital media technology have made it increasingly easier for artists to access previously unheralded or unknown works of music. When artists write and record new music, they are no longer isolated in a studio. Millions of unique songs, rhythms, and beats are now simply a few clicks away thanks in part to musical databases such as Spotify, Apple Music, Spotify, Pandora, and other digital web players.⁷² This results in recording studios no longer being an

⁶⁷ See Scott Graham, *Skilled in the Art: Blurred Lines — Iancu Revealed — Tinder v. Bumble*, LAW.COM, Mar. 23, 2018, available at <https://www.law.com/2018/03/23/skilled-in-the-art-blurred-lines-iancu-revealed-tinder-v-bumble/>, [https://perma.cc/F64C-V43Z].

⁶⁸ Colin Stutz, *The ‘Blurred Lines’ Appeal Failed — Now What?*, BILLBOARD, Mar. 22 2018, <https://www.billboard.com/articles/news/8257580/blurred-lines-appeal-pharrell-robin-thicke-marvin-gaye-legal-analysis>.

⁶⁹ See Graham, *supra* note 64.

⁷⁰ *Petrella v. MGM*, 134 S. Ct. 1962, 1964 (2014).

⁷¹ See *id.* at 1969.

⁷² See Randall Roberts, *How the ‘Blurred Lines’ case could have chilling effect on creativity*, LATIMES, Mar. 6, 2015, available at <http://www.latimes.com/entertainment/>

“artistic bunker . . . but porous to all copyrighted work available.”⁷³ In turn, artists regularly search previous compositions, often subjected to copyright protection, for inspiration during the creative song writing process. While such a process has always been utilized by artists, these new technological developments are causing artists to be more open and honest about their sources of inspiration.⁷⁴

As a result of *Petrella*, the improvement in music media technology, and openness from artists, older songs that would have ordinarily been subject to laches are now finding themselves being litigated in federal courts. The most notable of these cases is currently being litigated in the 9th Circuit. The band Led Zeppelin is being accused of copyright infringement in its writing of their hit song, “Stairway to Heaven.”⁷⁵ While this case remains unsettled, industry experts expect that the 9th Circuit opinion on this case will provide much needed clarity on the admissibility of sound recordings for jury trials involving songs released before 1978.⁷⁶ As one of the lawyers for the Gaye family put it, arguing the “Blurred Lines” case, “was like trying the case blindfolded and handcuffed.”⁷⁷ Therefore, the judges of the 9th Circuit may wish to stray away from such difficulties moving forward, and may adopt a judicial standard that would allow for such evidence to be admitted in their court rooms. Until the 9th Circuit affirmatively rules in one direction or the other, however, the issue remains ultimately unresolved and up to the individual discretions of trial judges.

Lastly, the “Blurred Lines” case may be seen by future courts as merely being a factual outlier; a “perfect storm” of facts that led to its conclusion. Unlike most music infringement cases that go to trial, *Williams v. Gaye* involved two high-profile artists and two highly popular songs. Further, the Gaye family was relatively strapped for cash, as most of the money their father’s estate generated was forced to go to unpaid creditors as per the terms of a previous settlement agreement.⁷⁸ The profits generated by

music/la-et-ms-blurred-lines-notebook-pharrell-williams-robin-thicke-marvin-gaye-20150306-column.html, [https://perma.cc/57UK-DQWU].

⁷³ *Id.*

⁷⁴ *See id.*

⁷⁵ *See* Kory Grow, *Led Zeppelin Win in ‘Stairway to Heaven’ Trial*, ROLLINGSTONE, June 23, 2016, available at <https://www.rollingstone.com/music/news/led-zeppelin-prevail-in-stairway-to-heaven-lawsuit-20160623>, [https://perma.cc/V4BT-9ZHK].

⁷⁶ *See* Graham, *supra* note 64.

⁷⁷ *Id.*

⁷⁸ *See* William Keeler, Jr., *The Victorious Estate of Marvin Gaye*, GARVEY SCHUBERT BARER (Mar. 17, 2015), <http://www.gsblaw.com/west-coast-trusts-estates-litigation/the-victorious-estate-of-marvin-gaye>

“Blurred Lines” offered the Gaye family a financial opportunity to reap some of the benefits of their deceased father’s intellectual property.

The fact that Williams, Thicke, and Harris brought a preemptive lawsuit against the Gaye estate may have additionally forced the issue to go to trial. Some legal experts speculate that, had the Gaye family initiated the lawsuit, the case would have ultimately resulted in a settlement and more favorable outcome for the “Blurred Lines” artists.⁷⁹ Once the case was on trial, Robin Thicke made multiple ill-advised references to “Got to Give It Up” when doing promotional interviews for “Blurred Lines” upon its release.⁸⁰ Thicke subsequently walked back those statements in later interviews and at trial stating he had little to no hand in writing the song.⁸¹ This back and forth, combined with his admissions of consistent lying, infidelity, and drug abuse, painted the artist in an extremely negative light.⁸² The controversial nature of the lyrics and music video only served to strengthen the spotlight on Thicke. While the jury is theoretically supposed to remain unbiased in its decision-making, it may have subconsciously created unfavorable biases towards Thicke, and in extension, his fellow musicians.

When combined with the aforementioned questionable jury instructions and failure of Williams’ and Thicke’s attorneys to appeal the district court’s denial of summary judgement, the facts of this case created a situation that essentially guaranteed an unfavorable outcome. As a result, the multitude of these factors creates a feasible argument that the 9th Circuit should only be seen as a judicial anomaly moving forward. Only time will tell on whether this argument holds any merit, and once again the 9th Circuit’s opinion in the “Stairway to Heaven” case may provide some much-needed clarity on the issue.

Moving forward, the “Blurred Lines” case can still provide valuable insight to musicians and their attorneys as they engage in the creative process of song writing. Musicians will need to be less open about their sources of information, and may need to be more proactive in obtaining proper samples and other licenses in the creation of their songs. Attorneys, meanwhile, will need to be more aware of musicians’ sources of influence and provide legal advice accordingly. This advice will include limiting a client’s statements to the media regarding the creative writing process, as such statements can only harm the client should litigation ensue. When preparing for

⁷⁹ See Christman, *supra* note 28.

⁸⁰ See Roberts, *supra* note 72.

⁸¹ See *id.*

⁸² See Jeff Nelson, *Paula Patton Accuses Robin Thicke of Abuse, Addiction and Infidelity in Explosive Court Documents*, PEOPLE, Jan. 26, 2017, available at <http://people.com/music/paula-patton-accuses-robin-thicke-of-abuse-addiction-infidelity/>.

court, attorneys will need to formulate two different sets of litigation strategies that account for both the use and absence of sound recordings as evidence. They will also need to have musical experts willing to testify on their client's behalf, and be aware of all procedural postures that may enable them to win a case before a full jury trial. If a motion for summary judgement is denied, attorneys must immediately appeal the decision or risk subjecting their client to the inconsistent opinions of a jury.

The "Blurred Lines" case certainly made headlines as it progressed through the 9th Circuit. While the impact may not be as severe as some legal experts once believed, it remains to be seen what the ultimate legacy will be. What is apparent, however, is that 9th Circuit has, at least at the moment, "blurred the lines" of previously established music copyright law precedent.

