

Marvin Gaye's Family Gets Boost from Songwriters, Musicologists in 'Blurred Lines' Appeal

5:12 PM PST 12/28/2016 by Ashley Cullins

⋮

Clear battle lines are being drawn in this copyright war.



Hulton Archive/Getty Images

When attorneys for Pharrell Williams and Robin Thicke appealed the [controversial jury verdict](#) [1] against the "Blurred Lines" creators, [hundreds of artists](#) [2] rallied behind them. Now it's Marvin Gaye's family that's seeing an outpouring of support.

While a judge trimmed the jury's \$7.4 million verdict down to \$5.3 million, many in the industry have said the verdict's potential to stifle artists from creating works that are inspired by those who came before them is the biggest cost.

Clear battle lines are being drawn in this copyright war. On one side, artists including Linkin Park, Earth, Wind & Fire and Jennifer Hudson and legendary composer Hans Zimmer have sided with Williams and Thicke.

On the other side are Hall of Fame songwriters and world renowned composers including David Porter, Valerie Simpson, Paul Riser, Jon Lind and Sylvia Moy. The group is responsible for writing hits like "My Girl," "Could It Be I'm Falling in Love," "Dreamweaver" and "My Cherie Amour." They're joined by professors of law, music and business from across the country.

On Wednesday they, along with a separate group of musicologists, filed an amicus brief in support of the Gayes — whose attorney, Richard Busch, last week told the 9th Circuit that [the jury's verdict was just](#) [3].

The Institute for Intellectual Property and Social Justice, along with the composers and professors, argues that any fears of chilled creativity because of the ruling against Thicke and Williams is unfounded because the Fair Use Doctrine still allows for lawful borrowing. (Read the brief in full below.)

"[The Thick parties] and their amici trot out a hypothetical, feared parade of chilling effects that this evidence-based decision might create," writes Sean O'Conner in one amicus brief. "However, that parade will not march because this decision was based on disputed evidence about protectable aspects of a particular piece of music — not on some broad-brush protection of a whole musical genre — and because the fair use by subsequent composers of even protectable elements from this work remains available."

At the heart of the appeal will be whether it was proper for U.S. District Judge John Kronstadt was correct in not allowing the jury to hear the original sound recording of "Got to Give It Up." He allowed only recreations of the work based on the sheet music deposited with the U.S. Copyright Office.

Thicke and Williams argue Kronstadt properly limited the scope, but testimony from the Gayes' musicologists introduced opinions about the sound recording and allowed unprotected elements to be considered by the jury. Their lawyer, Howard King, argues to the 9th Circuit that the problem was made worse by inadequate jury instructions that failed to distinguish between protectable and unprotectable material.

The Gayes and their amici, on the other hand, say Kronstadt's decision to limit the scope and preclude the playing of the original recording favored the "Blurred Lines" duo and was in error.

"While the court below properly allowed expert interpretation of the lead sheet, the trial court also could have, and should have, allowed the Gaye parties to submit the full phonorecording of 'Got To Give It Up' to show the entire scope of the composition Gaye actually wrote," O'Conner writes. "The copyright in 'Got To Give It Up' is in the composition as it was written and performed by Gaye in the studio, not merely in the uninterpreted notations on a lead sheet, nor even in commercially released sheet music for an amateur market, that Gaye himself did not inscribe."

The other amicus brief filed by more than a dozen musicologists from Yale, Harvard and University of Chicago, among others, defends the work of the Gayes' experts Judith Finell and Ingrid Monson. It argues that their testimony analyzing the similarities between the "Got to Give It Up" lead sheet and the "Blurred Lines" sound recording are based on sound musicological principals. (Read it in full [here](#) [4].)

"There is *nothing* in the law that suggests Musicological interpretation of a lead sheet to determine what it represents is improper," writes attorney Bernard Burk. "Holding otherwise would make the musical author's rights subject to a potentially unqualified, after-the-fact transcriber, who may have limited ability to prepare transcriptions, and who must make choices of what to notate and how to notate it while under time pressure to get the copyright registration on file. Such a holding would mean that only those notes this third party chose to notate in a limited lead sheet would be protected from theft. Bluntly, this is wrong."

Another issue at hand is the idea of systemic bias against creators of aural music, as many artists like Marvin Gaye create their works without having the ability to read or write sheet music using European classical staff notation.

"Composers not fluent in this specific form of musical notation — especially those who work in aural musical traditions, or are from disadvantaged communities or backgrounds and thus did not enjoy access to formal music education — have been routinely discriminated against when the copyright system has been incorrectly construed to require the use of such notation," O'Conner writes. "Allowing cultural bias to categorically deny copyright protection to aural musical expression discourages the participation of marginalized creators and communities in the copyright regime. The decision below avoids such distortion of copyright and instead affirms the rights of marginalized creators to protection for their work."

{ "nid": 922465, "type": "blog", "title": "'Blurred Lines' Creators Urge Appeals Court to Reverse Marvin Gaye Family's Trial Victory", "path":

"<http://www.hollywoodreporter.com/thr-esq/blurred-lines-creators-urge-appeals-922465>", "media":

{ "width": 349, "height": 349, "extension": ".jpg", "file_size": 78903, "mime_type": "image/jpeg", "type": "image", "path": "sites/default/files/2013/06/robin_thicke_blurred_lines.jpg", "orientation": "square", "id": null, "caption": null, "credit": null, "relative-path": "/thr-esq/blurred-lines-creators-urge-appeals-922465" }

Links:

[1] [http://pinterest.com/pin/create/button/?url=www.hollywoodreporter.com/thr-esq/marvin-gayes-family-gets-boost-songwriters-musicologists-blurred-lines-appeal-959465&media=http://www.hollywoodreporter.com/sites/default/files/imagecache/thumbnail_570x321/2013/04/marvin_gaye.jpg&description=Marvin Gaye's Family Gets Boost from Songwriters, Musicologists in 'Blurred Lines' Appeal](http://pinterest.com/pin/create/button/?url=www.hollywoodreporter.com/thr-esq/marvin-gayes-family-gets-boost-songwriters-musicologists-blurred-lines-appeal-959465&media=http://www.hollywoodreporter.com/sites/default/files/imagecache/thumbnail_570x321/2013/04/marvin_gaye.jpg&description=Marvin%20Gaye%20Family%20Gets%20Boost%20from%20Songwriters,%20Musicologists%20in%20Blurred%20Lines%20Appeal)

[2] <http://www.hollywoodreporter.com/thr-esq/blurred-lines-jury-orders-robin-779445>

[3] <http://www.hollywoodreporter.com/thr-esq/blurred-lines-appeal-gets-support-924213>

[4] <http://www.hollywoodreporter.com/thr-esq/marvin-gaye-family-defends-blurred-lines-trial-outcome-appeals-court-958705>

[5] <https://www.scribd.com/document/335249171/Amicus-Brief-musicologists>