

ETHICS in MUSIC PUBLICATION

Will examine:

- ~~Not the philosophical question about the moral value of music~~
- The question about the \$\$\$ commercial value of music

COPYRIGHTS

PLAGIARISM

PIRACY

Songwriters typically own the copyrights in the music and lyrics to the songs they write and earn money, usually from license fees or royalties from the commercial use of their songs. Publishing income does not come from copyright ownership in **sound recordings**. It comes from ownership of the copyrights in the songs.

As a composer:

What do I do when I compose a song, want to have people listen to it (online), but don't want people claiming it's their own, or use it for making money?

What if I want to write a song using words from a recent poem? (70 years)

MUSIC COPYRIGHTS

Copyright is a form of legal protection given to many kinds of created works such as:

musical compositions or songs,
lyrics,
records (CDs, LPs, singles, 45s, cassettes, DAT, etc.)
poems,
books,
films,
TV shows,
computer software,
and even commercials.

For a work to be protected under copyright, its must be:

- 1) “original” which means that it was not copied from any other source;
- 2) “fixed in a tangible medium of expression” — must exist in some reasonably permanent or stable form so that a person can perceive it and reproduce it;
- 3) have a minimum degree of creativity.

MUSIC COPYRIGHTS (2)

For the musician, copyrights can protect both songs (which usually consists of a melody and includes lyrics if the song has words) and recordings (CDs, mp3s, LPs, cassettes, DAT, and any other recording).

The “fixed” requirement means that there is no protection for a song that is only in your head.

A song may be "fixed" by:

- writing it down,
- recording it (even on a handheld recorder),
- or saving it to a hard drive on a computer.

Playing a song live does not meet the “fixed” requirement.

But, if you record the live performance, you have now "fixed" the song.

Once an original work is fixed in a tangible medium, the creator has copyright protection automatically.

Though registering the work with the Copyright Office may be desirable, it is not required to obtain copyright protection.

https://law-arts.org/pdf/Legal_Issues_in_the_Music_Industry.pdf

The Rights of the Copyright Owner:

The owner of a copyright has the exclusive rights to do the following:

REPRODUCE THE WORK: the rights to make copies of the work, such as the right to manufacture compact discs containing copyrighted sound recordings.

DISTRIBUTE COPIES OF THE WORK: The right to distribute and sell copies of the work to the public.

PERFORM WORKS PUBLICLY: Copyright owners of songs (but not owners of sound recording copyrights) control the rights to have their song performed publicly. Performance of a song generally means playing it in a nightclub or live venue, on the radio, on television, in commercial establishments, elevators or anywhere else where music is publicly heard.

MAKE DERIVATIVE WORKS: A derivative work is a work that is based on another work such as a remix of a previous song or a parody lyric set to a well-known song (a classic example being Weird Al Yankovic's song "*Eat It*" which combines Michael Jackson's copyrighted original work "Beat It" with a parody lyric "Eat It")

PERFORM COPYRIGHTED SOUND RECORDINGS BY MEANS OF A DIGITAL AUDIO TRANSMISSION:

This is a right recently added by Congress that gives copyright owners in sound recordings the rights to perform a work by means of a digital audio transmission. Examples of digital audio transmissions include the performance of a song on Internet or satellite radio stations (such as XM or Sirius).

DISPLAY THE WORK: Although this right is rarely applicable to music, one example would be displaying the lyrics and musical notation to a song on a karaoke machine.

Plagiarism

https://en.wikipedia.org/wiki/Music_plagiarism

- **Music plagiarism** is the use or close imitation of another author's music while representing it as one's own original work.
- [Plagiarism](#) in music now occurs in two contexts—with a *musical idea* or *sampling* (taking a portion of one sound recording and reusing it in a different song).
- Sampling has long been an area of contention from a legal perspective. Early sampling artists simply used portions of other artists' recordings, without permission; once [hip hop](#) and other music incorporating samples began to make significant money, the original artists began to take legal action, claiming [copyright](#) infringement.
- Some sampling artists fought back, claiming their samples were [fair use](#) (a legal doctrine in the USA that is not universal). International sampling is governed by agreements such as the [Berne Convention for the Protection of Literary and Artistic Works](#) and the [WIPO Copyright and Performances and Phonograms Treaties Implementation Act](#).
- Today, most major artists obtain prior authorization to use samples, a process known as "clearing," by gaining permission to use the sample and, usually, paying an upfront fee and/or a cut of the royalties to the original artist. Independent musicians, lacking the funds and legal assistance to clear samples, are at a disadvantage unless they seek the services of a professional sample replay company or producer.
- Recently, the [free culture movement](#), started mainly by [Lawrence Lessig](#), has prompted many audio works to be licensed under a [Creative Commons](#) license that allows for legal sampling of the work provided the resulting work(s) are licensed under the same terms.

Plagiarism: Cases from 1972-2018

- There's a blurred line between inspiration and theft.
- Musical copyright continues to be a hot-button issue, affecting everyone from [Madonna](#), [Justin Bieber](#), [Ed Sheeran](#) and [Lana Del Rey](#) to the mighty [Led Zeppelin](#).

1. The Beach Boys vs. Chuck Berry (1963)

- "Surfin' U.S.A.," by the Beach Boys (1963) vs. "Sweet Little Sixteen," by Chuck Berry (1958)
- **The Case:** The California boys often incorporated rock & roll pioneer Chuck Berry's songs into their early concerts. But 1958's "Sweet Little Sixteen" set Beach Boys' composer Brian Wilson into overdrive. Inspired by Berry's rapid-fire references to various American cities, he recast the song as a paean to a fun-in-the-sun sport. Wilson penned a new set of lyrics listing off the hot surfing locales across the Pacific coast. Wilson said he intended the song as a tribute to the rock guitarist, but Berry's lawyers used another term: plagiarism.
- **The Verdict:** With the threat of lawsuits looming, Beach Boys manager – and Brian Wilson's father – Murry Wilson agreed to give the publishing rights to Arc Music, Berry's publisher. However, Berry's name wouldn't appear on the songwriting credits until 1966.
- **Why It Matters:** Although the genre was built on a handful of standard three-chord progressions and blues licks, the "Surfin' U.S.A." incident was one of the first major plagiarism scuffles in rock history.

2. Led Zeppelin vs. Willie Dixon (1972)

- "Bring It On Home," by Led Zeppelin (1969) vs. "Bring It On Home," by Sonny Boy Williamson (written by Willie Dixon) (1966)
- "Whole Lotta Love," by Led Zeppelin (1969) vs. "You Need Love," by Muddy Waters (written by Willie Dixon) (1962)

- **The Case:** Courts found that two tracks on *II*, Led Zeppelin's sophomore album, owed crushing debts to Chicago blues classics by Willie Dixon. Album opener "Whole Lotta Love" copped lyrics from the 1962 Dixon-penned Muddy Waters song "You Need Love." The source material for Zep's "Bring It On Home" is even more apparent. Page borrowed the intro and outro of Sonny Boy Williamson's 1966 original, intending it as a deliberate homage to the blues great; Dixon didn't see it that way and sued the band for copyright infringement in 1972. He took them to court again in 1985 over writing credits on "Whole Lotta Love," which by then had become a classic-rock staple.
- **The Verdict:** Both suits were settled out of court for undisclosed – but presumably large – sums. Songwriting credit reverted to Dixon in the case of "Bring It On Home," and his name is also included on "Whole Lotta Love" along with the rest of Led Zeppelin. Despite the cost, Robert Plant was unbothered by the controversy over the latter song. "Page's riff was Page's riff," he told *Musician Magazine* in 1990. "It was there before anything else. ... At the time, there was a lot of conversation about what to do. It was decided that it was so far away in time and influence that ... well, you only get caught when you're successful. That's the game."
- **Why It Matters:** Led Zeppelin's artistic debt to the blues, one shared by many of their British classic-rock peers, was never in doubt, but these suits actually took legal stock of that debt – and put a price tag on it.

3. Ray Parker Jr. vs. Huey Lewis and the News (1984)

- "Ghostbusters" by Ray Parker Jr. (1984) vs. "I Want a New Drug," by Huey Lewis and the News (1984)
- **The Case:** Producers of the film *Ghostbusters* originally approached Huey Lewis to pen the film's theme, but he was already committed to work on another sci-fi comedy – *Back to the Future* – and declined. Producers tapped Ray Parker Jr. to do the honors, apparently directing him toward a sound that could be described as "Huey Lewis-esque." Lewis himself certainly thought so, and filed a suit against Parker, alleging that he lifted the melody from his own song "I Want a New Drug."
- **The Verdict:** The pair settled out of court in 1995 on the condition that both parties refrain from speaking about the suit in public. All was well until Lewis unloaded about the settlement on a 2001 episode of VH1's *Behind the Music*. Parker sued him soon after for breaching the confidentiality agreement.
- **Why It Matters:** Though no legal precedents were set, the lawsuit's ghostly reemergence served as a strong reminder that confidentiality agreements weren't just a formality.

4. The Verve vs. The Rolling Stones (1997) <https://www.youtube.com/watch?v=1lyu1KKwC74>

- "Bitter Sweet Symphony," by the Verve (1997) vs. "The Last Time," by the Rolling Stones (written by Mick Jagger, Keith Richards) (1965) <https://www.youtube.com/watch?v=kvIIM2AZgCA>
- **The Case:** The Verve had a major smash with their dreamy "Bittersweet Symphony." Vocalist Richard Ashcroft penned the song's lyrics, but the instrumental backing was partially sampled from a symphonic version of the Rolling Stones' song "The Last Time," recorded in 1965 by the Andrew Oldham Orchestra. The band had originally agreed to license a five-note segment of the recording in exchange for 50 percent of the royalties, but former Rolling Stones' manager Allen Klein claimed the Verve voided the agreement by using a larger section than they agreed to use. ABKCO Records, Klein's holding company, filed a plagiarism suit on behalf of himself and "The Last Time" songwriters Mick Jagger and Keith Richards.
- **The Verdict:** The Verve forfeited all of the songwriting royalties and publishing rights to ABKCO, and the song credit reverted to Jagger and Richards. "We were told it was going to be a 50/50 split," [recalled Verve bassist Simon Jones](#). "Then they saw how well the record was doing. They rung up and said we want 100 percent or take it out of the shops, you don't have much choice."
- Andrew Loog Oldham, another former Stones manager who owned the actual recording that was sampled, [sued the band](#) in 1999 for \$1.7 million in mechanical royalties. In the end, the Verve lost all control of their biggest hit. It was used in a Nike commercial against their wishes, earning them no money and crushing their sense of artistic integrity. "I'm still sick about it," Ashcroft said in later years. The final insult came when "Bittersweet Symphony" was nominated for a "Best Song" Grammy – with Mick Jagger and Keith Richards named on the ballot.
- **Why It Matters:** The saga of "Bittersweet Symphony" can either be viewed as a cautionary tale or one of the most unjust chapters in musical copyright history. Though the Verve sampled a cover of a Rolling Stones' song, it was a portion written by orchestra arranger David Whitaker – who was not credited on any of the recordings.

5. Mark Ronson vs. The Gap Band, the Sequence, Zapp and Collage (2015–2018)

- “Uptown Funk” by Mark Ronson (feat. Bruno Mars) (2014) vs. “Oops Upside Your Head” by the Gap Band (1979), “Funk You Up” by the Sequence (1979), “More Bounce to the Ounce” by Zapp (1980), “Young Girls” by Collage (1983)
- **The Case:** The release of Mark Ronson’s retro-tinged Bruno Mars vehicle in November 2014 signaled the start of a legal pile-on that continues to this day. The track’s co-composers – Ronson, Jeff Bhasker, Philip Lawrence and Peter Hernandez – acknowledged their debt to earlier work by offering credit to Trinidad James’ 2012 rap hit “All Gold Everything” prior to issuing the song, but that did little to stem the tide of legal briefs. By February 2015, Seventies [funk heroes the Gap Band](#) had filed a claim through Minder Music alleging copyright infringement on their 1979 track “Oops Upside Your Head.” The band’s co-founder, Charlie Wilson, fired a warning shot during an interview with [WBLS in New York](#) that spring, saying, “The musicologist came back and said it was ‘Oops Upside The Head’ and now they have to pay.”
- Pioneering female rap trio the Sequence leveled accusations of their own in early 2016, citing their 1979 Sugar Hill Records single “Funk You Up,” from which they claimed Ronson & Co. borrowed “significant and substantially similar compositional elements” from the song’s hook. “Bruno Mars took the lyrics, the cadence and the melodies, and then they went and reached over to ‘Apache’ [the indelible 1981 Sugarhill Gang jam] and got ‘Jump on it/Jump on it,’” band member Angie Stone [told Rolling Stone in 2017](#). “I’m like, OK, now y’all done did too much. We’re broke over here, OK? We need some money. We need some of that, because we created that!”

- Also in 2016, Minneapolis electro-funk collective Collage charged the writers of “Uptown Funk” with coopting “the main instrumental attributes and themes” of their 1983 song, “Young Girl.” [The resulting lawsuit](#) sought unspecified damages and profits. Most recently, R&B collective Zapp filed a suit in New York’s U.S. District Court in September 2017, alleging that their 1980 proto-synth groove “More Bounce to the Ounce” is a crucial component to Ronson and Mars’ funky gumbo. According to a copy of the suit [obtained by Billboard](#), the band’s publishing company is seeking damages of up to \$150,000 per infringement, a permanent injunction against profiting from the alleged infringement, and a jury trial.
- **Verdict:** While the majority of cases against Ronson for “Uptown Funk” are still pending, matters with the Gap Band were resolved out of court in the spring of 2015. Four Gap Band members – Charlie, Robert and Ronnie Wilson and Rudolph Taylor – as well as their producer, Lonnie Simmons, all received writing credits, earning them each 3.4 percent of the song.
- **Why It Matters:** While speaking at a [TED Talk](#) in the spring of 2014, Ronson provided some insight into his creative process by noting that sampling was akin to riffing on blues progressions. “If you ... copy without making it a carbon copy,” he told the audience, “it is original.” This belief, a common one among star producers, may be subject to change after the legal mayhem that greeted the initial success of “Uptown Funk.” Given that the song spent 14 weeks sitting at the top of *Billboard* and became the second best-selling digital single of all time, the cases against it represent perhaps the most high-profile takedown of a hit in the modern post-sampling era.

PIRACY:

To Name a Thief (article in course resources)

Piracy is a broad term to describe any instance of:

“the unauthorized copying, distribution and/or sale of copyrighted content”

Digital piracy describes a specific form of piracy most commonly associated with the unauthorized distribution of: software, music and movie files through the Internet.

Within this definition there exists a subcategory of digital piracy: file sharing. File sharing is used to refer to the process of sharing files directly with others through peer-to-peer technology such as BitTorrent.

Digital piracy takes a variety of forms, of which file sharing is only one.

Three levels of Piracy

- How individuals in piracy worlds understand and negotiate the moral and ethical ramifications of their actions.
 - File sharers: see themselves as distinct from the ‘real’ pirates because their form of copyright infringement does not involve monetary reward.

1. Deviant thieves:

wish to obtain something for nothing and threatens the existence of the cultural industries

Associating youth with piracy - historical tendency to draw links between youth, crime and delinquency

Problem with the definition: It makes an equivalence between tangibles and intangibles

Digital copies are ‘non-rivalrous’ goods (not denying that opportunity to anyone else)

Contradiction: Piracy vs Copyright

Naming piracy as ‘theft’ supports a deliberate ideological agenda and “labeling unauthorized copying as ‘piracy’ suggests an undue rhetorical certainty about the property conceptions underlying copyright”

‘Property conceptions’ are invariably Western in nature

2. Subversive radicals

From DEVIANCE TO SUBVERSION

The 'subversive radical' is engaged in a power struggle with the cultural industries

The pirate as liberator: wishes to destabilize the pre-existing monopolistic models for the distribution of music, films, software and games

According to Bishop: "with such a history of unfairness and one-sided contract negotiations with artists, greed, the lust for power, price gouging, and price fixing, the industry has worked hard to earn its unfavorable reputation"

3. Inquisitive (potential) consumers

The potential consumer conception of the digital pirate is a picture of an individual who is probably not doing as much damage to the creative industries as is often claimed.

Can also be seen as an *explorer*: a voracious consumer who uses file sharing as a form of sampling so they might investigate products before they buy.

Paradox: while it may seem like the availability of free copies would cause sales to fall, this need not necessarily be the case if the copy was not seen as equivalent to the 'original'.

When a film airs on television, there is a growth in both illegal downloads and legitimate sales

Ethical Issues in the Music Industry Response to Innovation and Piracy

Music Industry VS Piracy by Robert F. Easley

- The conflict is due to:
 - Innovations: compression and electronic distribution of files over the internet

Innovations: originate from one of three sources: a manufacturer, supplier or user.

Key distinction between:

Innovation by firms and suppliers who must market the innovation to profit from it, and innovation by users who must guard their innovation as a trade secret to obtain any advantage.

EXAMPLE:

Expert Group (MPEG) which developed technical standards for audio and video signal compression. This standard was then implemented in software made freely available to users, requiring virtually no marketing effort for that benefit to be obtained, with the published standard precluding any possibility of trade secrecy. The audio version of the standard, commonly known as MP3, allowed music files to be reduced in size to the point that they could easily be copied over internet connections. This quickly led to services such as Napster that offered simple ways for internet users to share their music collections online, a development that the recording industry is still struggling to address.

First, it is clear that the major threat to record labels posed by electronic distribution of music is to their margins.

Consumers, who learned through burning their own CD's that the cost of producing a CD was just a few cents, are now aware that the marginal cost of distributing an electronic copy of a compressed version of the same music approaches zero.

There is no packaging, there is no CD, only the digital file. Clearly this puts pressure on the consumer's expectation of a reasonable product price.

The record labels are "exceptional" in their resistance to dropping prices – and an almost extinct business.

There is clear evidence of a willingness to pay for online music in general, via legal download services.

There is even some indirect evidence that those who download **pirated** copies also exhibit a willingness to **pay**.

Apple's iPod service is probably the best known of the legal download services, and it has quickly established a price of \$.99 per title.

Legal downloads are growing, with offerings such as Connect from Sony, and Microsoft recently entering with their own product, though online sales now account for only 5% of industry revenues (Economist, 2004).

The \$.99 price offers savings to consumers who are no longer forced to buy a bundled set of tracks in album form, and it is sufficient for record labels to get their usual fees from the sale without having to actually produce a physical product and distribute it.

It is unclear whether this price will hold, as competition increases in online sales. Already iPod is experimenting with other types of bundles, such as an offering U2's entire catalog (16 albums, 400 tracks) for \$150.

Problem(s)?

- The broad public would be complicit.
- Willingness to pay for pirated distribution of music.

In the article *To Name a Thief: Constructing the Deviant Pirate*

When 'real pirates' are identified they are those that seek to gain economically from file sharing. File sharers distance themselves from the illegal and unethical connotations of the more pejorative term 'piracy' by defining it as something other than 'file sharing:' that is, the for-profit distribution of physical goods.

Deviant pirates have adopted parts of the anti-piracy rhetoric to pour scorn on those that they perceive to be the *real* pirates: that is, both those who engage in the unauthorized circulation of physical goods for economic reward as well as some of the major owners of copyright.

CAN I...?

1. Can I perform a copyrighted song in public?

The right to **perform** or play a **song in public** is one of the exclusive rights of the copyright holder. You **will** need to get permission or a license if you play music in **public** unless the music is in the **Public Domain** or the use of the music qualifies as fair use.

2. Can I use 10 seconds of a copyrighted song?

You may have heard of "fair **use**," a copyright provision that permits you to **use 10, 15 or 30 seconds** of music without copyright obligation. That is, you understand that you **can use** a short section of a **song** without paying a fee. Yet, you're wondering how exactly this works. The short answer is that it doesn't work.

3. How do I get permission to use copyrighted music?

You need to **obtain permission** from all of the publishers who own copyrights in a song in order to use that song. The easiest way to find the contact information for a **music** publisher is through ASCAP, BMI and SESAC.

4. What are the copyright laws for music?

Generally sound recordings are copyrighted **separately** from the copyright of a musical composition as they are not considered the **same work** under copyright law. 6. Published and **unpublished** musical works may be copyrighted.

5. Is it safe for a composer to put his/her music on the internet (Cloud/YouTube) or tracks from CD's?

8 Basic Facts Every Musician Should Know About Copyright Law

Any aspiring musician needs to know the basics of music copyright law.

Musicians who work hard at their art risk loss of credit to music thieves unless they learn how to protect themselves and their creations.

1. Copyright protection is present at the creation.

The moment you create your music is the moment copyright protection begins. Creation occurs when music and/or lyrics are recorded, set to paper, or otherwise "fixed in a tangible form," according to the US Copyright Office.

2. To protect a copyright, the owner should register.

While the copyright is formed when you create, you need more to go to court to enforce your rights. In order to sue and claim damages, creators must own a copyright registered with the US Copyright Office.

3. A copyright establishes various rights for the owner.

Some rights established by ownership of a copyright include the following:

- To reproduce the work;

- To adapt or arrange the work;

- To perform the work;

- To display, distribute, and/or sell copies of the work;

- To incorporate the work with visual images;

- To license others to do any of the things listed above.

4. Protection for is for more than a lifetime.

Generally, for published works created after January 1, 1978, copyright extends for 70 years beyond the life of the author. If there is more than one author, the copyright usually extends to 70 years from the death of the last living author.

When musicians create work for corporations or limited liability companies, this is considered "work for hire," and the corporations or limited liability companies are the owners of the copyright for 95 years from its first publication or for 120 years from the year of its creation, whichever expires first.

5. For copyright purposes, a sound recording is separate from a composition.

Generally sound recordings are copyrighted separately from the copyright of a musical composition as they are not considered the same work under copyright law.

6. Published and unpublished musical works may be copyrighted.

Work does not have to be published anywhere in order to be copyrighted; even unpublished works are eligible for copyright protection.

7. Special rules apply to those who want to perform cover versions of copyrighted songs.

For those who want to perform a cover version of a copyrighted song, set rates must be paid to the copyright owner to acquire "mechanical rights" to use the music. The current rates are set by the US Copyright Office, but you may also go through a private, non-profit organization called the [Harry Fox Agency](#), which simplifies the licensing exchange.

8. "Poor Man's Copyright" isn't good copyright protection.

You may have heard that you can establish the date of creation for copyright law purposes by mailing yourself a copy of the work and keeping it in a sealed envelope; this is often called "Poor Man's Copyright."

In reality, this evidence is not likely to prove useful in a future copyright case. The best advice is to go through the copyright registration process for complete protection.

Be Smart and Register with the Copyright Office

The US Copyright Office prefers electronic submissions, but applicants can use the traditional paper application for a slightly higher fee. Because LegalZoom uses the Copyright Office's electronic application, the registration certificate could arrive up to 6 months earlier than a traditional paper application. The government office requires a nonrefundable filing fee, and a copy or copies of the work(s) to be copyrighted.

[Start Here](#) If you're ready to copyright your music.

For additional information: [US Copyright Office](#); [Copyright Resource Center](#).

LegalZoom's copyright resources: <https://www.legalzoom.com/knowledge/copyright/topic/copyright-definition>