



# COPYRIGHT: BLURRED LINES EFFECT?

*By Janine Hollesen, Director*

## LEGAL BRIEF APRIL 2018

On 21 March 2018, Robin Thicke and Pharrell lost their appeal against Marvin Gaye's estate in relation to their hit song "Blurred Lines". The majority of the US Appeals Court Judges ruled that "Blurred Lines" had ripped off Marvin Gaye's 1977 classic "Got to Give It Up".

The Appeals Court ordered Thicke and Pharrell to pay \$5 million to Gaye's estate and 50% of all future royalties from "Blurred Lines". In 2015, the jury in the lower court awarded the Gaye family \$7, 3 million. It was against this ruling that Thicke and Pharrell appealed.

"Blurred Lines" debuted in 2013 at No. 1 in 20 countries and has earned nearly \$17 million.

The comparison of the two songs can be heard at the following YouTube link <https://www.youtube.com/watch?v=ziz9HW2ZmmY>.

Music copyright could be regarded as a basket of rights in that there can be a number of different authors and/or owners of copyright works in their own right including the following:

- > The musical composition as a musical work in respect of which the composer is the author;

- > The lyrics as a literary work with the lyricist being the author; and
- > The sound recording in the recording itself which is usually owned by the recording company.

The South African Copyright Act also makes provision for needle-time rights which have been included in the Act relatively recently for the benefit of the artists, which is not discussed in this article.

In the "Blurred Lines" case, the dispute was concerned with the musical composition in which the majority of the court found that Gaye's 1977 classic had been copied.

One dissenting judge was of the view that the ruling allowed Gaye's estate to "accomplish what no one has before: copyright a musical style" and that the ruling "strikes a devastating blow to future musicians and composers everywhere".

The ruling changes the standard with regards to copyright infringement in musical compositions as it can be said with some comfort that new compositions are inspired by already existing ones. The ruling may well open the door to a flood of litigation.

The case is highly controversial and has given rise to the term "Blurred Lines Effect", so much so that after the jury verdict in the "Blurred Lines" case in 2015, Jay-Z settled a dispute with Swiss jazz musician, Bruno Spoerri. Spoerri had alleged that Jay-Z's "Versus" had ripped off his "Lilith – On the way". Jay-Z settled with Spoerri by agreeing to pay 50% of the royalties earned from "Versus" to Spoerri.

"Lilith – On the way" can be heard on YouTube here <https://www.youtube.com/watch?v=lxснаamt6gl>. A link to Jay-Z's Versus was not found.

If the above has given any food for thought, the following YouTube link entitled "11 Most Obvious Song Rip-Offs in Music History" may be of interest in which various hit songs are compared with prior works <https://www.youtube.com/watch?v=YPhVloCpPWs>.

Copyright is a fascinating aspect of intellectual property which provides the owner thereof with wide ranging relief in the event of infringement. As a result, when creating new works using prior works, it is best advised to tread carefully to ensure that the copyright line is not crossed which could lead to the accusation of copyright infringement of such prior works.

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