

**I Hate These Blurred Lines:
Wrongful Appropriation and Copyrightability in Music Copyright**

By

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Abstract:

We have two concerns with music infringement trials: The first concern is the process by which juries decide questions of whether a defendant copied too much from a plaintiff's work. (This is the inquiry sometimes known as "wrongful appropriation" or "substantial similarity".) This paper discusses the challenges of methodology in forensic musicology, and the musical and psychological difficulties of applying the 'substantial similarity' test fairly and objectively. (Bonadio, 2016; Gordon, 2015). We present an analysis of three disputes, with comparative audio examples – The Isley Brothers/Michael Bolton (2001); Robin Thicke & Pharrell Williams/Marvin Gaye (2015); and Randy California/Led Zeppelin (2016).

Our second concern addresses copyright classifications, in particular, the contested relationship between the creative decisions that give rise to copyrights in "musical works" (compositions) and the creative decisions that give rise to "sound recordings" (sounds as rendered). We suggest that overlap between the two is common and should be better recognized. To illustrate the potential compositional contributions of performers and sound engineers, we utilize audio examples from *Newton v. Diamond* and other disputes.

References mentioned in the abstract:

Bonadio, E., 2016. Led Zeppelin, plagiarism claims, and why we should be worried about the future of music. The Conversation. URL <http://theconversation.com/led-zeppelin-plagiarism-claims-and-why-we-should-be-worried-about-the-future-of-music-57832> (accessed 5.13.16).

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Lund, J., 2012. An Empirical Examination of the Lay Listener Test in Music Composition Copyright Infringement. Available SSRN 2030509.