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Singer-Songwriter Ed Sheeran Wins Copyright Infringement Case

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Yesterday, a Manhattan federal jury decided global music icon Ed Sheeran was not liable in a copyright infringement lawsuit that accused him of copying Marvin Gaye's 1973 classic "Let's Get it On" for his 2014 hit song "Thinking Out Loud."[i] The jury reached a unanimous verdict after less than three hours of deliberations.[ii] Intellectual property experts have closely monitored this case due to the widespread effects a verdict against Ed Sheeran would have had on the music industry, and copyright law in general.

Ed Sheeran was sued by the heirs of Ed Townsend, who co-wrote "Let's Get it On" with Marvin Gaye.[iii] Townsend's heirs claimed that "Thinking Out Loud" copied the "heart" of Gaye's song including its melody, harmony, and rhythm. Ed Sheeran's attorneys argued that "the chords in the two songs are commonplace musical building blocks that have turned up in dozens of other songs."[iv] Townsend's heirs sought a share of Ed Sheeran's profits from "Thinking Out Loud."

One of the key issues at trial was whether "chord progressions can be copyrighted or do they lack the requisite copyright 'original expression' as mere building blocks." [v] More broadly, the case centered on which song elements are owned by an individual songwriter and which are free for anyone to use and adapt.[vi] The plaintiffs argued that "even if elements like chords may not be under copyright individually, their 'selection and arrangement' [in] 'Let's Get it On' was original and distinctive enough to warrant protection."[vii]

Townsend's heir's likened Ed Sheeran's song to "theft" and offered a fan video of Ed Sheeran moving seamlessly between "Thinking Out Loud" and "Let's Get It On" at a live show as evidence.[viii] During his testimony, Ed Sheeran performed portions of "Thinking Out Loud" and other songs to rebut testimony by the plaintiff's expert and explained his creative songwriting process to jurors.[ix]

At closing arguments, Ed Sheeran's attorney stated the similar elements between "Thinking Out Loud" and "Let's Get It On" are "an essential element of every songwriter's toolkit" and warned should the plaintiffs prevail, "creativity would be stifled for fear of being sued."[x]

In recent years, intense copyright litigation has captured headlines.[xi] In 2015, a Los Angeles federal jury decided Robin Thicke's hit "Blurred Lines" copied elements of Marvin Gaye's 1977 "Got to Give It Up" and awarded millions of dollars to Gaye's family. In 2018, after Thicke appealed, Gaye's family was awarded a final judgment of nearly $5 million dollars. In 2017, a lawsuit was filed against Taylor Swift by two songwriters who accused Swift of using

lyrics without permission for her chart-topping hit, “Shake It Off.” In December 2022, weeks before trial was set to begin, the parties agreed to dismiss the case.[xii] In April 2022, Ed Sheeran won a U.K. copyright battle surrounding his 2017 hit “Shape of You” and was awarded $1.1 million dollars in legal fees.

Following the verdict in his favor, Ed Sheeran stated, “It is devastating to be accused of stealing someone else’s song when we put so much work into our livelihoods.”[xiii] However, given the potential for large monetary awards in copyright infringement cases, it’s likely that high profile cases like Ed Sheeran’s will continue to be litigated in the courts.

Cullen and Dykman’s Intellectual Property team continues to monitor important developments in trademark and copyright law. Should you have any questions about this legal alert, please feel free to contact Karen Levin (klevin@cullenllp.com) at (516) 296-9110 or Ariel Ronneburger (aronneburger@cullenllp.com) at (516) 296-9182.

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

[i] Ben Sisario, “Ed Sheeran Wins Copyright Case Over Marvin Gaye’s ‘Let’s Get It On,’” N.Y. Times, May 4, 2023, https://www.nytimes.com/2023/05/04/arts/music/ed-sheeran-marvin-gaye-copyright-trial-verdict.html?searchResultPosition=1.

[ii] Blake Brittain and Brendan Pierson, “US Jury Sides with Ed Sheeran in ‘Let’s Get It On’ Copyright Trial,” Reuters, May 4, 2023, https://www.reuters.com/legal/us-jury-sides-with-ed-sheeran-lets-get-it-on-copyright-trial-2023-05-04/.

[iii] “Ed Sheeran Wins Thinking Out Loud Copyright Case,” BBC, Entertainment and Arts, May 4, 2023, https://www.bbc.com/news/entertainment-arts-65480293.

[iv] Ben Sisario, “Ed Sheeran Wins Copyright Case Over Marvin Gaye’s ‘Let’s Get It On,’” N.Y. Times, May 4, 2023, https://www.nytimes.com/2023/05/04/arts/music/ed-sheeran-marvin-gaye-copyright-trial-verdict.html?searchResultPosition=1.

[v] “Let’s Get The Trial On: How Ed Sheeran’s Court Case Can Impact Artists and Their Estates,” Forbes, April 26, 2023, https://www.forbes.com/sites/legalentertainment/2023/04/26/lets-get-the-trial-on-did-ed-sheeran-plagiarize-a-marvin-gaye-classic/?sh=61d054a2dfb9.

[vi] *Id.*

[vii] Ben Sisario, “Ed Sheeran Wins Copyright Case Over Marvin Gaye’s ‘Let’s Get It On,’” N.Y. Times, May 4, 2023, https://www.nytimes.com/2023/05/04/arts/music/ed-sheeran-marvin-gaye-copyright-trial-verdict.html?searchResultPosition=1.

[viii] Ben Sisario, “Ed Sheeran Copyright Trial Goes to the Jury. Here’s What to Know,” N.Y. Times, May 3, 2023, https://www.nytimes.com/article/ed-sheeran-marvin-gaye-copyright-trial.html.

[ix] “Ed Sheeran Brings Guitar to Copyright Trial, Plays ‘Thinking Out Loud’ For Jurors,” USA Today, Apr. 28, 2023, https://www.usatoday.com/story/entertainment/celebrities/2023/04/28/ed-sheeran-performs-sings-jurors-during-copyright-trial/11758443002/.

[x] Ben Sisario, “Ed Sheeran Copyright Trial Goes to the Jury. Here’s What to Know,” N.Y. Times, May 3, 2023, https://www.nytimes.com/article/ed-sheeran-marvin-gaye-copyright-trial.html.

[xi] Ben Sisario, “Stolen or Original? Hear Songs from 7 Landmark Copyright Cases,” N.Y. Times, Apr. 27, 2023, https://www.nytimes.com/2023/04/27/arts/music/music-copyright-lawsuits-ed-sheeran-blurred-lines.html?name=styln-ed-sheeran-trial&region=TOP_BANNER&block=storyline_menu_recirc&action=click&pgtype=Article&variant=undefined.

[xii] Ben Sisario, “Lawsuit Over Lyrics in Taylor Swifts ‘Shake it Off’ is Dismissed,’” N.Y. Times, Dec. 12, 2022, https://www.nytimes.com/2022/12/12/arts/music/taylor-swift-shake-it-off-lawsuit.html.

[xiii] Jennifer Korn, Matt Meyer, and Elise Hammond, “Jury Finds Ed Sheeran Did Not Infringe in Copyright Case, CNN Live Updates, May 4, 2023, https://www.cnn.com/business/live-news/ed-sheeran-copyright-verdict/index.html.

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