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## INTELLECTUAL PROPERTY EXPERTS DISCUSS MODERN CHALLENGES IN MUSIC LAW



November 19, 2019

Cardozo alumni and intellectual property (IP) experts discussed the latest in copyright infringement at the Entertainment Law Initiative panel: “Protector or Suppressor?” hosted by the Recording Academy and the FAME Center. The event was co-sponsored by the Cardozo Entertainment Law Society.

Michael Reinert '82, partner at Fox Rothschild and adjunct IP professor at Cardozo, moderated the panel, which analyzed several recent lawsuits against musicians, including Led Zeppelin, George Harrison and Katy Perry.

Carla Miller, senior vice president, business and legal affairs at Universal Music Group, said the Perry case illustrates how modern times have influenced copyright law.

Miller said the “ubiquity of music over the Internet” could influence how artists approach the creative process.

Reinert agreed that copyright infringement is determined by the breadth of access and exposure.



Professor Christopher Buccafusco, director of Cardozo's Intellectual Property & Information Law Program, recently wrote an amicus brief for *Skidmore v. Led Zeppelin*. He was also quoted in *Rolling Stone* earlier this year regarding the Perry case.

At the panel, Buccafusco considered the main questions of copyright cases: "Is it widely available?" He added that the question is "whether the plaintiff can motivate an intuition that defendant copied the song from them."

Buccafusco said "working in a field of creatives" means a lot of songs end up sounding alike.

Christine Lepera, partner at Mitchell Silberberg & Knupp agreed: "Just because something sounds the same, doesn't mean it's copied."

Brad Cohen '05, senior vice president and head of litigation at Warner Music Group considered the approach to evidence in recent copyright cases. Cohen said the *Skidmore v. Led Zeppelin* jury heard the musicologist's sheet music but not the sound recording.

Lepera also gave an inside look at the methodology of such cases, noting that attorneys pour over precisely how many streams an artist got on YouTube to build the case for infringement.

"It was a grain of sand at the beach," Lepera said.

Miller noted the unreliability of streams or views as evidence.

“You’ll see the spikes of the views go up as soon as the claim is filed,” Miller said.

Reinert re-framed the theme of the event: whether copyright law is a “Protector or Suppressor” and how future music law should eliminate fear for creators.

Miller responded: “It’s both. Resist the notion there needs to be a revolution of copyright. It’s supposed to incentivize creation. The question we’re asking is if we’ve become so litigious that we’re seeing suppression.”

Lepera said: “Not every aspect of a musical composition can be considered owned by one person... There are certain building blocks that have to be available to all creators.”

The panel was organized by Entertainment Law Society Music Chairs and 2Ls Amanda Inglesh and Jason Charles.

Charles reflected on the panel after the event: "The event was a great success. Our all-star panel, hand-picked by Cardozo alumnus and music industry legend Michael Reinert, gave those in attendance a master class in copyright law and music in the modern world."

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