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Implications of the Copyright Lawsuits Against Dua Lipa

BY SCOTT SEMAYA/ON APRIL 12, 2022



愚木混株 by cdd20 from *Unsplash*

If you were not aware of Dua Lipa due to her pop hits over the past few years,¹ you may have heard her name in the news for other reasons. Recently, Dua Lipa has been sued for copyright infringement for her hit song "Levitating" by not one, but two artists.² The first lawsuit was brought by Artikal Sound System, a reggae group, who alleged that Lipa copied a portion of their 2017 song, "Live Your Life."³ The second lawsuit was brought by songwriters L. Russell Brown and Sandy Linzer, who claimed that Lipa ripped off their song "Wiggle and Giggle All Night."⁴ The lawsuit is especially noteworthy because "Levitating" became 2021's number one Billboard Hot 100 Song of the Year, and has had continued success since.⁵

Copyright infringement over songs is not something new. Over the years, there have been many notable copyright infringement lawsuits brought against famous musicians and bands.⁶ Even currently, there are other copyright lawsuits against big name artists. Childish Gambino was recently sued by Florida rapper Emelike Nwosuocha (Kidd Wes), alleging that Gambino's "This is America" copied Nwosuocha's "Made in America."⁷ Drake was recently sued for copyright infringement for his songs "In My Feelings" and "Nice for What."⁸ And Ed Sheeran was sued by artist Sami Chokri and producer Ross O'Donoghue, alleging that Sheeran's "Shape of You" ripped off Chokri's "Oh Why."⁹ Sheeran recently won his suit.¹⁰ Ultimately, there have been, and will always be, popular artists and songs that get sued

for copyright infringement. But important questions remain, namely: how do these high profile cases get resolved, and what is the larger, more long-term impact?

As is the case with any lawsuit, music copyright cases can go to trial or get dismissed or settled beforehand. Katy Perry was famously sued with the plaintiffs winning a jury verdict of \$2.8 million, only to have it vacated by the district court judge.¹¹ On the other end of the spectrum, Olivia Rodrigo recently put members of the band Paramore on the credits of her song "Good 4 U" to stave off a lawsuit.¹² So, depending on the nature of the allegations and evidence presented, a range of possibilities exists in these cases. In Dua Lipa's case, there appear to be extreme similarities between plaintiffs' songs and "Levitating," as has been highlighted by many people over the past few weeks.¹³ But an initial analysis demonstrates that the Artikal Sound System lawsuit is weak while the Brown and Linzer lawsuit appear stronger.¹⁴ Ultimately, the outcomes of each lawsuit are uncertain, and they will be likely be determined in part by the copyright infringement legal standard.

"To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original."¹⁵ However, as is the case with many music copyright cases, there is no direct evidence of copying alleged against Dua Lipa. Where no such direct evidence exists, plaintiffs must demonstrate two things: (1) the alleged infringer had access to the copyrighted work and (2) the two works are substantially similar. To determine "substantial similarity," the Ninth Circuit has developed a two-part test that evaluates the works under an extrinsic and intrinsic prong.¹⁶ "As [the test] has evolved . . . the extrinsic test now objectively considers whether there are substantial similarities in both ideas and expression, whereas the intrinsic test continues to measure expression subjectively."¹⁷

At this point, it is hard to tell whether the claims against Dua Lipa will succeed.¹⁸ The plaintiffs face steep hurdles to overcome in order to first get to trial, let alone succeed on their claims. And, as discussed, there is still a chance that either or both of the lawsuits will settle before the cases proceed toward trial. But, ultimately, the cases against Dua Lipa highlight a bigger and more concerning trend in the music industry.

Now, more than ever, music is being produced on a mass scale.¹⁹ With streaming services such as Spotify and SoundCloud providing easy access for musicians to produce and distribute their music, the room for copyright infringement keeps growing. Some are even calling for copyright laws to change because of how different the music industry has become over the past few decades.²⁰ Critically, this is causing a change in behavior in some of the biggest artists, as they either decide not to produce a song out of fear of a copyright lawsuit, or buy expensive insurance to prevent against possible infringement down the line.²¹ The magnitude of this change in behavior may yet to be seen. But, as the lawsuits against Dua Lipa have shown, the possibility of infringement remains largely present in the music industry, and many artists are naturally upset about it.²² Unless there is a major change to music production or

copyright infringement laws, these high-profile lawsuits will continue to show up for years to come.

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