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# Ed Sheeran Copyright Victory Highlights Issues in the Music Industry

BY SHAYNA GRIFE / ON OCTOBER 4, 2022



Photo from Tom Øverlie on Flickr

Ed Sheeran won a copyright infringement lawsuit filed against him for alleged copyright infringement in his popular song “Shape of You” in 2018.<sup>1</sup> The Grammy-winning song, which also holds the title of the most streamed song on Spotify, was accused of being too similar to “Oh Why” by Sami Switch.<sup>2</sup> The lawsuit raised questions for the music industry as to the issues associated with the increase of copyright infringement suits and the damaging effects that they may have on the music industry.

The music industry is facing challenges as the way music is being created is evolving. New genres are emerging that are producing music devoid entirely of lyrics, and there are a limited number of notes and even melodies that could be made. Songs are being written and produced by teams instead of individuals, and tracing originality is getting increasingly hard.<sup>3</sup> The line of what is too similar and what is simply a coincidence is becoming too thin. Katy Perry recently won a lawsuit that hinges on the origin of a melody.<sup>4</sup> This decision will be influential in regard to a need for circumstantial evidence present in a copyright suit. Circumstantial evidence focuses on where an artist would have or could have heard the song in question referred to as access; as well as the degree of similarity considered “too similar” for a song.<sup>5</sup> To prove copyright infringement, the filing party needs to show both “the defendant had access to the original work” and “the two works are substantially similar.”<sup>6</sup> What constitutes “substantially similar” will be looked at differently moving forward after the Katy Perry case as melodies cannot be monopolized as original by any particular artist.<sup>7</sup>

In Sheeran’s case, Sami Switch was arguing that Ed Sheeran had heard his song “Oh Why” because they were both available on the YouTube Channel SBTV around the same

time.<sup>8</sup> The increase in streaming platforms and availability of music has made artists increasingly more vulnerable to litigation. New music is released daily on Spotify, Apple Music, SoundCloud, YouTube, TikTok, and virtually any platform available to artists to get their work out in the public. The music industry needs to address the increase in vulnerability of artists to avoid hindering the creativity of artists.

The creative world is already facing situations that are hindering its' progress as Ed Sheeran is now filming all of his music sessions in preparation for litigation to be able to defend his work.<sup>9</sup> He is already "scared to touch the piano."<sup>10</sup> The purpose of copyright law is to "promote the progress of science and the useful arts."<sup>11</sup> Copyright law is intended to protect author's work to a limited extent and encourage the creation of more of it. Without copyright law, there would be a decreased incentive for authors to create new music, literature, and cinema because there would be no way of protecting and owning their work. On the flipside, copyright law is intended to be limited to avoid indefinite monopolies and allow for new artists to emerge in the field.<sup>12</sup> Copyright law requires balance, and the music industry is currently imbalanced.<sup>13</sup>

Lawsuits bring with them financial gain, and settlements bring with them an even bigger financial gain. Sheeran talked about how a "settlement will be cheaper than taking it to court."<sup>14</sup> Baseless claims can lead artists to settle claims to avoid lengthy and costly litigation.<sup>15</sup> The result will be larger artists who can afford to settle will be able to stay afloat but may be deterred from creating new music. Smaller artists who do not have a strong following yet will not be able to afford to defend their matters in court. An artist's work is more than just a source of income but is intertwined in their sense of integrity.

Sheeran went through with the suit against "Shape of You" not because of money, but because of the principle of the matter.<sup>16</sup>

If the purpose of copyright law is to promote progress amongst artists, then the current copyright law needs to be addressed to accommodate for the changes in the music industry.

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