



CARDOZO

Benjamin N. Cardozo School of Law

LARC @ Cardozo Law

AEJ Blog

Journal Blogs

11-7-2023

Cardozo AEJ Author Interview Series: Matthew Goldman, Class of 2022

Matthew Goldman

Cardozo Arts & Entertainment Law Journal

Follow this and additional works at: <https://larc.cardozo.yu.edu/aelj-blog>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Recommended Citation

Goldman, Matthew, "Cardozo AEJ Author Interview Series: Matthew Goldman, Class of 2022" (2023).
AEJ Blog. 368.

<https://larc.cardozo.yu.edu/aelj-blog/368>

This Article is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in AEJ Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact larc@yu.edu.

Cardozo AELJ Author Interview Series: Matthew Goldman, Class of 2022

BY ONLINE EDITOR / ON NOVEMBER 7, 2023



Cardozo AELJ **Author** Interview Series

Matthew B. Goldman, '22

Senior Articles Editor, *Cardozo Arts & Entertainment Law Journal*, Vol. 40

Interviewed by Ivana Petani, Online Editor, Vol. 42

40 CARDOZO ARTS & ENT. L.J. 727

Fragmented Music Copyright Protection: A Better Arrangement

CARDOZO AELJ
Arts & Entertainment Law Journal

The Cardozo AELJ Author Interview Series seeks to give our readers further insight into the Articles and Notes published in the Cardozo Arts & Entertainment Law Journal. In this interview, Matthew Goldman discusses his Note, [Fragmented Music Copyright Protection: A Better Arrangement](#), which was published in Volume 40, Issue 3.

Matthew Goldman, Cardozo Law Class of 2022, is an Associate in the Program Management (Insurance) Group at London Fischer LLP. Matthew was the Senior Articles Editor for Volume 40 of the Cardozo Arts & Entertainment Law Journal.

Our interview with Matthew was conducted by Ivana Petani. Ivana is a Third Year Law Student at the Benjamin N. Cardozo School of Law and the Online Editor for Vol.42 of the Cardozo Arts & Entertainment Law Journal. Ivana is interested in trademark, copyright, and privacy law.

IP: In your note you discuss some music theory, are you a musician? What instrument(s) do you play and do you sing as well?

MG: I grew up playing the drums and a little bit of the piano, but since high school, I've been primarily a singer. I actually went to undergrad thinking I would be a vocal performance major, but after a semester and a half I realized that I wasn't particularly interested in classical

training/opera, which was definitely the focus of that program. Instead, I started to take more music theory, composition, history, and arts-related business courses. Having a background in music was obviously helpful for this topic, but it was still pretty difficult to effectively translate between musical language and legal language.

IP: What initially drew you to this topic?

MG: During my first year at Cardozo, one of the first events that the IP Program held was a livestream of the 9th Circuit oral arguments for *Skidmore v. Led Zeppelin*. It was also the first time I saw Prof. Buccafusco speak about copyright law, and after his discussion of *Skidmore*, I knew that I wanted to work with him on my Note. After a few weeks of email conversations, I narrowed the topic to what it ended up being: an analysis of a few relevant copyright doctrines and music theory principles, and a discussion on how the doctrines and principles can work together to create a more coherent legal framework, focusing on *Skidmore* and the similar case involving Katy Perry's song "Dark Horse."

IP: How would you address concerns that framing music copyright in a more fragmented way might actually stifle creativity in the music industry by protecting bit and pieces of songs that under previous, more holistic evaluations would have not been considered protected under copyright?

MG: I realize that the title of my Note might be a little misleading, but I don't think that we should be approaching all of music copyright protection in a more fragmented way. Instead, I was trying to address situations where the party alleging infringement was doing so based only on bits and pieces of their works, rather than alleging that the entire composition or even the more abstract "feel" of the work was copied. Overall, I'm definitely more concerned with those kinds of arguments—ones that try to gatekeep musical creativity in snippets of melodies, rhythms, and basic themes that, when taken out of the context of the work as a whole, clearly derive from a shared, uncopyrightable musical language. Obviously, some extremely creative musical works can be very short and relatively simple, and authors should be able to reap some benefits from their creativity. But on the other hand, music as an artform relies very heavily on imitation and sharing, so copyright protection shouldn't be used to try to stifle its growth.

IP: Do you think federal judges who handle music infringement cases would be more willing to issue judgments earlier in the legal process if they used decisions from a body composed of copyright experts, like the new Copyright Claims Board, to guide their decision making?

MG: Every copyright case (and every case in general) is factually unique, so judges will still have to make certain determinations based on the circumstances of the particular lawsuit, but I definitely don't think it would hurt to review and use decisions made by a group of very well-versed copyright experts. I can't imagine that any music copyright infringement case that

makes headlines (like the recent Dua Lipa suits) would be resolved by the CCB, so the judges that do handle the major lawsuits would probably use CCB rulings more for their analysis of the copyright issues.

IP: You mention that expert musicologists are used in music copyright cases, do you think these experts have any blind spots? Do you think there is anything they should be instructed to do and how does new technology like AI possibly shape what the role of these experts will look like in the future?

MG: One of the topics that I originally considered with Prof. Buccafusco was the role of expert musicologists in these high-profile infringement cases. There's a lot of really good scholarship on that topic, so I think it would have been tough for me to carve out a unique angle for Note purposes. I don't know that expert musicologists as a group necessarily have blind spots. I think some of the issues come up when music as an academic topic collides with copyright doctrine and these musicologists, who really aren't legal experts, are asked to give opinions that blur the lines between music theory and copyright law. There's also something to be said about who is paying for the musicologist's services—a musicologist testifying for the Plaintiff might present an opinion that leans more towards protection, while one testifying for the Defendant tends to go the other direction.

IP: Do you think the state of play in this area would be positively affected if kept in the domain of courts or would statutory revisions provide better guidance?

MG: Like I said before, I think it's really hard to use plain words to explain musical concepts, so any statutory revisions would probably struggle with that same translation issue. I think courts and scholars have been doing a good job with trying to strike an appropriate balance between protection and creative growth, but there's always room for improvement.

IP: In your opinion, is the general music rights landscape becoming more pro artist in the sense of protecting work or is it affording people the appropriate level of creativity?

MG: It's tough to say whether the music rights landscape is more or less pro-artist—I think that more artists these days are probably concerned with being labelled a plagiarist, and are more likely to proactively give writing credits to others to avoid the "bad" press that comes with a copyright infringement lawsuit. In a similar vein, I think some music copyright infringement plaintiffs might simply be using the publicity that comes with accusing a popular artist with infringement for their own gain, not necessarily believing or expecting to win an actual lawsuit. That said, I think musical expression is as varied and creative as ever, mostly because of the Internet and the various platforms where literally anyone can make and share music. With so much music being created on a daily basis, and with so few music copyright infringement claims being made (and even fewer making it deep into litigation), I don't think that copyright law is having much of an impact on creativity.