

Begged, Borrowed, or Stolen?

How Musicology Shapes Copyright Infringement Disputes

Presented by Judith Finell, Musicologist

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicservices.com>

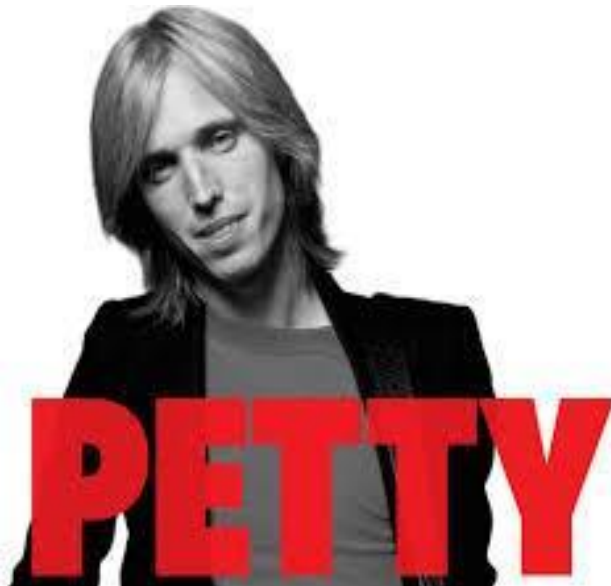
1

Where does it start?

Hey!

*That sounds like **MY** song!!*

Tom Petty v. Sam Smith



“I Won’t Back Down” – Tom Petty



“Stay with Me” – Sam Smith



Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

3

Similarities

“I Won’t Back Down” - Tom Petty

Phrase 1 Phrase 2

:08 Well, I won't back down... No, I won't back down...

“Stay With Me” - Sam Smith

Phrase 1 Phrase 2

:32 Oh, won't you stay with me? 'Cause you're all I need.

Both examples are shown in the key of C for ease in comparison

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

4

Similarities

- Melody = pitch + rhythm
- All 10 pitches and most rhythms in Petty are also in Smith
- Melodic structure and variations
- Harmony – 2 out of 3 same chords that support the melody
- Function of the melody: hook, title lyrics in each

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

5

Differences

- Lyrics
- 1 out of the 3 chords supporting the melody

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

6

But they sound so alike!

Why are 2 songs that contain
substantial similarities
sometimes poor candidates for
copyright infringement
complaints?

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

7

When is similarity not enough?

- First song is unoriginal
- Shared, but commonplace material
- Prior art defense – especially if in the public domain
- Defendant's own prior art

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

8

Musical Misperceptions

To the lay listener:

- Two songs can sound much more alike or different than they actually are upon closer technical examination by a musicologist
- Sometimes infringement is disguised

A forensic musicologist focuses on identifying the similarities and differences, and in determining their significance from a copyright perspective

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicservices.com>

9

A musicologist's forensic toolbox

Musical comparisons involve detailed examination of the musical properties of two or more works to determine substantial similarity and differences.

Tools include:

- Transcription of melodies, harmonies, and lyrics, to compare tones, rhythms, and other musical features
- Spectrogram analysis when sampling is a factor
- Research resources for identifying prior art

Questions: Are similarities generic or specific?

How important is the similar and different material to each song?

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicservices.com>

10

Beyond Coincidence

Constellation of Similarities

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

11

Could some disputes have gone in
a
different direction?

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

12

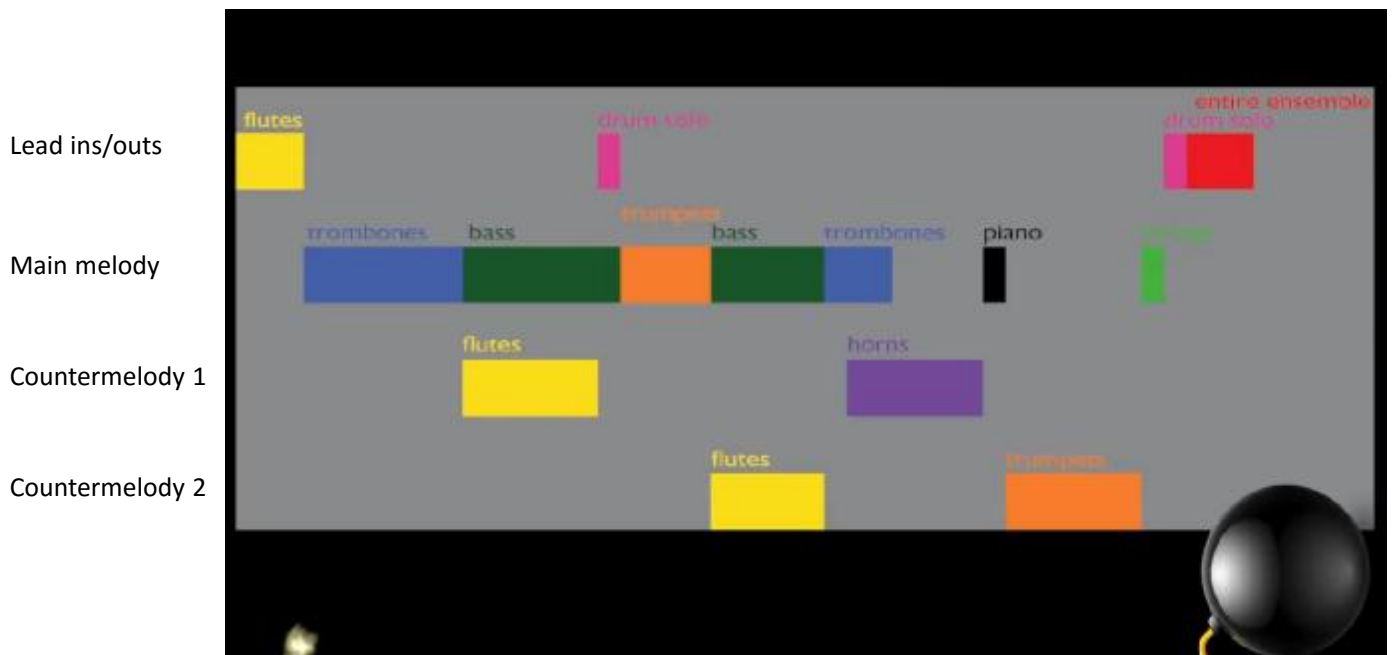
Constellation in *Mission Impossible* Theme



Presented by Judith Finell MusicServices Inc. <http://www.jfmusicservices.com>

13

Constellation in *Mission Impossible* Theme – a road map



Presented by Judith Finell MusicServices Inc. <http://www.jfmusicservices.com>

14

Role of musicologist **in preventing disputes**

- Review music before release to identify potential copyright infringement risk
- Recommend musical changes that maintain mood, genre, and demographic target, while reducing concrete similarities
- Compare to temp or reference tracks, if used, and uncover any material that is substantially similar

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

15

Role of musicologist **at the outset of a dispute**

- Assess strengths and weaknesses of a case
- Evaluation: Not all similarities are equal
- Identify likely challenges by opposing parties, including potential prior art and originality

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

16

Role of a musicologist at trial

- Guide the jury in how to listen / compare music from a copyright perspective
- Help the jury understand how to isolate essential musical material and exclude extraneous sounds
- Present audio/visual exhibits designed for non-music readers
- Build musical understanding and context to enable arrival at reasonable conclusions

Presented by Judith Finell MusicServices Inc. <http://www.jfmusicervices.com>

17

Questions?

Judith Finell

(914) 779-8881

judi@jfmusicervices.com

Judith Finell MusicServices Inc. / New York

<http://www.jfmusicervices.com>

18



Judith Finell is a musicologist and the president of Judith Finell MusicServices Inc., a music consulting firm in New York founded in 1985. She has testified as an expert witness and consulted in various litigations involving copyright infringement over the past 20 years, including most recently as the lead musicologist for the Marvin Gaye family in their dispute over the song “Blurred Lines” with Pharrell Williams and Robin Thicke. She has also testified in disputes for Michael Jackson, Sony/CBS, Warner-Chappell, the estates of Igor Stravinsky and Bob Marley and before the Copyright Royalty Board in Washington on behalf of the National Music Publishers Assn. in a dispute with the RIAA.

Ms. Finell’s firm regularly advises entertainment company clients on licensing and risk avoidance in copyright matters, including HBO, Sony Pictures, Disney, Grey Advertising, Lionsgate, LucasFilms, CBS, and others.

Ms. Finell holds an M.A. degree in musicology from the University of California at Berkeley and a B.A. from UCLA in piano performance. She has written numerous articles and a book in the area of contemporary music and copyright infringement and has appeared in trials on Court TV and before the American Intellectual Property Law Association. She is on the board of the Copyright Society of the U.S.A., and has appeared as a guest lecturer at the law schools of UCLA, Columbia, Vanderbilt, George Washington, NYU, and Fordham as well as the Beverly Hills Bar Assn., LA Copyright Society, and the American Independent Music Publishers. She may be reached either by e-mail at judi@jfmusicervices.com or by telephone at (914) 779-8881.