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6B Copyright Law, Competition & Trademark Law Session. Copyright & Music

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**TWENTY-EIGHTH ANNUAL CONFERENCE
INTERNATIONAL INTELLECTUAL PROPERTY
LAW & POLICY**

Friday, April 9, 2021 – 9:15 a.m.

**SESSION 6: COPYRIGHT LAW, COMPETITION &
TRADEMARK LAW
6B. Copyright & Music**

Moderator:

Mitch Glazier

Recording Industry Association of America (RIAA), Washington, D.C

Speakers:

Judith Finell

Judith Finell Music Services Inc., New York and Los Angeles

***Blurred Lines, Led Zeppelin, and Katy Perry Decisions from a Musicologist
Perspective***

William F. Patry

Google, New York

***Blurred Lines, Led Zeppelin, and Katy Perry Decisions: Another Musician's
Perspective***

Regan A. Smith

U.S. Copyright Office, Washington, D.C.

Music Modernization Act: Where Are We Today?

Daniel J. Abowd

The Royalty Network, Inc., New York

2021: A Songwriter's Odyssey

Panelists:

Richard Pfohl

CONNECT Music Licensing, Toronto

Sean M. O'Connor

Antonin Scalia Law School, George Mason University, Arlington

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MITCH GLAZIER: Welcome, everybody. Thank you to Hugh and Fordham, and to everybody participating in this really great conference this morning. This will be the most exciting panel of the day. I hate to inform Lauri

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that we are completely about to outdo our preceding panelists, but that's just the way it is when you have this group in front of you. Sometimes, you just have to live with the fact that we're going to be excellent.

I want to introduce this stellar group of panelists who are going to talk about some really important current issues in music and copyright this morning. First up will be Judith Finell, a musicologist with MusicServices Incorporated in New York and Los Angeles. She's going to be talking about the *Blurred Lines*,¹ *Led Zeppelin*,² and *Katy Perry*³ decisions, and teach us all a little bit about how it works in those cases from a musicologist perspective.

Then we're going to have Bill Patry, my friend from Google, who is going to give another musician's perspective on *Blurred Lines*, *Led Zeppelin*, and *Katy Perry*. Then we'll have some discussion after those two presentations since they go together.

Then we have Regan Smith, the General Counsel of the U.S. Copyright Office in Washington, D.C., who's going to talk about the Music Modernization Act and where we are after the launch in January and about a million regulations that she's had to help do.

Then finally, we're going to talk to Daniel Abowd from Royalty Network Incorporated in New York. He's going to talk about songwriter and publisher issues coming up in 2021. Those are going to be the presenters. Then for the panelists – and the panelists' job and my job is to help spark discussion and be appropriately provocative – we have Richard Pfohl with Connect Music Licensing in Toronto, Canada, and Sean O'Connor with the Center for the Protection of Intellectual Property at George Mason University.

We've got a lot to do this morning. We don't have that much time to do it, so I'll just say, if you have any questions, I'll be monitoring the Q&A. Go ahead and put your questions in the Q&A, and then as we enter discussion after each of the presentations or groups of presentations, I'll do my best to make sure that your questions are asked. All right. Judith, are you ready?

JUDITH FINELL: Yes.

MITCH GLAZIER: All right, here we go.

JUDITH FINELL: Thank you very much for inviting me. Thank you, Hugh, and everybody here. I hope you enjoy our presentation. I'll be shedding some light from my perspective on forensic musicology issues and analysis. We'll be playing some music for you to give you some context, and I'll go through the musical analysis very quickly just to give you the background of some of these cases from a musicological standpoint.

In terms of where a musicologist is needed and how, I would say that basically, I'm at the intersection of music, technology, and law. By that, I mean that technology enables music to be created in many different forms, distributed, shared, and copied in new ways. Many of you know that already, but please consider that when music became digitized, it was suddenly able to be sampled, copied, distributed, and shared on social media platforms all over the world. This development completely disrupted the legal protocols and safeguards in terms of access, protecting master recordings, licensing, and so on. Everything changed because technology enabled music to be shared, distributed, and

¹ Williams v. Gaye, 895 F.3d 1106 (9th Cir. 2018).

² Skidmore v. Led Zeppelin, 952 F.3d 1051 (9th Cir. 2020).

³ Gray v. Perry, No. 2:15-CV-05642-CAS-JCx, 2020 WL 1275221 (C.D. Cal. Mar. 16, 2020).

created in new ways that didn't necessarily require the permission of the originators of an initial musical work that was infringed.

That's where we are today. Some of the cases that I'm talking about have nothing to do with the latest developments in technology. They are more classic music copyright cases. I'd say that *Blurred Lines*⁴ is actually in that category. I don't feel that *Blurred Lines* came into being necessarily due to any of the new technological advances, though it did in certain ways, in terms of engineering.

Really, what I see as important here is from my standpoint as a musicologist. I look at the composition first before I look at a recording or anything that evolves from that composition. Whether I'm looking at a recording or if I'm looking at the underlying work, I always start with melodic pitch, unless there is no melodic pitch to be discussed, such as in spoken music, and we'll get to that later.

At the top of my list is always the question: is there a melody and are there pitches, in other words, tones, connected with that melody? Melody is really defined as pitch plus rhythm. Sometimes there's no pitch, but there's usually rhythm because music exists as sound in real time, so it has a duration. Those are two of the elements that I always consider first.

Then, after that, as elements coincide with one another and there are multiple pitches and rhythms coinciding, we have harmony, which is chords. This list [slide shown] is basically the way in which I would analyze most musical compositions and compare them to one another based on my own particular training, but it is also in a hierarchical order of musical significance. Though it doesn't always perfectly apply because music, like any creative art, continues to evolve and develop with the minds, creativity, and talent of those creating it.

Let's talk about the *Blurred Lines* case for a few moments, although it's been talked about for years now. I think it's important to go back to some of the musical elements in the *Blurred Lines* case and describe how I saw the musical comparison for context. We'll listen first to *Got To Give It Up* for a few moments, which is Marvin Gaye's song, and then we'll hear for a few moments the song *Blurred Lines*. You will all have your own reactions as to whether or not they sound alike. There's been a lot of discussion on both sides of the aisle as to what sounds alike in them, and whether the similarity is merely style or compositional. If you think about that hierarchy I just showed you, I'll do my best to illustrate to you how I saw the musical comparison. Please listen with me to *Got To Give It Up* and then *Blurred Lines* for a minute.

These are the recordings that I received about three years before the initial trial took place in Los Angeles. I receive recording comparisons every day, and this one did not seem like anything different from normal initially. I listened to the two songs and I heard the most obvious similarities right away before I looked under the hood. You've got cowbells, you've got certain other stylistic similarities, you've got a similar pulse going through, but that's not what I normally investigate. If that were all I thought were there, I would have said, "Well, you have two generically similar musical works, but nothing concrete, no real what I call 'musical content.'" In other words, if I dissect them, and transcribe what's going on in these recordings, do I find pitches that are parallel? Do I find rhythms? Do I find harmonies, etc.? That's really my job: to

⁴ Williams v. Gaye, 895 F.3d 1106 (9th Cir. 2018).

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filter those more technical elements that in fact are what comprise one musical work as compared to another.

That's where I started, but the recordings you just heard, at least the one on the left, *Got To Give It Up*, was not allowed to be played in the courtroom in its entirety by the judge, and that's what we're going to talk about a little bit here.

The opponents were successful in barring the recording for many legalistic reasons. I'll just say that basically, we were not allowed to play the Marvin Gaye recording in the courtroom. In a way, the challenge to a musicologist became greater because somehow – I had to help a judge and jury understand what was involved with these two works when they could only see the lead sheet written by the Marvin Gaye parties when they were securing their copyright, but actually, not by Marvin Gaye himself. Yet, the full recording of *Blurred Lines*, Pharrell Williams' and Robin Thicke's song, could be heard.

This went back and forth between the attorneys all the way up to the eve of trial. Eventually, the judge agreed to allow exhibited anything that was represented in the deposit copy lead sheet itself, which was a very bare-bones skeletal document, not even as complete as ordinary sheet music. However, if it appeared in the lead sheet, we could play that part of the recording in court. We were actually allowed to create a reduced version of the recording, which I was permitted to produce and extract so that I could use it as an exhibit, along with my playing the piano and illustrating to the jury what I felt were the important elements of similarity.

The elimination of the recording was definitely a huge challenge, especially the reliance only on the lead sheet, but in the end, it actually backfired on the opponents. It enabled the argument to be focused for the jury on only the similar features, instead of playing a four-minute song, and then helping a jury with no musical training whatsoever to isolate an individual feature when there may be 10 instruments and singers all sounding at one time.

In a way, this limitation enabled me to help them really see under a musical microscope, what was there. It was something I'd never encountered in any other trial, and I hope never to encounter it again, but we were able to create a new approach. My challenge was to educate a jury that was not musically technically educated and help them understand it.

I'm going to show you a handful of the key exhibits. I really saw this as a musical composition case, with both Marvin Gaye's and the opposing composition containing several features in common, which I referred to as a "constellation" because of their impact on and interaction with one another in similar ways. There were certain similar features that were consistently present in each song. In Marvin Gaye's song and in *Blurred Lines*, it included the combination, which I called the "heartbeat" of the song, of the bass and the keyboard, and the way in which they shared many of the same pitches, rhythms, harmonies, and all.

We were allowed to play this in a brief way in the courtroom, but the judge made it very clear at the end of every day, as he thanked the jury for its service, stating, "Please do not go home and listen to Marvin Gaye's song." I do not know if the jurors did listen to the song at home or not. The judge did say, basically, "I don't want to hear Marvin Gaye's voice in this courtroom, although, you will hear it on some of these examples," but the musical examples were deliberately very brief. Then I was allowed to analyze them for the jury.

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You can hear a little bit of each, and this is what I called the “heartbeat” of each song, it’s that pairing of bass and keyboard and the exact rhythms, harmonies, and pitches that they are playing.

[*Got to Give It Up* by Marvin Gaye instrumental]

[*Blurred Lines* by Pharrell Williams instrumental]

You can hear they’re not identical, but when I analyzed them and transcribed each, they had most of the same primary pitches. Each of them also played chords in the keyboard that were on what I refer to as the “off-beats,” meaning that there are four beats in the bar of each song and there are two strong beats, which are beats one and three, and there are two off-beats, which are the alternating beats, meaning beats two and four. Each song played its chords in its keyboard instrument on beats two and four, and those chords were the same chords. That combined with most of the same bass notes, though not identical, teaming to drive each song forward as a kind of pulse of the song and something that relentlessly continued through almost every bar of each song.

Another similar feature that they had that was pretty surprising in popular music was called “word painting.” Word painting is not an unusual feature in classical music. It has been used going back to the Renaissance, as a way that composers can symbolically represent a word in a lyric by musically illustrating what the word is depicting. For example, a religious anthem may contain lyrics describing going up high to heaven, and the melodic line may rise up to a higher and higher pitch. Or, the lyric may describe descending to hell, and the melodic pitch may move down lower and lower and lower, to illustrate musically what the lyrics are conveying.

Now, that’s commonly done as a device in classical music across many cultures, but it is rarely done in the arena of popular music in which both Marvin Gaye inhabited, and in a way, what Pharrell Williams was, shall we say, imitating, here. Marvin Gaye had a series of three sets of words, “Move it up”/”turn ‘round”/”shake it down.” He sang them in a certain way. His melody went down when he sang the word “down” and went up when he sang the word “up.”

This word painting was replicated in Pharrell Williams’ song, because Pharrell Williams also had three sets of similar words. They were in a different order, but when he sang those words, they also landed on most of the same pitches as did Marvin Gaye. Pharrell changed the order of the same words as Marvin Gaye, thus, “Shake it ‘round”/”go down”/”get up,” but those main words, those action words were close to or identical, and they use the same melodic word painting. Functionally, they were completely the same in that one was right before the beginning of a deviation section, which I’ll describe in a moment, called the “parlando” section in Marvin Gaye. The other song also book-ended a deviation section as a separate rap section by a third-party artist named T.I. They both had this book-ending function right before in one and right after a section that didn’t exist before or after that in either song.

That was fairly stunning. This word painting was very, very parallel and they did sound alike. For the jury, I was allowed to create a mashup, in essence, that alternated between Marvin Gaye singing “Move it up” and then the other song “Get up,” etc. I was allowed to make a kind of A-B comparison of these three sets of lyrics.

As I say, this word painting occurred, in one case, right before this very unusual section of Marvin Gaye and right after the very unusual section in

Blurred Lines. Why was it unusual? Because in Marvin Gaye's song, he's known, if you've heard his music, for his very wide-ranging vocal lines where he sings notes that are 8-10 notes apart. He often uses falsetto. He was a very agile and fluid kind of singer, but there was this one section of his song here that stopped dead from that kind of singing and that kind of melodic writing and was a chant on either a single pitch, like a monotone or his biggest range was three notes apart, as opposed to 8 or 10 notes. This occurred at one specific stopping point in his song and it went on for 15 bars, and then it started up again just like the song before and after that section. It was a deviation due to its abrupt change to a half-spoken, half-sung way of performing. That in music is called "parlando," meaning half-sung, half-spoken.

What was stunning was that the opposing song, *Blurred Lines*, did something similar. It showed on the lead sheet. I saw that exactly at the same bar and the same millisecond on the recording, *Blurred Lines* also stopped, and in came a completely different singer from Robin Thicke who was singing melodiously before and after, and it was a spoken rap. A completely spoken, non-sung rap by T.I., a rapper. That went on for exactly 15 bars and then it stopped at exactly the same millisecond as Marvin Gaye's song stopped his parlando, and then came the word painting as a transition, which we call a "bridge" in music.

The word painting was a bridge in both songs. The deviation was in the same place in both songs, and it was such that I actually believe that *Got to Give it Up* was the template for *Blurred Lines* and I described that in the trial.

To close, this exhibit [slide shown] is really how I wanted to illustrate the constellation to the jury, and I would just say that I had a challenge because the jury couldn't hear the entirety of the Gaye recording. I felt that most people understand visuals and retain visual information more easily than audio information if they're not trained musicians. This is basically a road map of every bar in *Blurred Lines* and exactly where this constellation of elements occurred, in which bar. You'll see that some colors are wider than others, meaning they occupy more bars, while some occupy fewer, and this is the exact location bar-for-bar totaling 130 plus bars of *Blurred Lines* where the elements are shown where they are similar to elements directly parallel with Marvin Gaye's song. This is what I left for the jury to consider.

The outcome of this has, of course, filtered into other cases. The judge in one of the original *Led Zeppelin* trials cited the decision about the lead sheet,⁵ for example. I'm just going to play this for a moment and then there's another case, the *Katy Perry* case⁶ in which the whole combination of constellation and style came up, which is something of a misconception of, I believe, the *Blurred Lines* case. It isn't mere style, it really is compositional features that are similar, but this is how it's been discussed. Let's listen to Led Zeppelin and then Katy Perry for a moment, and then I think I should turn it back to the other panelists.

[*Taurus* by Spirit instrumental]

[*Stairway to Heaven* by Led Zeppelin instrumental]

I was not a testifying expert in this trial, but I would say that what they were comparing were those introductory bars in terms of the arpeggio, meaning

⁵ Skidmore v. Led Zeppelin, No. CV 15-3462 RGK (AGRx), 2016 WL 1442461, 15 (C.D. Cal. 2016).

⁶ Gray v. Perry, No. 2:15-CV-05642-CAS-JCx, 2020 WL 1275221 (C.D. Cal. Mar. 16, 2020).

playing the individual notes of the chords on the guitar, and the descending chromatic line. There was powerful prior art that was asserted. There were limitations in terms of what was included. The lead sheet issue came up again in this case and, I believe, the judge did cite the *Blurred Lines* case.

Recently, there was a decision in the *Katy Perry* case. It has wound its way through various levels of the courts also. Again, in a way, this case was probably impacted by the decision with the *Blurred Lines* case in which the experts cited similar features of an ostinato, which is a repeated single melodic line. In this case, it was an electronic melodic line that was very similar between the two, but eventually, it was seen as not anything more than what was called a “musical building block” by the judge.

The opinion focused on the idea that if you have a collection of similar features that are not seen as individually protectable, then the case could be lost on that basis. I believe that’s what happened here. Let’s listen to each of them for a moment to contextualize.

[*Joyful Noise* by Flame playing]

[*Dark Horse* by Katy Perry playing]

I think you can probably hear that electronic repeated melody, what is called an “ostinato” in each. Those were compared, and they are almost identical, but again, it was not seen as original enough by the deciding parties involved.

This is normally what I’m asked to do at a trial: perform an educational role in order to enable jurors and judges to understand the complexities and technicalities of music. Thank you for your attention. I’ll turn it back to the rest of the panel.

MITCH GLAZIER: Thank you, Judith. That was really great and really interesting. Everybody has their own personal subjective thoughts about what’s inspired versus what is copied. The question is, is there some way to rationally move forward in some objective way in these cases? I’m going to turn it over to Bill Patry of Google who’s also a musician in his own right and see whether or not he can provide any ideas and answers for us.

BILL PATRY: Thank you so much, Mitch. I’m very happy to be here. I regard you as a treasured friend. I’d be on any panel that you’re the chair of. I’ve known Judith, I think, for decades, going back to the days when the Copyright Society and the meetings were in Montauk and then Bolton’s Landing. I’ve been able to hear many presentations by her, and they’ve always been quite informative.

I’m a musician, I’ve been a classical musician since I was six years old. I have undergraduate degrees in music theory and composition, so nothing I say here, I think, can be misattributed to my employer, because I’m not going to talk about fair use and software APIs, thankfully, just music, which is my great love. I also have a 19-year-old daughter, who’s a classical musician. She’s been one since she was seven. Coincidentally, she’s taking at university this semester, a pop music theory class, so we’ve had a lot of time to actually talk about these particular cases, and break them down, and figure out how we think about them.

On the *Blurred Lines* one, for me, even listening recording to recording, which is not the way to do it, I don’t see any similarity beyond genre or style. If you look at it from lead sheet to recording, as I think you have to, and I think Regan’s going to explain why that’s the case, then I don’t think there’s copying of anything that’s protectable. I wouldn’t have even let it go to a jury. As much

as I love juries, as much as I vehemently disagree with a recent opinion that says review of juries is de novo, I wouldn't have let this go to a jury at all. If you compare, as you have to properly, the lead sheet of plaintiffs works to the defendants.

On the issue of word paintings, which as Judith mentioned is a very common thing in classical musical, in fact, the Renaissance time, and classical music, Beethoven's *Pastoral Symphony* or Berlioz's *Symphony Fantastique*. It's just a technique. It can be a good technique, it can be a hackneyed technique, it could be a cliché, whatever it is, it's just a technique.

As a technique, it can form the basis for any infringement analysis. In terms of the singing, the Marvin Gaye singing, which I happen to like a great deal too, I don't think that the word painting as a part of how he sung things, was really a part of the case, since it was about lead sheets so it wasn't a sound recording case. It was a musical infringement case, in which the scope of the copyright, for historical purposes, was really limited to what's on the lead sheet. However great his performance was, that shouldn't have been a part of the case.

One of the concerns when you play things side by side, just recording to recording, is you're not listening to the actual works, that were the issue in the case. The words weren't the same. In terms of the value the experts have, and they have a lot of value in cases, when you display things visually and with colors, my concern with that is that a jury, which maybe doesn't read music, the comparison is of colors. You're looking at a chart that has all these colors. It's a chart that has a lot of similar greens or similar blues or whatever. Oh, well, sure, there's too many greens, there's too many blues, but that's a representation. It may be a good representation in terms of what a musicologist may think, but for a jury, you're not comparing visual works, you're comparing musical composition.

I think there are a lot of problems in the *Blurred Lines* case. Maybe there is a desire because you might think that the two recordings are the same, so you're going to try and see how those similarities might have existed the sheet music, but to me, that case was really wrongly decided. I wouldn't let it go to a jury. It's hard to feel sorry for Robin Thicke. The stuff that he said about what went on in the recording studio and the blatantly misogynist lyrics, this wasn't a Cyndi Lauper's *Girls Just Want to Have Fun* in terms of the lyrics, but that's not a part of the case. If you do it on the straight law part of it, I would never have let it go to the jury.

Led Zeppelin, I love the en banc opinion,⁷ I love Judge McKeown. I think she's an astonishingly fantastic judge who has an amazing feel for copyright and who is doing the Lord's work in helping get rid of some of the bizarre things in the Ninth Circuit, like the inverse ratio rule, which has been one of my mishegosses, one of my obsessions for a long time. The fact that she got rid of that not only gave me great personal happiness, but I think did a great deal to take care of some of the problems that have occurred in these music infringement analyses.

When you have a lot of access to something, or even say, "I was inspired by that work," that's going to be something that might affect people. If you have a very clear view of how the infringement analysis works, that might not happen. For me, the big thing was definitely getting rid of the inverse ratio rule.

⁷ Skidmore v. Led Zeppelin, 952 F.3d 1051 (9th Cir. 2020).

On *Katy Perry*, I don't think there's any evidence of access. Things were on YouTube, that's great. How many people look at particular things? It doesn't even matter if there were a million views of something when there's 12 trillion works that are out there. I think access to be something that's meaningful, there has to be evidence of actual access or access so amazingly deep that you can say, anybody who is listening to anything would have heard it. I don't think there's any access, but beyond that, I don't think there's any copyright [sound cut].

Indeed, for me, the two works are so formulaic that I didn't know that you could have anything that was protectable in either of them. Maybe there's a constellation of protection there, a sort of a starry night form of protection. Clearly, there wasn't anything protectable that could have been done.

On that line, I think Judge Snyder's March 16, 2020 opinion in the *Katy Perry* case⁸ is helpful for figuring things out that this panel is trying to figure out. I say that because she goes through a lot of the various Ninth Circuit opinions on substantial similarity. In doing so, she points out the real problem for me, which is that in the Ninth Circuit, it's a really convoluted artificial system of substantial similarity. The opinions are on their own incomprehensible, but then every new incomprehensible opinion tries to distinguish the less incomprehensible opinion.

I don't know how you can have rational decision-making in the Ninth Circuit with the system that they have. If I could wave a magic wand, I would have them get rid of their entire case law on substantial similarity and start over again. In particular, I would have them do this, they need to get rid of the extrinsic-intrinsic test. That is just a bizarre test. It goes back to the 1977 *Sid & Marty Krofft* opinion,⁹ but sort of morphed Rube Goldberg-like into this morass of case law, in which the test isn't even the same for each subject-matter. You've got to go through – is it literary work, is it visual, is it musical?

Judge Snyder's opinion goes through this, and she was like, "I can't figure it out." I don't blame her, I can't either. They should really just stop having extrinsic-intrinsic, which also I think distorts the role of juries and distorts the rule of allowing things to go to summary judgment. I think, in connection with that, they need to stop basing their analyses on the artificial idea that there are objective and subjective similarities. It's a fact issue, generally.

You can say, as a matter of law, that this is not a protectable feature, but generally, these are subjective of inquiries in which reasonable people can disagree. I totally accept it. Judith believes there was substantial similarity in *Blurred Lines*, I don't. Okay, that's a subjective fact thing. It's not an objective thing at all. There's no objective truth to this, so you need to get rid of it.

Dissections is another thing I'd get rid of. Leave that to elementary school science classes and frogs. It has no role in musical works, which are integrated works. That's why we love them. That's why they mean something to us. Why they mean something as a whole. They don't mean something like you dissect a frog. You can dissect it if you like, but what you're left over with is not music. You're left over with pieces of things. It's the whole, to me that

⁸ Gray v. Perry, No. 2:15-CV-05642-CAS-JCx, 2020 WL 1275221 (C.D. Cal. Mar. 16, 2020).

⁹ Sid & Marty Krofft Television Prod., Inc. v. McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977).

really narrators the idea of selection and arrangement in musical composition. It doesn't make sense to me though. We do it for compilations. We do it because the statute says so it says, "A compilation is a selection and coordination of things," but that's not what music is. Music is an integrated whole, which gives us certain emotional reactions because of that. You can't slice and dice it like you can the white pages of a telephone directory. I will also say that that next we should declare all ostinatos and baselines unprotectable and really just can't form the basis for an infringement analysis. Let's just put that in the past.

I would do the same thing for cowbells. Then I know Bruce Dickinson said, "We need more cowbell." I don't know we ever need any cowbell, certainly less of it. Shouldn't be a part of any infringement analysis. So in total, I would do this. I would make it as simple as possible. The Second Circuit has a much simpler way of doing this and speeding things more simply I think will lead to better guidance for juries and really better opinions. Making things super complicated like the Ninth Circuit does, I think doesn't do justice to plaintiffs or defendants. That's my take on it.

MITCH GLAZIER: Sean, let's start off the discussion here, pro-cowbell, anti-cowbell, where do you come down here?

SEAN O'CONNOR: Wow. Just so much and so little time. Cowbell is important. [laughs] I would say that one of the challenges is that Bill gave an excellent description of coming at music from a classical European perspective—that's probably not surprising because that's his background—while I come from more from a popular music background and what a lot of people create there—especially in African American music—starts from the rhythms. A percussion ensemble can have compositions which are then copyrightable—even though there is no melody or harmony.

Here's the challenge, because we don't have a lot of time. The lead sheet issue is that unfortunately, for artists like Marvin Gaye, their publishers transcribed what they composed by ear. They were not trained in sheet music notation. It's been unfair for a lot of those artists and their estates that now they're stuck with these lead sheets that just give a melody line. At least in Gaye's *Got To Give It Up*, the lead sheet has the core bassline written out.

Most of the stuff that Marvin Gaye was composing had important elements in addition to the main melody line, such as really interesting basslines. I like basslines and repeating riffs. Lots of other parts, the cowbells, things like that, if those are original compositions, they should have been captured in a conductor's score, a full score, for copyright registration. As you may have noticed, when a conductor is leading an orchestra, the score they are working from has all the lines with different instruments. That's what should have happened, and it didn't happen for much Pop music. There are some reasons why the lead sheet practice happens commercially, but that's really the problem here. We need to worry about, "Can we go back and fix the abbreviated lead sheets for some of these artists?" That's one of the challenges, in *Blurred Lines*, in the *Led Zeppelin* case: for me, the most important parts were, unfortunately, left out. The lead sheet issue is a major problem for a lot of these artists and I think that's going to be a problem continuing forward.

MITCH GLAZIER: It is really fascinating because as Bill said, it is somewhat subjective. Everybody has opinions about music and whether you're listening to a recording or trying to visualize a comparison in court, this can be really difficult.

A while ago when *Blurred Lines* was going on, somebody came to me with an idea that was pretty interesting, which was, "If these cases make it pretty easy to find infringement from a policy point of view, should people consider limiting damages to what the composer would have received under Section 115 of the Copyright Act rather than all of the damages because of the potential stifling effect of those kinds of damages if these cases are very easy to determine."

I have no idea if that's the right answer or not, but I thought that it was just an interesting thought to put a pin in. Let's move on from substantial similarity and the *Blurred Lines* set of cases. Now talk about the Music Modernization Act. Regan Smith, you have, I think, written 70 million lines of regulations over the past year on the Music Modernization Act, and the MLC, the Mechanical Licensing Collective, is now launched. Why don't you paint a picture for us as to what we're going to see going forward here?

REGAN SMITH: Great. Thank you. I'm just going to dive right in because there has been a ton going on in the last year and try to paint a picture of where exactly we are and what might be going on. We finished the regulatory marathon as you pointed out. The blanket license became available in January and the MLC this month is about to issue its royalty statements. The watchwords for what we can expect and what we should be looking for are data, transparency, and scale.

I'm going to walk through how these changes are affecting and will affect some different actors in music services and copyright owners and creators, what to look for from the MLC and the Copyright Office, as well as broader policy implications. To start with the digital services, and the reason why am I starting with the digital devices is now they've got the blanket license and they're actually using this.

The Section 115 license has infamously been around since 1909. We all know that and while it was shaping industry negotiations, it was effectively a ghost in the attic because the actual compulsory license terms were not being used so much. We saw an uptick towards the last years of filing notices with the Copyright Office when the copyright owner could not be identified, but we weren't seeing that supplanting the use of direct licenses in the marketplace.

In January, fifty-five digital services filed a notice of license with the MLC. Certainly, many of them are still using their direct licenses, but for example, Apple Music publicly announced that it intends to switch over to using the blanket licensing. What do they have to give in order to use the blanket license? Obviously royalties on a timely basis to the MLC, but the big change is data. There's a ton of data that it is now going to be flowing into a centralized place.

Some of this data again was already on the books, but not being used. Some of these are new requirements by regulation and some of these fields of information include, and to the extent they have it in some cases, sound recording title, featured artist, ISRC,¹⁰ record label, release date version, IPI,¹¹ songwriter, ISNI,¹² publisher information. For the first time, digital services will have to provide either a URL or other information to enable listening to the sound recording for the purpose of matching.

¹⁰ International Standard Recording Code.

¹¹ Interested Party Information.

¹² International Standard Name Identifier.

Some of this we haven't seen yet because the services have until September to sort it out due to some of the on-ramp activity happening. There's going to be a ton more data flowing into one centralized place. We also saw in February a report of historical unmatched uses, this was the transfer of \$424 million. Along with that, came 1800 data files containing over 1.3 terabytes. There's another second half of that reporting in June.

This is a lot of information that the MLC will be able to process and also to share. What is happening for copyright owners and creators? What are they giving to the MLC? Again, they are giving their data, they're coming forward, providing information about their words, as well as their identity. They are submitting their title, their ownership percentage shares, which will now become publicly available, ISWCs,¹³ IPIs, ISNIs, alternative titles, song writing information, as well as administrators, as well as payment information and we hope to see more reliable royalty statements starting this month.

One aspect of the change I want to highlight is for every payee so long as they're entitled to \$5, they will now have an entitlement to receive that electronically, which is a lower threshold than under some comparable systems, and that is intended to help ensure for smaller dollar value creators, publishers, or administrators.

And where's the MLC at, and where's it going? I think that's a good point of pivoting to the future because while it is open for business, but it also is still in startup mode. They've indicated royalty payments will come out by the end of April, but perhaps as soon as next week, they are processing and sharing this amount of data to incentivize participation.

They released a beta database that is publicly available, that I would say is still being populated. It's not clear that beta database yet includes information provided by DSPs¹⁴ in February. It does seem to include the information provided by copyright owners. This database is available in bulk access for \$100 to anyone. They will also provide API access by December of this year by regulation. Obviously, all of this transparency is cabined by countervailing important considerations of confidentiality so there's rules in place to make sure no one at the MLC as well as at the digital services is misusing private or business-sensitive information. How is the MLC doing on participation? Over 11,000 publishers have been reported to sign up and there's more than 18 million musical works in this database.

Is that a good number you might be asking? I think we'll see when they release reports related to matching uses of musical works, but you can compare it to over an excess of 50 million sound recordings on any of these services. Keep in mind, there can also be more than one recording of the same song. Still on the MLC's plate, they reportedly intend to launch the claiming portal in June. They've indicated it will be a little while later before some of these historical uses come out. They've also indicated that they're working on finding ways for non-self-administered songwriters to be able to communicate with their publishers on the MLC.

And where is the Copyright Office at? Right now, we're really focused on our policy study to Congress for best practices to the MLC. A couple of weeks ago, we held public roundtables, and while we synthesize that information, there's a few highlights I can share.

¹³ International Standard Music Work Code.

¹⁴ Digital service providers.

First, there was definitely a consensus that the MLC should be partnering and continuing to partner with a number of groups, so it's a one-size-all-fit solution to engendering participation. Particularly with songwriters and with international actors, who might have specific needs.

We also heard a concern that the MLC must be representative of both songwriting and publishers in the communities including those who are not self-administered, but whose economic livelihood stands to be really affected by this transformation. I don't think that is controversial, but it is a persistent comment we've heard, so we're considering that. Importantly, there was I think, probably a consensus, or at least a near consensus, that the MLC should hold off on its first distribution of unmatched claims, this is the market share distribution, or the so-called black box distribution, for longer than the statutory minimum of two years. The MLC itself certainly has expressed that that is its intention, so that people have an opportunity to come forward and claim including as some of these UX¹⁵ issues continue to get worked out and knowledge of the MLC continues to grow. We will look at that, and we'll look as to whether there's a regulatory role for the Office.

Third, there was a consensus that transparency and reporting is going to be important in looking at the MLC, but there wasn't a clear analogue to other organizations. The answer may be that the MLC effectively benchmarks itself through periodic reporting through a number of metrics, and one can track how it's working over time.

Just zooming out for a second to the broader music ecosystem and looking at data transparency and scale, we now have a situation where there's massive data on the U.S. market that will be updated monthly and shared at a nominal cost. This is going to be happening soon and at a time when you're seeing well-publicized music catalog sales suggesting a confidence in investors that music is a predictable asset class, and a solid investment. It seems optimistically that the MMA developments will only help that. I think in the best-case scenario, we'll start to see the emergence of a more positive feedback loop, through conversations of the beginning of the metadata supply chain in the studio to better identify ownership splits, as well as looking at ways where the sharing of these unique identifiers in one place in the U.S. market can be of use to innovation and to administration of licensing both in the U.S. and abroad, perhaps in other fields.

We'll see whether it is useful for performance licensing or safe licensing or outside of the U.S. Finally, I think there's been a lot of efforts by a lot of actors to getting blanket license up and running. I'm sure there'll be a few more bumps along the road, but it makes sense to be optimistic here and to try to make it work and set an expectation of payment for the use of music in the digital space.

MITCH GLAZIER: Thank you. That was great. Personally, I think Kris Ahrend is doing a great job. In many ways, it's a Herculean task and a lot of issues. Especially the data issue, it's impossible to do everything right and to make everybody happy. One of the things I wanted to know is how do you think going forward, the MLC can help in identifying and resolving the nightmare of splits? That's always the problem, trying to figure out at the end of the day, which songwriters own which pieces of which songs.

¹⁵ User experience.

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That's not necessarily information that you know in the studio going in, it's not necessarily information you know that could exist privately in agreements between individuals. The record companies that I represent, and on the Indie side that Richard Burgess represents, you have some information but rarely do you have all of that kind of information. We're put in a weird spot, because, of course, we're neither the copyright owner nor are we the beneficiary of the license. How do you see the MLC going forward and the issue of resolving splits going forward?

REGAN SMITH: I think that's a great question. Some of it is just going to be building out knowledge, that you should get this resolved if you are the musical work copyright owner or the songwriter in the studio because as you said, this is happening at an early stage before it gets to the record labels or the distributor, let alone the digital services and then ends up with the MLC. Discussions with the Copyright Office have revealed that there is variation across musical communities, so for example the Nashville community has said, "Well, we generally have our metadata hygiene together," maybe those practices can be modeled out to different musical genres.

I think we will see, but at the MLC stage, if it receives split information that might be fractured, incomplete, the MLC might experience overclaims, or underclaims, and they have established a dispute policy to address those instances. They have a statutory committee composed largely of songwriters to help work that out and to maybe draw attention to the issue as well as, of course, when there is a split issue, holding that money and ensuring that there's time to iterate those issues and get it worked out. Having it only needs to be worked out in one place is going to be helpful and encourage people to do that.

MITCH GLAZIER: Thank you. All right. Let's move on to our last presentation and then we're going to open up the conversation a little bit more. Daniel, let's talk CRBs and willing buyer-willing seller, and phonorecords. I don't know what we're up to, three and four, four and five? However many we're up to.

DANIEL ABOWD: I'm going to do this super quickly so I don't take a further hacksaw to our time here and let the next panel start something close to on-time. I'm going to try to convince you in seven minutes or less that 2021 is the most impactful year for songwriter livelihoods ever. Let's see if I accomplish that goal.

Here are the three milestones, one of which Regan has just discussed at length so I won't talk too much about it. These are three huge events, all of which impact songwriters' livelihoods immensely. All of which are happening to some degree in 2021.

All three relate to digital mechanical royalties, which as I'm sure you already know, are the royalty obligations owed by interactive streaming services, such as the ones I've listed here and others, to songwriters when users stream their works.

Two of the milestones relate to the Music Modernization Act ("MMA"). I'll just give a brief overview of that. The MMA did a bunch of different things. We're going to be talking about Title I. Specifically, within Title I, we're talking about the Mechanical Licensing Collective ("MLC"), as well as something that I think has been discussed less—although that's probably going to change very quickly—which is the new "willing buyer/willing seller" rate standard under the post-MMA Section 115.

Like I said, milestone number one is this massive data operation that every songwriter or publisher is frantically trying to populate into the MLC database because, frankly, numbers two and three on my list—which relate to what substantive royalties songwriters are *supposed* to be paid—don't really matter if item one isn't solved. That's because item one is what allows songwriters to *actually* get paid. That's job one. I can certainly speak on behalf of the publisher I work for that this has been item one on our list, again, since January when the MLC launched and even before.

Number two, as I am sure many of you are aware, is the ongoing *Phonorecords III* saga¹⁶ in the Copyright Royalty Board (“CRB”) where—actually I want to quickly explain what the CRB is to make sure we're all on the same page here. The CRB is an administrative tribunal that sets statutory royalty rates in a number of contexts. For songwriters, the big one is Section 115 *Phonorecords* proceedings, which govern, among other things, interactive streaming mechanical rates from services like Spotify, etc. *Phonorecords III* was a big deal. It still is a big deal. It's still ongoing.

Phonorecords III was the first fully-litigated Section 115 CRB trial of the streaming era. That's true for a couple of reasons. One, the streaming era is obviously not all that old; and two, the 2012 rates, which were arguably promulgated in the streaming era, although at the beginning of it, were largely the product of a settlement. So *Phonorecords III* is the first time we're really going to the mat over these rates.

I should mention that *Phonorecords III* is still applying the old, pre-MMA 801(b) rate standard. The MMA doesn't directly affect this.

Initially in *Phonorecords III*, in 2019, songwriters received a really favorable decision. That got appealed. You might have seen some of the hubbub surrounding all of that. The D.C. Circuit vacated that initial determination on procedural grounds. We're now in remand limbo expecting new rates hopefully sometime in the second half of this year, although I know there are delays in the CRB, so we'll see.

When I refer to the 44%, now-vacated royalty rate increase, what I'm talking about is the 2022 rate of 15.1% of service revenue royalties due to songwriters, which is about a 44% increase over the 2012 headline rate of 10.5% of service revenue. (Songwriters are paid a percentage of service revenue; there are other complexities, but that's the headline that you need to know.)

What now? I think it's easy to get lost in the details, but the important thing is that the impact of *Phonorecords III* is somebody looking you in the eye and telling you, "This is your salary, or a significant component of your salary, for the past five years of your career." There are a number of complications: the services we're paying out at the new increased rates, then when the D.C. Circuit issued its opinion, they started paying out at the 2012 rates. And so there is the potential, depending on how the remand goes, that songwriters may ultimately have to pay money back, or there may be adjustments, etc. It could be an operational nightmare.

¹⁶ See Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III), 84 Fed. Reg. 1918, 1919 (Feb. 5, 2019) (to be codified at 37 C.F.R. pt. 385).

On to *Phonorecords IV*.¹⁷ I know—obviously, these CRB proceedings happen every five years, so how is it possible that two are happening at the same time? I'm with you, but they are. *Phonorecords IV* began earlier this year with preliminary proceedings.

As you can see on this slide, publishers are planning to be very aggressive in the next *Phonorecords IV* because they feel they now have a better rate standard, under the MMA: the willing buyer-willing seller rate standard. *Rolling Stone* has predicted an “all-out war.” We'll see.

Quickly, because I know I'm up against time, this slide shows the *old* 801(b) standard: a mishmash of public interest factors that the CRB had some legislative discretion in figuring out how to balance. You can see that the CRB was expressly permitted to allow rates to be informed by marketplace voluntary agreements reached in lieu of the statutory license. That language regarding voluntary agreements informing statutory rates is no longer in the statute, which is interesting and may be significant in some way. We'll see.

Mostly, the thing you need to know is the new standard just says that the CRB should try to approximate a free market. I should say a free *competitive* market, and I'll mention why that's important in a second. But how do you approximate a free market that doesn't exist, and has *never* existed because, as already been mentioned, the compulsory license is as old as the exclusive right of reproduction itself? There's never been a market for this. So how do you approximate it?

The conventional wisdom here, and I think it's probably correct, is that willing buyer-willing seller is a win for songwriters—that it's a better standard for songwriters than the 801(b)(1) standard. Certainly, that sentiment is what's informing the strategy by songwriters to be particularly aggressive in *Phonorecords IV*.

But we can test that hypothesis a little bit, because although *Phonorecords IV* will be the first time that the CRB has applied willing buyer/willing seller in the Section 115 context, it has already been applying willing buyer-willing seller in the Section 114 context, governing royalty rates paid by non-interactive services like Pandora to recording artists and record labels.

If you do that comparison, I'll just briefly point out a few observations that are absolutely pro-songwriter implications from the rate change. The biggest one: this is probably the best chance songwriters have ever had at a per-play rate, which is something they've really wanted in the past, and is something the CRB has awarded under willing buyer/willing seller in the Section 114 context. I don't know that the copyright owners are pushing for that this time—I'm not involved in the litigation—but they pushed very hard for a per-play rate last time and failed.

The reason they want a per-play rate is because, they argue, when you calculate songwriter livelihoods based on service revenue, those livelihoods become contingent on the whims of the service business models. As we all know, services are not always trying to maximize revenue—that's not a judgment, that's just a fact. They are trying to amass user bases. They're perhaps trying to bring in users and then spread them out to their other platforms and services—you can imagine Google, who has a lot of things going on other than

¹⁷ See Determination of Rates and Terms for Making and Distributing Phonorecords (*Phonorecords IV*), 86 Fed. Reg. 325 (Jan. 5, 2021).

music streaming. But of course, songwriters only share in the revenue from streaming. And so a per-play rate might insulate songwriters from some of that dynamic.

As I mentioned, the potentially reduced reliance on voluntary marketplace benchmarks under the willing buyer/willing seller statutory language could also be significant. Songwriters have long felt that those marketplace agreements fall under what they call the “statutory shadow.” The argument: if you're, say, Spotify, why would you ever agree to a rate that's higher than the statutory rate when you can just default to the statutory rate?

I think it's worth noting there are also pro-service implications for the new rate standard. For example, in the now-vacated *Phonorecords III* decision, the CRB relied pretty heavily on the plight of the modern songwriter. They heard evidence regarding the decay of the labor force in Nashville, the drying up of liquidity for songwriters advances—much of which is derived from mechanical income, which has gone down significantly since the '90s. All of that evidence came in under the 801(b) standard. At least that's the context in which the CRB discussed it. If songwriters are foreclosed from making those songwriter well-being arguments, they may lose a tool that was, at least last go-around, pretty persuasive to the CRB.

Additionally, as I mentioned, the free market that songwriters are hoping the CRB will approximate might look a lot different than what the CRB thinks of as a free *competitive* market. The CRB, especially in the willing buyer-willing seller context, has long been very distrustful of what they feel are rightsholder oligopolies. And so, again, elements of the new rate standard could actually cut more in favor of the services than people realize.

Finally, there are important points of uncertainty surrounding the impact of the new rate standard. I'll highlight number four on this slide: disruption. Under the old rate standard, the CRB before was expressly charged with considering potential industry disruption in setting its rates. Under the new rate standard, it no longer has to do that. Whatever the CRB chooses to do, it can now be something pretty dramatic. This significantly widens the variance of possible outcomes in all directions.

Another big point of uncertainty: these CRB proceedings aren't some federal cause of action that gets tried in the district courts 200 times a day, and so we develop this smooth doctrine. This is one shot every five years. Twice a decade. Songwriters got a really—now-vacated—but a really favorable outcome under the old, worse standard for songwriters. But that doesn't necessarily mean that they'll get an even better outcome next time, even if they now have a more favorable standard. They could get a *worse* outcome, even applying a more favorable standard, simply because of the variance inherent to a sample of just one or two data points every decade.

And again, the upshot for songwriters here is: "Hey, this is a huge part of your livelihood for the next five years."

I'll just close with a slide showing these three checkpoints that really matter a lot for songwriters this year. As you can see, I've used a super-duper scientific measurement—half normative, half descriptive of how songwriters are feeling, or should feel about these three things that are happening this year. I, like everybody else, am really excited to see how it all turns out. Thank you.

MITCH GLAZIER: Thank you. Thank you for bringing up the point that for all of us watching this it's really interesting, and we're all wondering what

the CRB is going to do, and how they're going to do it. If you're a songwriter and this is your livelihood, this is going to be teeth-clenching because it's going to determine a lot. I know that we're running a little bit over time, but Richard, I want to get you in here. Coming from Toronto, and from the Canadian system, and from Connect, what are your thoughts about this?

RICHARD PFOHL: Just picking up Daniel's point about the conventional wisdom on this, whether this is good or bad for songwriters. The view from north of the border would be that it is good. Here's why. Canada actually introduced the willing buyer-willing seller standard as a requirement in amended Copyright Board regulations back in 2018. That was one of the key things that we lobbied for and the value for us was proven by the fact that the users lobbied heavily against it, which indicated to us that they knew that if you had to pay marketplace rates, what a functioning marketplace would set, that you would have to pay more than what they were paying under existing Copyright Board-set rates.

I'm delighted to report that Canada adopted the willing buyer-willing seller standard. I'm less delighted to report that in the spirit of political compromise -- and Mitch and Bill, this will take you back to those days in the House Judiciary Committee Markup -- they made the willing buyer-willing seller standard one of four different things that the Board must consider, and they effectively embedded it in the equivalent of the old U.S. public interest regime. They said, "Yes, Copyright Board, you must look at a willing buyer-willing seller standard, but you must also consider "the public interest" and "any other criterion that the Board considers appropriate," which effectively renders the standard a non-standard.

What the U.S. now has, for all the flaws and uncertainty that Daniel describes, is actually much better than Canada's effective non-standard, and we know it's better, because we know how Canada's standard will work in practice. Even before it was adopted -- four years earlier, back in May of 2014 -- the Canadian Copyright Board came out with a ruling in the online music services proceeding.¹⁸ They set the rates for online music services, specifically, non-interactive and semi-interactive services.

In that case, we made the case for a willing buyer-willing seller standard, because while we were waiting for the Copyright Board to decide this, we actually signed deals with DSPs, for the rates that they would pay in the interim. Generally what they were willing to pay was what they're paying in the U.S. They treated these as North American rates, these North American companies. They said, "The business model works for us in the U.S., so it should work for us in Canada."

We put before the Board eight of those signed agreements, and the Canadian Copyright Board looked at those agreements and realized that they would have to throw out decades of precedent in which, frankly, they'd been setting the rates too low for rights holders. They actually rejected those agreements that we put before them. They had the willing buyer-willing seller standard. It wasn't even hypothetical, it was the actual signed agreements, saying, "These are the North American rates, everyone's good with them. Okay, could you bless them please?" They said, "No."

¹⁸ Re:Sound - Tariff 8 (Non-Interactive and Semi-Interactive Webcasts), 2009-2012 (2014) (Can. C. B.).

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They actually set the rates in Canada at 1/10th of the rates in those agreements, 1/10th of the U.S. rates. Daniel, be thankful, count your blessings, and go forward with it. For the Canadian government, we're looking for you to fully implement the willing buyer-willing seller standard, by taking out those other, elements because as long as they're there, then you've got a default to consider any other criteria, and effectively there is no standard.

MITCH GLAZIER: Thanks, that's really interesting. It's so bizarre if you think about it, if you're a songwriter, your salary, maybe like a public school teacher takes into account what the public interest is. I'm not sure those two jobs are exactly equivalent as far as those kinds of considerations should be concerned. Although we all love music and appreciate what songwriters do. I'm not sure it's their duty to the public to have that considered as part of their salary. That's just my opinion. There is one question in the chat that I want to get to, that kind of switches gears for a second.

I know we're running overtime, but there's only one question. I want to see if we can answer it. Judith, this one's for you and it shifts gears a little bit. It's from Barry Scannell. I hope I'm saying your last name correctly. I'd be very interested to hear Judith speak about how a work produced using AI could potentially infringe if trained on a specific artist, for example, the Beatles *Daddy's Car* song or the recent Nirvana song. Inputs from music that's already out there through AI, what's your musicologist opinion about potential infringement?

JUDITH FINELL: Thank you for asking. I actually speak about that in my teaching quite a bit. AI is built on observing and learning patterns that exist. Say you've put in all the Beatles. It will recognize certain melodic, rhythmic, and other metrics of it. I mean, music can be reduced to metrics in durations and pitches and even loudness, softness, and many other elements that maybe blend together in a work, but individually, can be looked at that way.

The question would be that since whatever the AI creates, it's built on preexisting work, some of which is copyright-protected. I'd say that that's a danger in the end though, it's getting smarter and smarter and getting in a way more creative in the sense that if you look at the development of it. If IBM can develop AI that is so smart that it can beat the world champion in chess while the same is going on in the music space so that it's harder and harder to recognize something that's created by artificial intelligence. I'd say the analysis is really the same though.

I don't think there have been infringement cases yet, but the analysis still is comparing one piece of music to a preexisting work that may or may not have been infringed. It still has the same features that should be compared in that hierarchy. In my opinion, I'm not sure if I'm really answering your question, but I'd say AI is probably like one generation from now will not even be built as much on previous examples. We'll keep certainly parting and building on its own first additions, shall we say, and into a new generation of creativity. I think that that's the direction it's going.

MITCH GLAZIER: Thank you. Thank you. It's fascinating. Well, look, I have so many questions and I wish if we were at Fordham physically, right now, I would take you all over to the cafeteria and all of these fantastic brains would sit over a couple of cups of coffee. We would talk about all of these issues for another couple of hours, but I just want to thank all of the panelists.