

Two Worlds Collide – originality and plagiarism in songwriting

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For a song to attract copyright (and therefore have economic value) it must be original. Songwriters therefore need to strike a creative balance - avoiding plagiarising other works whilst working within the established constraints of song (duration, form, lyric conventions, diatony, rhyme, genre, bar count). Any song that is too similar to another will breach its copyright; any song that is 'too original' – deviating too far from the established norms of its genre – may not survive the marketplace.

Copyright law attempts to protect songwriters from accidental or flagrant plagiarism, but it requires workable mechanisms in order to do so - and it can only protect musical elements that can be codified. Demers (2006) argues that this has led to a privileging of melody and harmony, creating a situation where the law offers these elements more protection than non-notatable elements of popular music such as vocal mannerisms, production effects or instrumental arrangement. In the music industry, 'song' and 'track' are necessarily economically separated (and were historically dealt with by publishers and record companies respectively) but in creative practice - and in the ear of the listener - the distinction is not so easy to make. McIntyre (2001) takes a moral and listener-experiential approach to this question, and in doing so points out the inadequacy of the law in dealing with actual songwriter practice. Frith (2004) laments that "with recording rights there is no... understanding that in much popular music the musical work *is* the recording".

This paper will explore the difference between song originality is enshrined in case law and will contrast these with examples of homage/copying that have not been shown to infringe copyright. Drawing on the presenter's own experience as an expert witness musicologist in copyright disputes, it will discuss the implications for songwriters of the dividing line between 'song' and 'track' - from a legal, moral, technological and listener perspective and what this means for songwriters' Intellectual Property in the future.

Joanna Demers, *Steal this music how intellectual property law affects musical creativity* (Athens :: University of Georgia Press,, 2006).

Simon Frith, *Music and copyright*, 2nd ed. (New York: Routledge, 2004).

Phillip McIntyre, "The Domain of Songwriters: Towards defining the term 'Song'," *Perfect Beat: The Pacific Journal of Research into Contemporary Music and Popular Culture* 5, no. 3 (2001): 100-111.

Biography

Joe Bennett's research focuses on the creative practice and psychology of songwriters,

particularly collaborative songwriters. He teaches on the Masters Degree in songwriting at Bath Spa University, and is the founder and organiser of the UK Songwriting Festival. His guitar tuition books and compositions are published worldwide by Music Sales, Rockscool and others, and his monthly songwriting articles are published in Total Guitar magazine. Joe received a National Teaching Fellowship in 2004 from the UK Higher Education Academy in recognition of his work as a teacher of popular music. As an expert witness forensic musicologist, Joe advises music lawyers, publishers, artists and songwriters on matters of plagiarism and musical similarity.

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