

TOP LINE

LEGAL

Blurred Legal Lines

Robin Thicke's team offered a six-figure sum to Marvin Gaye's family in an attempt to avoid a legal tangle that could cost millions of licensing dollars

By Alex Pham



Robin Thicke's "Blurred Lines" is said to allegedly sound like "Got to Give It Up" by Marvin Gaye, pictured here in 1977.

Robin Thicke's lawsuit against the Marvin Gaye family and Bridgeport Music made waves when it was filed Aug. 15, not just because of its almost apologetic tone toward the family, but also because it was a novel legal tactic that's likely to be repeated in future copyright battles. ¶ Thicke's team filed suit only after offering payment to the Gaye family. Billboard has learned that a six-figure sum was proposed, in hopes of avoiding a court battle. ¶ At issue is millions of dollars—not just in sales and publishing money for a track that has already sold 4.6 million copies (according to Nielsen SoundScan), but also in synch and potential licensing fees. The goal of Thicke's lawsuit, according to legal experts, is to clear the field for future deals. ¶ Though the Gaye family has yet to bring any legal action, the similarity between Thicke's "Blurred Lines" and Marvin Gaye's "Got to Give It Up"—

a No. 1 Billboard Hot 100 hit in 1977—has been widely noted. And the prospect of any legal battle might discourage future brand or licensing deals, according to legal sources Billboard spoke with.

A Radio Shack/Beats TV campaign earlier this year that featured "Blurred Lines" is estimated to have garnered \$500,000. The song—written by Thicke, Pharrell Williams and Clifford Harris Jr. (aka T.I.)—is the second-best-selling track of the year after Macklemore & Ryan Lewis' "Thrift Shop." Billboard estimates that downloads and publishing have generated around \$1.3 million.

In essence, Thicke's lawsuit, filed in U.S. District Court in Los Angeles, seeks a pre-emptive ruling of originality. It address both the Gaye family and Bridgeport, the owner of Funkadelic's back catalog, and asks for a judgment that "Blurred Lines" does not infringe on either the Funkadelic song "Sexy Ways" or Gaye's "Got to Give It Up."

Earlier this year, the same firm representing Thicke—King Holmes Paterno & Berliner—filed a suit on behalf of RZA against JVC Kenwood arguing that a 2010 track that RZA had produced for Kanye West, "Dark Fantasy," did not contain a sample of work by Meiko Kaji. In that case, RZA had in fact been asked for payment for an unauthorized sample, and the suit maintained the work was original. "We see dozens of baseless copyright-infringement claims against our clients every year," Howard King told the Hollywood Reporter at the time, promising more lawsuits to come.

The Thicke suit, though, doesn't concern sampling but musical compositions. The lawsuit seeks to address the idea that "Blurred Lines" has the same "feel" and "sound" as "Got to Give It Up" and "Sexy Ways."

"To prove infringement, you have to demonstrate that there are substantial similarities in the key elements of the songs," including lyrics and melody, says Lawrence Iser, a copyright attorney with Kinsella Weitzman Iser Kump & Aldisert. Typically, that involves the opinion of a musicologist.

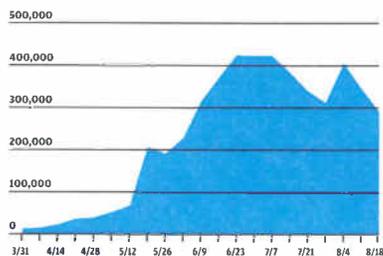
In this case, however, it's not the lyrics or melody that's at issue—it's the "feel." This is where the lines get blurry for copyright infringement—can someone copyright a feel? A groove? A sound? If so, this opens the field for all manner of lawsuits involving common EDM hooks, blues chord progressions, drum patterns and even entire genres.

"Copyright does not protect 'feel' or genre," Iser says. "If it did, they could claim the entire funk genre, and a whole lot of artists would be sued."

King, Thicke's attorney, declined to comment. Calls to Richard Busch, the lawyer representing Bridgeport and the Gaye family, weren't returned by press time. ●

How 'Blurred Lines' Grew

"Blurred Lines" notches an 11th week atop the Billboard Hot 100 this week, and leads the Hot 100 Airplay chart for a seventh frame.



Source: Nielsen SoundScan