

# COPYRIGHT

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SLIDES 12: SUBSTANTIAL SIMILARITY ANALYSIS:  
THE SPECIAL CASE OF COPYING IN MUSIC

# Class Outline

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- A deep dive into substantial similarity analysis via recent music infringement cases

A – Do we have a registered, copyrighted work? +

B – Is there some allegedly similar work that might be infringing? (← this is the smell test, aka “copying-in-law”)(some courts mistakenly refer to this as substantial similarity)

If so → to the jury with two questions:

- (1) Do we have copying-in-fact?
  - Direct and circumstantial evidence of access
  - Expert testimony allowed
  - Question of fact

“probative similarity analysis”



If so...

- (2) Was that copying improper? (i.e. was the taking “enough” to be wrongful?)
  - Lay listener/observer standard
  - A question of fact

“substantial similarity analysis”



**GQ: What's the origin story behind your new single "Blurred Lines"?**

**Robin Thicke:** Pharrell and I were in the studio and I told him that one of my favorite songs of all time was Marvin Gaye's "Got to Give It Up." I was like, "Damn, we should make something like that, something with that groove." Then he started playing a little something and we literally wrote the song in about a half hour and recorded it. The whole thing was done in a couple hours—normally, those are the best ones. Him and I would go back and forth where I'd sing a line and he'd be like, "Hey, hey, hey!" We started acting like we were two old men on a porch hollering at girls like, "Hey, where you going, girl? Come over here!" That's why, in the video, we're doing all these old men dances. It was great.





Got to Give It Up

Blurred Lines

Clip 1



Clip 2



Clip 3



Clip 4



Clip 5





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REPORTER



THE BEST OF  
**SPIRIT**



“copyright “does not protect ideas, themes or common musical elements, such as descending chromatic scales, arpeggios or short sequences of three notes.”



Otherwise unprotectable individual elements may be protectable in combination if they are found to be:

1. Numerous enough; and
2. Arranged in a sufficiently original manner.