

Facing the music: Pop stars embroiled in copyright infringement suits

By [Jani Cronjé](#) and [Jared de Canha](#)

30 Mar 2022

Copyright infringement hearings have certainly taken on a new meaning, after well-known musician, Ed Sheeran, recently performed bars of his hit, *Shape of You*, before the High Court in London in an effort to prove that portions of the chart-topper were not copied from an existing musical work.



Image source: © dvarg – [123RF.com](#)

Sheeran is currently embroiled in a copyright battle with grime artist, Sami Chokri (who performs under the name “Sami Switch”) and music producer, Ross O’Donoghue, who allege that *Shape of You* infringes portions of their song *Oh Why*, released in 2015. These proceedings were initially launched by Sheeran and his co-authors before the High Court in May 2018, seeking that the Court declare that the song did not infringe Chokri and O’Donoghue’s copyright.

In July 2018, a counterclaim was brought on the basis of copyright infringement, with Chokri and O’Donoghue arguing that the “Oh I” hook in the *Shape of You* song is “strikingly similar” to the “Oh Why” hook in their own song of the same name. These authors also believe that Sheeran and his co-authors would very likely have heard their track before creating their later work.

During the leading of evidence, the Court was played a number of recordings of Sheeran singing the hook of his song in different pitches, using a technique known as “stacking”. As part of the hearing, Sheeran also sang elements from Nina Simone’s *Feeling Good* and the Blackstreet’s song *No Diggity* to illustrate how melodies are commonplace in the composition of pop music. His testimony also detailed how the final melodies in question did bear a resemblance to one another, given that both compositions are based around the minor pentatonic scale and contain vowels in them.

It was further explained that the first version of the song had already been revised to remove elements which sounded similar to Bill Withers’ song, *Grandma’s Hands*, and TLC’s hit *No Scrubs*. In fact, TLC’s writers were later given credit on the track, despite failing to respond when Sheeran and his team sought clearance before the song was released.

Other cases

Across the pond, pop star Dua Lipa now faces two separate cases of copyright infringement brought in relation to her hit,

Levitating, within the span of a week of each other. The first claim was brought by reggae band, Artikal Sound System, who claim that the chorus of this bop infringes their 2017 song, *Live Your Life*. Songwriters L. Russel Brown and Sandy Linzer filed their claims shortly thereafter, arguing that the “signature melody”, especially the introductory verse of Dua Lipa’s *Levitating*, copies their songs *Wiggle and Giggle All Night* and *Don Diablo*.

Of course, this similar issue has played out in South Africa, when Daniel Baron accused French DJ, David Guetta of copying the melody of his 2016 single, *Children of the Sun*, in Guetta’s collaboration with Sia in 2018, entitled *Light Headed*. Our firm, led by our colleague Stephen Hollis, subsequently sent a letter of demand to Guetta’s management team on behalf of Baron in 2019, demanding that Baron receive credit for his work and share in the profits generated by *Light Headed*, on the basis of its melodic, chordal and rhythmic similarity to Baron’s work. In this specific case, the South African Music Rights Organisation (Samro), the organisation with whom Baron’s song is registered, froze all royalties payable to Guetta in South Africa, pending the outcome of the dispute between the parties. The matter remains pending.

Bundle of rights

The South African Copyright Act of 1978, of course, recognises the bundle of rights which vest in an author, and these rights may be relied on by an artist to protect their musical work (the musical notation), literary work (the lyrics) and sound recording components of an original performance reduced into material form. The subsistence of copyright in a work confers a number of exclusive rights on the holder of copyright, including reproducing, publishing and performing the work. An author’s copyright in South Africa is deemed to have been infringed when a person does or causes any other person to perform any act which the owner has the exclusive right to do or authorise.

Court assessment

In assessing these alleged infringement cases, the Court will rely on a qualitative test, examining the degree of objective similarity between two works, as well as whether a causal link exists between the original work and the alleged infringing work.

Essentially, this means that the claimant would need to prove that the artist actually regarded and had access to the prior work, and adapted or copied substantial elements of it when creating the new song. The notion of a “substantial part” of the work being infringed has been the subject of interpretation by our Courts, and it would be interesting to see how our Courts would apply this test in these circumstances.

The line which musicians tread between inspiration and theft is becoming an increasingly relevant consideration in the music industry, and our Courts will, no doubt, be tasked with examining when an artist’s musical influences have been infringed when composing these new melodies. Can we expect Zoom concerts from the High Courts of South Africa?

It is yet to be seen whether these allegations of copyright infringement against Sheeran and Dua Lipa will fall flat. Encore possibly to follow?

ABOUT THE AUTHOR

Jani Cronjé is a Trade Mark Attorney and Jared de Canha, a Candidate Attorney, at Adams & Adams.

For more, visit: <https://www.bizcommunity.com>