In the

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pharell Williams et al. *Plaintiffs, Appellants, and Cross-Appellees*

v.

Frankie Christian Gaye et al., *Defendants, Appellees, Cross-Appellants*

On Appeal From The United States District Court For The Central District of California, Hon. John A. Kronstadt, District Judge, No. 13-cv-06004 JAK (AGRx)

BRIEF *AMICUS CURIAE*

OF THE

INSTITUTE FOR INTELLECTUAL PROPERTY AND SOCIAL JUSTICE

MUSICIAN COMPOSERS

AND

LAW, MUSIC, AND BUSINESS PROFESSORS

IN SUPPORT OF APPELLEES

SEAN M. O'CONNOR
LATEEF MTIMA
STEVEN D. JAMAR
INSTITUTE FOR INTELLECTUAL PROPERTY AND SOCIAL JUSTICE, INC.
707 MAPLE AVENUE
ROCKVILLE MD 20850
Telephone: 202-806-8012

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Amici musician-composers and law, music, and business professors are joining this brief in their individual capacities and not as part of any corporation or trade association.

DATED: December 28, 2016.

Respectfully,

SEAN M. O'CONNOR
LATEEF MTIMA,
STEVEN D. JAMAR
INSTITUTE FOR INTELLECTUAL PROPERTY AND SOCIAL JUSTICE, INC.

By /s/ Sean M. O'Connor
SEAN M. O'CONNOR
Attorneys for Amicus Institute for Intellectual Property and Social Justice, Inc.; Musician-Composers; and Law Professors

IDENTITIES OF MUSICIAN-COMPOSER AMICI

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John Altman: Mr. Altman is a world famous music composer, arranger, orchestrator, and conductor. He is a frequent guest conductor for the Royal Philharmonic Orchestra, serves on the Board of the American Society of Music Arrangers and Composers, is a member of the British Academy of Film and Television Arts, and received the lifetime achievement award from the British Academy of Composers and Songwriters. Mr. Altman has too many recordings to mention, and has been nominated and/or won most if not all of the most prestigious film composer awards, including an Oscar mention for the period music in James Cameron's *Titanic.*

Brian Holland: Inducted into the Songwriter Hall of Fame, Rock & Roll Hall of Fame, SoulMusic Hall of Fame, and member of the legendary songwriting trio of Holland-Dozier-Holland. Mr. Holland has written or co-written 145 hits in the US, and 78 in the UK.

Eddie Holland: Inducted into the Songwriter Hall of Fame, Rock & Roll Hall of Fame, SoulMusic Hall of Fame, and member of the legendary

songwriting trio of Holland-Dozier-Holland. Mr. Holland has written or co-written 80 hits in the UK, and 143 in the US charts.

McKinley Jackson: Mr. Jackson is known as one of Soul music's greatest arrangers and producers. Mr. Jackson arranged nearly every song recorded for the Invictus/HotWax/Music Merchant labels. Mr. Jackson also wrote or co-wrote, among other hits, "Ace In The Hole," "Fish Ain't Biting," "Out Here On My Own," "Trying To Hold on to My Woman," and "Midnight Flower."

Jon Lind: Mr. Lind is a professional songwriter who has written or co-written numerous hit songs, including "Boogie Wonderland" (Earth, Wind, & Fire), "Crazy For You" (Madonna), and "Save The Best For Last (Vanessa Williams, nominated for Grammy Award for Song of the Year in 1991). Mr. Lind was also the Head of A & R, and was the Sr. VP for Hollywood records from 2006-2013, and worked with among others Miley Cyrus, Demi Lovato, Selena Gomez, and the Jonas Brothers.

Terry Manning: Inducted into the International Rockabilly Hall of Fame. He has worked for 50 years as a singer-songwriter, composer and record producer, and has worked with the likes of Led Zeppellin, Iron Maiden, ZZ Top and many others. While at Stax records, he was

responsible for such hits as “Heavy Makes You Happy,” “Respect Yourself,” and “I’ll Take You There.”

Melvin Moy: Songwriter and brother of Sylvia Moy, wrote the song “Home Cookin.”

Sylvia Moy: Inducted into the Songwriters Hall of Fame; wrote many of Stevie Wonder’s hit songs while at Motown. Among her hit singles are “Uptight (Everything’s Alright),” “My Cherie Amour,” and “I Was Made to Love Her,” among many others.

Nicholas Payton: World famous jazz musician who studied under Ellis Marsalis, and has recorded and performed with Wynston Marsalis, Joshua Redman, Roy Hargrove, and Joe Henderson among others. He is a Grammy Award winner, and composed and arranged all 16 songs on his 2011 album “Bitches.” His work on each song on that album included playing every instrument, singing and playing trumpet throughout, and producing the entire set, on that album. He is accompanied on that album by guest vocalists Cassandra Wilson, Esperanza Spalding, N’Dambi, Chinah Blac, and Saunders Sermons.

David Porter: Inducted into the Songwriter Hall of Fame. Mr. Porter has catalog sales exceeding 300 million units. He has more than 1,700 songwriter and composer credits for artists encompassing all genres. Some of his most famous songs include Grammy award winners "Soul Man," "Dreamweaver," and "Get Jiggy With It." In 2015, Rolling Stone magazine listed him as one of the 100 greatest songwriters of all time.

Paul Riser: Inducted into the Musicians Hall of Fame. Mr. Riser is an American trombonist and musical arranger who was responsible for co-writing and arranging dozens of top ten hit records, and is known as one of the Motown "Funk Brothers." Mr. Riser wrote or arranged on such hits as "My Girl," "Papa Was A Rollin' Stone," "I Heard it Through The Grapevine," and "The Tears of a Clown," among songs too numerous to mention.

Valerie Simpson: Inducted into the Songwriter Hall of Fame, and received ASCAP's Founder's Award, the highest honor given by ASCAP to songwriters. Her songs include "Ain't No Mountain High Enough," "You're All I need To Get By," "Ain't Nothing Like The Real Thing, "Reach Out And Touch (Somebody's Hand)," and "I'm Every Woman."

Melvin Steals: World-renowned songwriter, with several top 100 hits, most famously as co-author for the legendary song “Could It Be I’m Falling in Love.”

IDENTITIES OF LAW, MUSIC, AND BUSINESS PROFESSOR AMICI

Matthew Barblan, Executive Director, Center for the Protection of Intellectual Property, George Mason University, Antonin Scalia Law School

Tuneen Chisolm, Professor of Law, Chapman University School of Law

Ralph D. Clifford, Professor of Law, University of Massachusetts School of Law

Greg Dolin, . . . Professor of Law, University of Baltimore School of Law

Shubha Ghosh, Crandall Melvin Professor of Law and Director, Technology Commercialization Law Program, Syracuse University College of Law

Kevin J. Greene, Professor of Law, Thomas Jefferson School of Law

Hugh C. Hansen, Professor of Law and Director, Fordham IP Institute & IP Conference, Fordham University School of Law

Steven Jamar, Professor of Law, Howard University School of Law; Associate Director of International Programs, Institute for Intellectual Property and Social Justice

Deidré A. Keller, Professor of Law, Claude W. Pettit College of Law, Ohio Northern University,

Michael S. Mireles, Professor of Law and Director of Intellectual Property Concentration, University of the Pacific, McGeorge School of Law

Lateef Mtima, Professor of Law, Howard University School of Law; Founder and Director, Institute for Intellectual Property and Social Justice

Sean M. O'Connor, Boeing International Professor and Director, Center for Advanced Study and Research on Innovation Policy, University of Washington (Seattle) School of Law

Victoria F. Phillips, Professor of Practice of Law and Director, Glushko-Samuelson Intellectual Property Law Clinic, American University Washington College of Law

Lita Rosario . . . American University

Guericke C. Royal: Associate Professor, Howard University and Downbeat Award-Winning Composer, Arranger and former Smithsonian Artist-in-Residence

Anjali Vats, Visiting Law Professor, University of California, Davis School of Law; Assistant Professor of Communication and African and African Diaspora Studies, Boston College; Assistant Professor, Boston College Law School (By Courtesy)

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Sean O'Connor, *What Composers and Copyright Attorneys Can Teach Each Other, Part 2* available at https://www.youtube.com/watch?v=Ibjp3erJkA8

STATEMENT OF COMPLIANCE WITH RULE 29(c)(5)

None of the counsel for the parties authored this brief. The parties have not contributed any money that was intended to fund the preparation or submission of the brief. No persons other than amici curiae or their counsel contributed money that was intended to fund the preparation or submission of the brief.

CONSENT OF THE PARTIES

Pursuant to FRAP 29(a), Appellees and Appellants have consented to IIPSJ's filing of this brief.

STATEMENT OF INTEREST

The Institute for Intellectual Property and Social Justice promotes social justice in the field of intellectual property law and practice, both domestically and globally. Through core principals of access, inclusion, and empowerment, intellectual property social justice advances the social policy objectives that underlie intellectual property protection: the broadest stimulation of creative and innovative endeavor and the widest dissemination of creative works and innovative accomplishments for the greater societal good.

The undersigned musicians, composers, and law, music, and business professors are experts in their fields with an interest in a well-functioning copyright system that supports social justice and the well-being of musicians and composers who contribute greatly to the creative economy in the United States and worldwide.

SUMMARY OF ARGUMENT

The decision below preserves the copyright social justice interests of inclusion and empowerment that benefit creators and users alike. The trial court correctly applied standard copyright doctrine regarding the scope of protection afforded to musical works, and thereby protected the appropriate range of creative expression without cramping the use of unprotectable ideas and elements by composers. Equally important, the decision in no way impedes the rights of artists to make fair use of even the protectable aspects of a musical work. Accordingly, the decision below should be affirmed because the court was correct on the law, the evidence supports the jury verdict, and critical social justice interests of copyright law are well served in this important case.

The trial court properly distinguished protecting copyrightable expression from extending that protection to ideas, style, or genre. Under the copyright law, the "total feel and concept" of a *particular* musical composition is protectable whereas a song's general ideas, style, or genre are not. The expert testimony identified the copyrightable particulars of the song, *Got To Give It Up*, and the Gaye parties' experts'

opinions as to copying by Thicke and Pharrell was based on those protectable elements, not on the composition's general stylistic elements or the new genre it pioneered. The jury was properly instructed on this point and ample evidence supports its verdict.

The trial court's post-verdict opinion correctly respects the proper roles of experts in music copyright trials and of juries in evaluating conflicting expert testimony. The trial court correctly applied the extrinsic and intrinsic tests for copyright infringement as established by this Court. These tests mediate the complicated interplay of analyses by expert musicologists and the subjective experience of the music by a lay person that the law requires in evaluating claims of copyright infringement of musical compositions.

The trial court properly allowed evidence of musical elements reasonably interpreted from the "lead sheet" deposit copy of *Got To Give It Up* that, taken separately and together, were infringed by appellants. Because of their intentionally abbreviated notation, lead sheets must be interpreted by music performers and musicologists in performing or analyzing the composition. The cramped reading of lead sheets proposed by the Thicke parties is simply inaccurate with respect to how

lead sheets are actually used in music performance, analysis, and publishing, especially for music grounded in aural traditions.

While the court below properly allowed expert interpretation of the lead sheet, the trial court also could have, and should have, allowed the Gaye parties to submit the full phonorecording of *Got To Give It Up* to show the entire scope of the composition Gaye actually wrote. The copyright in *Got To Give It Up* is in the composition as it was written and performed by Gaye in the studio, not merely in the uninterpreted notations on a lead sheet, nor even in commercially released sheet music for an amateur market, that Gaye himself did not inscribe.

The Copyright Office's former policy of requiring written music deposits contravened the 1909 Act and also discriminated against traditionally marginalized composers. A specific method of notating music privileges the kinds of music for which that notation was developed. This is particularly evident in the case of European classical music staff notation. Composers not fluent in this specific form of musical notation—especially those who work in aural musical traditions, or are from disadvantaged communities or backgrounds and thus did not enjoy access to formal music education—have been

routinely discriminated against when the copyright system has been incorrectly construed to require the use of such notation. Such misapplication of the law has historically been used to deny protection to works that contain creative musical expression but which have not been documented by their composers in the written notation method received from the European classical musical tradition.

American copyright embraces all kinds of creative expression, howsoever such expression might be documented. Intellectual property social justice requires that everyone be included, empowered, and provided the ability to express themselves and to profit therefrom, even if the music does not arise out of or comport with Western classical music traditions and mechanisms. The jury verdict and the post-verdict opinion reflect and advance these social objectives and should be upheld.

ARGUMENT

I. ISSUES OF FACT ARISING FROM CONFLICTING EXPERT MUSICOLOGIST TESTIMONY WERE PROPERLY LEFT TO THE JURY.

A. Determining Protectable Expression in a Musical Work

The copyright in a musical work extends to the protectable aspects of the composition. Where the composition contains both protectable and unprotectable elements, the copyright extends only to the protectable ones. *Mattel, Inc. v. MGA Entertainment, Inc.,* 6161 F.3d 904 (9th Cir. 2010). Protectable aspects include discrete elements such as original melodic lines, harmonic lines, and percussive parts, as well as an original combination of these and other elements, even if some of the elements are individually not protectable. *Swirsky v. Carey,* 376 F.3d 841 (9th Cir. 2004). For example, the standard 12 bar blues chord progression is not itself protectable, but a particular original expression of it combined with other elements can be. Exactly where the line between protectable expression and nonprotectable expression is to be drawn is largely a matter of fact to be decided by the jury. *Swirsky v. Carey,* 376 F.3d 841 (9th Cir. 2004); *Three Boys Music Corp. v. Bolton,*

212 F.3d 477 (9th Cir. 2000). *See also Nichols v. Universal Pictures Corp.,* 45 F.2d 119, 121 (2d Cir. 1930) (literary works).

A subsequent composer presumptively violates the copyright in a prior, underlying work when her work is substantially similar with respect to its use of protectable expression taken from the first work. *Three Boys Music Corp. v. Bolton,* 212 F.3d 477 (9th Cir. 2000). In the Ninth Circuit, the substantial similarity inquiry is bifurcated into extrinsic and intrinsic evaluations. *Swirsky v. Carey,* 376 F.3d 841 (9th Cir. 2004). Because music is a complex domain with many attributes unknown to the lay person, expert testimony is required under the extrinsic test. *Id.* Under the Ninth Circuit's approach, musicological experts testify as to the scope of protection, including which elements are not protectable as musical *scenes a faire*, as well as which aspects are original either as individual musical elements or combinations thereof. *Id.* If experts find protectable expression, the question of infringement goes to the jury*. Id.* When experts disagree about what is original or excludable, resolution of these issues is not one of law for the court, but rather is a question of fact for the jury. Fed. R. Evid. 702-04;

Swirsky v. Carey, 376 F.3d 841 (9th Cir. 2004); *Three Boys Music Corp. v. Bolton,* 212 F.3d 477 (9th Cir. 2000).

At trial, the Gaye experts identified a constellation of protectable expression in *Got To Give It Up* that they considered original and thus entitled to copyright protection, and that they found *Blurred Lines* had duplicated or otherwise used in violation of Gaye's copyrighted work. This constellation included the "signature phrase," "hook," "theme X," bass melodies, keyboard parts, word painting, shared lyrics, and parlando, all represented in the lead sheet deposit copy of *Got To Give It Up*. Importantly, this testimony identified original creative elements particular to the song *Got To Give It Up*, and not merely general conventions of a genre, era, or style. In fact, as Professor Monson established in her report, Gaye had creatively combined elements of various genres to create a unique, original amalgam in *Got To Give It Up* that gave birth to a wholly new style or genre. Thus, the protectable elements therein and their combination as put before the jury were particular to the composition *Got To Give It Up*, and were not merely unprotectable conventions of genre, era, or style.

The Thicke experts conceded that certain of the creative elements of *Got to Give It Up* are present in *Blurred Lines.* For example the Report of Sandy Wilbur (Oct. 31, 2014) states that the signature phrase ("I used to go out to parties") and hook ("Keep on dancin'") are "important hook phrases" appearing in *Blurred Lines*. Wilbur also agreed that the songs' scale degrees are substantially similar as shown in Finell Preliminary Report of 10/17/13 (in Musical Examples 1A and 2A). Thicke's experts argued, however, that these elements were not original and thus not protectable, and moved for summary judgment on that ground. The Gaye experts effectively countered the Thicke experts' opinions and conclusions with their own opinions and conclusions.

Faced with conflicting expert testimony, the trial court correctly decided that the conflict created a factual issue to be resolved by the jury. Accordingly, the court denied the motion for summary judgment and referred the factual dispute to the jury. Weighing all the evidence, including the conflicting expert testimony, the jury ultimately found that protectable expression in *Got To Give It Up* was infringed by *Blurred*

Lines.[1] The jury's verdict is supported by sufficient evidence and should be affirmed.

B. The Fair Use Doctrine Precludes the Chilling Effects Claimed by the Thicke Parties and Their Amici

The Thicke parties chose not to argue in the alternative that their use of protectable aspects of *Got To Give It Up* may have been permissible fair use. They and their amici trot out a hypothetical, feared parade of chilling effects that this evidence-based decision might create.

[1] Other composers, notably Smokey Robinson among others, recognized the similarity between the songs and opined that Thicke had copied Gaye. In an interview Robinson said, "Part of the melody is in there! ... It was absolutely a rip off!" Maricielo Gomez, *Smokey Robinson tells Howard "There's some good music being made today, man!" on the Stern Show,* October 1, 2014 (around 34:44 minute), http://blog.siriusxm.com/2014/10/01/smokey-robinson-tells-howard-theres-some-good-music-being-made-today-man-on-the-stern-show/; https://www.youtube.com/watch?v=PedzBpDNJrI. *See also* Rob Hoerburger, *Why 'Blurred Lines' Won't Go Away* New York Times, (August 8, 2013) http://6thfloor.blogs.nytimes.com/2013/08/08/why-blurred-lines-wont-go-away/?_r=1; Stephanie Penn, Album Review: Robin Thicke's "Blurred Lines" http://soultrain.com/2013/08/05/album-review-robin-thickes-blurred-lines/; Ray Rossi, *Is "Blurred Lines" a Rip of "Got to Give it Up"? – You Be the Judge*, (Aug. 21, 2013) http://nj1015.com/is-blurred-lines-a-rip-of-got-to-give-it-up-you-be-the-judge-pollvideo/ ("First time I heard 'Blurred Lines' I thought, 'whoa….that's 'Got To Give it Up!' ").

However, that parade will not march because this decision was based on disputed evidence about protectable aspects of a particular piece of music—not on some broad-brush protection of a whole musical genre—and because the fair use by subsequent composers of even protectable elements from this work remains available. 17 U.S.C. § 107; *Campbell v. Acuff-Rose Music,* 510 U.S. 569 (1994); *Lenz v. Universal Music Corp.*, 801 F.3d 1126 (9th Cir. 2015).

As this and other circuits have repeatedly held, the unauthorized use of protectable elements, including uses which result in similar works, is permitted where the use is transformative or otherwise qualifies as a fair use. *Campbell v. Acuff-Rose Music, Inc.,* 510 U.S. 569, 579 (U.S. 1994). Under appropriate circumstances, the fair use doctrine could be applied to the unauthorized use of *Got To Give It Up*. Of course, fair use would be similarly available to future composers and other users in connection with their unauthorized use of *Blurred Lines*.

Fair use protects composers and users alike from an erstwhile Hobson's choice. That fair use remains fully available to protect the interests of users of *Got To Give It Up* further supports upholding the jury verdict.

C. This Decision Furthers the Purposes of Copyright Social Utility and Social Justice By Avoiding Negative Consequences of Western Formal Music Notation Bias and Inequitable Misappropriation

The decision below not only protects the copyrights of composers while preserving the fair use rights of users and later composers, but it also serves intellectual property social justice principles of access, inclusion, and empowerment. *See e.g.* Peter Menell, *Property, Intellectual Property, and Social Justice: Mapping the Next Frontier,* 5 Brigham-Kanner Prop. Rts. Conf. J. 147 (2016); Lateef Mtima and Steven D. Jamar, *Fulfilling the Copyright Social Justice Promise: Digitizing Textual Information,* 55 N.Y.L. Rev. 77, 80-84 (2010/11). Gaye's experts avoided certain misleading biases in determining which aspects of *Got To Give It Up* should be considered "creative." They provided expert analyses, which identified how certain elements were original to composer Marvin Gaye, and not merely standard, rote ingredients of a particular genre. As experts in relevant modern popular music genres including R&B and Soul, they explained why these elements are creative as a

matter of music theory and are an original combination of elements from various genres.

By allowing the jury to undertake the intrinsic infringement determination, the court served copyright social justice by preventing musicological bias against aural traditions from improperly denying copyright protection to creative elements in *Got To Give It Up*. The decision corrects long-standing traditions within the field of denying protection to the creative output of marginalized creators and of the resulting misappropriation of their work. *See, e.g.,* K.J. Greene, *Copyright, Culture & Black Music: A Legacy of Unequal Protection,* 21 Hastings Comm. & Ent. L.J. 339 (1999); Keith Aoki, *Distributive Justice and Intellectual Property: Distributive and Syncretic Motives in Intellectual Property Law* 40 U.C. Davis L. Rev. 717, 755 -62 (2007). *See also,* Smokey Robinson Interviewed by Howard Stern on "The Howard Stern Show" on SiriusXM on September 30, 2014, http://blog.siriusxm.com/2014/10/01/smokey-robinson-tells-howard-theres-some-good-music-being-made-today-man-on-the-stern-show/; https://www.youtube.com/watch?v=PedzBpDNJrI (on composing

music and exploitation of composers in the music business) (around the 10th minute).

Allowing cultural bias to categorically deny copyright protection to aural musical expression discourages the participation of marginalized creators and communities in the copyright regime. The decision below avoids such distortion of copyright and instead affirms the rights of marginalized creators to protection for their work.

Another equally important and damaging aspect of cultural bias that has disfavored marginalized artists was the longstanding Copyright Office policy to require written music notation for copyright registration and Library of Congress deposits—which in practice was taken to mean the formal written music staff notation originally developed in Europe for sacred and secular classical music traditions ("European staff notation"). This mode of deposit and registration was not mandated by the Copyright Act of 1909 under which *Got To Give It Up* was registered (see Part III below). In fact, the Copyright Office did allow deposit of player piano rolls for a period in the 1920s and 30s for registration of musical composition copyrights. Conversation of Howard Abrams with Marybeth Peters, Former Register of Copyrights on October 19, 2016.

Nonetheless, from some time after the 1930s and before the 1980s, written music deposits were required for musical compositions. Phonorecordings of course were deposited for sound recording copyrights starting in 1973 when federal protection for them was first adopted.

The form-of-deposit discrimination problem arose because many of our nation's most gifted (and internationally acclaimed) composers who worked outside of the European classical or formal music tradition—albeit squarely within emerging twentieth century Western popular music genres—were not fluent in European staff notation. Nor was this mode of notation seen as particularly relevant to the aural music traditions in which they composed. Marvin Gaye was one of these composers—as were Robert Johnson, Hank Williams, Jimi Hendrix, Irving Berlin, Michael Jackson, Elvis Presley, Glenn Campbell, and many other American music innovators. This technical limitation had little impact on their ability to convey their compositions to other musicians to perform, as many musicians in the new pop, jazz, country, and other indigenous American genres also were not fluent in European staff

notation. Such musicians, like the composers themselves, played by ear and by watching as others played.[2]

At least two categories of problems resulted from the disconnect between the Copyright Office deposit policy and the inability of many American composers to read and write European staff notation. First, in many cases, these composers were not in a position to inscribe their compositions in such notation, and consequently were forced to rely on others where lead sheets or sheet music was deemed required. In many such cases, music publishers assigned an employee trained in European staff notation to transcribe a recorded performance of the composition. The transcriber would transcribe what she considered the main melody and chords of the song. The result might or might not accurately represent the actual melody and chords composed, and might include or omit other important, original elements of the composition. If courts

[2] Thus, we use the term "aural" here instead of "oral" because we focus on this "playing by ear" nature of Gaye and many other popular composers who are able to learn to play and to compose music by listening to music being performed (and by watching the performers), and then composing directly to performances on instruments themselves. By contrast, "oral" connotes folk and other traditions in which senior musicians directly instruct junior musicians in how to play particular songs as a means of preservation and transmission across generations.

construed the composition as limited to that which could reasonably be interpreted from the lead sheet or sheet music inscribed by someone other than the composer—and in many cases with no direct involvement by the composer—then only an incomplete version of the composition would receive copyright protection.

Second, leaving composition transcription (and related copyright formalities) to a manager, record label, or music publisher created a moral hazard of composers being taken advantage of. We now know that a significant number of composers suffered this harm by not having works registered in their own name or by having works registered with "co-authors" who played no actual role in composing the work. As the historical record reveals, many marginalized composers, especially those of color and outside both the European staff notation tradition and communities which offered better access to legal representation and information, were exploited badly in the twentieth century.[3]

American copyright law should be interpreted and applied to prevent misuse of the law in furtherance of misappropriation schemes.

[3] In fact, when Congress added termination rights under Section 203 of the Copyright Act of 1976, the provision was largely motivated by narratives of such exploitation.

The decision below helps mitigate decades of copyright abuse and may be a harbinger of changes that can curtail and discourage practices which undermine our fundamental objectives of copyright social utility and justice. The decision should be affirmed.

II. THE DISTRICT COURT PROPERLY ALLOWED REASONABLE INTEPRETATIONS OF THE LEAD SHEET DEPOSIT BY EXPERT MUSICOLOGISTS

There are various methods of written music notation—e.g., European staff notation, guitar tablature notation—and various categories within each method. The three main categories of European staff notation are based on the detail or completeness of the notation written. A full score, which orchestral conductors use, includes separate staves for each instrument scored. *See, e.g.,* IIPSJ Amicus Brief Exhibit A. Composers trained in European staff notation generally use this form, scoring simultaneous parts for various instruments, such as stringed instruments, woodwinds, brass, and percussion. Even though this is the most detailed and complete written notation of a music composition, the conductor and each player must still bring to each part and to the

score overall their knowledge of pace, accents, expressive playing of long notes, and much more to translate the black marks on paper into the sounds we hear. If no interpretation was required, or if interpretation was not even possible because of the precision of the score, then the notable differences among performances of a work by various musicians and conductors would not exist.

A published "short score," commonly referred to as "commercial sheet music" (or "sheet music") occupies a middle ground. It does not purport to score all of the instrument parts expressly written by the composer. It instead creates a new arrangement of the composition that focuses on only some elements, often those that can reasonably be played by two hands on a piano or other keyboard by a beginning to intermediate musician. *See, e.g.,* IIPSJ Amicus Brief Exhibit B. Such sheet music typically contains a treble clef that shows the melody and some harmony and a bass clef that shows chords and perhaps a bass line. If the composition contains a vocal melody, then that is generally scored in an extra treble clef above the piano staves or on the treble clef piano stave. In many cases, the abbreviated names of chords, e.g., "A7," is notated above the top staff for chordal accompaniment on guitar, banjo,

ukulele, etc., but generally with no additional notation as to the voicing of that chord (see below), or as to the rhythm to use when playing the chord. The chord name simply appears above the staff at the point when the accompanist should start playing it, and implicitly ends only when another chord name appears.

Sheet music for popular music is rarely one and the same with the actual composition unless the composer wrote the music as that exact two-handed piano part. (Sheet music of Scott Joplin's piano rags and Stephen Foster's folk-like songs are good examples where the music as notated is in fact just what was composed.) In order to make the music easier for the non-professional musician to play or sing, commercial sheet music often presents songs in a different key from the original composition, with different notes and often simpler chords, and with integral parts written by the composer omitted (such as lead or bass guitar parts, horn parts, etc.). Additional factors such as articulation—i.e., how the notes should be played such as staccato, legato, accented, etc.,—are most often not specified in this type of notation. Thus, such sheet music is rarely a good instantiation of the full composition.

Lead sheets, the third category of European staff notation, are the most stripped down, abstracted versions of compositions. They often contain a single treble clef showing the main melody with chord names given along the top as they are in sheet music. Sometimes lead sheets include other notable parts such as a bass line, or give performance directions such as "moderate swing." *See, e.g.,* IIPSJ Amicus Brief Exhibit C. Lead sheets are designed to be used by professional performers who know how to interpret and extrapolate from them and they function as a kind of shorthand for composers. For example, popular music "fake books" compile standard show tunes, jazz standards, or pop standards, etc., in lead sheet form so that musicians already familiar with the song can "fake it" with just melody and chords in live performances, especially where they take requests from the audience. *E.g.,* Hal Leonard Corp., *R&B Fake Book: 375 Rhythm & Blues Songs* (1999) (includes *Got To Give It Up* at p. 134.). Occasionally, and significantly, a lead sheet will contain an additional element such as a bass line that is considered exceptionally important for the song.

No musician believes that modern pop song compositions consist only of the single melody (and lyrics) plus basic chord indications that a

lead sheet typically shows. The composition as notated in shorthand on the lead sheet is not limited to what is inscribed within the four corners of the lead sheet. The composition as actually composed includes melody, harmonies, chord progressions, rhythms, and many other stylistic elements.

Thus, even the most constrained reading of lead sheets to determine the scope of the copyrighted composition must include interpretation of rhythms and harmonic voicings as integral elements. For example, the chord symbol alone, written over the staff with no other indications, does not tell the performer how to play it. She must interpret it in conjunction with the written melody line and any performance indications, and perhaps her knowledge of the actual composition, to play it as the composer composed it. The frequency of playing the chord (e.g, "eight-to-the-bar"), the rhythm (e.g., swing), the voicing (i.e., the order of stacking the tones comprising it),[4] and playing

[4] Chords generally contain three or more notes "stacked" together from low to high tones. A root major chord is three tones: the first, third, and fifth notes of the major scale played simultaneously. Minor chords use a flatted or minor third in place of the major third. Other kinds of chords generally add extra tones beyond the first, third, and fifth. For example, the dominant 7th chord adds the dominant or flatted seventh tone of the scale to a major chord. On a keyboard the default approach is to play

method (e.g., "Travis picking" on guitar) must all be interpreted from the lead sheet. These elements can be integral to the composition. In fact, Wilbur, the Thicke parties' expert, conceded that "chord notation is representational," "there are numerous ways to notate a chord," and "reasonable musicologists may differ on how to notate a chord." Thus, not only *can* professional performers and musicologists interpret key, tempo, time signature, style/genre terms, and the written notes, but they *must* so interpret simply to transform this shorthand into a viable composition.

The district court restricted the scope of the *Got To Give It Up* composition to the lead sheet deposited with the Copyright Office. But even so restricted, playing music from lead sheets requires more than mechanical reproduction of only the limited notations inscribed thereon.

Given the foregoing and our discussion in Part III.C, below, the importance of expressly inscribing the eight bar bass line on the otherwise standard, sparse *Got To Give It Up* lead sheet stands out. Gaye

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chords in order of their tones as described above. On other popular instruments such as guitars, the standard chord form may be quite different, and indeed there may be multiple "standard" ways to play a single chord on that instrument.

did not make the lead sheet himself, because he was not fluent in European staff notation. Nonetheless, the importance of the line to a listener is such that the agent for Jobete who transcribed the composition into lead sheet form deviated from the standard convention and took the unusual step of adding an additional harmonic line, the bass line. *See* IIPSJ Amicus Brief Exhibit C at 1. This importance is reinforced by musicologist Judith Finell who described the bass line with its distinctive descending motif in bars 4-5 and 7-8 as part of the "heartbeat" of the song. On the lead sheet, "bass" suggests the lowest line in the ensemble that helps define, among other elements, the framework of the harmony, and not necessarily the instrument. Thus, it could be played on any instrument with a sufficiently low range, including electric or acoustic bass, piano, or keyboard.

Misleadingly, the Thicke parties and their amici claim this bass line as identified by Ms. Finell is somehow an improper extra-textual interpretation. But it is clearly inscribed right at the beginning of the lead sheet. The centrality of this riff as an original element of the composition explains the publisher's unusual action of including a part beyond the main melody and chord names on the lead sheet. Although it

is placed only at the beginning of the lead sheet, the textual musical notation, "bass simile," unambiguously tells a musician familiar with that term that this material is to be repeated in a similar fashion with discretion from that point on.

This bass riff is even more than the "heartbeat"—which suggests rhythm only—it is also a key melodic line in the song, occupying a role somewhat similar to classic riffs such as the distinctive lead guitar riffs in The Beatle's *Day Tripper* and Roy Orbison's *Pretty Woman*, *see, e.g.*, Sean O'Connor, *What Composers and Copyright Attorneys Can Teach Each Other, Part 2* available at https://www.youtube.com/watch?v=Ibjp3erJkA8, as well as the iconic organ part in Procul Harum's *A Whiter Shade of Pale* that was ultimately adjudicated as creative and integral to the song, entitling its composer, Matthew Fisher, to co-author status, *Fisher v. Brooker and others*, 2009 U.K.H.L. 41 (U.K. 2009).

At trial, both Ms. Finell and Professor Monson properly interpreted the sparse lead sheet's various themes and hooks—individually and within the "constellation" of combined musical elements they noted—to opine that *Blurred Lines* was substantially

similar to these aspects of *Got To Give It Up.* In contrast, the Thicke expert's opinion seemed to interpret the lead sheet through the lens of the Western classical or formal music tradition. Such a lens works more as blinders that obscure than as glasses that sharpen analysis. *See* Robert Brauneis, *Musical Work Copyright for the Era of Digital Sound Technology: Looking Beyond Composition and Performance*, 17 Tul. J. Tech. & Intell. Prop. 1, 7-10 (2014). That perspective was inappropriate for Gaye's composition and the genres he was working in to such a degree that the trial court could have disallowed that testimony. But instead the court allowed the jury to decide for itself whether this opinion was credible. For the Gaye parties, the district court properly allowed evidence of musical elements reasonably understood by musicians and musical experts as embedded in the lead sheet deposit copy that taken separately and together were infringed by appellants. Ultimately, the jury accepted the testimony of the Gaye parties' experts and properly resolved the factual dispute in their favor.

III. THE DISTRICT COURT SHOULD HAVE ALLOWED THE FULL RANGE OF EVIDENCE AS TO THE SCOPE OF GAYE'S COMPOSITION

An evidentiary dispute at trial concerned the extent to which the deposited lead sheet constrains the assessment of substantial similarity. The roots of this dispute stem from the now long-abandoned policy of the Copyright Office to accept only written notations of musical compositions for purposes of copyright registration—widely taken to mean European staff notation. As discussed above, where a composer was not fluent in such notation, her publisher or record label would typically have shorthand lead sheets prepared and submitted to secure registration, such as was done for *Got To Give It Up*. These were known to be artificial exercises that did not capture the full complexity of the actual musical composition. Former Marvin Gaye bandleader, and *amicus* on this Brief, McKinley Jackson sometimes wrote lead sheets for publishing and copyright purposes (but did not do the one for *Got To Give It Up*) and gives as an example of this highly artificial constraint that a three-part vocal harmony that was a core part of an author's composition was required to be stripped down to a single vocal melody line. Email correspondence between Sean O'Connor and McKinley

Jackson on December 26-27, 2016. But fans of vocal groups know that in many cases it is the whole stack of vocal parts together, sometimes in unusual voicings, that create the magic and creativity of the passage.

The Copyright Office should have accepted phonorecording deposits, particularly where the composer did not read and write European staff notation and where there were no generally accepted, effective, alternate systems. The Copyright Office has itself long since abandoned this flawed and inadvertently discriminatory policy, and there is no reason to revive it as a means by which to preclude the Gaye parties from establishing the full scope of Gaye's composition.

Moreover, lead sheet deposits required by the Copyright Office merely documented the fact of the composition of a copyrightable work; under the Copyright Act of 1909 the copyright attached to the entire composition as composed when either published or registered. Consequently there is no legal basis for excluding evidence of the full composition which Gaye composed, and to the extent that the trial court allowed evidence of the composition beyond the lead sheet deposit, such evidence was admissible as a matter of law.

A. The Copyright Office's pre-1978 Registration Deposit Policy Did Not Circumscribe the Copyright in *Got To Give It Up*.

Under the 1909 Act, copyright protection was established by publication or registration of the work. *Id.* at §§ 9-11. With the addition of performance rights to the composer's bundle of exclusive rights, infringement of the copyright in a musical work was no longer limited to copying physical copies of the music. Act of January 6, 1897, 29 Stat. 481 (Jan. 6, 1897). Unauthorized, non-fair use performance infringed rights in the musical composition. It did not matter whether musicians performed the music by ear, or from sheet music purchased legally, or from lead sheets or other notation created to recall the work to the mind of the performers. The performance rights in a musical work were not confined to its embodiment in any form or written notation.

In the present case, the deposit copy of the work is significantly different from the published commercial sheet music, *compare* IIPSJ Amicus Brief Exhibit B *with* IIPSJ Amicus Brief Exhibit C, and both are drastically limited from what Gaye actually composed in the studio on the phonorecording. Both the deposited lead sheet and the published sheet music represent only very limited notations of the work with

multiple parts (vocals, keyboard, bass, percussion, etc.) composed by Gaye in the studio. Given the manner and medium in which Gaye composed, the phonorecording provides the most accurate document of Gaye's composition. Some courts have allowed phonorecordings as evidence of the music composition in cases such as this, where the composer composed in the studio to a phonorecording. *See Three Boys Music Corp. v. Bolton,* 212 F.3d 477 (9th Cir. 2000); *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, 585 F.3d 267, 276 (6th Cir. 2009).

Regardless of the validity of the prior copyright registration policy, that policy had no bearing on the vesting of copyright protection. *Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1342 (9th Cir. 1981). Accordingly, the trial court properly ruled that copyright in the composition *Got To Give It Up* is not limited to the lead sheet deposit, but then improperly ruled that only evidence in the nature of written published documents could be admitted. The trial court could have, and should have, admitted the phonorecording produced and performed primarily by Gaye as the evidence of what was actually composed and protected. That the same phonorecording was also prepared and

distributed as a sound recording work should not impair its role as Gaye's own defining recordation of his composition.

The publication or registration of the work was the act by which copyright in the underlying composition vested, but it should not be confused with constituting the scope of the protected work itself. While it might seem to make sense that these written notations should define the "copy" of the work, that would mean that a simplified two-handed piano part version of a new symphonic work prepared for the amateur market, or a shorthand placeholder lead sheet used to identify the work solely for registration, would limit copyright to only what was notated for these constrained purposes. This does not make any sense of course. For a symphonic work, it is likely that the composer, or his or her publisher, instead submitted a fully scored version of the work to the Copyright Office for registration. In that case, the deposit copy would be the definitive version of the work—even though prior publication of simplified sheet music may have already vested copyright in the work. For composers like Gaye, writing a full score in European staff notation was not possible. Neither the published simplified sheet music, nor the lead sheets prepared as a pro forma step by his publisher, accurately

captured the full scope of his compositions. Only the phonorecording—the tool of choice for composition and recordation of that composition—did this.

B. The Copyright Office Could Have and Should Have Accepted Phonorecordings as Deposit Copies of Musical Compositions Before 1978.

Under the Copyright Act of 1909, the limitation of a "copy" of a musical composition to human readable notation systems under the Copyright Act of 1790, as interpreted by the Supreme Court in *White-Smith Music Publishing Co. v. Apollo Co.,* 209 U.S. 1 (1908), was explicitly broadened to include "any system of notation or any form of record in which the thought of an author might be recorded and from which it may be read or reproduced." Copyright Act of 1909 § 1(e). Following this, the Copyright Office for a time allowed deposits for registration and for the Library of Congress in the form of player piano rolls. For reasons not fully known and not linked to any further change in the statute, at some point (in the 1930s we believe) the Copyright Office began requiring written notation deposits, before again allowing deposits of phonorecordings for musical compositions beginning in the 1980s.

Despite the express language in the 1909 Act allowing for musical composition copies to include "any form of record in which the thought of an author might be recorded and from which it may be . . . reproduced," courts were divided on whether the publication of a phonorecording could act as publication of a musical composition under federal law, or only as publication of a sound recording under various state laws. The issue for the Copyright Office, as well as for the courts ruling against publications of phonorecordings as publications of musical compositions, seemed to arise from a lingering sense that *White-Smith* still governed as a matter of *constitutional* interpretation of the Intellectual Property Clause ("IP Clause"), U.S. Const., Art. I, §. 8, cl. 8, to require "writings" narrowly understood as the subject matter for federal copyright protection.

The issue in *White-Smith* concerned infringement by copying and not by performance. The plaintiff did not sue the purchasers of player piano rolls who were using them to privately or publicly perform the copyrighted compositions. Public performances would have been prima facie actionable under the 1897 amendments. Instead, White-Smith sued Apollo as the maker of the rolls on the theory that Apollo was

producing infringing copies of the compositions, which themselves had been registered through deposit of European staff notation. The *White-Smith* Court, however, did not decide what constituted "writings" under the IP Clause for purposes of registering copyrights. This was not an issue because copies of musical compositions for this purpose under the 1790 Act, as amended by the 1831 Act adding musical compositions to the list of copyrightable subject matter, was limited to written or printed music notation. The question instead was what constituted copies for *infringement* purposes. Had the case been brought against purchaser-performers as infringement of performance rights, the outcome may have been different. But being brought as it was on the basis of the rolls as manufactured and distributed by Apollo as infringing copies of the written musical composition, the Court was constrained by a copyright system that had defined the registration copy of a musical composition as a thing that was to be read by humans, and thus an infringing copy of that would also have to be something that could be read by humans. An infringing *performance* could have been a different matter, but that was not before the Court.

But in *Goldstein v. California*, 412 U.S. 546 (1973), the Supreme Court expressly held that phonorecordings could be within the constitutional category of "writings" under the IP Clause. The Court wrote that

> although the word "writings" might be limited to script or printed material, it may be interpreted to include any physical rendering of the fruits of creative intellectual or aesthetic labor. . . . [citations omitted] Thus, recordings of artistic performances may be within the reach of [the Intellectual Property Clause].

Id. at 561. The *Goldstein* Court held that *White-Smith* had decided only what could be infringing copies of the musical composition under the *statute* in force at the time, and had excluded phonorecordings as writings under the IP Clause. Perforce the phonorecording of the musical composition satisfies the constitutional requirement of a writing and as discussed above, meets the statutory language as well.

By the mid-twentieth century, relatively high fidelity recording devices had also become much more affordable, especially with the advent of the compact cassette, and centered around only a few basic platforms. This allowed more composers who were not fluent in European staff notation, or who did not find it helpful for their genre, to document their compositions in a more natural and accurate way. *See*

Brauneis, *supra*, at 25-30. Simple tricks with such devices even enabled them to create limited multi-track recordings to demonstrate different instrument parts played simultaneously for more complex compositions. The limited number of standardized recording and playback platforms meant that any institution, including the Copyright Office, need not worry about acquiring many diverse platforms for phonorecordings.

In the 1980s, the Copyright Office promulgated its new policy to accept phonorecordings as deposits for musical compositions. It was a welcome change for many, including some *amici* on this Brief, and allowed composers to register their compositions in the manner best suited for their aural process of composing, documenting, sharing, and analyzing their works.

Today, in key genres of popular music, composers work exclusively with digital music tools—creating, manipulating, and sending digital music files back and forth amongst composers, producers, and musicians to create a composition that is purely aural and digital. Even paper sheet music notation itself is becoming an archaic, possibly obsolescent, format for at least some forms of music.

See, e.g., Andrew Marantz, *The Teen-Age Hitmaker From Westchester County*, THE NEW YORKER (Aug. 19, 2016). Furthermore, instrumental timbre choices, such as sticks or brushes on drums, were once seen by some as stylistic performance components. Modern pop composers now consider these textures central compositional elements in their works. *Id*.

Marvin Gaye was in the vanguard of such composers and we can only truly understand and analyze his compositions through the format in which he worked—analog multi-track phonorecordings. The Copyright Office should have accepted phonorecordings as registration deposits throughout. Neither Gaye nor other composers should today be penalized by restricting evidence of their compositions to a stripped-down lead sheet deposit created to comply with an extra-statutory administrative practice, especially where that deposit does not match the work composed by the author in the studio.

C. Restricting Copyright Protection to a Lead Sheet or Sheet Music Deposit Perpetuates Traditions of Copyright Injustice

Composers not fluent in European staff notation, composers who work in aural traditions and genres where such notation is not very helpful, and composers from disadvantaged backgrounds have routinely been discriminated against by a copyright system at times improperly administered so as to extend protection to only certain kinds of privileged works. This misapplication of copyright law contravenes the social objectives of the law. *See* Lateef Mtima, *Copyright and Social Justice in the Digital Information Society: "Three Steps" Toward Intellectual Property Social Justice,* 53 Houston L. Rev. 459, 482-84 (2015). Excluding the best evidence for what Gaye actually composed—the phonorecording of the work—perpetuates these discriminatory practices and traditions by penalizing him for working in a genre and at a time when it was difficult for marginalized composers to protect their interests.

Nineteenth and early twentieth century notions of musical composition and copyright embraced by those in the musical establishment combined with the Copyright Office registration deposit

policy to discriminate against composers and performers who expressed their music outside the nineteenth century European formal written notation tradition. What counted as "music" and was thus protectable was that which could be fit into European classical or popular music traditions—even as Americans were created exciting new musical genres and styles—and could be communicated through notation systems developed in medieval and early modern times for disseminating and systematizing music in Christian religious or classical music traditions. But by the end of the twentieth century, vast amounts of commercially popular music were being produced by composers and performers who did not use European staff notation in any systematic way. This was because they were not fluent in that format and because they did not perceive it to be a necessary or even helpful means of communicating their music.

Modern composers and performers in multicultural music genres who do use European staff notation have developed work-arounds to communicate their intentions by adding written comments such as "swing feel" or "shuffle" or "medium funk beat" that approximate the desired rhythm and phrasing to the staff notations of their

compositions. But even with these adjustments, the notation still only provides an approximation of the music and not the actual composition. Anyone who has heard a computer program play sheet music instantly hears the difference between a technically accurate computer rendition of the notated tones and that of the same music as performed by humans. *Compare* algorithmic audio preview of *Got To Give It Up* sheet music at Musicnotes.com *available at* http://www.musicnotes.com/sheetmusic/mtd.asp?ppn=MN0065460 (last visited Nov. 18, 2016) *with* Gaye's recording *Got To Give It Up* (Tamla 1977).

Gaye composed direct to phonorecordings for pop, R&B, or Soul combos which included electric bass, keyboards, drum kits, auxiliary percussion like cowbells, vocals, etc. Beethoven and Gershwin wrote orchestrated compositions for solo instruments, small ensembles, and full symphony orchestras. They included a full set of instrumental parts and not just chord indications, melodies, and words for all of their compositions. If Gershwin could notate for old-fashioned car squeeze bulb horns as he did in "An American in Paris," *see, e.g.*, Michael Cooper, *Have We Been Playing Gershwin Wrong for 70 Years*, N.Y. TIMES (Mar. 2,

2016 at C1) *available at* http://www.nytimes.com/2016/03/02/theater/have-we-been-playing-gershwin-wrong-for-70-years.html?smid=nytcore-iphone-share&smprod=nytcore-iphone&_r=0 (last visited Nov. 18, 2016)—and to which presumably the copyright in that composition extends—why could Gaye not also enjoy protection for his R&B or Soul orchestral composition as to the material executed by cowbells and background voices? The answer seems to turn solely on whether the composer is fluent in European staff notation and can thus transcribe his composition accurately into it. That is unjust. It disfavors those outside that particular music tradition.

This court can help remedy this legacy of discrimination by ruling that evidence of the scope and content of Gaye's composition of *Got To Give It Up* in the form of the phonorecording that Gaye produced as the definitive version of that composition should have been admitted at trial. In this case, the jury found for the Gaye parties and that decision should be affirmed, but the issue is properly raised and can be decided. A ruling by this Court recognizing the validity of phonorecording evidence in this case would strengthen the case for protection of

original and distinctive percussion, vocals, and other elements that Gaye and other composers include as part and parcel of their musical compositions.

So many composers, particularly those who created original and inherently American music art forms such as jazz, country, bluegrass, R&B, and rock and roll, were not fluent in European staff notation, even as they were musicians and composers of the first rank. Their compositions lived and breathed for them in the phonorecording they made that would either be released commercially or used to "sell" the song to other producers or performers who would then cut a cover of the composition to release as a sound recording. If placeholder lead sheets prepared by music publishers with little to no involvement of the composer, or simplified published sheet music for the amateur home market, are allowed to determine the scope of copyright protection in a composition, the creative contributions of some of our nation's greatest innovators will be denied protection in deference to received nineteenth century European traditions inapt to uniquely American creativity.

CONCLUSION

For the foregoing reasons the Court should affirm the judgment of the trial court.

DATED: December 28, 2016.

Respectfully submitted,

SEAN M. O'CONNOR
LATEEF MTIMA,
STEVEN D. JAMAR
INSTITUTE FOR INTELLECTUAL PROPERTY AND SOCIAL JUSTICE, INC.

By /s/ Sean M. O'Connor
SEAN M. O'CONNOR

Attorneys for Amicus Institute for Intellectual Property and Social Justice, Inc.; musician-composers; and law professors

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32(A)(7)(C) AND CIRCUIT RULE 32-1 FOR CASE NUMBER 09-55817

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains ___ words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief substantively complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirement of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14 point Cambria.

DATED: December 28, 2016.

SEAN M. O'CONNOR,
LATEEF MTIMA,
STEVEN D. JAMAR
INSTITUTE FOR INTELLECTUAL PROPERTY AND SOCIAL JUSTICE, INC.

By /s/ Sean M. O'Connor

SEAN M. O'CONNOR

Attorneys for Institute of Intellectual Property and Social Justice, Inc.; musician-composers; and law professors

CERTIFICATE OF SERVICE FOR DOCUMENTS FILED USING CM/ECF

I hereby certify that on December 28, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Sean M. O'Connor

SEAN M. O'CONNOR

EXHIBIT A

<insert sample page of long form full score>

Ludwig van Beethovens Werke.

Vollständige kritisch durchgesehene
überall berechtigte Ausgabe.
Mit Genehmigung aller Originalverleger.

Serie I.

SYMPHONIEN

für grosses Orchester.

PARTITUR.

№ 1. C dur, Op. 21.	№ 5. C moll, Op. 67.
„ 2. D dur, „ 36.	„ 6. F dur, „ 68.
„ 3. Es dur, „ 55.	„ 7. A dur, „ 92.
„ 4. B dur, „ 60.	„ 8. F dur, „ 93.

№ 9. D moll, Op. 125.

№ 9.

Leipzig, Verlag von Breitkopf & Härtel.

NEUNTE SYMPHONIE

mit Schlusschor über Schiller's Ode an die Freude

Beethovens Werke.

von

L. van BEETHOVEN.

Serie 1. No 9.

Dem König Friedrich Wilhelm III. von Preussen gewidmet.

Op. 125.

Allegro ma non troppo, un poco maestoso. ♩ = 88.

Flauto I.

Flauto II.

Oboe I.

Oboe II.

Clarinetto I. in B.

Clarinetto II. in B.

Fagotto I.

Fagotto II.

Corni in D.

Corni in B basso.

Trombe in D.

Timpani in D. A.

Violino I.

Violino II.

Viola.

Violoncello.

Basso.

pp

sotto voce

sempre pp

Original-Verleger: B. Schott's Söhne in Mainz.

B. 9.

Stich und Druck von Breitkopf & Härtel in Leipzig.

EXHIBIT B

<insert short form commercial sheet music sample page for GTGIU>

GOT TO GIVE IT UP

Words and Music by
MARVIN GAYE

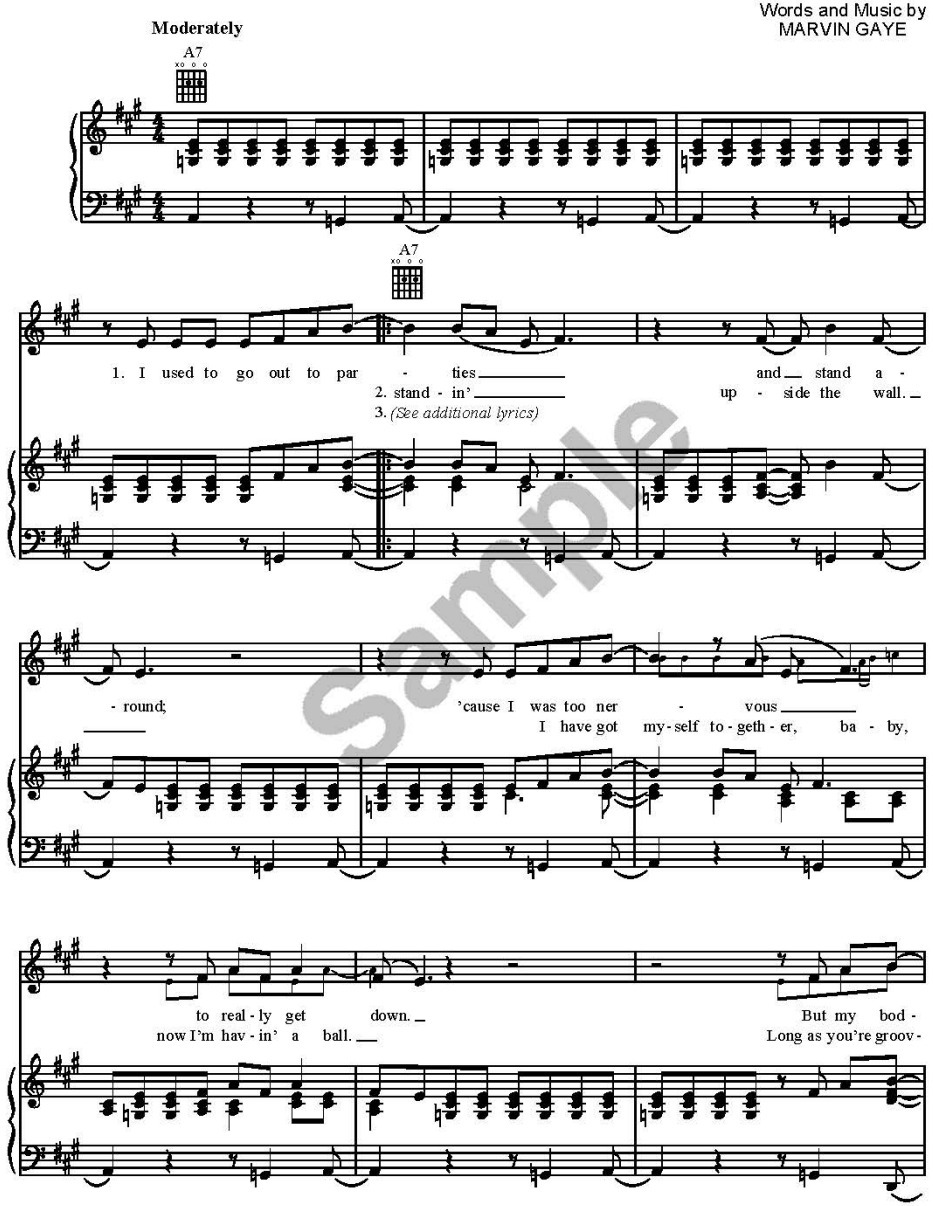


EXHIBIT C

<insert GTGIU lead sheet deposit

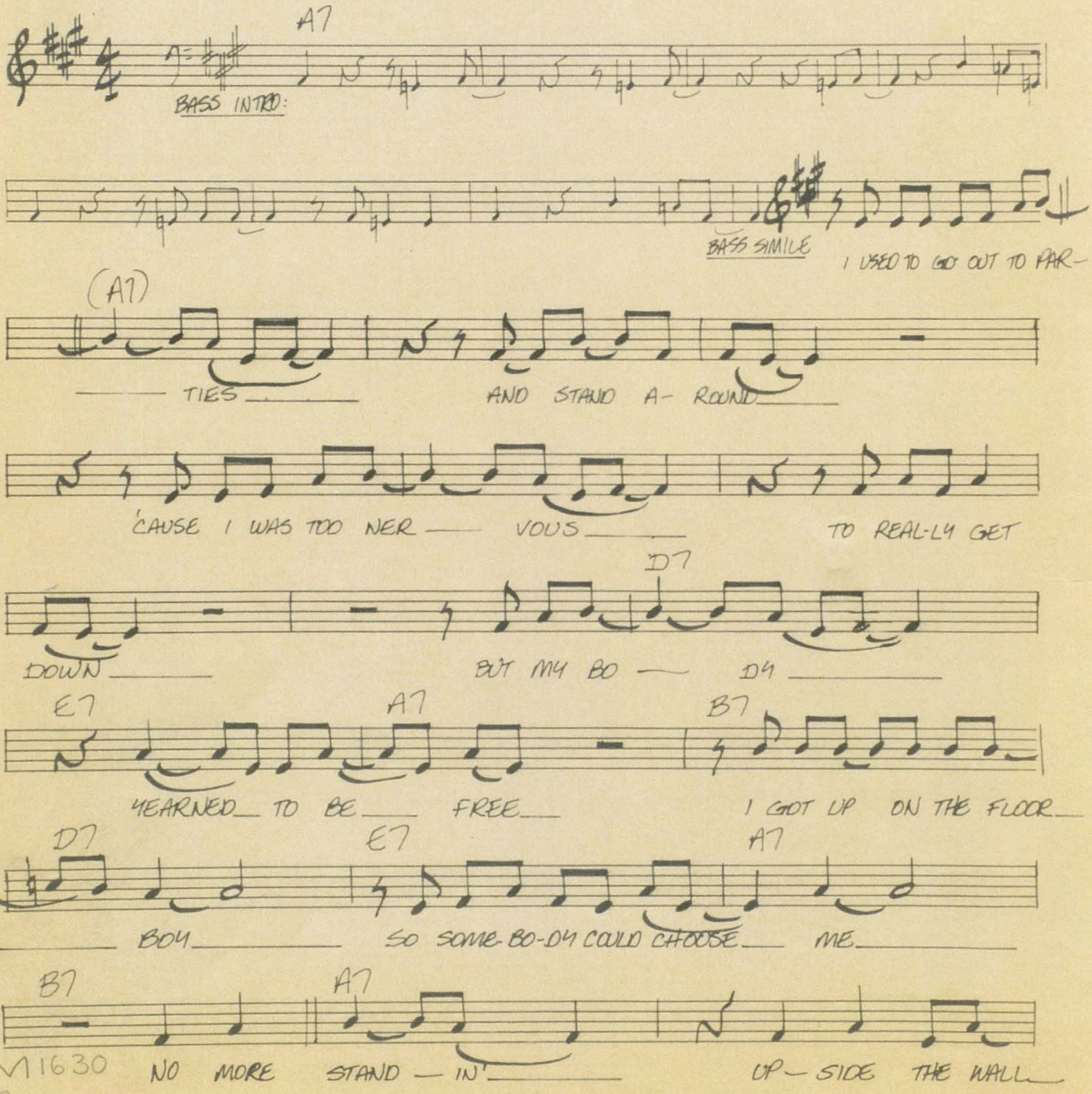
Got To Give It Up

(PART 1)

EP 366530

10,034 A

WORDS AND MUSIC BY
MARVIN GAYE



M1630