You Stole My Song!
From George Harrison to Michael Bolton, strange tales of copyright infringement

BY BILL DeMAIN

SONGWRITERS STEAL. IT HAPPENS ALL THE TIME.

Bob Dylan’s classic “Blowin’ in the Wind” lifted its melody from the traditional folk song “No More Auction Block.” Lennon and McCartney’s “Here, There and Everywhere” was cut from the same cloth as the Beach Boys’ “God Only Knows.” David Bowie based “Fame” on a doo-wop tune called “Footstompin’.” Elvis Costello called “Alison” a cleverly disguised rewrite of the Spinners’ “Ghetto Child.”

It’s not just songwriters who have the magpie spirit. Painters, novelists and film directors all stand on the shoulders of those who came before them, referencing previous works, filtering influences and ideas through their own unique styles. But because of its limitations—12 notes, harmonic simplicity, a handful of basic rhythms and lyrics that deal primarily with matters of the heart—modern pop songwriting has more shared DNA than any other art form.

But what happens when creative borrowing crosses the line into outright stealing?

In the 18th century, composers often accused others of swiping their motifs. But then, most of them were freely looting melodies from peasant folk songs. It wasn’t until copyright laws were firmly in place in the early 19th century that musical plagiarism landed in court. The first recorded case in the U.S. was Reed v. Carusi, in 1831, over a song called “The Old Arm Chair.” The plaintiff won $100 in damages.

A hundred years later, copyright infringement cases were popping up every
week in Tin Pan Alley. Indeed, a disgruntled tunesmith from that era, Ira Arnstein, holds the record for suing songwriters. Arnstein was so paranoid that he once marched outside out of ASCAP wearing a sandwich board that read, My songs have been plagiarized by: Irving Berlin, George Gershwin, Cole Porter, Jerome Kern, Rodgers & Hart.

That sign reveals a crucial aspect of these cases. If you’re going to sue a songwriter, aim high. Better to go after Michael Jackson than LaToya Jackson. The thought is that a superstar would rather settle out of court than have his reputation tainted. John Q. Songwriter may not expect to win his case, but he might still get a hundred thou out of the deal.

So how do you win a copyright infringement case? You need to prove two things. One, that the song in question has what the law calls “striking similarity” in melody, rhythm and structure to yours. And two, that the defendant had previous access to your song. Not so easy.

Here we review four of the most famous copyright infringement cases. If there’s a lesson to be learned, it’s this: Imitation is the sincerest form of flattery—except when you have the same chorus and melody.

**Bright Tunes vs. Harrisongs**

1971

**Defendant’s song:**
*My Sweet Lord*

**Plaintiff’s song:**
*He’s So Fine*

“Every time I put the radio on, it’s ‘Oh My Lord,’” John Lennon said in December 1970. “I’m beginning to think there must be a God.”

Lennon wasn’t alone. As his former bandmate George Harrison’s debut single blanketed the airwaves, a struggling New York publisher, Bright Tunes Music, must’ve heard divine intervention in the melody of “My Sweet Lord.” It was identical to a chestnut in their dusty catalog, “He’s So Fine.”

On Feb. 11, 1971, as Harrison’s hit was idling down from four weeks at No. 1, Bright Tunes filed a copyright infringement suit.

The older song, written by Ronnie Mack, had been a chart-topper in 1963 for the Chiffons. That same year, the Beatles were routinely singing the praises of such American R&B tunes, both in interviews with the British press and in the set lists of their live show. There was no question of access to the previous work, as Harrison freely admitted during his trial.

But the Chiffons weren’t on his mind in 1969, when he picked up his guitar and started singing the word “Hallelujah” over a two-chord progression. “I was inspired by the Edwin Hawkins Singers’ version of ‘Oh Happy Day,’” Harrison said.

If anything gave him pause about his song-in-progress, it was the mention of God in the lyric. “I thought a lot about whether to do that, because I would be committing myself publicly and I anticipated that a lot of people might get weird about it.”

Apparently, no one in Harrison’s inner circle got weird about the obvious similarities of his new song to “He’s So Fine.” Maybe the fear of calling a Beatle a thief was stronger than the need to tell the truth.

Harrison gave the song to keyboardist Billy Preston for his debut single on Apple Records, but the release was withdrawn in September 1970. Two months later, Harrison’s version—produced by Phil Spector (surely the Titan of Teen detected plagiarism)—was released as the lead-off from his triple-album debut *All Things Must Pass.*

“I wasn’t consciously aware of the similarity when I wrote the song,” Harrison said. “But once it started to get a lot of airplay, people started talking about it, and it was then I thought, ‘Why didn’t I realize?’ It would have been very easy to change a note here or there and not affect the feeling of the record.”

Harrison tried to settle out of court. His manager Allen Klein even offered to buy Bright Tunes’ entire catalog. But the publisher dug in, insisting that Harrison should surrender his copyright. A four-year stalemate ensued, during which Bright Tunes went into receivership for unrelated business problems.

The case finally came to trial in February...
1976. Side by side, the two songs were painstakingly analyzed. "The plaintiff had huge charts made up with the three notes from Motif A and the four or five notes from Motif B drawn on them," Harrison recalled. "And they talked about these for about three days, to the point where I started to believe that maybe they did own those notes."

In the end, Harrison was found guilty of "subconscious plagiarism" and had to pay $1,599,987 of the earnings from "My Sweet Lord" to Bright Tunes (songwriter Ronnie Mack had died in 1963, shortly after "He's So Fine" charted). "I've never had any money from the song," Harrison later recalled. "It's always been in escrow. As far as I'm concerned, the effect the song has had far exceeds any bitching between copyright people and their greed and jealousy."

There was a happy ending for Harrison, sort of. The headaches of the litigation inspired him to write "This Song," which went to No. 25 in 1976.

**Selle vs. Brothers Gibb**

**1980 & 1983**

**DEFENDANT’S SONG:**

*How Deep Is Your Love*

**PLAINTIFF’S SONG:**

*Let It End*

Maurice Gibb was on the witness stand, listening closely to a single-note melody being played on a cheap electronic keyboard. After eight bars, he identified the song as one he co-wrote with his brothers Barry and Robin, titled "How Deep Is Your Love." Except it wasn't. It was "Let It End," penned by an amateur songwriter named Ronald Selle.

The plaintiff made much of Gibb's mistake in court, claiming it was proof positive of infringement. But Maurice was hearing only the skeletal outline of the song. No arrangement, no harmony, no singing voices. Listened to this way, there is a similarity between the melodies of the two songs (over half the notes are the same). While Selle couldn't prove the Bee Gees had access to his song, the jury decided in his favor.

An antiques dealer and part-time musician, Ronald Selle wrote "Let It End" in November 1975, then performed it twice with his band in Chicago nightclubs. He sent an unsolicited tape and lead sheet of the song to 11 publishers. Eight of the companies returned the materials; three didn't respond. Two years later, Selle heard "How Deep Is Your Love" on the radio and thought he recognized the melody as his own.

The Bee Gees wrote "How Deep Is Your Love" in January 1977 while recording at Chateau d'Hérouville in France. During the trial, their producer and several session players who were present at the studio testified on behalf of the Gibbs. A work tape was played, documenting the birth of the song. Bits of melody and lyric ideas were heard being volleyed among the brothers. The finished song was released in 1977 as part of the landmark *Saturday Night Fever* soundtrack.

Unless the Gibbs had been present at one of Selle's two performances or they had sought access to rejected materials from the publishers Selle approached, there was no way they could've heard his song. Moreover, they were already accomplished, prolific songwriters with 20 Top 40 hits prior to "How Deep Is Your Love." Why would they plagiarize?

Yet the fact remains that there is a similarity in the two tunes. No one has calculated the mathematical possibilities of two songwriters independently composing identical melodies at the same time. But there are examples in other disciplines of what scientist Robert Merton famously called "Multiples": the simultaneous discovery of calculus by Gottfried Wilhelm Leibniz and by Isaac Newton, the development of the theory of natural selection by Charles Darwin and by Alfred Russel Wallace, the invention of the telephone by Alexander Graham Bell and by Elisha Gray. Couldn't the same phenomenon occur with pop songs?

One man who thought so was Federal Judge George Leighton, who overturned Selle's victory in the Gibbs' 1983 appeal. He said, "There is no evidence the Bee Gees had heard or seen Mr. Selle's song and that mere similarities in the tunes do not support the contention that the group had access to it."

**Fantasy Inc. vs. John C. Fogerty**

**1985**

**DEFENDANT’S SONG:**

*The Old Man Down the Road*

**PLAINTIFF’S SONG:**

*Run Through the Jungle*

In one of the strangest copyright infringement cases ever, John Fogerty was sued for stealing from one of his own songs.

In the late '60s, as lead singer and songwriter of Creedence Clearwater Revival, Fogerty signed a recording and publishing deal with Fantasy Records. In CCR's five-year run at the label, they sent a dozen songs into the Top 40, including "Bad Moon Rising" and "Down on the Corner." The group split acrimoniously in
1972. Fogerty, a notorious control freak, had bullied his three bandmates (including brother Tom), telling them what to play then locking them out of the recording studio while he was mixing.

Fogerty also had a fists-up relationship with Fantasy label head Saul Zaentz. Desperate to be free of his contract, Fogerty relinquished rights to his Creedence songs. For most of the 70s, Zaentz dangled litigation over Fogerty’s attempts to ink another recording deal. In retaliation, Fogerty refused to play any of his old songs during his concerts, cutting off performance royalties to Fantasy.

In 1985, Fogerty made a major comeback with the Centerfield album. As the lead-off single “The Old Man Down the Road” zoomed into the Top 10, Saul Zaentz ambushed him with a copyright infringement case. He contended that the song was a rewrite of an old CCR B-side, “Run Through the Jungle.”

Maybe Bob Dylan was right when he said that all songwriters have three songs that they write over and over. For all his distinct talent, Fogerty never strayed far from his trademark swamp-rock style. If “The Old Man Down the Road” was similar to “Run Through the Jungle,” the same charge could probably be made for a dozen other songs from his catalog.

The court rejected Fogerty’s initial claim that he was “immune from the charge, given his interest in the economic success of the earlier work.” And so, with acoustic guitar in hand, Fogerty sang for the jury, stopping to point out the differences between his two songs. Did the personal concert affect their judgment? Maybe. Their verdict: no infringement.

But the case didn’t end there. What became clear was that it represented the climax of 20 years of bad blood between Fogerty and Zaentz. Responding to Centerfield’s songs “Mr. Greed” and “Zanz Kant Danz,” Zaentz then sued Fogerty for defamation; Fogerty changed the title of the latter song to “Vanz Kant Danz.” After being cleared of infringement, Fogerty tried to stick his sizable legal costs to Zaentz.

A note here about legal fees. In England, there’s a rule that the losing party has to pay for the winning party’s attorney’s fees. It doesn’t matter whether the losing party is the defendant or the plaintiff. This discourages frivolous or bad-faith lawsuits. In the U.S., each party pays their own legal costs, though there’s been a slow trend toward the British rule, thanks to Fogerty v. Fantasy.

In 1994, the Supreme Court overturned lower court rulings and awarded attorney’s fees to Fogerty.

In an ironic twist ending, Fogerty recently signed a new deal with Fantasy. Zaentz, who sold the label in 2004, is out of the picture. “Such a huge bit of my life had been spent battling with the old Fantasy, basically because I wanted to protect my songs and my rights,” Fogerty said. “After all those years of struggle, when Fantasy was acquired by new ownership, all those bad people are gone. The new people are fulfilling the vision of the old Fantasy. And they’ve made it clear that they honor me and my music.”

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Three Boys Music vs. Michael Bolton

Michael Bolton surely rues the day in 1988 when he introduced Ronald Isley at a benefit concert by saying, “This man needs no introduction. I know every song he’s ever done.”

Six years later, Isley used those words in court to help prove that Bolton knowingly plagiarized an Isley Brothers song called “Love Is a Wonderful Thing.”

That Bolton and co-writer Andrew Goldmark wrote a song with the same title in 1991 wasn’t so incriminating. According to ASCAP and BMI, there were already 85 songs called “Love Is a Wonderful Thing” before the Isleys’ track was written in 1964. But the phrasing and melody of the title line in Bolton’s Top 5 Billboard hit is almost identical to the Isley Brothers’ song. That error—whether made consciously or not—would ultimately cost Bolton, his collaborator and Sony Records a whopping $5.4 million in damages.

What’s remarkable about this case is the canny way the Isley Brothers attacked Bolton. To prove that he had access to their song, they painted a picture of the singer’s youth in Connecticut.

In the summer of 1966, Michael Bolotin was 13, growing up in New Haven. A rabid R&B fan, he was already singing in a soul covers band and had a big record collection. The Isleys called in three veteran disc jockeys who worked in and around New Haven in 1966. With playlists in hand, they testified to the heavy rotation “Love Is a Wonderful Thing” received. A host of a weekly local TV show, The Discophonic Scene, said that the song was often featured on his program.

Though Bolton and Goldmark kept
denying previous knowledge of the Isley Brothers’ song, the work tape for their own tune 25 years later undermined their position. At one point, Bolton wonders aloud if their song isn’t too close to Marvin Gaye’s “Some Kind of Wonderful.” Of course, songwriters routinely ask these kind of questions, but with every aspect of the writing process under the microscope, Bolton’s momentary doubt became practically an admission of guilt.

Attempting to prove the obscurity of the plaintiff’s song, Bolton presented three R&B experts—including Motown’s Lamont Dozier—who all testified they’d never heard of the Isley Brothers’ “Love Is a Wonderful Thing” (strange, as Motown Records released the single in 1966). An expert musicologist was hired to point out the differences between the two songs. Bolton even produced copies of TV Guide from 1966, claiming that the program in question never aired in New Haven. None of this swayed the jury, who heard the striking similarities in the main hook of the song.

Sony Records tried to convince the jury that “Love Is a Wonderful Thing” produced only 5-10 percent of the profits from Bolton’s multi-platinum album Time, Love and Tenderness. The Isleys countered that the song was the lead single and had been released three weeks before the album. The jury, practicing some Chinese math, found that 28 percent of the album’s profits derived from the song, and that 66 percent of the song’s profits resulted from infringing elements. All those numbers eventually added up to the $5.4 million verdict.

In 2001, Bolton appealed the decision but was overruled. The judge declared, “The Isley Brothers undoubtedly contributed something original to ‘Love Is a Wonderful Thing’ … It is entirely plausible that a Connecticut teenager obsessed with rhythm and blues music could remember an Isley Brothers song that was played on the radio and television for a few weeks and subconsciously copy it 20 years later.”