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This Girl Is On Trial

Technology has turned copyright into a complex and misunderstood law.  Its original intention was to protect creators intellectually, but over time copyright has turned into primarily monetary protection.  As the ability to communicate drastically increases with technology, copyright laws must constantly change and conform to new situations regarding intellectual property.

In a recent case regarding music, Earl Shuman, author of the 1969 song, “Hey There Lonely Girl” is currently suing Alicia Keys for the use of “an important part of 'Lonely Girl'” in her new hit, “Girl On Fire.” This case stretches a bit deeper than it appears to.  On the surface, the case seems to have two different levels to it. On one hand, Shuman argues that Keys has chosen to use very central and important lyrics from “Hey There Lonely Girl” in her new hit single; on the other hand, only *two* words have been used from the 1969 hit. Thus, there are two different aspects of the case to analyze: the significant *meaning* of the words used versus the small *number* of words used.  Although extreme “copyright optimists” (Goldstein 11) may agree that these two words are the embodiment of the song “Lonely Girl,” Goldstein and most logical thinkers would disagree that this situation should be considered copyright infringement.

 To begin, lets look at an argument in favor of this interesting accusation.  The words “lonely girl” are indeed the title of the song, but it wouldn't be copyright infringement to simply sing those two words alone.  In the song, “Girl On Fire,” Keys sings those two words in a similar melody to that of the original “Lonely Girl.”  If this similarity was intentional, Keys is only paying respect to the song itself but the argument could then stand that the “expression” was similar.  Goldstein states, “Copyright only protects a work’s expression, not its underlying ideas.”  The Oxford American Dictionary defines expression as: “the style or phrasing of written or spoken words.” With this definition, Key’s expression coupled with the words “lonely girl” could possibly be seen as copyright infringement.

In addition, this copyright could possibly be passed with a mindset similar to those of French lawmakers: “The moral right affirmed in French copyright law aims at securing “the intimate bond that exists between a literary or artistic work and its author’s personality””(Goldstein 136).  With this belief, one could argue in favor of Shuman because the words and expression of “Lonely Girl” are an original expression of his character.

The main controversy with regard to copyright is the battle between sympathy and logic.  While France supports sympathy, America aims more towards logic: the logic of mass production. “American lawmakers do not extend rights against new uses of copyrighted works unless copyright owners can show they need them as an incentive to continue *producing* literary and artistic works” (Goldstein 138). Thus, America is more concerned with the continuation of production rather than intellectual protection.

Giving Shuman this case would be counter intuitive. Copyright is meant to create an incentive for artists to create more works. In this case, Shuman seems to be seeking compensation for all the wrong reasons. Instead of suing Keys to protect his song, Shuman seems to rather be grasping at straws, really stretching his case, in order to desperately try to make money off of a very well-off pop star. Thus, winning this case, if anything, would seem to demotivate Shuman to create more songs in the future; as through this case he would make enough money to write less works and still remain financially stable.

 With regards to the argument in Goldstein’s eyes, he would most likely be appalled that this case has even been considered for copyright infringement.  Goldstein can be viewed as more of a “copyright pessimist” (Goldstein 11) than optimist simply by what we would say is Goldstein’s thesis: “The real question is what steps it will take to ensure that the promised new era of information and entertainment survives copyright” (Goldstein 28).  Many would assume that this novel would be about the future stability of copyright, yet Goldstein wants to know if the future of information can withhold the hardships that copyright creates. Even though Goldstein touches on points in favor for Copyright Optimists, his thesis along with his overall arguments seem to be somewhat bias towards copyright pessimists.

Goldstein would certainly disapprove of this case because it seems to be simply for monetary gain and not for the protection of intellectual property. Along these lines, he also agrees with Jon Pareless from the New York Times about copyrighting music: “‘any song that has sold more than a million copies ought to go directly into the public domain, as if its fans have ransomed it from the copyright holders’” (Goldstein 12).  “Lonley Girl” has definitely sold more than a million copies. So, according to Jon Pareless and Goldstein (indirectly) Shuman really should not even have a case to argue.

Shuman has probably made enough money off of “Lonely Girl,” and should honorably refrain from being greedy. However, instead, he seems to be trying to capitalize on this case, using this instance as a way to repopularize his forgotten song. In this sense, this case reminds me very much of the “Somebody That I Used To Know” covers that we listened to and discussed in class a few weeks back. Although Gotye, the writer of “Somebody That I Used To Know,” was frustrated with all of the artists covering his song without his permission, the covers if anything further popularized his original song; they did not detract from his monetary gain or from his fame. Just as the covers of Gotye’s song didn’t take away (and if anything furthered) the original song’s success, Alicia Keys’ song didn’t take away from (and if anything furthered) the success of “Hey There Lonely Girl.” Especially since Shuman’s song has long been forgotten, through this case, the song is probably getting the most attention it has gotten in forty years! Thus, Shuman should be taking Keys out to lunch in celebration as opposed to taking her to court in disapproval.

Through this case, Shuman is simply taking advantage of the complexity of the law while it is unstable.  Goldstein’s book aims to find the moral justifications of copyright as a function of technology.  This case would be good for Goldstein to put in his book to display how America’s copyright laws are not suited for today’s competitive and loophole finding population.

 On a different note, Goldstein’s opinion would be completely justified and backed up by Siva Vaidhyanathan.  In the Epilogue of his book, *Copyrights & Copywrongs*, Vaidhyanathan states, “copyright protection seems to be squelching beauty, impeding exposure, stifling creativity” (Vaidhyanathan 185).  As copyright laws become more stringent, artists cannot build off of others as much and therefore creativity is diminished. The world we live in today was based off humans working together and building off other’s ideas to reach a common goal.  This way of life is dwindling daily as copyright laws become stricter.  Vaidhyanathan also states that copyright, “rewards the established at the expense of the emerging.”  Alicia Keys is far past “emerging” but theoretically if this song had been the first hit of a new artist and this copyright case arose, the case would indeed reward the established forty four year old song at the expense of an emerging artist.

 Lastly, this case is also unjustified at a fundamental level.  Goldstein lays out “four factors in determining whether an otherwise infringing use of copyright work should be excused” (Goldstein 111). The factors that seem the most relevant to this case are “the amount taken (less is better than more); and the effect of the use on sales of the copyrighted work (again, less is better than more)” (Goldstein 111). The amount taken in this case is certainly unjustified. The effect of the use on sales would be either none or result in a positive effect.  “Lonely Girl” has certainly seen its major sales since 1969; in addition, Keys’ reiteration of the title in a familiar tone could possibly remind listeners of the song “Lonely Girl” which could have a positive effect on sales.  With regards to the four main factors of copyright infringement, Alicia Keys’ song should not be accused of breaking the law.

The evidence for which to argue Shuman’s case (Keys used a *meaningful* part of his song), is inferior to the amount of evidence presented to oppose his case (Keys only used *two words* of his song). Thus it seems fair to state that Goldstein would overall side against Shuman and in defense of Alicia Keys. Her song is definitely an original work that did not claim its fame from “Hey There Lonely Girl” in the slightest sense. Rather, her use of the lyrics “lonely girl” in her song seems to be a tribute to a lost song or a coincidence. Keys does not deserve to be punished at the hands of a greedy, has-been, rock and roll writer that couldn’t think of a new good song in the last forty years.

Works Cited

Boardman, Madeline. "Alicia Keys' Lawsuit: Singer Accused of Copyright Infringement For 'Girl On Fire'" *The Huffington Post*. TheHuffingtonPost.com, 18 Dec. 2012. Web. 19 Mar. 2013.

Ehrlich, Eugene. *Oxford American Dictionary*. New York: Oxford UP, 1980. Print.

Galla, Brittany. "Alicia Keys Sued: 'Girl on Fire' Singer Accused of Copyright Infringement." *The Boombox*. N.p., n.d. Web. 19 Mar. 2013.

Goldstein, Paul. *Copyright's Highway: From Gutenberg to the Celestial Jukebox*. New York: Hill and Wang, 1994. Print.

Vaidhyanathan, Siva. "Epilogue: The Summer without Martha Graham." *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*. New York: New York UP, 2001. 185-89. Print.