

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

IP FRONTIERS

Zeppelin's big 'Stairway' win heavenly to the music community

It's one of the most instantly recognizable and iconic songs in rock music history. But was the opening guitar riff in Led Zeppelin's "Stairway to Heaven" plagiarized?

This past June, a U.S. federal jury in Los Angeles concluded that Led Zeppelin's Jimmy Page and Robert Plant did not copy the intro in "Stairway to Heaven" from the song "Taurus," a tune by U.S. rock band Spirit. "Taurus" is an instrumental track released on Spirit's self-titled debut album in 1968. Led Zeppelin IV, which included "Stairway," was released by Led Zeppelin in 1971.

A trustee for Spirit's late guitarist Randy Wolfe (AKA Randy California) filed a copyright infringement suit in 2014 accusing Led Zeppelin of lifting the opening to "Stairway to Heaven" – which is acoustic guitar arpeggiating chords played in a descending pattern. The trustee was able to bring the suit as U.S. copyright law gives protection to a creator's rights for 70 years after his or her death, and Wolfe's copyrights were controlled by a trust formed after his death. However, civil infringement actions must be "commenced within three years after the claim accrued." As "Stairway" was released about 43 years ago, the three-year statute of limitations rule effectively barred any recovery for alleged infringement during the first 40 years of the song's release and limited any potential recovery to new releases of the recording over the last three years, as well as any future releases of the recording.

Tens of millions of dollars were still at stake though, as the suit sought a partial writing credit for Wolfe – which carries a right to a portion of the royalties. An expert on music royalties testified during the trial that Plant and Page have earned about \$58.5 million to date in royalties as composers of "Stairway to Heaven." And



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part of Wolfe's lawsuit sought an injunction to prohibit a scheduled reissue of Led Zeppelin's albums that have been completely remastered by Page.

To establish copyright infringement, Wolfe's camp had to prove two things: (1) ownership of a valid copyright, and (2) copying of constituent

elements of the work that are original. To show copying, courts consider access to the copyrighted music and whether a substantial similarity exists between the two works. The amount of access and similarity required to prove copying are inversely proportional. So the more access a party had to a prior work, the less similarity must be shown to prove copying. Similarly, the more similarities that exist, the less access must be shown to prove copying.

In this case, Wolfe's estate presented evidence that Page and Plant had seen Spirit in concert and that they owned a recording of "Taurus" as an album containing the track was found in Page's massive collection of records and CDs. They also submitted evidence that Spirit shared a bill with Zeppelin three times between 1968 and 1970, meaning the famed British rockers had multiple opportunities to hear "Taurus" before releasing "Stairway" in late 1971. Spirit's bassist Mark Andes even testified that he met Plant at one of the shows and played snooker with him afterward.

On the stand

Page and Plant, both present throughout the trial, took the stand to dispute their

familiarity with "Taurus," and argued the contested passage of the song was a standard descending chord sequence that had been in use in the public domain for more than 300 years. Plant testified that he had no memory of the game of snooker, saying that in all the "hubbub and chaos" it would be hard to remember a one-off meeting 40 years ago. Plant partially attributed his lack of memory to a bad car crash on his way home from the club. Both he and his wife suffered head injuries in the accident, he told the court.

Page and Plant also vividly recalled, in detail, creating "Stairway" at a countryside retreat south of London in 1971. Plant told the court that Page was playing music by the fire, and Plant offered a couplet to go with it as a lyric. When asked what the lyric was, Plant stated that the lyric was the now famous opening line to "Stairway to Heaven" -- "There's a lady who knows all that glitters is gold and she's buying a stairway to heaven." When Page took the stand, he recounted the same story of the song's creation. Page also testified that he did not remember hearing Spirit perform live, claiming he first heard "Taurus" two years ago on the internet. The jury rejected the defense, however, and found that, at the very least, Page and Plant had "access" to "Taurus."

Although Wolfe's estate won on the "access" prong, they lost on the big one: substantial similarity of the works. I invite you to run an internet search on "Stairway to Heaven and Taurus" and listen to a side by side by comparison of the works. Many of you will no doubt find the respective portions of the songs "substantially similar." However, the jurors never got to actually hear both recordings, instead jurors were asked to compare the sheet music for

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“Taurus” to “Stairway” and heard guitar and piano renditions of the tracks by music experts on both sides of the case. Not surprisingly, Wolfe’s version of “Taurus” played on guitar sounded more like the recording of “Stairway” than the defense’s version of “Stairway” played on piano.

Why just sheet music?

The actual recordings were not played because of the age of the songs and the copyright law they are protected under. U.S. copyright law’s last major revision happened in 1976 – The Copyright Act of 1976 – and is the primary basis of current copyright law. Before that, protection was provided under The Copyright Act of 1909, which didn’t protect sound recordings as they barely existed at the time. Because of that, the only copyright that could be disputed was the sheet music for the two songs, which was filed with the U.S. Copyright Office. In a case involving two post-1976 songs, it might be easier to get sound recordings into evidence, and as a result a finding of substantial similarity.

Page and Plant also called experts who testified that the songs shared little in common other than chord sequences

that date back three centuries. The tension between common, uncopyrightable chord progressions and copyrightable expressions of these chord progressions creates a question of whether songs which are built around such common elements are sufficiently original to be copyrighted. Of course, experts for the trust said there were significant other likenesses including the use of arpeggios, similar note combinations, pitch and note durations, which could only result from something more than just coincidence.

But after only five hours of deliberation, the jury found that Wolfe’s estate failed to show that the unique and original portion of Wolfe’s composition was “substantially similar” to the pertinent portion in “Stairway,” and therefore did not constitute copyright infringement.

Industry jitters

The “Stairway” verdict was the latest in a series of high-profile copyright rulings that have earned the interest of the larger musical community. The music industry began stressing a year ago, when a different California jury found that Robin Thicke and Pharrell Williams infringed the copyright to Marvin Gaye’s “Got to Give It Up” in their 2013 hit “Blurred

Lines.” The ruling cost Thicke and Williams \$7.3 million in damages, which were later reduced to \$5.3 million, and are currently being appealed. The “Blurred Lines” case led to a wide debate in the music world over the limits of copyright protection, and whether a song’s atmosphere, rhythms and overall “feel” can constitute copyright infringement.

The “Blurred Lines” case also spawned an increase in copyright suits, including suits against high-visibility defendants like Kanye West, Ed Sheeran and Justin Bieber. Musicians have thus become more cautious when assigning songwriting credits as a means of protecting themselves from infringement allegations. Stars like Beyoncé, Sam Smith, and Mark Ronson have all opted to give credit in situations where similarities between their recordings and another’s copyrighted work have been alleged. But the “Stairway” case warns potential plaintiffs claiming copyright infringement of their song that such cases aren’t easy to win and the “Blurred Lines” result may be an anomaly.

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