

# Singing from the same sheet: A new approach to measuring tune similarity and its legal implications

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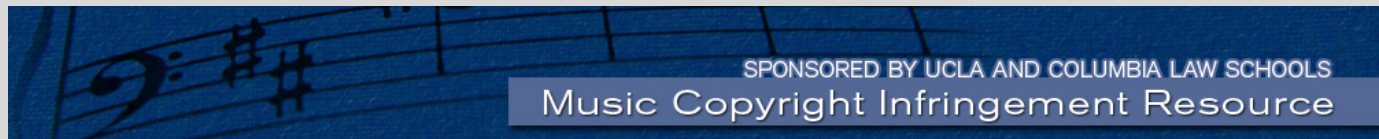
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# Outline

1. Introduction
2. Legal aspects of the Project
3. Similarity in Copyright Disputes
4. The Legal Degree of Similarity
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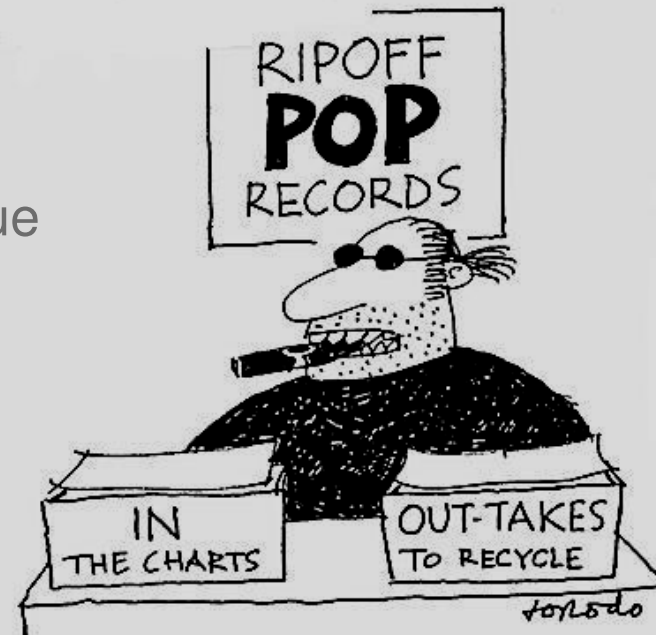
# The Legal Side of the Project

- To explore if court decisions on music plagiarism could be accurately predicted by formal models
- Case law from commonwealth countries
- First comprehensive case law database of melodic infringement disputes in commonwealth countries
- Database is currently hosted at the Music Copyright Infringement Resource UCLA



# Introduction

- Music Plagiarism
  - High Commercial Interest
  - Captivates the interest of the public
  - Simplistic/Repetitive nature of pop music
- Little research into the potential use of musical comparison technologies for copyright disputes
- Represents a new interdisciplinary angle in which to analysis and critique the law



# Similarity in Copyright

- Altered or 'non-identical' copying of a part
- Copyright Design and Patents Act
  - Lists the exclusive rights of a copyright holder (s.16(1)(a-e)) – Reproduction or Adaption
  - Extends these rights to the whole, or a ***substantial part*** of the protected work (s.16(3)(a))
- “There must be sufficient ***objective similarity*** between the infringing work and the copyright work, or a ***substantial part*** thereof, for the former to be properly described, not necessarily as identical with, but as a reproduction or adaptation of the latter.”

*Francis Day Hunter v Bron*

# Looks like Infringement? Sounds like infringement?

Austin v Columbia Gramophone

*“Infringement of copyright in music is not a question of note for note comparison, but whether the substance of the original copyright work is taken or not. It falls to be determined by the **ear as well as by the eye**”*

- Note-by-note comparison
- The auditory perception of musical similarity

# By the Eye



- Typically musical comparison 'by the eye'
  - Line Drawing
  - Highlighting
- Criticism
  - This approach has been criticised as 'simple', 'primitive', and 'misleading' (Cronin)
  - Invites a 'subjective and limited breakdown and analyses of songs [that] often lead to conflicting interpretations from experts' (Liebesman)

CHORUS 2nd time

1 2 3 4  
In a little Spanish town, 'Twas on a night like this,

5 6 7 8  
Stars were peek-a-boo-ing down, 'Twas on a night like this,

"WHY"

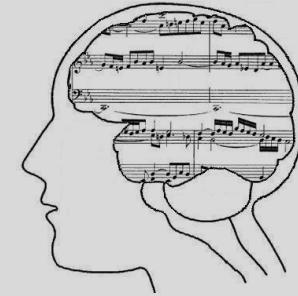
1 2 3 4  
I'll never love you go, WHY, be-cause I love you

5 6 7 8  
I'll al-ways love you so, WHY, be-cause you love me.

The image shows a musical score for the song 'By the Eye'. It consists of four systems of music, each with a vocal line and a piano accompaniment. The first system is labeled 'CHORUS 2nd time' and contains measures 1-4. The second system contains measures 5-8. The third system is labeled '"WHY"' and contains measures 1-4. The fourth system contains measures 5-8. There are two green circles highlighting specific musical phrases: one in measure 1 of the first system and one in measure 1 of the third system. Red arrows point from these circles to measure 6 of the second system and measure 8 of the fourth system. A yellow highlight is present under the piano accompaniment in measure 4 of the first system and measure 5 of the fourth system.

Francis Day Hunter v Bron

# By the Ear



- Auditory perception of similarity

Francis Day Hunter v Bron

*'Similar to the extent that an ordinary reasonably experienced listener might think that perhaps one had come from the other'*

*'The public has a purer approach to music than the critics.' That, of course, does not mean that one must discount the help that the critics can give, but I think I must rely on the ear as well as on the eye'*

- Williamson Music v Pearson and 'the reasonable listener survey'



# A Substantial Part

- CDPA s.16(3)(a) Extends copyright protection to the whole or a *substantial part* of the protected work
- What is a 'substantial part'?
  - Case-by-Case approach
  - The Point of reference

Designer Guild v Russell Williams

*"It depends upon its importance to the copyright work. It does **not** depend upon its importance to the defendants"*

- Quality over Quantity

Newspaper Licensing v Marks and Spencer

*"Quality should be identified; 'by reference to the reason why the work was given copyright protection'*

# A Substantial Part

- Idea vs. Expression of the ideas(s)

Designer Guild v Russell Williams

*Has the infringer incorporated a substantial part of the independent skill, labour etc. contributed by the original author in creating the copyright work?*

- Non protection for commonplace ideas

Designer Guild v Russell Williams

*'the more abstract and simple the copied idea, the less likely it is to constitute a substantial part'*

&

*'certain ideas expressed by a copyright work may not be protected because [. . .] they are not original, or so commonplace as not to form a substantial part of the work'*

- Musical's works

Creagh v. Hit and Run

*'[. . .] not original, forming as they do, notes 1, 2 and 3 of the minor scale and are commonplace'*

EMI v Papathanassiou

*'The [disputed part] was a musical commonplace and had been used by the defendant himself before the composition of "City of Violets"'*

# Things to Keep in Mind

- Similarity measurement in music is determined by the ear *and* the eye
- The evidence presented often uses third party music
- It is generally accepted that there is a presupposed level of knowledge from the listener
- Not every divisible part of a protected work is afforded copyright protection
- Whether or not a part constitutes a substantial part is always in reference to the protected work

# Studying music plagiarism empirically

Questions:

- How do court decisions relate to melodic similarity?
- Can they be predicted by similarity algorithms?
- How do listeners, algorithms, and courts agree?
- How important is modelling of prior musical knowledge?
- How to model plaintiff's vs defendant's perspective?

# The problem, e.g. *Selle v. Gibb* (1983, 567 F.Supp 1173)

- Ronald Selle, “Let It End”, 1975 (unpublished)



- Bee Gees, “How Deep Is Your Love” (1977)



# Two Studies

Müllensiefen & Pendzich (2009):

- 20 US cases on melodic plagiarism with binary decision (yes/no plagiarism)
- Different computational approaches (edit distance/string matching, n-grams, Tversky's ratio model of similarity)

Müllensiefen, Wolf, & Cason (in prep.):

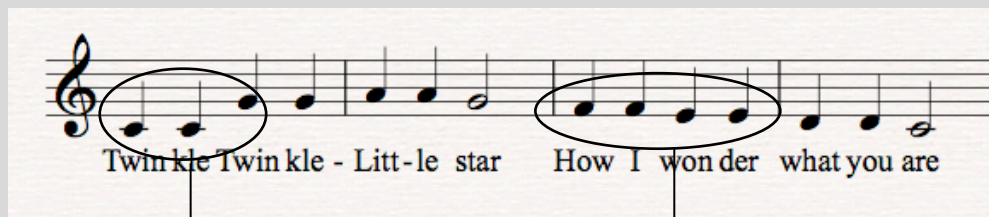
- 19 cases from US and Commonwealth (yes/no plagiarism)
- Different computational approaches (Tversky's ratio model, compression distance, Euclidean feature distance)
- 37 participants tested on implicit memory paradigm indicating similarity between tunes

# Measuring melodic similarity

1. Break melodies up into features
2. Weight features by commonness in pop music history
3. Compute similarity based on unique features shared between melodies

# 1) Breaking melodies up into features

Features: Short motives (m-types) similar to words in language



m-type of length 2:  
"s1e\_u5e"

m-type of length 3:  
"s1e\_d2e\_s1e"

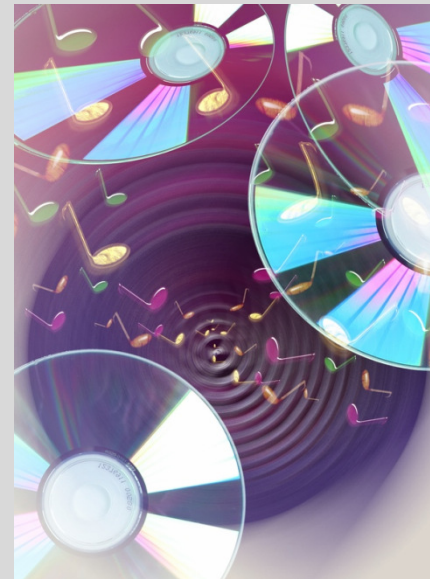
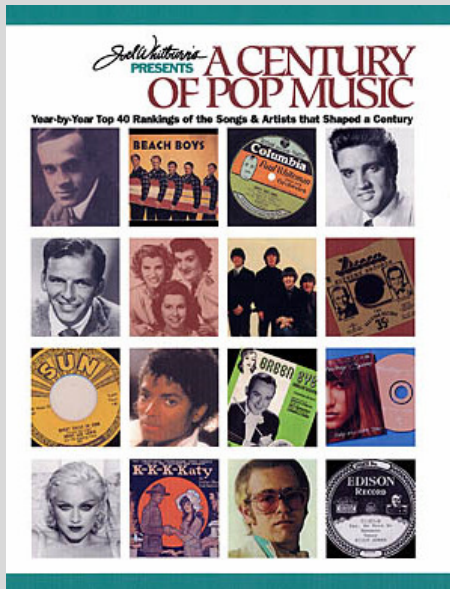
And then?

Count melody-types!

Word Type $\square$	Frequency $f(\square)$ ,	Melodic Type $\tau$ (pitch interval, length 2)	Frequency $f(\tau)$ ,
Twinkle	2	0, +7	1
little	1	+7, 0	1
star	1	0, +2	1
How	1	+2, 0	1
I	1	0, -2	3
wonder	1	-2, -2	1
what	1	-2, 0	2
you	1	0, -1	1
are	1	-1, 0	1



## 2. Weight features by commonness



- Count motives in Goldsmiths database (14,000 songs), representing popular music since 1950s
- Derive IDF weights (established from text retrieval)
  - Common motives: low weights
  - Rare and unique motives: high weights

### 3. Compute similarity: Tversky's ratio model (1977)

Rationale: Similarity of two objects,  $\sigma(s,t)$ , is related to

- Number of features  $s$  and  $t$  have common (vs. number of features they don't have in common)
- Perceptual salience of features,  $f()$
- Direction of comparison, often:  $\sigma(s,t) \neq \sigma(t,s)$

$$\sigma(s,t) = \frac{f(s_n \cap t_n)}{f(s_n \cap t_n) + \alpha f(s_n \setminus t_n) + \beta f(t_n \setminus s_n)}, \alpha, \beta \geq 0$$

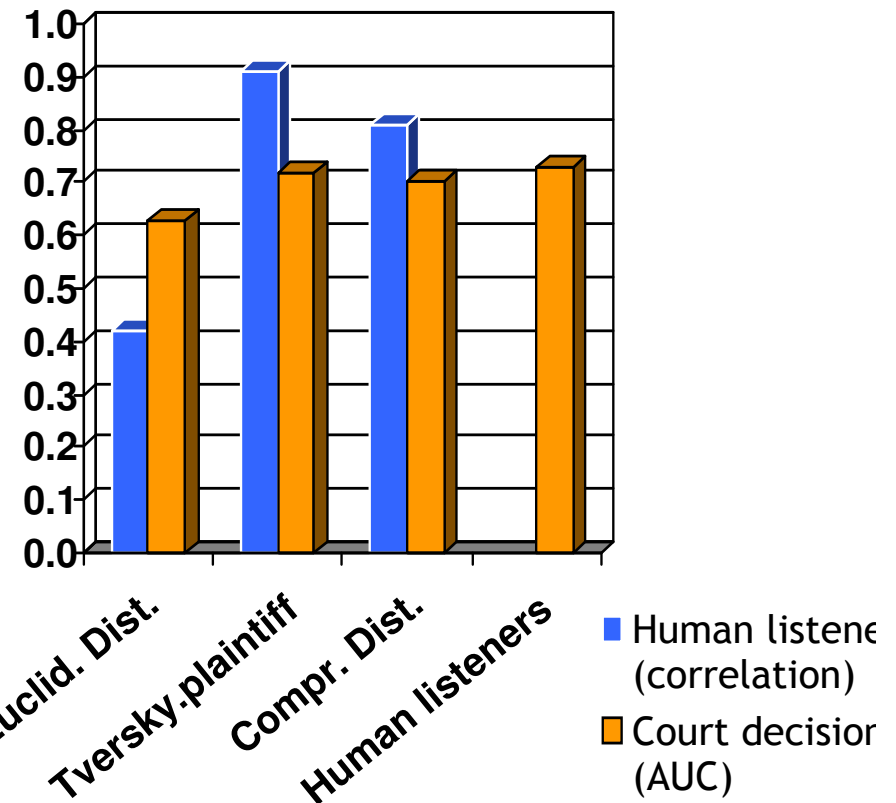
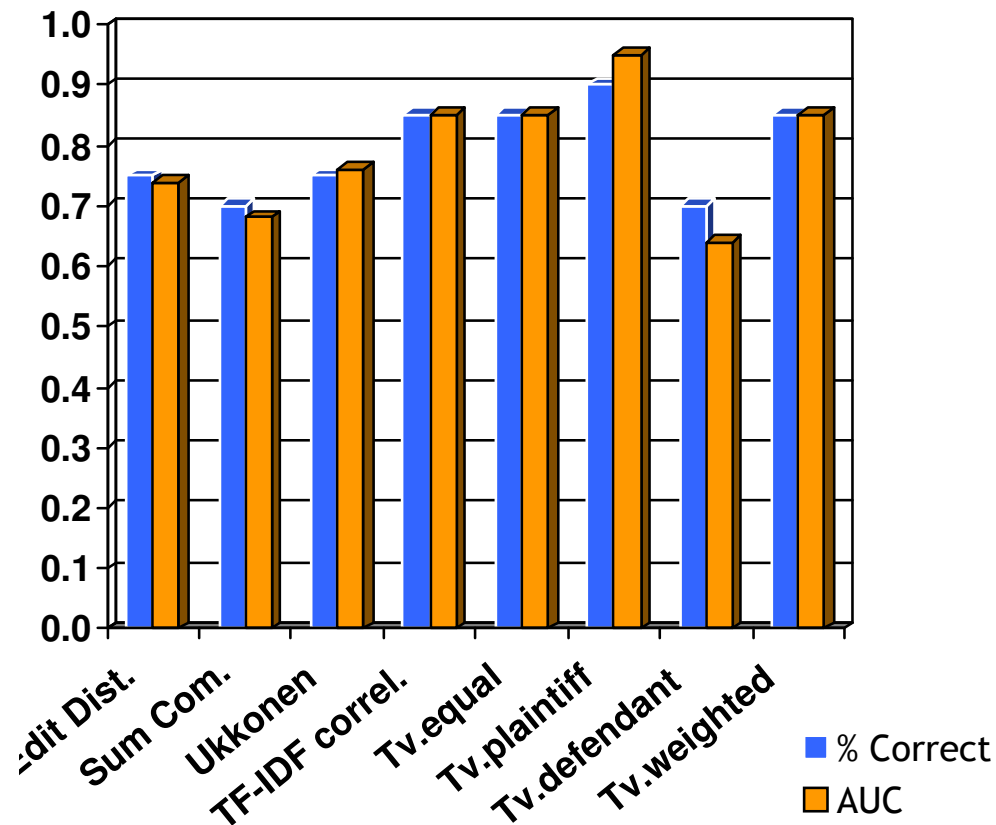
Implementation of ratio model for melodic similarity

- Objects => melodies
- Features => short motives
- Perceptual salience => IDF weights derived from pop database
- Different values of  $\alpha$ ,  $\beta$  to change frame of reference (plaintiff vs defendant)

# Empirical results

Müllensiefen & Pendzich, 2009

Müllensiefen, Wolf & Cason, in prep



Results:

- 1) Tversky's ratio model closest to court decisions and listener judgements
- 2) Absolute agreement comparable to group of 'reasonable listeners'
- 3) Modelling of plaintiff's perspective gives optimal results

# Tversky's ratio model - legal implications

The ratio model of similarity:

- Good empirical benchmarks
- Legally adequate?

$$\sigma(s,t) = \frac{f(s_n \cap t_n)}{f(s_n \cap t_n) + \alpha f(s_n \setminus t_n) + \beta f(t_n \setminus s_n)}, \alpha, \beta \geq 0$$

Implementation and legal interpretations of melodic similarity:

- *Objective Similarity*  $\Leftrightarrow$  Relative overlap in motives (numerical value)
- *Substantial Part*  $\Leftrightarrow$  Perceptual salience function
- *Non-protection of common place ideas*  $\Leftrightarrow$  Down-weighting of common elements
- *Knowledge of reasonably experienced listener*  $\Leftrightarrow$  Statistical information derived from pop corpus
- *Importance to copyright work not defendant's*  $\Leftrightarrow$  parameters  $\alpha, \beta$  to adjust for plaintiff's perspective

# To Conclude

- Tversky's ratio model can be implemented straightforwardly for measuring tune similarity
- Good agreement with court decisions and listeners' judgements
- Core components match key features of copyright act and case law
- Not subject-specific but based on general similarity perception
- Provides opportunity to interrogate legal concepts on empirical basis

## Open questions:

- Implementation of other musical elements (harmony, lyrics, sounds, polyphony)
- Applicable to continental author's right and legal practice?

# References

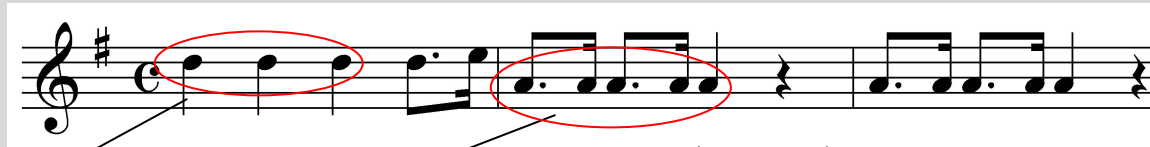
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Müllensiefen, Wolf, & Cason, (in prep). Algorithmic models of human similarity perception and court decision on music plagiarism.

*Thanks very much for your attention!*

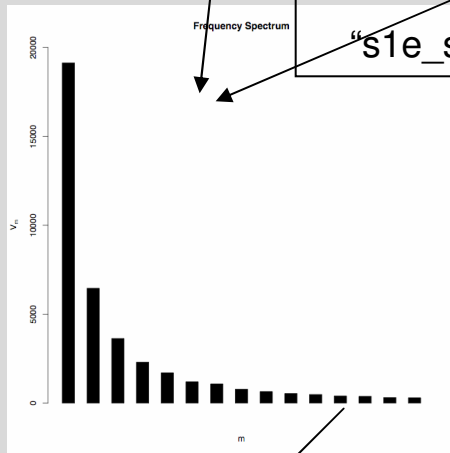
# Making Melodies Computable



m-type of length 2:  
"s1e\_s1e"

m-type of length 4:  
"s1q\_s1l\_s1q\_s1l"

Symbol sequence encoding:  
"s1e\_s1e\_s1q\_u2q\_d5l\_s1q\_s1l\_s1q\_s1l\_s1q\_s1q\_s1l\_s1q\_s1l"



$$i.abs.std = \sqrt{\frac{\sum_i (\Delta p_i - |\overline{\Delta p}|)^2}{N-1}} = 2.83$$

Overlap in m-types  
between s, t (Tversky)

Mutual  
compressability of s,t  
(Vitanyi)

Euclidean distance of  
global features between  
s,t (Shepard)