

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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<p>SAMUEL BARTLEY STEELE, BART STEELE PUBLISHING, and STEELE RECORDZ, Plaintiffs, v. Turner Broadcasting System Inc., et al., Defendants.</p>	<p>Civil Action No.08-11727-NMG Plaintiff's Opposition To Defendants' Motion For Summary Judgment</p>

I. Introduction

Plaintiffs Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz (hereinafter, "Plaintiffs") submit this memorandum in opposition to the Motion for Summary Judgment filed by Defendants on June 10, 2009 and the Motion filed by Defendant Kobalt on June 26, 2009.

In its April 3, 2009 Order, the Court directed the parties to address the issue of substantial similarity between Plaintiff s' work¹ and Defendants' works. The court's order correctly summarizes the claim in saying "According to Steele, much of the visual portion of the TBS Promo is derived from his song and the Bon Jovi Song was then based upon that Promo, the Steele Song, or both." The Steele Song is the registered version which will be referred to as "Team". Defendants have left enough of Plaintiffs' work in their final product that the Court will see substantial similarity between the works. Plaintiffs will show that ordinary observers, professional musicians, and video/film experts observe substantial similarity between the works. Because there are genuine issues of triable fact / disputed material facts on the issue of similarity, Defendants' motions must be denied.

Plaintiffs will refer to Affidavit/Article Exhibits as 'Exhibits A, B, C, D, E & F', as well as the respective subsections within, in order to help prove substantial similarity between the works. As detailed in this Opposition and the accompanying affidavits and articles, temp tracking has become standard operating procedure for both film production and commercial advertising business (see Exhibits B-4 {Brown} & B-6 {Just} as well as Exhibits D 1-6). However, temp tracking constitutes unlawful reproduction, synchronization or "sync", and derivation, and therefore violates copyright law. Musicologists are now often hired to "clear" temp tracks, i.e., provide their opinion that a

¹ The Court's April 3rd Order ruled that only Plaintiffs' first song, entitled "Man I Really Love This Team", is to be considered for similarity to Defendants' works. The Order stated the Court's determination that Plaintiffs' Derivative version, entitled "Man I Really Love This Town", with its derivative and different lyrics, was not included in Plaintiff's copyright registered with the US Copyright Office, and that the Court therefore lacks jurisdiction over any dispute involving Plaintiff's derivative / "Town" song. Although a recording of the derivative/"Town" version of Plaintiffs' song does not appear on the CD deposited with the Copyright Office, Plaintiffs argue that the copyright registration extends to his derivative "town" song. See G. Ricordi & Co. v. Paramount Pictures, 189 F.2d 469 (2d Cir. 1951) and cited in Johnson v. Gordon, 409 F.3d 12, 18 (1st Cir. 2005). They state that if the material is in both versions, it is copyright protected. Since the words "Boston"/Town/Hometown/Cooperstown" are in the registered version (lyrics copyrighted at the Library Of Congress since June, 31, 2006), their protection should extend to the derivative, "Man I Love This Town" (since "town" is not new material and "Team" is about the hometown Boston just as much as it is about the Red Sox). Moreover, the Red Sox have acknowledged access to Plaintiff's original "Team" song in their April 'Answer'. In light of these facts, Plaintiff urges the Court to extend jurisdiction to include the "Town" version of their song as the Court analyzes this case. However, even if the Court is not inclined to extend jurisdiction, this Opposition will still demonstrate substantial similarity between the original "Team" song, and Defendants' works.

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given piece of music to be used in the final version of a commercial is not substantially similar to music *acknowledged to have been used as a temp track*. In fact, musicologists are the ones who, knowing reproductive and sync rights have already been violated, assist to illegally create an unauthorized derivative work that will hopefully avoid copyright laws. Plaintiffs challenge this practice head-on, as it assists corporations in ripping off writers and publishers. The very purpose of the copyright law is that creators are entitled to profit from their works or else they would be spending all their time *not* creating, and struggling to survive. The musicologists are getting paid to help avoid copyright laws and divert these profits from rightful owners to the corporate entities and the established bands that will help sell their product. The musicologists involved in this illegal practice - notably Defendants' expert, Anthony Ricigliano- are clearly hurting the advancement of the arts.

As discussed in detail below, Plaintiffs attempted to enlist musicologists to assist with proving their case. Through these efforts, Plaintiffs realized that musicologists could not provide a complete analysis of the works involved, because those works include video and film--the MLB Promo. Musicologists limit their analysis to music. Comparing only the songs involved in this case overlooks a huge part of Plaintiff's claim. Plaintiffs therefore sought out experts in film and video production to look at the case. These experts (Brown, Carapeeza, Whitman, Murphy, Ellis, Feraguto and Yasuda) all state that the MLB Promo was clearly derived from Plaintiff's song.

In the introductory remarks of their Motion, Defendants refer to a 2-page informal analysis prepared for Plaintiffs by musicologist Alex Stewart. Defendants highlight Stewart's statement that the case "is not strong musicologically." Defendants fail to include Stewart's conclusion that "it seems (Plaintiff) got a raw deal." Stewart's 2-hour cursory review was performed in January 2009, before Plaintiffs realized musicologists were essentially ignoring the video evidence and limiting their comparisons to Plaintiff's song and the CD version of the Bon Jovi song. Plaintiff therefore submits its expert reports to expand upon Stewart's limited analysis. See Exhibits A-1 (Yasuda), and A-2 (Farguto), Exhibits B-1 B-6 and Plaintiff Steele's own affidavit, Exhibit F-3.

II. The Core Of This Case: "Synchrative Violation"

The core of this case is quite simple: a sync right violation embedded in an unauthorized derivative work.

As explained by the court in Abko v. Stellar Records, 96 F3d 60, fn 4 (2nd Cir. 1996), a copyright owner's "synch rights" are derived from the exclusive right to reproduce a work protected by the Copyright Act :

"A synchronization license is required if a copyrighted musical composition is to be used in "timed-relation" or synchronization with an audiovisual work. " Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 24.02[f] (1995). Most commonly, synch licenses are necessary when copyrighted music is included in movies and commercials. See 4 Nimmer § 24.04[C]. The "synch" right is a right exclusively enjoyed by the copyright owner. Buffalo Broadcasting Co., Inc. v. ASCAP, 744 F.2d 917, 920 (2d Cir.1984), cert. denied, 469 U.S. 1211, 105 S.Ct. 1181, 84 L.Ed.2d 329 (1985). The Copyright Act does not explicitly confer synchronization rights, but courts have held that the synch right is derived from the exclusive right of a copyright owner, under 17 U.S.C. § 106(1), to reproduce his work. Agee v. Paramount Communications, Inc., 853 F.Supp. 778, 786 (S.D.N.Y.1994), aff'd in part, rev'd in part, 59 F.3d 317 (2d Cir.1995); Angel Music, Inc. v. ABC Sports, Inc., 631 F.Supp. 429, 433 n. 4 (S.D.N.Y.1986).

Defendants first synchronized video images in timed relation with Plaintiffs' song, "Team". In most cases, the temp audio is used for general mood and feel/and or direction. Here, however, Plaintiffs' song was used for more than just that. Defendants did not just sync video to the music for mood and feel. Defendants used Plaintiff s' copyrighted lyrics to select video images (spotting cues) for this baseball commercial. Defendants also used Plaintiffs' lyrical storyline to structure their video (copying plot or storyline). What makes this case different is that in the process of violating Plaintiffs' sync rights (not just for mood and feel/direction), Defendants also simultaneously created a derivative work in a new medium based upon Plaintiffs' copyrighted lyrics and storyline. For the purpose of this case, and perhaps future similar cases, let's call this a 'synchrative' work.

This case of 'new medium' copyright violation is certainly not the first. In Kalem Co. v Harper Brothers, 222 U.S.55 (1911), a 15 minute silent movie/video was found to infringe upon the copyright of a 560 page novel called "Ben Hur" written by General Lee Wallace. Although this 15 minute movie/video (with no audio whatsoever), was 'transformed or adapted' from only a portion of the novel (a chariot racing scene), it was clearly a derivative way of telling the story of General Lee's copyrighted storyline. Even if

the movie had audio, today's musicologist would insist the courts compare the words in the book to only the words in the movie script. Musicologists today ignore the heart of the problem recognized in 1911: just as a book can become a movie, a song can be transformed into an audio visual. Musicologists simply do not know how to compare a song to a transformative audio visual work. In fact they would prefer the courts look the other way in cases such as ours while they continue to profit off comparisons limited to one medium, i.e. song to song. Plaintiffs looked far and wide for a musicologist to compare "Team" with the TBS/MLB audio visual promo, because Plaintiffs know from the temp tracking process that the audio visual (MLB TBS promo) came before the derivative CD version of the Bon Jovi song. After the promo and its soundtrack were derived from Plaintiff's song, the Bon Jovi soundtrack was extracted from the audio visual and presented to the world as independent creation. This Opposition will prove that both the BJ TBS/MLB soundtrack and its derivative CD version were NOT independent creation. Every single musicologist that Plaintiffs contacted did not know how to compare a song to an audio visual medium and would only offer a comparison between "Team" and the CD version of the Bon Jovi song. In fact these musicologists themselves knew that a song to song comparison did not address my complaint. One of Plaintiffs' musicology reports shows the limitations of musicological analysis, stating "access case quite strong because of temp track" and stated Plaintiffs got a "raw deal" (see Exhibit A-3 pg.2 {Stewart}). This musicologist was hired to informally compare song to audio visual, and instead compared song to song (CD version), and very briefly looked at the video evidence and could clearly see the temp track evidence, yet did not know how to do a proper comparison of song to audio visual.

Plaintiffs praise this Court for seeing the larger issue. The infringing song was composed by looking at the 'synchrative' video and hearing the original song and by copying portions of the original story/lyrics/musical expressions to replace that audio. The best legal advice a temp track solution for this 'Biggest Problem' (as Defense 'expert' Ricigliano says) is only violating sync laws. Showing the illegal video on mute is the best thing to do (see "Temp Track"/Ricigliano article). Musicologists agree the safest advice is simply to show the illegally temp tracked video with no audio, and ask the composer when they watch it, "Look at this and what do you hear?" (Exhibit D2), or

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"Agencies need to make sure that temp tracks never leave the editorial suite." (Exhibit D1). Clearly, the performer in this case, Bon Jovi, was not showed the video on mute. This court was correct in allowing a comparison for substantial similarity of the original copyrighted song "Team" to the audio visual TBS MLB promo that were made both to and from it. The Defendants had access (as the Red Sox have already admitted) to "Team" to create the temp track. They were not sent the derivative "Town", but had knowledge of it and were told they could call the Plaintiffs if they were interested in using "Team orTown".

Another similar case to this one involved the score for the movie "300". In the "300" case, the combinations of musical and video similarities to the pre-existing score by Elliot Goldenthal for the movie "Titus" were undeniable and led to the parties quickly settling. That settlement occurred the exact same month (August 2007) that the infringing TBS/MLB baseball promo was released at MLB.com. The 300 case also involved one of the same defendants in this case, Time Warner. In acknowledging that Goldenthal's score was illegally used as a temp track to create the derivative score, Warner issued the following press release from August 2007:

"Warner Bros. Pictures acknowledges and regrets that a number of the music cues for the score of "300" were, without our knowledge or participation, derived from music composed by Academy Award winning composer Elliot Goldenthal for the motion picture "Titus." Warner Bros. Pictures has great respect for Elliot, our longtime collaborator, and is pleased to have amicably resolved this matter."

Plaintiffs are entitled to the same protection of their copyrighted work as Goldenthal received. Defendants Motion must be denied.

III. Argument

Contrary to Defendants' Expert Report, Substantial Similarities Exist Between Plaintiffs' Song and Defendants' Works

Clearly there are substantial similarities between "Team" and the music/lyrics/video images of Defendants' works. The music/lyrics/video images in the promo are essentially paraphrasing Plaintiffs' song. Nimmer calls this type of copyright infringement "Comprehensive Nonliteral Similarity." Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 24.02[f] (1995)

At Section 13.03[A] [1], Nimmer states

to

'comprehensive nonliteral similarity' addresses " the situation where there is a comprehensive similarity between the two works in issue. By this is meant a similarity not just as to a particular line or paragraph or other minor segment, but where the fundamental essence or structure of one work is duplicated in another. If such duplication is literal or verbatim, then clearly substantial similarity results. The problem here under scrutiny is the situation where there is comprehensive similarity but no word-for-word or other literal similarity--what the Second Circuit terms "inexact-copy infringement." The mere fact that the defendant has paraphrased rather than literally copied will not preclude a finding of substantial similarity. Copyright cannot be limited literally to the text, else a plagiarist would escape by immaterial variations. "

See evidence on next page about BJ paraphrasing Plaintiffs' entire choral hook during live shows only).

LYRICAL SIMILARITIES

Based on Nimmer's logic, Defendants are guilty widespread paraphrasing of lyrics, not only just title similarities in the works as the Defense sole 'expert' contends. As any logical person would concede, Plaintiffs' "on Yawkey Way" could be paraphrased as Defendant's "on this street", "goin roud"="spinnin' round/comin' round", "feel that spirit"="feel the heart", "hometown/boston"="city", "scream"="shoutin", "you gotta"="you got it", "know"="knew", "love=love/like", "come on let'm know say here we go"="come on now here we go again", "I love this team=I love this town". Plaintiffs' call/response w/ crowd-"Say Here We Go"=Defendant's "Say Hey Say Yeah", etc. In fact, taking out the words: this/that/there's/a/the/it/is/in/on/out/from/to, 79 out of 135 words in the promo BJ lyrics are derived directly from "Team" lyrics. *57% of "Team's" lyrics are in the BJ baseball soundtrack's lyrics*. In a case about President Ford's memoir, copying 13% of words alone was enough for court to find copyright infringement, Harper & Row v. Nation Enterprises 105 S.Ct. 2218, 471 US. 539 (1984).

Even "Team's" Bridge itself was paraphrased. The Bridge section of defendants' song is filled with similarities to Plaintiffs' original lyrics (or for more concrete proof of striking similarity, see the Bridge/Verse lyrics comparison of "Team" to the Bon Jovi live version of "I Love This Town" Exhibit F). In this section, both Plaintiffs' and Defendant's songs employ the same antiphonal or "call and response" device, as well as repetition, or anaphora, of the word "you" to excite the crowd (see both Mark Ferraguto & Jon Yasuda's musicology reports, Exhibits A1 & A2). Both also incite the crowd at the same structural point within the bridge, using the same words, "Come on" and "Here we go."

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Again, this synchronous confluence of musical content and lyrics raises genuine issues of material fact. At this same point in the BJ live versions, one can see clear proof of copying original expression. This is even more proof why the Defendant's Motion must be denied as a musicologist would not look at this, but a jury certainly would raise an eyebrow at this evidence.

Plaintiffs' lyrical chorus hook, and expression of that, are surely original. Well, the part of the chorus hook that musicologists surely warned BJ not to put in their baseball soundtrack is still played at every live show. Plaintiff has viewed numerous youtube videos of Defendant Bon Jovi's live performances of their song. See Exhibit F-1. *In each of these videos, Mr. Bongiovi speaks to the crowd, adding yet more material lifted from Plaintiff's song.* (Exhibit F-3 shows that every verse of the Bon Jovi song except 2 verses were derived from 'Team's original lyrics or the video illegally synched to 'Team.')Mr. Bongiovi, at every single live show urges 'Everybody' in the crowd to "Get'm Up, Get'm Up, Get'm Up" (Plaintiffs' chorus hook/heart of the song is "Get Up Off Your Seats, Everybody Scream, Man I Really Love This Team") right before the chorus hook refrain. Plaintiffs invites the courts to look at any youtube live performance of "I Love This Town" to prove the point that plagiarism occurred. Plaintiffs will say again, every live show! See Exhibit F-2.

At some shows, this one for example,

<http://www.youtube.com/watch?v=XDyNqJ2Nq4U>

Bon Jovi says "Everybody, Get'm Up Get'm Up, Get'm Up, That's Why I Love This Town" compared with "Team's" "Get Up Off Your Seats, Everybody Scream, Man I Really Love This Team".

To see paraphrasing or plagiarism side by side, (again see Exhibit F-1, the Bridge/Verse comparison). Even though not on the CD version or even the MLB TBS promo, it shows clear proof that Mr. Bongiovi himself heard and copied from "Team's" surely original copyrighted expression, and stole parts of Plaintiff's original expression (whether on any recorded version or not). In the words of Nimmer, "Copyright cannot be limited literally to the text, else a plagiarist would escape by immaterial variations." If a poet plagiarizes

another poet and publishes the derivative poem, why would any Court not consider the fact that the poet uses parts of the plagiarized poem (not in the published version) when he reads the derivative poem live? Even if a paid 'expert'/lyricologist, who the Court considers an 'expert', advised the poet to not include those words in the published version so as to avoid a copyright infringement lawsuit.

Similarities in Textual Rhythms

A scan of the opening text of Plaintiff's verse 1, bridge and chorus shows that (1) accented and unaccented syllables coincide at the same points in Defendants' composition as in Plaintiff's work, and (2) the texts have the number of syllables at these critical musical junctures. This clearly shows that even the textual rhythm, or scansion, of Defendants' song coincides with Plaintiffs' song. Again, this is too much to write off as mere coincidence, and more than enough to raise a triable issue of material fact regarding similarity. For more, please see Plaintiffs' musicology analysis (A1 {Yasuda} pgs.6-10, subsection 1-4)

MUSIC

The combination of musical similarity and lyrical similarity between Plaintiff's song and the Promo Video Soundtrack version of the Bon Jovi song rises to the level of substantial similarity. Even Defense 'expert' Ricigliano's report notes some similarities between these 2 works, although Ricigliano dismissed them as coincidence. Plaintiffs ask the Court to use its common sense in deciding whether these similarities could be coincidental, given the fact that defendants have acknowledged access to Plaintiffs' song. What are the odds, with the fact that a copyrighted baseball playoff anthem about the hometown team that Defendants have admitted access to, that it was a coincidence (according to Ricigliano) that the BJ MLB soundtrack would have so many musical/lyrical/video/choral- heart similarities to Plaintiffs' song?

The fact that the music and lyrics intersect at the same structural point in both songs would raise the eyebrows of any ordinary listener. Plaintiffs' evidence (Exhibits A1 {Yuda report}, A2 {Ferraguto report}, and B1 (Murphy report) reveal how Defendants' song lyrics actually converge at identical points in musical structure, and that the songs share identical rhythms at these points. These three reports as well as the

Stewart report (Exhibit A3) show similarities beyond the obvious country genre/length/style/tempo/harmonic/melodic pattern/lyrics/title/rhythm/phrase length/scansion/structure/instrumentation/ instrumental timbre/ subject matter (baseball playoffs/hometown team{s}). Plaintiffs urge this court to look at the ordinary observer section of this report, which proves the Defendants have already failed the audience test, as ordinary people could tell this was a derivative of "Team" (Exhibits C1 through C9).

VIDEO

As detailed in Exhibits B1 (Murphy)/B3 (Whitman)/B4 (Brown)/A1 (Yasuda pgs.3-5) and Steele F-3, there are many instances where the visual images / frames of the TBS/MLB Promo match up with lyrics/rhythm/music in Plaintiffs' song. Lyrical or Musical 'spotting cues' are when the video frames tell the story of what the lyrics say or what the music is doing. When the mood and feel of the video frame-cuts match the beat/rhythm/tempo/feel of the music, this is called 'synchronization' (Defense 'expert' Ricigliano confuses this with 'spotting cues'). Please note that 96% of the frame-cuts/synchronization match or are strikingly similar to Plaintiffs' quarter note beat (see Exhibits B1 (Murphy)/B2 (Ellis)/B3 (Whitman)/B4 (Brown)/B5 (Carapezza).

Defendants' use of lyrical and musical 'spotting cues', for example, the "Yawkey Way" street sign (lyrical), BJ lyric "Down, Down, Down" as the music descends as well (musical) coinciding with "Team's" piano roll down, falls within what Nimmer calls paraphrasing. Moreover, the visual images as a whole in the promo tell the same story as Plaintiff's song (see Exhibit B1 {Murphy}, Ex. B4 (Brown) & B3 (Whitman)). The story is the hometown fan's MLB playoff experience outside the ballpark on the street, excitement builds as the playoff game starts, fans move inside the stadium and everybody's getting up off their seats screaming the chorus together, "Man I Really Love This Team". Furthermore, Plaintiffs' song refers only to the Boston Red Sox and Fenway area until verse 2, when the song starts referring to other hometown teams, just as the video images do. The promo shows mostly video shots of hometown Red Sox players until "Team" mentions these other teams, when the promo does as well. Yawkey Way, Detroit Tigers, etc., and the "Got to stay tough/Cowboy Up", lyrical spotting cue perfectly coincides with "Team", and has absolutely nothing to do with the BJ MLB soundtrack lyrics.

Additionally, the promo's frames directly correspond to plaintiff's lyrical material (spotting cues) at the exact same points in time. It cannot be coincidental that the promo's 'spotting cues and Plaintiffs' quarter-note beat synchronize 96% of the time. Nor can it be coincidence that the Plaintiffs' lyrics tell the Promo's visual story exactly on cue.

The evidence confirms that the Defendants (1) received a copy of Plaintiffs' song (which Defendants have admitted); and (2) used Plaintiffs' song as a temp-track for the Promo, selecting and synchronizing visual images to fit the lyrics, rhythm, and other aspects of Plaintiffs' song discussed herein. Again, Defendants did not simply violating Plaintiffs' sync rights, but violated two copyrights, derivative right in a new medium as well: they made a "synchrative work". Plaintiffs' last statement about the video evidence left behind involves what was already discussed in the previous 'Lyrics' section. Again, please refer to youtube video's and/or (Exhibit F-1 and F- 2), where Bon Jovi sings at every live show "Everybody Get'm Get'm Get'm That's Whay I Love This Town". Frame #100 of the TBS/MLB promo shows Jon Bon Jovi urging the 'Everybody' in the crowd to 'Get'm Up Get'm Up' just before the chorus refrain. Plaintiff urges the court to consider that in that frame, where Mr. Bongiovi is yelling "Get'm Up" in that frame and Plaintiffs can use this as more evidence against them. Because this great first circuit court was smart enough to allow a comparison of "Team" to the TBS MLB promo, the court must consider that in that frame, whereby BJ is urging 'Everybody' to 'Get'm Up' before the chorus hook (again see Exhibit F, live rendering of lyrical bridge/chorus hook comparison. This reveals another degree of similarity in this unique case. Mr. Bongiovi's physical gestures, and what we know he is saying at that exactly that moment, should be considered when comparing Plaintiff's and Defendants' works. The BJ live rendering of their derivative version is a classic paraphrase, in Nimmer's words.

IF YOU USE A TEMP TRACK, YOUR WORK IS NOT INDEPENDENT CREATION

Plaintiffs refer to temp track articles (Exhibits D1-D6) in which defense 'expert' Ricigliano explains how temp tracking works. He clearly acknowledges several points. It is illegal. It is a HUGE problem and it is pervasive in the industry. He willingly helps people avoid copyright laws. He says that musicologists are the only solution. He advises ripping off 5 songs at one time (using 5 temp tracks instead of 1 is) so any subsequent

infringement suit will "make the final track more defensible (in court)" (Exhibit D1). In the legal world, with copyright infringement already being one of the hardest cases to prove, is it fair that the 'experts' that the courts & juries count on to translate the musical language to see the truth are helping people steal from one another so they can profit themselves?

In Exhibit D-5, an article titled "Pale Imitations", dated May 2006, Ricigliano himself explains how some musicologists operate today: "The first question I always ask people is, 'did you try to license this song (i.e.did you contact the publisher)? because if you did, there is intent ... and as soon as you establish intent, then boy, you better be careful what you put down, and how close you are.'" (See Exhibit D5). This statement implies that he is involved in the process, knowing full well that advertisers/music houses/performers are attempting to evade copyright laws, and not just clearing the illegal track after the crime has been committed. Further, Ricigliano also stated "The biggest problem occurs as soon as an overture has been made to the publisher ... [both record label and publisher] are on the lookout for anything even remotely resembling their music in the final commercial" (See Exhibit D3). Plaintiffs disagree wholeheartedly. Obeying the copyrights should not be considered a 'problem'. Ricigliano sums up the temp track process, saying "[copyright infringement] happens because the commercial's producers fall in love with their temp track . . . they put the music houses between a rock and a hard place. They ask the musicologist to sign a statement saying it's original music, and push the [houses] to get closer all the time. And since a music house wants to make a living and they're afraid they won't get the job, they try to get a little closer" (See Exhibit D5).

As we know, thanks to Ricigliano himself, if someone wants to use a pre-existing song in an advertisement, they contact the song's publisher. If , on the other hand, an advertising soundtrack has been illegally derived from a temp track the client/agency/music house/performer "create" it together (i.e. NOT INDEPENDENT CREATION). Please refer to the article "Making the Brand:Bon Jovi's Designated Hit" where the director of the promo admits working with the Client/Agency/ House/Performer. Plaintiffs included this article in the original complaint, but resubmit it for the Court convenience (Exhibit E-1). Since that time, this article mysteriously disappeared from the

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web . In this non- independent creation, by Defendants' own words, the client=MLB, agency=TBS, music house=Def Jam, performer=Bon Jovi. Or in the words of the advertisement director, Craig Barry, "We wanted a song with a BIGGER PICTURE that could work with different cities." Plaintiffs ask a rhetorical question, "Bigger picture than what?" Answer: bigger than Plaintiff, and unknown artist whose song referred to a single hometown baseball team.

Knowing that neither version of the BJ song was independently created explains ASCAP's statement about finding it difficult to believe defendants' work was independent creation. ASCAP stated, "We find it hard to believe this was independent creation on their (Bon Jovi's) part with the whole baseball thing and video".² It also articulates the general sense ordinary observers have expressed that defendant's work was based on Plaintiffs' song (again, see Exhibits C1 thru C9)

Those Ricigliano articles also specifically explain the hierarchy or chain of events that lead to copyright infringement in the world of advertising. In advertising temp track cases, just as in this case by Defendants' own admissions the publisher is cut out. Here, we have CLIENT=MLB/AGENCY=TBS/MUSIC HOUSE=DEF JAM/PERFORMER=BON JOVI, and no publisher involved in the creation of this audio visual. Ricigliano knows from reading the complaint and the exhibits that this was not independent creation. In Ricigliano's report, he tries to imply that the MLB/TBS promo audio & video are edited versions of the longer 4:37 CD version audio and a "non-existent 4:37 length video". Ricigliano is trying to divert the courts attention from what he knows is true, that one verse was added for the CD version. Ricigliano, from his knowledge of the hierarchy and the facts in this case, is blatantly trying to mislead the courts as to the true facts at hand. Plaintiff's Exhibit A1, Yasudua Report (and the Steele report), details how Ricigliano's report attempts to mislead the

² Plaintiffs asked ASCAP for written confirmation of the "not independent creation" statement, which ASCAP representatives made in a March 31, 2008 telephone conversation with Plaintiffs. On June 11, 2009, Steve Young, attorney for ASCAP told Plaintiffs that he and ASCAP could not provide any such confirmation. Mr. Young told Plaintiffs that Robert Cheatham, one of the ASCAP representatives who participated in the March 31 2008 telephone conversation no longer worked for ASCAP, and that Andrew Rodriguez, the other ASCAP representative who was on the March 31, 2008 phone call with Plaintiffs had no memory of the conversation. Plaintiffs' recollection is that Mr. Cheatham made the "no independent creation" statement. (see Exhibit C-3 Carly Sakolove).

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court on several other points...all for one reason, ironically the same reason he helps these people violate the copyright laws, for money. Plaintiffs are honored to show the courts what is really going on out there with these 'experts'. Plaintiffs move that Ricigliano's entire report be dismissed. However, Plaintiffs will spend more time in subsequent section, called Ricigliano Report Disected, showing how his report is biased, misleading, and useless for this case.

ORDINARY OBSERVERS

Contrary to what defendants say, and clearly obvious from my affidavits, the ordinary observer test was in favor of the Plaintiffs (again see Exhibits C1 thru C9). Or as said in one of the Ricigliano articles (Exhibit D4), "The real test is if it is confused by the audience". None of the 3 Plaintiffs (writer, record label, or publisher) were on the lookout for sound-alikes (as Ricigliano warns his clients). Plaintiffs never expected something this would ever happen. Plaintiffs learned they had been ripped off from ordinary observers. People recognized that this audio and video were both derived from Plaintiffs' song and began contacting him. Plaintiffs understand that people like Ricigliano who help rip off thousands of artists/publishers (and possibly more if they take his advice to rip off 5 songs in one to make it "more defensible in court"), are untrustworthy as an 'expert'. Plaintiffs also understands the devastating effect of copyright theft. Plaintiff's hope is that bringing this case will protect artistic human beings in the future from going through the same ordeal. Plaintiffs liken their songs to their own children--the songs contain the hearts and DNA of their creators. If someone cloned Plaintiff's child, then cloned the clone, all the clones/derivative works would still contain Plaintiff's DNA. And that DNA would be recognizable.

Plaintiffs' affidavits, both expert and ordinary observer, recognize Plaintiffs' DNA in Defendants' works. In those affidavits, Plaintiffs' witnesses go far beyond saying that they observe 'substantial similar when comparing the song to the MLB/TBS audio visual.

Here are a few highlights from those affidavits, which Plaintiff urges the Court to read in their entirety :

- Joel Ellis-"exacting",
- Dr.Stewart-"access case quite strong because of temp track",

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- Chris Faraone (referring to the audio visual)-"clearly conceived...with Bart Steele's original composition as a guide",
- Mark Ferraguto (Masters in Musicology)-"clear as day",
- Irene Barr-"the audio and video images are VERY similar",
- George Christodal-"There is no doubt in my mind that the BJ version came from Samuel Bartley Steele's",
- Carly Sakolove-"I was shocked...it was eerie and disturbing how well they matched and sounded similar",
- Eric Whitman-"there is more than substantial similarity",
- Shaun Risley-"there is without a doubt...infringement of Bart's written song",
- Matthew Brown-"clearly an infringement that is obvious from the temp track evidence, both audio and visual",
- Richard Carapeeza-"the video and song are a clear theft...this is a clear violation", ---
- Stephen Murphy-"striking similarities to Bart's pre-existing Team",
- Jonathan Yasuda-"rising far above the level of striking similarity",
- Chadbyrne Dickens-"I watched closely a quick edited and loud commercial on TBS for MLB...I was thinking wow, I can't believe it! It's Bart's song!! He didn't tell me. He must have sold his song to Bon Jovi for big bucks good for him!!", -
- John Cadiz-"The Bon Jovi MLB ad sounds a lot like Bart's song"

Plaintiffs asks this court, based upon the striking similarity between "Team" and the audio visual MLB/TBS promo ad, for a trial by jury.

ORIGINALITY

Defendants contend that the lyric content, rhythmic content, structure of Plaintiffs' song, etc. are unoriginal. The requirements for originality are modest. In Vargas v. Pfizer, 418 F. Supp 369,372 (S.D.N.Y 2005), the court stated, "Original, as that term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works) and that it possesses at least some minimal degree of creativity." After noting that the originality of a copyrighted work is typically a question for the jury, the Pfizer court ruled that the Plaintiffs' c omposition --a one-bar drum rhythm looped twenty seven times--could not be said, as a matter of law, to lack

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originality. Rather, the court stated, the parties' dispute about the originality of Plaintiffs' work indicated a genuine dispute of fact. The Pfizer court therefore denied Defendant Pfizer's motion for summary judgment. So, too, here: Defendants' motion must be denied. Plaintiffs contend that the work "Team" is original, unlike Defendants' works, which by using Plaintiffs' work as a temp track, are inherently unoriginal and NOT independent creation. Santrell, Uh, Oh case.

CHORUS HOOK/HEART of "TEAM"

One of Plaintiffs' musical experts (Exhibit A3 pg.2), Alexander Stuart, stated that the most unique part of 'Team' is the chromatic chords played along with the chorus hook 'Love-This-Team'. This part is one of the clearest examples of both similarity and paraphrasing (again see Exhibit A1 {Yasuda}).

Any Defense argument that Plaintiff's chorus hook or other elements are not individually protected does them no good. Again, refer to Plaintiffs' original expression of bridge and chorus hook and compare to BJ live version, Exhibit F. Courts have found that a combination of elements that are not individually protectible or even "original" can support a finding of copyright infringement. See Santrayll v. Burrell 39 USPQ 2d 1052 (SDNY 1996). Mr. Ricigliano himself has been a part of the noteworthy published cases establishing this standard.

In Three Boys Music v Michael Bolton 212 F.3d 477 (9th Cir. 2000), the appellate court refused to disturb a jury's finding of infringement based on Plaintiffs' unique combination of unpredictable elements. In the appeal following a jury verdict for Plaintiffs in that case, Defendants Michael Bolton and his co-songwriter Andrew Goldmark argued that there was insufficient evidence of substantial similarity. The appellate court rejected this argument, noting that Plaintiff's Isley Brothers' musicologist Gerald Eskelin had testified "that the two songs shared a combination of five unprotectible elements: (1) the title hook phrase (including the lyric, rhythm, and pitch); (2) the shifted cadence; (3) the instrumental figures; (4) the verse/chorus relationship; and (5) the fade ending." The Bolton appellate court also noted that

"Although the appellants presented testimony from their own expert musicologist, Anthony Ricigliano, he conceded that there were similarities between the two songs and that he had not found the combination of unprotectible elements in the Isley Brothers' song "anywhere in the prior art." The jury heard testimony from both of these experts and "found infringement based on a unique compilation of those elements." We refuse to

interfere with the jury's credibility determination, nor do we find that the jury's finding of substantial similarity was clearly erroneous."

In our case at hand, Defendants conducted a title search to disprove similarity between original elements. However they did not look at the heart of the matter and consequently offered a superficial analysis. Plaintiffs' country baseball hometown playoff anthem, "Team", finds original expression in its celebration of baseball (and the hometown team). Using Defendants' same sources and methodology, a search of ASCAP and BMI yields over 15 million registered song titles. The Library of Congress' "Bibliography of Published Baseball Music and Songs" lists 423 baseball songs dating back to 1858. Of those baseball songs, none contains the phrase "I Love This".

By this standard, plaintiff's song stands unique amongst 423 baseball songs. Furthermore, amongst 15 million registered works, it is the only musical composition whose original expression celebrates baseball, and the hometown team and whose title contains the words "I Love This", and none are specifically love songs about a fan's hometown team's playoff run to the World Series for the first time in 86 years.

In the Bolton case, Ricigliano's side lost in part because he was unable to find any prior art with a confluence of similar features (even though most were uncopyrightable, i.e. title similarities, fade out, etc.). In this case, he will fail as well. There are substantial similarities including: 53% of the lyrics/title hook phrase/ length/fade ending starts just as promo ends/antiphony(call/response)/anaphora/country genre /style/chordal/harmonic/rhythm/structure/instrumentation and timbre/ phrase length/scansion/added crowd noise/ textual/ pitch sequence/ melodic pattern (especially of BJ vocal chorus melody is compared to Plaintiffs' harmonies of the chorus vocal hook's melodic pattern (6)-7 -6-5-5 is strikingly similar to (6)-7-5-5 (if transposed in the same key from the original (2)-3-1-1 {the number in brackets represents the country vocal slide up}...and most important SUBJECT MATTER(i.e. Baseball Soundtrack). This does not even include the strikingly similar video evidence (or the fact that this was Bon Jovi's 2nd country song in their entire careers).

RICIGLIANO REPORT DISECTED & DISCREDITED

Plaintiffs ask that this Court consider Mr. Ricigliano's report in light of all his prior experience, including the Bolton case. The elements of Plaintiffs' song, either individually or in combination, add up to protectible original expression sufficient to support a finding of copyright infringement. It is disingenuous, at best, for Ricigliano to claim otherwise.

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At worst, it invades the role of this Court. That is, Mr. Ricigliano cannot be allowed to testify that similarities between Plaintiff's song and Defendants' works do not support a finding of copyright infringement. That is a legal conclusion, and it is for the Court to make that conclusion. The fact that Mr. Ricigliano and other musicologists make their living selling such testimony does not legitimize this practice. Musicologists have been getting away with this simply because many artists and publishers, whom musicologists help rip off, lack the resources to protect their rights and pursue infringement claims. Plaintiffs beg this Court to put a stop to this vicious cycle of victimization and profiteering off the violation of constitutionally protected rights.

Plaintiffs' Chorus Hook Is In Synch with the Promo Video Images

One of the many misleading statements Ricigliano makes is that the chorus hook in "Team" is not in 'sync' with the video images. Viewing the promo along with Plaintiff's song substituted for the BJ soundtrack reveals that out of the 15 times 'Love-This-Team' are mentioned/played in the song, the last 12 times are perfectly synchronized with the visual images. Defendants 'expert' Ricigliano points to the first chorus hook and points out, "the first rendering of (the chorus hook) is not in sync with any picture of fans in a baseball stadium". This is one of the most inaccurate statements in his report and proves he has absolutely no knowledge of audio visuals. He proves in this statement alone that he only knows how to help rip off the audio half of a temp track and not analyze the audio visual objectively. First of all, there is a ballpark shown (frame #2 of that visual series). Secondly, his reference to 'in sync with any picture of fans in a baseball stadium', this is not what synchronization is (even though he's still wrong about the shot of the ballpark). This is misleading, not only because he doesn't understand that 'in sync' doesn't mean what the video is showing, is because he knows it is irrelevant and untrue at the same time. Just as 96% of the frame cuts ARE 'in sync' with the beat/rhythm of "Team", 13 out of the 15 (or 4 out of the 5 chorus hooks are in perfect sync with "Team"'s 1/4 note beat). He chose only the first chorus hook (or first appearance of 'Love-This-Team' in order to mislead this Court). We ask the court or any ordinary observer to look at the other 12 appearances of 'Love-This-Team', and say they are not perfectly 'in sync'. This proves either Ricigliano's lack of knowledge or dishonesty, Plaintiffs will let the court decide.

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Defense Expert Ricigliano's Transcription of Plaintiffs Song is Inaccurate.

Defendants' Motion for Summary Judgment relies heavily upon Ricigliano's inaccurate report & transcription (musical notation) of Plaintiffs' song as well as the CD version of the Bon Jovi song. It is important to note that the transcription/musical notation of Plaintiffs' chorus hook (the music accompanying the lyric, "Love This Team / Town") is inaccurate. Interestingly, Ricigliano's transcription shortens Plaintiffs' musical meter by half, and thereby gives the false impression that the songs are rhythmically incongruous with respect to melodic rhythm (see exhibits ____). Transcribed correctly, Plaintiffs' closing melodic, two-measure phrase "love this team / town" would in fact be written as two half-notes followed by a whole-note. A quick comparison between the two songs would then reveal that Plaintiffs' closing two-measure, melodic phrase, "Love-This-Team / town", is rhythmically identical to Defendants' closing two-measure, melodic phrase, "love this town." Furthermore, Defendants' verses and bridge sections show remarkable similarities to Plaintiffs' song. Defendants' verses and bridge use the same successive, three-note, melodic, rhythmic pattern (1/8 note, 1/4 note, 1/8 note) used by Plaintiffs, with only token alterations or paraphrases to Plaintiffs' lyrics. Briefly stated, the sung melodies of both songs extensively repeat identical melodic, rhythmic patterns, and appear in the same locations within the musical structure.

It is necessary to distinguish background, rhythmic patterns or "beats" from melodic, rhythmic patterns. The percussive drums, synthetic or acoustic, often provide the underlying rhythmic pulse of a song. Songs of similar country rock genres often share the same background pulse or drum beat rhythm. *Melodic rhythm*, however, is a foreground rhythm and is a defining characteristic of melody. It operates in the foreground of the listener's ears with its other counterparts, melodic pitch and lyrics. When a vocalist sings, the melodies are not bereft of rhythm. This melodic rhythm, unlike background drum beats or loops, is always inextricably fused to the lyrics of a song. As the vocalist delivers the lyrical import, it is the melodic rhythm that carries this message to the listener. It is not just Plaintiffs' melodic rhythms alone that cry original expression. Rather, it is the confluence of Plaintiffs' lyrics and melodic rhythm that creates original expression. The combination of these two elements that appear in the *same location in*

Defendants' composition as they appear in Plaintiffs' composition raises a triable issue of fact regarding substantial similarity.

The lyrics and rhetorical devices used by Defendants, in combination with the extensive musical similarities, and accompanying synchronous, visual, tempo-tracking evidence, raise even more genuine triable issues of material fact regarding substantial similarity. Furthermore, Ricigliano knows from the Bolton case that uncopyrightable things such as Title/Genre/Length/Tempo/Subject matter (i.e. Baseball soundtrack)/Pitch sequence/Instrumental timbre & Instrumentation/etc. can, when taken together, be used to show substantial similarity. Just as in the Bolton case, where Ricigliano admittedly could not come up with any prior art that had all these intangible aspects within the same prior art, he (the one defense 'expert') has failed to show any prior art with all these similarities in the same song. This was the main reason Ricigliano's side lost the Bolton case, and Plaintiffs' believe this will be one of the many reasons Defendants will lose this case as well.

Defendants apparently expect the Court to believe that the BJ song existed before the MLB/TBS promo was created, and that it was sheer luck that it happens to fit so well with the MLB/TBS promo. Assumed to be at the advice of the musicologist, Defendants put the infringing song on the album first to make it seem like independent creation.

An earlier BJ audio visual, "Have A Nice Day", was used in a similar way for a Samsung cell phone advertisement. Ironically, that video was also released as well at MLB.com In the words of the ad producer Eric Hirshberg, (who works for the Deutsch ad agency , which is also one of Ricigliano's 'clients'), " The goal is to make it seem like no money changed hands". In other words, fooling the public into believing they are watching a music video and not an advertisement. E ven more like this case is the Wrigley gum commercial, " Forever" by Chris Brown (#3 hit on the charts last year). The album versions of the Bon Jovi and Chris Brown songs were simply "extended versions" of the shorter jingles they were payed to record for the ads. This arrangement allows the performer to keep the soundtrack side of the copyright, and the client (advertiser) to own the audio visual copyright. Although both short and long versions were likely recorded at the same time, the long versions of the songs were released on the albums first because "The idea was to connect the hit song and the jingle in listener's minds. That way, by the

time the new jingle came out, it was already seeded within popular culture". Just like Chris Brown's full length Wrigley Gum song was released first on the album, and the shorter subsequently released jingle were both based on the same song, both versions of the Bon Jovi song/jingle appear to be derived from Plaintiffs' original song.

Conclusion

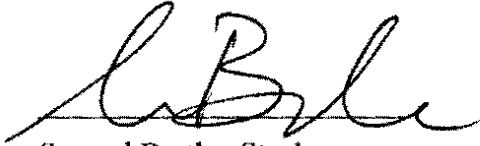
Because the parties have submitted opposing affidavits regarding the issue of substantial similarity, Defendants' motion for summary judgment must be denied. Moreover, it would be improper for the Court to dismiss this case on the expert analysis presented by Defendants. As discussed above, Defendants' expert testimony is biased, based on inaccurate transcription, and incomplete for analyzing the issues presented in this case. Ricigliano's unqualified video analysis speaks for itself. Plaintiffs got qualified experts- both video and musical experts- to compare the works in all their respective mediums. The lyrics and rhetorical devices used by Defendants, in combination with the extensive musical similarities, and accompanying synchronous, visual, temp-tracking evidence, as well as the results of the ordinary observer test, raise genuine issues of material fact regarding substantial similarity.

This case is very important for the protection of writers and publishers. Plaintiffs have written a great Celtics basketball song. With Turner also 'owning' the NBA playoffs, why would these Plaintiffs (or any other songwriter/publisher) ever send their song in an attempt to get the song picked up? It would probably just be used as a temp track with an established star like Bon Jovi doing it instead. If the Defendants prevail in this case, it would be a defeat for the creators, and a victory for the corporations, copyright violators, and the musicologists that help them avoid our constitutionally protected rights.

Plaintiffs requests the Court deny Defendants' Motion for Summary Judgement and allow the case to proceed.

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Respectfully Submitted,

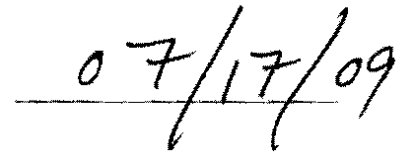


Samuel Bartley Steele

Bart Steele Publishing

Steele Recordz

Pro Se Plaintiffs



Dated

JONATHAN YASUDA
21 BEACON ST.
BOSTON, MA 02108

FILED
KLEINER'S OFFICE

07/17/09 5:00

AFFIDAVIT

I am writing this affidavit as a professional musician and law student dedicated to artists' legal rights. This case only sheds more light on how today's technology, when combined with one's intent to extract protected, original, tangible expressions of another artist's registered work, present significant challenges to preserving copyright law. The purpose of my attached report is to elucidate and hopefully illuminate how two compositional elements -- *music and lyrics* -- contained in Bart Steele's composition, are substantially similar to Bon Jovi's song.

Although I cannot speak as a certified musicologist, I can speak as an award-winning, conservatory-trained musician with a penchant for copyright law. As my resume evinces, I have studied music theory extensively and I have had the privilege to work with internationally acclaimed musicians as a classical concert pianist.

As a Boston Bar Association student member and Steering Committee Representative of the Massachusetts Artists Leaders Coalition, I have petitioned Congress against adopting the Orphan Works Act as it is in violation of the Berne Convention. I have volunteered my time with intellectual property law attorneys to help indigent artists at the Volunteer Lawyers for the Arts. I have also successfully petitioned the Massachusetts legislature for artists to serve on the newly established Creative Economy Council. My law school recently featured me in Massachusetts Lawyers Weekly as "Virtuoso in Copyright Law" and published an article about my pro bono work for artists of all disciplines.

I wrote my attached report without extensively availing myself to the musicological lexicon. Too often musicologists present convoluted diagrams and transcriptions that only bewilder the ordinary fact-finder. My report is written so that a law student clerk, attorney, or jury can easily distill and understand the material facts.

Again, my primary goal is to show how the two works at hand are substantially similar. My ancillary goal, but a goal nonetheless, is to show this Court that case law must begin to address a steadily growing black-market practice of "temp-tracking" that is subverting our constitutionally protected rights.

I declare under the penalty of perjury that my attached musical report and the foregoing statements are true and correct and based on my personal knowledge.



6/30/09

Jonathan T. Yasuda

Date

Jonathan T. Yasuda

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EDUCATION

New England School of Law

Boston, Massachusetts

Juris Doctor, expected May 2011

Activities: Member of Entertainment and Sports Law Society, 2007 – Present

Honors: Featured student for school magazine: “Virtuoso in Copyright Law”

College of the Holy Cross

Worcester, MA

Bachelor of Arts, Music Major, Economics-Accounting Minor, cum laude, May 2005

Honors: Presidential Academic Scholar, John E. Brooks S.J. Full-Tuition Scholarship, 4 Years

Deans List, 2001 – 2005

Steinway Dedication Concert Pianist, 2003

Featured Online Article, Outstanding Graduating Senior, Commencement, 2005

Piano Assistant, Emmanuel Ax and The King Singers, Mechanics Hall, 2002

Brooks Hall, Rachmaninoff Piano Concerto No. 2, 2003

Accompanist, Televised Performance, *Madama Butterfly*, Soprano Maria Ferrante, 2003

Notable Private Teachers: Jonathan Bass, Jean Stackhouse, James David Christie

New England Conservatory of Music

Boston, Massachusetts

Level IV Certification, May 2001

Honors: First Place, New England Conservatory Concerto Competition, 1998

Jordan Hall, Soloist, Prokofiev Piano Concerto No. 1, 1999

Excellence Awards: Theory, Chamber Music, Piano Performance, 2001

Performed for such notable composers as Gunther Schuller, Daniel Pinkham and John Harbison

LEGAL EXPERIENCE

Volunteer Lawyers for the Arts of Massachusetts

Boston, MA

Intern

Summer 2008

- Advised clients on trademark, copyright, and landlord-tenant issues.
- Corresponded with the United States Congress and Massachusetts legislature.
- Organized the annual “Jazz Night” fundraiser at Scollers Jazz Club.

Norman Volk & Associates, American Transit Insurance Company

New York, NY

Intern

Summer 2004

- Researched New York’s § 5102 of the CPLR via Westlaw and applicable insurance case law.
- Drafted legal briefs on the issue of “Good Cause” pertaining to belated summary judgment motions.
- Distinguished favorable cases based on specific fact patterns for summary judgment motions on liability and threshold.
- Delivered court documents, attended trials, and met with State Supreme Court Justices in chambers.
- Handled preliminary conference responses and affirmation in opposition papers.

Ball and Sargent Law Offices

Worcester, MA

Intern

Spring 2004

- Prepared legal documents for real estate closings and employment discrimination cases.
- Crafted demand letters to insurance companies.
- Calculated potential settlement awards.
- Attended trials and met with State Supreme Court Justices in chambers.

PROFESSIONAL EXPERIENCE

Community Boating Incorporated

Boston, MA

Operations Supervisor and Dockmaster / Licensed Coast Guard Merchant Marine Officer

2006 – 2007

- Responsible for the general safety of sailors, rowers, and power-boaters on the Charles River Basin.
- Marketing, sales, and fundraising.

Worcester Chamber Music Society

Worcester, MA

Pianist, Founding Member

2006 – Present

- Perform exceptional masterpieces of chamber music literature.

Archdiocese of Boston

Boston, MA

Pianist

2001 – Present

Substantial Similarity:

Steele v. Bon Jovi

“Where Music and Lyrics Follow the Same Score”

**Report by Jonathan T. Yasuda
Student of New England School of Law
Professional Musician**

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I. INTRODUCTION

When Ludwig Van Beethoven composed his Symphony No. 5 in the early 19th century, who would have thought that a benign group of consecutive eighth-notes followed by a half-note would be the trademark of classical music centuries later. It is arguably one of the most powerful and enduring melodic rhythms of western music. Try shouting “DA DA DA DAAAAA!” in the middle of a crowded park – even intentionally sing it out of tune – and see if anyone can submit that some old, famous, dead dude, donning a white wig, wildly waving a baton, might have written it long ago. So you might get arrested, but if you’re lucky, maybe the police officer will ask on your way to the station, “Was that Beethoven?”

That timeless melodic rhythm continues to live and breathe in cartoons, movies, advertisements, sampled rap music, high school orchestras, radios, and the list goes on. *Now, see how many people can hum the entire symphony.* Good luck. You see, that is the beauty of music. A single note, or a single rest – silence – or perhaps a handful of notes can be the very essence or heart of a composition. For example, since it’s technically impossible to lift all of Tchaikovsky’s *Romeo and Juliet* score for a 30 second television ad, why not just use a snippet of the most memorable love theme? Sure, it cuts to the chase, omits perfectly good sections of music, but it effectively delivers and encapsulates the message of love. That’s just one very simple way to extract the “heart” of the composition. You just copy a musical sentence and paste. Done.

It is no mystery to professional songwriters, musicologists, or common listeners, that good pieces of music often have something “catchy”, whether it be a lyric, rhythm, harmony, melody, or maybe some combination of those elements. In other words, there

could be one or more elements in a piece of music that work together to deliver a message to an audience.

Now here's where technology and copyright infringement intersect. Tech-savvy musicians inside a recording studio can easily reduce a song to its most memorable or marketable elements and then create a "new" composition. To put it another way, this so-called "new" or "derivative" composition is really one of those "Based On A True Story" types of movies where the producers stick to the basic, original storyline, but add a few lovemaking scenes and Hollywood explosions to lure mainstream moviegoers to the theatres.

So when the heart of the original composer's composition – again, whether it be a particular lyric, rhythm, harmony, melody, or maybe a combination of these elements – saturates some "new" work, you have to ask yourself two questions: (1) did someone have access to the original composition in order to commit the infringement; and (2) how substantially similar are these two compositions?

II. TEMP-TRACK DEFINED

Here, in order to show that Bon Jovi's "I Love This Town" songwriters had access to Bart Steele's "Man I Really Love This Team" sound recording, Steele claims that he sent his lyrics and recordings to the Defendants. Determining whether the Defendants actually used Steele's song to create a derivative work may seem like an impossible task. How can one go back in time and step inside the studio where the Defendants allegedly tampered and manipulated Steele's song to create the derivative

work? Just as a murder weapon may have fingerprints, so does a fraudulently fabricated television commercial.

To explain, it is necessary to understand how a composer can extract the musical groundwork for a commercial. One way is called “temp-tracking” whereby the producer uses an existing composition to set the mood for the images of the commercial; then the television composer writes a seemingly new score for the commercial. As one can imagine, this is the perfect breeding ground for derivative work copyright infringement. Television composers and advertisers can get sloppy, deliberately trying to change a few musical and lyric elements to mask the true author’s work. As the New Grove Dictionary of Music states, this process is often rife with plagiarism:

Temp-tracks and classical styles are convenient means by which a director can suggest appropriate musical idioms to the composer; models have included Strauss's *Salome* for Waxman's *Sunset Boulevard* (1950), Holst's *The Planets* for Williams's *Star Wars* (1977) and Reich's *Music for 18 Musicians* for Tangerine Dream's *Risky Business* (1983). Egregiously, the practice of directly modeling scores on already successful original soundtracks is widespread, with plagiarism often disguised only by token alterations.

There is clear and convincing evidence that Steele’s “Man I Really Love This Team” was used as a template, or temp-tracked, to produce Bon Jovi’s “I Love This Town” TBS commercial. An easy way to reveal the fingerprints of a fraudulent temp-tracker is to conduct a simple experiment -- no ultraviolet light required.

Instead of watching the commercial with the Bon Jovi soundtrack, try watching the commercial with Steele’s music as the soundtrack. You will then see how Defendants’ access to Steele’s composition is undeniable and how they based the entire commercial off of Steele’s song. Here are the four blatant temp-tracking examples:

- 19 seconds into the commercial, when Steele sings, “Yawkey Way,” the Yawkey Way street sign appears right on cue in the commercial.
- At 42 seconds, when Steele sings about the Detroit “Tigers,” the footage clearly shows a ballplayer running the bases; and yes, the ballplayer is in fact wearing a Detroit Tigers uniform.
- At 56 seconds, when Steele sings, “Get up off your seats,” the crowd in the commercial is cheering off their seats.
- From 1:07 – 1:09, three consecutive clips show ballplayers chest butting, displaying their toughness, while Steele sings, “You gotta stay tough.”

Given these four isolated temp-tracking examples within the commercial, it is more than just uncanny that Steele’s baseball anthem matches the exact content of the MLB video clips. It is highly suspicious. And since Steele did send lyrics and sound recordings to Defendants, even showing how his lyrics could be adapted for different cities, the temp-tracking evidence shows further proof of Defendants’ access to Steele’s registered composition.

III. SUBSTANTIAL SIMILARITY:
INTERSECTION OF MUSIC AND LYRICS

A. Word Placement

Knowing that the Defendants based their commercial on Steele's song answers the question of access, but to claim that Bon Jovi's "I Love This Town" is substantially similar to Steele's "Man I Really Love This Team" requires us to compare and contrast the two songs. What elements, if any, were taken from Steele's composition? Was the heart and soul of Steele's composition ultimately stolen?

Rhyme scheme is a good place to start. Both songs begin with identical rhyme structures: **A-A-B-B-C-C-C**. This rhyme scheme is the backbone of the two compositions. Both songs also begin with a nine-syllable line.

Rhyme Scheme, Verse 1 and Chorus

A A B B C C C

Steele: █████ / Bound / Way / Stay / Seats / Scream / █████

Bon Jovi: Place / Face / Street / Feet / █████ / Down / █████

Verse 1, Line 1: 9 syllables

Steele: Have / you / heard / the / news / that's / go / in' / round

Bon Jovi: I / al / ways / knew / that / I'd / like / this / place

It is not the identical rhyme scheme that would lead one to conclude the two works are substantially similar. *Rather, it is the specific placement of the lyrics within*

this particular rhyme scheme that leads one to dismiss sheer coincidence. When Steele sings about Boston's historic street, Yawkey "Way", Bon Jovi sings about feeling alive "walkin' down the street". Though "Way" and "street" do not rhyme by any stretch of the imagination, their lyrical import and meaning are the same. Further, those two words share the same placement within the rhyme structure (opening "B" rhyme). Also, notice how Steele's "Round" appears in Bon Jovi's "C" rhyme. As the song progresses, "Round" becomes a repeated chorus line in Bon Jovi's song. Moreover, Steele's love for his "Team" and Bon Jovi's love for the "Town" appear in the seventh line of both rhyme schemes.

B. The Bridge Sections

Steele's bridge section employs the use of *anaphora*, the rhetorical device of repetition. He emphasizes that the crowd ("you") has to believe, stay tough, keep the faith, and cowboy up. Just as Steele repeats "you" to excite the crowd, so does Bon Jovi. Bon Jovi's bridge also utilizes *antiphony*, or "call and response". The familiar chant of "here we go," sung in the last line of Steele's bridge, also surfaces in the last line of Bon Jovi's bridge. Moreover, notice how Steele's "come on" phrase is also used in Bon Jovi's song to raise the level of excitement. The similarities in syllabic structure are also remarkable. (See the following page bridge diagram.)

Steele's Bridge

█ got to keep believin'	(7 SYLLABLES)
█ got to stay tough	(5 SYLLABLES)
█ got to keep the faith	(6 SYLLABLES)
█ got to cowboy up	

Stand up proud and say it loud, █ and let'm know
Say here we go, Red Sox, here we go ... (crowd repeats)

Bon Jovi's Bridge

There's shoutin' from the rooftops	(7 SYLLABLES)
Dancin' on the bars	(5 SYLLABLES)
Hangin' out the windows	(6 SYLLABLES)
Drivin' in their famous cars	

█ want it? █ got it. █ ready? I'm on it.
█ now, here we go again ...

Note: Attachment Tab "1" colorfully shows how both songs share Syllabic Structure with regards to (1) the opening line of Verse 1; (2) the opening three lines of the Bridge; and (3) the opening two lines of the final Chorus.

C. Structural Composition of Two Melodic Rhythms

Steele's 1/8 note, 1/4 note, 1/8 note melodic rhythm motif recurs throughout Steele's composition. It is the heart of his composition. Bon Jovi also uses the same rhythmic motif throughout his composition.

The opening **A-A-B-B-C-C-C** rhyme scheme is reproduced in full on the following page. The green highlights represent the recurring 1/8 note, 1/4 note, 1/8 note rhythmic figure. Also, note how the rhyme scheme closes with two 1/2 notes ("Love this") followed by a whole note ("Team / Town"), shown in red. *It is important to note the specific placement or location of these two types of melodic rhythms.* Interestingly, both types of melodic rhythms appear the same number of times in similar, if not identical, locations in this opening verse.

Steele

Have you heard the news that's [REDACTED]
 Our hometown team is [REDACTED]
 And the word is out on [REDACTED]
 Our team in red has [REDACTED]
 So [REDACTED] your seats,
 Every [REDACTED],
 Man I [REDACTED]

“1/8, 1/4, 1/8” melodic rhythm ([REDACTED]) = **7 appearances**

“1/2, 1/2, whole” melodic rhythm ([REDACTED]) = **1 appearance**

Bon Jovi

I [REDACTED] [REDACTED] this place.
 You don't have to look to far to find a [REDACTED]
 I feel [REDACTED] I'm [REDACTED] the street
 I feel the heart of the city poundin' [REDACTED] my feet
 Yeah let the world keep [REDACTED] 'n' round
 This is where it's goin' down, down, down
 That's why I, [REDACTED]

“1/8, 1/4, 1/8” melodic rhythm ([REDACTED]) = **7 appearances**

“1/2, 1/2, whole” melodic rhythm ([REDACTED]) = **1 appearance**

(See Attachment Tab “2” for the complete Melodic Rhythm and Lyric Analysis. Also, see Attachment Tab “3” for the Musical Phrase Structure Analysis which shows how Verse 1 and Chorus of both songs follow nearly identical measure / bar structure.)

D. Scansion

Simply reading the lyrics of both songs reveals similarities in scansion, or textual rhythm, at the same places within the musical structure. (An example is provided on the following page.) A stressed syllable is represented by a hyphen (“-”). An unstressed syllable is represented by a capital U (“U”). The green highlights show where the stressed and unstressed syllables align in the text. The red highlights show how similar lyrics and textual rhythms often coincide.

Verse 1, Line 3

Jovi: I feel a - live when I'm walk-in / on the / [REDACTED]
 [REDACTED] U U / [REDACTED] U / [REDACTED]

Steele: And the word is out on / [REDACTED]
 [REDACTED] U / [REDACTED] / [REDACTED]

Note: See Attachment Tab "4" for more comparative examples of similar scansion.

IV. CONCLUSION

Given all the aforementioned evidence, combined with the attached analyses, I believe Bon Jovi's "I Love This Town" and Steele's "Man I Really Love This Team" are substantially similar. Finding two songs that share similar music and lyrics is not uncommon. What is uncommon, however, and highly indicative of plagiarism, is finding two songs that utilize the *same recurring compositional elements at the same locations within their respective musical structures*, as discussed in this report. Thus, it is my hope that this report not only reveals the non-coincidental substantial similarities between the two songs at issue, but also casts a spotlight on the unethical practice of temp-tracking unlicensed songs.

SYLLABLE ANALYSIS OF BART STEELE'S SONG



Our hometown team is series bound
And the word is out on YAWKEY WAY
Our boys in red have come to play

Now get up off your seats, Everybody scream (Chorus)
Man, I really LOVE THIS TEAM!

The Yankees, Royals and the Rays, (Verse 2)
The Tigers, Rangers and The Jays
Just ask Rem-Dawg in the box
Anyone will tell you Boston Rocks!
Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!



YOU gotta keep believin (Bridge)
YOU gotta stay tough
YOU gotta keep the faith

YOU gotta cowboy up
Stand up proud Say it loud COME ON and let'm know
Say HERE WE GO Red Sox HERE WE GO



From Landsdown Street to Pesky's Pole (Verse 3)
From Cooperstown in days of old
Feel that spirit far and near
Those Fenway fans begin to cheer



SYLLABLE ANALYSIS OF BON JOVI'S SONG (MLB PROMO)

[REDACTED]

You don't have to look too far, to find a friendly face
I feel alive when I'm walkin' on the STREET
I feel the heart of the city poundin' underneath my feet
Yeahhhhh let the world keep spinnin ROUND 'n' ROUND
This is where it's goin' down, down, down

That's why I, LOVE THIS TOWN (Chorus)
That's why I, keep co-min' ROUND

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, LOVE THIS TOWN

(MLB PROMO OMITTS 2nd VERSE)

[REDACTED]

There's shoutin' from the rooftops (Bridge)
Dancin' on the bars
Hangin' out the window

Drivin' in their famous cars
YOU want it? YOU got it
YOU ready? I'm on it

[REDACTED]

That's why I, LOVE THIS TOWN (Chorus)
That's why I, LOVE THIS TOWN

No matter where you're from, tonight you're from right here
This is where it all goes down, down, down
That's why I, LOVE THIS TOWN

[REDACTED]

[REDACTED]

That's why I, LOVE THIS TOWN

[REDACTED]

That's why I, LOVE THIS TOWN

[REDACTED]

That's why I, LOVE THIS TOWN

KEY

Black:	Repeating line of lyrics: [REDACTED]
Yellow:	Repeating line of lyrics: 7 syllables, 5 syllables, 6 syllables
[REDACTED]	

Conclusion:	Bon Jovi's lyrical, syllabic structure mirrors Bart Steele's lyrical, syllabic structure with respect to the overall, defined musical structure.
-------------	--

MELODIC-RHYTHM AND LYRIC ANALYSIS OF BART STEELE'S SONG

Have you heard the news that's goin' ROUND? (Verse 1)
Our hometown team is series bound
And the word is out on YAWKEY WAY
Our boys in red have come to play

Now get up off your seats, Everybody scream (Chorus)
Man, I really LOVE THIS TEAM!

The Yankees, Royals and the Rays, (Verse 2)
The Tigers, Rangers and The Jays
Just ask Rem-Dawg in the box
Anyone will tell you Boston Rocks!
Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

gotta keep believin (Bridge)
gotta stay tough
gotta keep the faith
gotta cowboy up
Stand up proud Say it loud and let'm know
Say Red Sox
Red Sox

From Landsdown Street to Pesky's Pole (Verse 3)
From Cooperstown in days of old
Feel that spirit far and near
Those Fenway fans begin to cheer

Now get up off your seats, Everybody scream (Chorus)
Man, I really LOVE THIS TEAM!

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

MELODIC-RHYTHM AND LYRIC ANALYSIS OF BON JOVI'S SONG (MLB PROMO)

I always knew, that I'd like this place (Verse 1)
You don't have to look too far, to find a friendly face
I feel alive when I'm walkin' on the STREET
I feel the heart of the city poundin' underneath my feet
Yeahhhhh let the world keep spinnin ROUND 'n' ROUND
This is where it's goin' down, down, down

That's why I, **LOVE THIS TOWN** (Chorus)
That's why I, keep co-min' ROUND

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

(MLB PROMO OMITTS 2nd VERSE)

There's shoutin' from the rooftops (Bridge)
Dancin' on the bars
Hangin' out the window
Drivin' in their famous cars
I want it? I got it
I ready? I'm on it
I'm on it now, I'm on it again ...

That's why I, **LOVE THIS TOWN** (Chorus)
That's why I, **LOVE THIS TOWN**

No matter where you're from, tonight you're from right here
This is where it all goes down, down, down
That's why I, **LOVE THIS TOWN**

Say hey (say hey) say yeah (say yeah) (Chorus)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

KEY

- Underline: Represents the (1/8, 1/4, 1/8) melodic-rhythm, musical pattern that (1) rhythmically aligns with the sung lyrics in both songs; and (2) appears in identical places within the musical structure of both songs
- RED BOLD:** Represents the (1/2, 1/2, whole) melodic-rhythm, musical pattern that (1) rhythmically aligns with the sung lyrics in both songs; and (2) appears in identical places within the musical structure of both songs
- Green: Represents the lyrical similarity between both songs within Verse 1 of the musical structure
- Represents the lyrical similarity between both songs within the Bridge of the musical structure
- NOTE:** Overlapping elements occur

Musical Phrase Structure: Bon Jovi, Verse 1 and Chorus

I al-ways knew that I'd like this pla-ce You don't have to

6

look too far to find a friend - ly face I

10

feel a - live when I'm walk-in on this stre-et I feel the

14

heart of the ci - ty pound-in un - der neath my feet Yeah

17

let the wor - ld keep spinn-in' round and round this is where it all goes

21

down down down that's why I love this town

Musical Phrase Structure: Bart Steele, Verse 1 and Chorus

The image displays a musical score for the song "Verse 1 and Chorus" by Bart Steele. The score is written in treble clef with a key signature of three sharps (F#, C#, G#) and a 4/4 time signature. It consists of seven lines of music, each with a measure number at the beginning. The lyrics are written below the notes, with some words hyphenated across measures. The lyrics are: "Have you heard the news that's go - in' round. Our home - town team is ser - ies bound. And the word is out on Yaw - key Way. Our boys in red have come to play. Now get up off your seats Ev - ery - bod - y scream. Man I rea - lly l - ove this team".

1 Have you heard the news that's go - in' round. Our

6 home - town team is ser - ies bound. And the

10 word is out on Yaw - key Way. Our

14 boys in red have come to play. Now

18 get up off your seats Ev - ery - bod - y scream

22 Man I rea - lly l - ove this team

KEY

Green:	Similar lengths of musical phrases appearing in identical locations within the musical structure corresponding to lines of verse
Blue:	Similar lengths of musical phrases appearing in identical locations within the musical structure that begin near lines of verse
[Redacted]	

SCANSION ANALYSIS

KEY: ■ represents a “stressed” syllable

■ represents an “unstressed” syllable

Verse 1, Line 3

Steele: I feel a - live when I’m walk-in / on the / ■
■ U U / ■ U / ■

Jovi: And the word is out on / ■
■ U / ■ / ■

Bridge, Opening Line

Steele: You gott - a keep be - liev - in
■

Jovi: There’s shout - in from the roof - tops
■

Chorus Refrain, Opening 6 syllables

Steele: Now get up off your seats ...
■

Jovi: Say hey say hey say yeah ...
■

Dear bart- sorry this has taken me so long, I've been out of the country. Hope this looks okay. If not, let me know.

-Mark

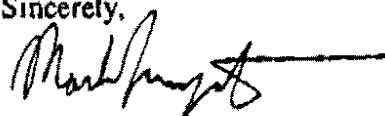
To whom it may concern,

I hereby attest that the statement I sent via email to Bart Steele on September 6th, 2008 concerning similarities between his song "Man, I really love this team" and Bon Jovi's song "I love this town" is my own. The similarities I have described between the two songs are true and accurate to the best of my knowledge.

I am a Ph.D. candidate in Musicology at Cornell University in Ithaca, New York. I received an M.A. (Master of Arts) in Musicology from Cornell in 2009 and plan to receive my Ph.D. in the spring of 2011. I previously received a B.A. in Music and French from the College of the Holy Cross in Worcester, Massachusetts. My current musicological work focuses on style analysis, in particular of 18th- and 19th-century music, as well as issues of historical context. I have taught or assisted in the teaching of Music Theory, Music History (1600-present day), and Jazz.

Should you require further information from me, please contact me at one of the addresses below.

Sincerely,

 6/19/2009

Mark Ferraguto

700 Stewart Avenue, #35
Ithaca, NY 14850
mferraguto@gmail.com
781-572-4951

On Sat, May 30, 2009 at 12:36 PM, <bartsteele@comcast.net> wrote:

Hi Mark,

I need a quick statement for an affidavit regarding your response to the email below (your response is attached)...also please say something like "under penalty of perjury my statement is true to the best of my knowledge" regarding the similarities you pointed out in both the song & video.

Also please give your name/address/phone/educational history.

I need this ASAP and will only take a sec. and via email is fine.

Thanks again Mark,

Bart

----- Forwarded Message: -----

From: "Mark Ferraguto" <mferraguto@gmail.com>
To: bartsteele@comcast.net, "Jonathan Yasuda" <jtyasuda@gmail.com>
Subject: some thoughts
Date: Sun, 7 Sep 2008 01:11:09 +0000

Hi Bart (and Jon),

Sorry about the slow response. Classes just started here so things have been crazy. Let me just say that I think you've got a great case here and I really hope things work out for you. I agree fully with everything you enumerated in the list, regarding similarities between your song and the video. I won't comment on any of that because I think it's clear as day. I have a couple comments about the similarities between the songs themselves, which may or may not be useful:

The First Verse:

Steele describes the TEAM that is making news and inspiring excitement among fans. Bon Jovi describes the TOWN that is inspiring excitement for him (and presumably other fans). The structure of the text is nearly identical. Both verses begin with two pairs of rhyming lines (Steele uses round/bound, Way/play; Bon Jovi uses place/face, street/feet), followed by a new section of three rhymes (Steele's seats/scream/team, Jovi's round/down/town). Bon Jovi's placement of 'street' coincides with Steele's 'Yawkey Way' (line 3). Both verses culminate in an expression of love for the team/town, using virtually the same language (Man, I really love this team/That's why I love this town). [Bon Jovi elaborates on this idea in a chorus, while Steele continues to the next verse].

The Bridge:

While the verses of both songs focused mainly on the singer (I love this town/team), the bridges bring the crowd on board. Steele invites the crowd to 'stand up proud and say it loud, come on and let em know', while Bon Jovi declares 'you want it, you got it, you ready? uh-huh, come on now.' The invitation 'come on' is used in both bridge sections (line 2, Jovi; line 3, Steele), and, more importantly, both bridges culminate in the same idea, again using almost identical language (Steele's 'Here we go red sox, here we go' and Jovi's 'Here we go again').

I hope this helps a bit. Best of luck and stick it to TBS!!

Mark 

On Tue, Aug 19, 2008 at 8:25 PM, <bartsteele@comcast.net> wrote:

- >
- >> Jon,
- >> Please forward these on to your buddy to confirm what we know, they used my
- >> song as a teamp-track. And thank him for me also!!!
- >>
- >> 1) First off they are both baseball playoff anthems and they're saying the
- >> same thing (their version is generic). I told them I was rewriting it for
- >> any town and any team and that's exactly what they did but those assholes
- >> cut me out!!!
- >> 2) Country Nashville sounds (except mine is a repeating drum loop, there's
- >> has dynamics and a real drummer. Tico...and like all their country crap
- >> lately...it's Bon Jovi Rock/Pop/Country)
- >> 3) Drum hit intros seem to match (:08)
- >> 4) Intro solo's seem similar feel
- >> 5) TBS who owned a NL team for 30 years and hosted the NLCS produced this
- >> ad. It is mostly AL and more Red Sox shots than any team by far (FOX hosted
- >> the ALCS last year)
- >> 6) When I sing 'round' there are 4 camera shots going around ballparks
- >> (:03-:16) (Important: When BJ sings 'world keep spinnin' round', video shots
- >> in the BJ version are of camera shots going very fast around ballparks in
- >> their chorus)
- >> 7) When I sing about a street, "Yawkey Way", Bj's sings 'walkin down the
- >> street'

- >> 8) When I say 'Hometown team is series bound' (:13), they show many jumping out of dug out to celebrate some huge win possibly trip to the series???
- >> 9) Also the second I say 'Yawkey Way', the camera pans up to a street sign of 'Yawkey Way' (:18)
- >> 10) I sing 'Boys in Red have come to play', they show a crowd wearing Red cheering to the beat (:23)
- >> 11) Video is mostly Red Sox and Fenway until I start singing about other teams/towns (:36), then they start showing Manny other teams for the first time!!!
- >> 12) Second I say 'Tigers', they in fact show a Detroit Tiger rounding first (:41)
- >> 13) My first "Get up off your seats, everybody scream" seems to match to well (:56), they show people gettin' off their seats and screaming
- >> 14) In the intro to my bridge (1:07), when I'm saying 'gotta stay tough, gotta cowboy up', they show players bumping chests, razzin' each other, and butt slapping...come on TBS!!!!
- >> 14) The lyrics at the ends of both of our Bridges are in fact the same 'come on let'm know, here we go' is me. BJ sings 'come on now, here we go again'
- >> 15) At intro to my solo (1:19), 'Here we go Red Sox here we go' seems to fit too well
- >> 16) (1:19-1:30) of my solo, it looks people are dancing to my song, catches made almost perfectly to my stupid drum loop beat
- >> 17) my 3rd verse 'Landsdowne St. to Pesky's pole' they show 6 camera shots (3 of Red Sox and 3 other AL teams)
- >> 18) I sing 'feel that spirit far and near' they show a Fenway home run, camera shot goes from far to near
- >> 19) In fact then I say 'Fenway fans begin to cheer', they show the reaction of the crowd at Fenway to the homer, it shows Fenway fans cheering (2:06)
- >> 20) In my last chorus is the most frightening (2:10), they match way too well
- >> 21) My song starts its slow fade out the second the ad ends (2:39)
- >> 22) Very similar bpm and length is spooky too
- >> 23) Both tracks have added crowd noise
- >> 24) They also stole the call/response concept too
- >> 25) I quote a player Cowboy up Kevin Millar, they quote the Say Hey kid Willie Mays
- >> 26) Finally, listen to how the end solos in both versions are somewhat similar
- >>

“I Love this Team/Town”

Informal analysis

(harmonic analysis uses Roman numerals; melodic analysis uses Arabic numerals)

Melody

Hook

Team (“Man I really love this team”): 5-5-5-5-4-b3-1

Town (“That’s why I love this town”): 3-2-1 3-2-1

Team (“Have you heard the news that’s goin’ ‘round, 3-5-1-1-1-5-b3-2-1:

Town (“I always knew, that I’d like this place”): 1 -1-1-1 7-7-6-6-6-5

(“You don’t have to look too far, to find a friendly face”) 1-1-1-1-1-1-6 1-2-2-2-1-1

Team (“Get up off your seats, everybody scream”) 5-5-5-5-5-4 5-5-5-5-4

LyricsMan I really love this teamThat’s why I love this town

Only three words in common (“I” “love” “this”)

Bon Jovi’s song about a town (it’s very vague, without the video, there would be no connection to baseball)

In Bart’s song, the subject is clearly baseball and specifically the Red Sox)

Harmony

Both songs are predominantly I, IV, V chords

Hook: Team (“Get up off your seats, everybody scream, man I really love this town”) V

IV V IV V IV [bVII VII] I (“blues dominant section – last 4-bars”)

Town (“I always knew, that I’d like this place” “That’s why I love this town”)

IV V I I

IV V I I

Rhythm

Both songs share some common rhythmic figures, phrase length, scansion (analysis of verse into metrical patterns), but also significant differences exist

Form

Team: 12-bar blues with 8-bar bridge (AABA A= 12-bar blues; B=IV IV I I IV IV VV one bar each) INTRO baseball cheer organ and 4 bars I chord

Town: AABCCBC A=8 bars; B=5 bars; C=4 bars INTRO first four measures of A section rubato (slow, free tempo)

Tempo/beat/groove

Similar “standard” rock beat (Bon Jovi slightly faster)

Instrumentation/orchestration/arrangement

Common rock configuration

Bon Jovi (guitars, bass, drums, ...)
Bart (guitars, piano, drums, bass...)

Musicological issues

- 1) Must show “striking similarity” between two works
 - a) lyrics and melody generally considered most important elements
 - b) other elements (harmony, rhythm, form/structure, subject matter, etc.) can bolster a case significantly
 - 2) Originality of earlier work; defense will search for existence of “prior art”
- However, legally, threshold for originality has been rather low

Access issues

Must show defendant could have had access to earlier work

This case is not strong musicologically:

Melody of “hook” has only one note in common (1).

Three words in common, but not the most distinctive word, “team.”

Harmony is commonplace. Both tunes consist primarily of I, IV, and V chords – the most commonly used chords in harmony. Moreover, “Team” is a 12-bar blues. One of the most distinctive harmonic figures in “Team,” the chromatic chord change (D-D#-E) at the end of the hook, is not found in “Town.”

Hook in “Town” begins on the IV chord (progression IV V I); hook of “Team” begins on V (progression V IV I).

Bon Jovi song has somewhat irregular structure: 5-bar “B section”; “Team” is regular 4- and 8-bar sections

“Access” case quite strong because of “temp track” and other history, but questionable how far this could go without more evidence of musical similarity. Too bad, because it seems your client got a raw deal. His story would play well in a courtroom, but unless I’ve missed something, it could be hard to present a case of MUSICAL plagiarism. Defense would be sure to come up with tons of examples of “prior art” (e.g., songs containing the words “I love this...”) in order to dispute the originality of any alleged similarities.

Alex Stewart

Curriculum Vitae
Alexander Stewart
2009

Department of Music
University of Vermont
Burlington, VT 05405
(802) 656-7766
astewart@uvm.edu

Teaching Positions

UNIVERSITY OF VERMONT 1999-present
Associate Professor
Jazz Studies Coordinator
Director, Integrated Fine Arts Program
Co-Director, Latin American Studies Program (Spring 2006)
Fulbright Fellow, Mexico (2006-7)

LONG ISLAND UNIVERSITY 1988-1999
C.W. Post Campus
Director of Jazz Studies

Adjunct courses:
The New School (Jazz and American Culture) 1995-1997
John Jay College of CUNY (History of Jazz and Rock) 1995

Education

GRADUATE CENTER: THE CITY UNIVERSITY OF NEW YORK
Ph.D. in Music (Ethnomusicology Concentration), 2000
Dissertation: *Composition and Performance in Contemporary New York City
Big Bands (1989-1999)* Advisor: Stephen Blum

MANHATTAN SCHOOL OF MUSIC
Master of Music, 1991

LONG ISLAND UNIVERSITY, C.W. POST
B.F.A., *summa cum laude*, in Music Education, 1988

SELECTED PROFESSIONAL ACTIVITIES

Publications – books

Making the Scene: Contemporary New York City Big Band Jazz. Berkeley: University of California Press, 2007.

Alex Stewart

Spanish translation from the French and German: Hans Bodenmann, *El ABC de la Flauta Dulce*. Zurich: Anton Peterer Music & Books, 2003.

Publications – refereed journals

Review of Ben Ratliff, *Coltrane: The Story of a Sound* in *Jazz Perspectives* 2(1):103-109 (2008).

“Contemporary New York City Big Bands: Composition, Arranging, and Individuality in Orchestral Jazz,” *Ethnomusicology* 48(2) (Spring/Summer 2004): 169-202.

Review of *The New Grove Dictionary of Jazz*. *Ethnomusicology* 47(3) (Fall 2003): 376-80.

Essay review of Lewis Porter, *John Coltrane: His Life and Music*. *Annual Review of Jazz Studies* 11, 2000-1 [2002]: 237-52.

“‘Funky Drummer’: New Orleans, James Brown and the Rhythmic Transformation of American Popular Music,” *Popular Music* 19(3) (Winter 2000): 293-318.

Review of Scott DeVeaux, *The Birth of Bebop*, *Yearbook of Traditional Music* 30 (1998): 135-7.

Publications – other

“Second Line,” *Encyclopedia of Popular Music of the World*. London: Cassell 2003.

Lectures, Colloquia, and Conference Papers

“Performing Race: Afro-Mexicans and Multiculturalism in Oaxaca’s Guelaguetza.” Paper to be presented at the Latin American Studies Association (LASA) XXVIII International Congress, “Rethinking Inequalities” Rio de Janeiro, Brazil, 12 June 2009.

La chilena oaxaqueña: “El gusto de mi region.” Paper presented at the annual conference of the Sonneck Society for American Music (SAM), Denver, CO, 19-22 March 2009.

Insights FlynnArts. Pre-concert lecture on Maria Schneider and her Orchestra. 22 January 2009. Amy E. Tarrant Gallery at the Flynn Center for the Performing Arts.

“Performing Race: Afro-Mexicans and Multiculturalism in Oaxaca’s Guelaguetza Festival.” Paper presented at the annual meeting of the Society for Ethnomusicology (SEM), Wesleyan University, Middletown, CT, 28 October 2008.

“*La Danza de las Diablas*”? Race, Gender, and Local Identity in Afro-mestizo communities of Mexico’s Costa Chica. Paper presented at the annual meeting of the Society for Ethnomusicology, Columbus, OH, 28 October 2007.

“*Son de las Barricadas*”: Songs of Protest from the Spanish Civil War to the Present on Oaxaca’s Radio APPO.” Hispanic Forum, University of Vermont, 10 October 2007.

Alex Stewart

“Cross-Cultural Learning through Music and Dance: A UVM Class in Guantánamo, Cuba.” Presentation to the UVM College of Arts and Sciences Advisory Board, April 2004.

“Beauty and the Beast: Maria Schneider’s *Wyrgly*.” Paper presented at special session of the joint meetings of Society for Music Theory (SMT) and the American Musicological Society (AMS), “Women in Jazz: Voices and Roles,” Columbus, OH, 1 November 2002.

“On the Edge: Sue Mingus and the Mingus Big Band.” Colloquium at the University of Illinois (Urbana and Champaign), 6 March 2002.

“*Blood on the Fields*: Wynton Marsalis and the Transformation of the Lincoln Center Jazz Orchestra.” Paper read at the 2001 annual meeting of the SEM in Detroit, October 2001.

“The Jazz Concerto as Collaborative Work: Jim McNeely’s ‘Sticks.’” Paper read at the joint meeting of the Society for Music Theory (SMT) and other major music societies in Toronto, 4 November 2000.

“New York City Big Bands and the Professional Jazz Musician.” Paper read at the annual meeting of the Society for Ethnomusicology (SEM) in Bloomington, IN, 24 October 1998.

“The Compositions of John Coltrane.” Lecture delivered at Manhattan School of Music, April 1998.

“From Mardi Gras to Funk: Professor Longhair, James Brown and the Transformation of Rhythm and Blues.” Paper read at joint meeting of the Society for Ethnomusicology (SEM) and the International Association for the Study of Popular Music (IASPM) in Pittsburgh, PA, October 1997.

Grants and Awards

Joan Smith Faculty Research Support Award *Performing Race: Afro-Mexicans, Multiculturalism, and the “Black Pacific.”*

Lattie F. Coor Award for International Travel to present paper at the Latin American Studies Association (LASA) Congress in Rio de Janeiro, Brazil. June 2009.

Fulbright Research Fellowship to Mexico, Afro-Mexican music, 2006-7.

UVM Arts and Sciences Dean’s Fund for Faculty Development, Fall 2005.

UVM Humanities Center Research Grant, Spring 2004.

UVM Global Outreach Committee Grant, March 2003.

UVM Arts and Sciences Faculty Development Grant for study in Cuba, May 2002.

2001 Barry S. Brook Award for best dissertation in music CUNY.

CUNY Dissertation Year Fellowship 1998-1999.

Music Copyright

Testimony in trial in Federal District Court, Nashville TN, Case No. 3:01-780, Bridgeport Music v. Universal Music. February 2007.

Testimony in Federal District Court, Nashville, TN Case No. 3:01-0155 involving rap artist, the Notorious B.I.G and the Ohio Players. (March 2006).

Expert reports in forensic musicology for Rawson, Merrigan & Litner, Greenfield and Boston, MA. December-January 2008-2009; King and Ballow, Nashville, TN; Schwartz Cooper, Chicago, IL; and others.

Symposium on Music Copyright, flautist James Newton discusses his lawsuit against the Beastie Boys. University of Vermont, January 2003.

Board Memberships

Friends of Indian Music and Dance (FIMD), Burlington VT

Burlington Discover Jazz Festival

University of Vermont Latin American Studies (LAS) Program

Professional Societies

Society for Ethnomusicology (SEM)

Society for American Music (Sonneck)

American Musicological Society (AMS)

Latin American Studies Association (LASA)

Chronology ReviewFILED
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

The attached Chronology Study and the results below were derived from analysis of ~~Bar's~~ Exhibit 1, a synchronized audiovisual of "(Man I Really) Love This Team" (Song) with MLB/TBS Bon Jovi Video (Video). Video was reviewed using QuickTime Player 7.6.2.

• DURATION

-Each essentially the same (Song: at 2:38 crowd cheers, fade begins; Video: at 2:38 fades to black)

• TECHNICAL / EDITING

-Of 155 Video Sequences, 149 (96%) are closely or perfectly synchronized to match Song's metronomic quarter-note "beats" (for uniformity, editability and marketability, Song was recorded to a mechanical "click-track") (see Column E "Song Measure / Beat Synch")

• TEAM FREQUENCY

-The Video promotes the 2007 MLB National League Playoffs. The accounting below excludes Bon Jovi, umpires, and (6) indeterminate sequences. For Team, consideration was given to player, stadium, fans, and prominent MLB player ads.

<u>Team</u>	<u>Sequences</u>	<u>Percentage</u>	<u>League</u>
Boston Red Sox	23	22.3	American
New York Mets	16	15.6	National
Atlanta Braves	8	7.8	National
Chicago Cubs	7	6.8	National
Los Angeles Dodgers	7	6.8	National
New York Yankees	6	5.8	American
Anaheim Angels	6	5.8	American
Cleveland Indians	4	3.9	American
Minnesota Twins	4	3.9	American
Philadelphia Phillies	4	3.9	National
Arizona Diamondbacks	3	2.9	National
Seattle Mariners	3	2.9	American
Cleveland Indians	2	1.9	American
Detroit Tigers	2	1.9	American
Milwaukee Brewers	2	1.9	National
Chicago White Sox	1	0.9	American
Colorado Rockies	1	0.9	National
Oakland Athletics	1	0.9	American
Kansas City Royals	1	0.9	American
Pittsburgh Pirates	1	0.9	National
San Diego Padres	1	0.9	National

• SIMILARITIES

-**Quantitative:** In consideration of frequency of similarities, Technical characterizes the degree of mechanical synchronization; Aesthetic qualifies similarities in "total concept and feel".

<u>Similarity</u>	<u>Striking/Identical</u>	<u>Substantial</u>	<u>Moderate</u>	<u>Mild</u>
Technical	2	16	1	2
Aesthetic	2	8	8	2

-Qualitative: Notice should also be taken of the skillful A/V editing in frames 00:36:00-00:38:20, which impart the “feel” and spirit of the accompanying music; similarly at 01:33:00-01:34:00, where two diving catches match repeating guitar phrase; and 1:43:30-1:48:80, where visual accents match guitar solo.

•TOTALITY

-Elements of Theme:

Introduction

Song Fan experience outside the stadium before gametime
 Video Imagery of fan experience outside the stadium before gametime

Verse 1

Song Song refers exclusively to hometown Red Sox
 Video Red Sox imagery predominates

Verse 2

Song Song catalogues a variety of MLB team names
 Video Variety of team images introduced

Bridge

Song Lyrics of faith/hope and primal gestures
 Video Images of “high-fives” and chest-thumping

Narrative: Bart asserts rightly his work is a country-rock baseball anthem for hometeam Boston Red Sox. His song chronicles a fan’s journey from the streets outside the stadium walls, to the ecstasy within during gametime.

To compare similarities of totality and theme (“total concept and feel”) in the Video to Bart’s original Song, Craig Barry--vice president and creative director for Turner Sports--says it best: "The true heart of a baseball franchise lives outside the stadium walls, in the hearts and minds of the fans. These fans love their hometown as much as they love the baseball team that represents them and that is the essence of the piece...we wanted to find an up-tempo, grassroots piece of music that represented not only baseball and the teams, but the fans and cities as well." Indeed. (“Baseball finds a late summer anthem”, TBS playoff promo features Bon Jovi’s ‘I Love This Town’, By Doug Miller / MLB.com, 08/31/2007 3:59 PM ET)

•CONCLUSION

-In comparison by empirical, statistical, technical and aesthetic analysis--applying either or both “expert” and “reasonable ordinary observer” standards--I conclude Video was intentionally and unlawfully synchronized to Song in violation of Bart Steele’s copyrights under law.

Electronically Signed this 12th Day of June , 2009,
Stephen J. Murphy
Born July 2, 1970
Professional Musican, Writer & Filmmaker
BA English Literature, Colby College
Residence Upwood
326 Chartier Hill Road
Woodbury, VT 05681
sjmurphy@murphysworkshop.com

Signed this 18th Day of June, 2009



Stephen J. Murphy

By my Oath & Honor I solemnly swear
that all depiction of fact above is true,
to the best of my knowledge,
under the pain of perjury, fine, or imprisonment;
Statements of opinion founded on such facts
are genuine to the extent of my heart,
reason and sense of fair play.

June 12, 2009

To supplement my earlier affidavit, I submit now more evidence to demonstrate why Bart Steele's "I Really Love This Team" was infringed:

The Memorandum & Order directs Bart to prove substantial similarity of original constituent elements. This test is certainly applicable to a traditional Song v. Song comparison.

However Bart's stronger infringement claim rests in synchronization rights (for recognition of synch-rights, see *Maljack Prods., Inc. v. GoodTimes Home Video Corp.*, 81 F.3d 881, 884-85 (9th Cir.1996)). The novel comparison in Bart's complaint is Song v. Video. Standards of substantial similarity necessarily apply. But for different reasons.

For a synch-rights claim, Bart need not apply the narrow "original constituent elements" comparison to Song v. Video. Instead, he must prove his "copyrighted musical composition is...used in 'timed-relation' or synchronization with an audiovisual work", *ABKCO Music, Inc. v. Stellar Records, Inc.*, 96 F.3d 60, 63 n. 4 (2d Cir.1996); see also Nimmer on Copyright § 30.02 [F][3].

To deny him this claim, the defendants must prove: (1) his work is wholly devoid of creative expression and undeserving of copyright protection; or (2) the Video was not synchronized to his Song.

First, to enjoy protection of his "copyrighted musical composition" Bart must demonstrate "original constituent elements" within his work. He does this convincingly:

His composition—a country-rock baseball anthem for hometeam Boston Red Sox—is surely an original expression in totality ("total concept and feel", *Roth Greeting Cards v. United Card Co.*, 429 F.2d 1106 (9th Cir. 1970)); and certainly presents a "modicum of creativity...no matter how crude, humble or obvious" (*Feist Publications, Inc. V. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340) in its constituent elements—lyrics and melody—to afford it copyright protection.

Bart is left then to prove synchronization of Video to Song. This he does by demonstration of substantial similarity and striking (identical) similarity in Video and Song (see attached Chronology Study & Chronology Review).

Of particular note, Video and Song are empirically and perfectly synchronous for one second between 18.8 and 19.8 seconds (Yawkey Way); and again empirically and near-perfectly synchronous for 1.4 seconds between 41.6 and 43.0 seconds (Detroit Tigers).

In addition as the documents attached attest, overwhelming empirical, statistical and technical evidence exists to suggest intentional synchronization of Video to Song.

To dismiss as mere coincidence such towering synchronicity in works divorced by time

and space exceeds the bounds of reasonable credulity. Intuitive suspicion of improbability casts doubt upon any claim of conclusive discovery of material fact, and therefore suggests Bart's case should proceed.

I respectfully ask the court, on the strength of existing empirical, statistical, technical and aesthetic evidence; and in the promise of greater discovery of material fact; and the compounding, abundant supporting general circumstantial evidence, please allow Bart Steele the opportunity to prove his case before a jury.

By my oath & honor I solemnly swear that all depiction of fact above is true, to the best of my knowledge, under the pain of perjury, fine, or imprisonment; Statements of opinion founded on such facts are genuine to the extent of my heart, reason & sense of fair play.

Electronically Signed this 12th Day of June , 2009,
Stephen J. Murphy
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Professional Musician, Writer & Filmmaker
BA English Literature, Colby College
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Signed this 18th Day of June , 2009



Stephen J. Murphy

Chronology Study

	A	B	C
1	Chronology	Sequence	Visual Description
2	00:00:00 - 00:03:00	1	Bon Jovi concert/soundcheck
3	00:03:00 - 00:04:90	2	Yankee Stadium exterior, interior fans, Day, Aerial CCW
4	00:04:90 - 00:06:60	3	? Stadium exterior, interior fans & ? City Skyline, Day, Aerial R/L Pan
5	00:06:60 - 00:09:10	4-7	Bon Jovi concert/soundcheck
6	00:09:10 - 00:10:80	8	? Stadium exterior, interior fans, Night, Aerial CW
7	00:10:80 - 00:11:80	9	Bon Jovi concert/soundcheck
8	00:11:80 - 00:13:50	10	Exterior Baseball Dugout, Players Celebrate & Embrace, Focus Red Sox
9	00:13:50 - 00:15:20	11-12	Bon Jovi concert/soundcheck
10	00:15:20 - 00:16:30	13	? Stadium exterior, interior fans & ? City Skyline, Day, Aerial CCW
11	00:16:30 - 00:17:20	14	Wrigley Field exterior & signs (TBS & Wrigley Field), Day
12	00:17:20 - 00:18:00	15	Wrigley Field exterior & street fans, Day, Street Level
13	00:18:00 - 00:18:80	16	Fenway Park exterior (Yawkey Way) & street fans, Day, Street Level
14	00:18:80 - 00:19:80	17	Fenway Park Exterior (Yawkey Way), Signs, Night, Street Level
15	00:19:80 - 00:20:70	18	? Stadium interior fans & field, Day, Ground Level
16	00:20:70 - 00:21:70	19	Fenway Park interior fans & field, Night, Ground Level
17	00:21:70 - 00:22:40	20	Bon Jovi concert /soundcheck
18	00:22:40 - 00:24:70	21	Braves interior fans stand & cheer
19	00:24:70 - 00:25:50	22	Cleats (Black / white) (M.Ramirez) kick dirt
20	00:25:50 - 00:26:40	23	Cleats (#24 Red Sox (M.Ramirez)) kick dirt
21	00:26:40 - 00:30:10	24-26	Bon Jovi concert/soundcheck
22	00:30:10 - 00:33:20	27	Shea Stadium exterior, interior fans & field, Night, Aerial Clockwise
23	00:33:20 - 00:34:10	28	Bon Jovi concert/soundcheck
24	00:34:10 - 00:35:00	29	Red Sox Pitcher, concentration face
25	00:35:00 - 00:35:50	30	Red Sox Pitcher pitches
26	00:35:50 - 00:36:00	31	Royals Pitcher throws ball, in an arc "descends", POV Batter
27	00:36:00 - 00:36:30	32	Minnesota Twins Pitcher pitches
28	00:36:30 - 00:37:00	33	Baseball sails past Twins Batter into ?Team Catcher's glove
29	00:37:00 - 00:37:50	34	Padres Pitcher pitches
30	00:37:50 - 00:37:90	35	Baseball sails past Twins Batter into Yankees Catcher's glove
31	00:37:90 - 00:38:20	36	Umpire signals Strikeout of Phillies Batter
32	00:38:20 - 00:39:20	37-38	Bon Jovi concert/soundcheck
33	00:39:20 - 00:39:80	39	Tigers Batter hits baseball
34	00:39:80 - 00:40:60	40	Phillies Stadium, interior field & fans stand & cheer, POV fan

	D	E
1	Audio	Song Measure / Beat Synch
2	Instrumental Intro - Organ	
3	Guitar & Crowd Cheer	2/1
4	Guitar & Crowd Cheer	2/4
5	Music & Vocal ("Have you heard the news")	3/3; 3/4; 4/1; 4/2
6	Music & Vocal ("that's goin' 'round?")	4/3
7	Music	5/2
8	Music & Vocal ("Our hometown")	5/4
9	Music & Vocal ("team is Series-bound")	6/3; 6/4
10	Music	7/1
11	Music	7/3
12	Music & Vocal ("And the word")	8/1
13	Music & Vocal ("is out on")	8/2
14	Music & Vocal ("Yawkey Way")	8/3
15	Music	9/1
16	Music	9/3
17	Music & Vocal ("Our boys")	10/1
18	Music & Vocal ("in red have come to play")	10/2
19	Music	11/2
20	Music	11/3
21	Music & Vocal ("Now get up off your seats / Everybody")	12/1; 12/3; 13/1
22	Music & Vocal ("scream / Man I really love")	13/3
23	Music & Vocal ("this Team!")	14/4
24	Music	15/1
25	Music	15/3
26	Music, piano 'roll' , notes and tone "descend"	15/4
27	Music & Vocal ("The")	16/1
28	Music & Vocal ("Yankees")	16/2
29	Music & Vocal ("Royals")	16/3
30	Music & Vocal	16/4
31	Music & Vocal ("and the")	
32	Music & Vocal ("Rays")	17/1
33	Music	17/2
34	Music	17/3

	F	G
1	Qualitative A/V Synchronicity	Team/Player/Park/Fans
2	Guitar (06:60-07:30) & Drum (08:00-08:40) Video match Song	
3		NY Yankees
4		?
5		N/A
6	"goin' round" / Clockwise Camera	?
7		N/A
8	"our hometown" / Red Sox Player	Boston Red Sox
9		N/A
10		?
11		Chicago Cubs
12		Chicago Cubs
13	"out on" / Fans on Yawkey Way	Boston Red Sox
14	"Yawkey Way" / Yawkey Way street sign	Boston Red Sox
15		?
16		Boston Red Sox
17		N/A
18	Fans display "red" Braves team colors	Atlanta Braves
19		Boston Red Sox
20		Boston Red Sox
21		N/A
22		New York Mets
23		N/A
24		Boston Red Sox
25		Boston Red Sox
26	Piano "descends" / Baseball "descends"	Kansas City Royals
27		Minnesota Twins
28		Minnesota Twins
29		San Diego Padres
30		Twins / Yankees
31		Philadelphia Phillies
32		N/A
33		Detroit Tigers
34		Philadelphia Phillies

	H	I
1	Tech Similarity	Aesthtic Similarity
2	Substantial	Substantial
3		
4		
5		
6	Substantial	Substantial
7		
8	Substantial	Substantial
9		
10		
11		
12		
13	Substantial	Moderate
14	Striking / Identical	Striking / Identical
15		
16		
17		
18	Substantial	Moderate
19		
20		
21		
22		
23		
24		
25		
26	Substantial	Moderate
27		
28		
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33		
34		

SM

	A	B	C
35	00:40:60 - 00:41:60	41	Bon Jovi concert/soundcheck
36	00:41:60 - 00:43:00	42	Detroit Tigers Batter rounds first base
37	00:43:00 - 00:46:50	43-45	Bon Jovi concert/soundcheck
38	00:46:50 - 00:47:20	46	New York Mets baserunner
39	00:47:20 - 00:47:60	47	New York Mets baserunner, steals base
40	00:47:60 - 00:48:20	48	?Team baserunner, steals base
41	00:48:20 - 00:49:30	49	Bon Jovi concert/soundcheck
42	00:49:30 - 00:50:00	50	Los Angeles Dodgers batter rounds bases
43	00:50:00 - 00:51:00	51	Braves baserunner, rounds third base
44	00:51:00 - 00:51:60	52	Braves baserunner, slides into homeplate
45	00:51:60 - 00:52:20	53	Atlanta Braves baserunner safe at homeplate, celebrates
46	00:52:20 - 00:53:00	54	Bon Jovi concert/soundcheck
47	00:53:00 - 00:54:20	55	New York Mets outfielder jumps for ball
48	00:54:20 - 00:55:20	56	Bon Jovi concert/soundcheck
49	00:55:20 - 00:56:00	57	New York Mets outfielder celebrates
50	00:56:00 - 00:56:80	58	Shea Stadium (Mets), interior fans stand & cheer, sign held aloft "Amazin!"
51	00:56:80 - 00:58:50	59	Bon Jovi concert/soundcheck
52	00:58:50 - 00:59:00	60	Boston Red Sox batter hits ball
53	00:59:10 - 01:00:00	61	Fenway Park interior fans stand & cheer homerun
54	01:00:00 - 01:01:20	62	Boston Red Sox baserunner to homeplate & cheering team
55	01:01:20 - 01:02:80	63-64	Bon Jovi concert/soundcheck
56	01:02:80 - 01:03:60	65	White Sox Stadium, interior fans stand & cheer
57	01:03:60 - 01:04:30	66	Cubs, interior fans stand & cheer
58	01:04:30 - 01:05:00	67	Cubs, interior fans stand & cheer, fan "high-five"
59	01:05:00 - 01:05:90	68	?Stadium, interior fans stand & cheer
60	01:05:90 - 01:06:50	69	New York Yankees player celebrates
61	01:06:50 - 01:07:50	70	Milwaukee Brewers players celebrate, "high-five"/"low-five"
62	01:07:50 - 01:08:30	71	New York Mets players celebrate, "elbow-shoulder bump"
63	01:08:30 - 01:09:00	72	Minnesota Twins players celebrate, "chest bump"
64	01:09:00 - 01:09:50	73	Cleveland Indians players celebrate, "high-ten"
65	01:09:50 - 01:12:90	74-75	Bon Jovi concert/soundcheck
66	01:12:90 - 01:13:50	76	Angels batter hits baseball
67	01:13:50 - 01:14:20	77	Angels baserunner rounds bases
68	01:14:20 - 01:14:90	78	Bon Jovi concert/soundcheck

	D	E
35	Music & Vocal ("The Ti--")	18/1
36	Music & Vocal ("--gers, Rangers and the")	18/2
37	Music & Vocal ("Jays / Just ask")	19/1; 19/3; 19/4
38	Music & Vocal ("Rem-Dawg")	20/3
39	Music & Vocal ("in the")	20/4
40	Music & Vocal ("box")	21/1
41	Music	21/2
42	Music	21/3
43	Music & Vocal ("Anyone")	22/1
44	Music & Vocal ("will tell")	22/2
45	Music & Vocal ("you")	22/3
46	Music & Vocal ("Boston rocks!")	22/4
47	Music	23/2
48	Music & Vocal ("Now get up")	23/4
49	Music & Vocal ("off")	24/1
50	Music & Vocal ("your seats")	24/3
51	Music & Vocal ("Everybody")	24/4
52	Music & Vocal ("scream")	25/3
53	Music & Vocal ("Man I really love")	25/4
54	Music & Vocal ("this Team!")	26/1
55	Music	26/4; 27/1
56	Music	27/2
57	Music	27/4
58	Music & Vocal ("You gotta")	28/1
59	Music & Vocal ("keep believing")	28/2
60	Music	28/4
61	Music & Vocal ("You gotta stay")	29/1
62	Music & Vocal ("tough")	29/3
63	Music	29/4
64	Music & Vocal ("You gotta")	30/1
65	Music & Vocal ("keep the faith / and you gotta Cowboy Up!")	30/2; 30/4
66	Music	31/3
67	Music & Vocal ("Stand up")	31/4
68	Music & Vocal ("proud and")	32/2

SM

	F	G
35		N/A
36	[Detroit] "Tigers" / Detroit [Tigers] baserunner	Detroit Tigers
37		N/A
38		New York Mets
39		New York Mets
40		?
41		N/A
42		Los Angeles Dodgers
43		Atlanta Braves
44		Atlanta Braves
45		Atlanta Braves
46		N/A
47		New York Mets
48		N/A
49		New York Mets
50	"[off] your seats" / Fans stand and cheer	New York Mets
51	"everybody [scream]" / Batter hits homerun	N/A
52		Boston Red Sox
53		Boston Red Sox
54	"Man I really love" / Baserunner to homeplate celebration	Boston Red Sox
55	Bon Jovi points in time with musical beat	N/A
56		Chicago White Sox
57		Chicago Cubs
58	"got" downbeat / Fan 'high-five' exact synch	Chicago Cubs
59		?
60		New York Yankees
61	"got" & "stay" exact synch / Player 'high-five' & 'low-five'	Milwaukee Brewers
62	"[stay] tough" / primal strength 'elbow-shoulder bump'	New York Mets
63	"[tough]" / primal strength/force 'chest bump'	Minnesota Twins
64	"got" downbeat exact synch / Player 'high-five'	Cleveland Indians
65		N/A
66		Anaheim Angels
67		Anaheim Angels
68		N/A

	H	I
35		
36	Striking / Identical	Striking / Identical
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		
49		
50	Substantial	Moderate
51	Mild	Mild
52		
53		
54	Mild	Mild
55	Moderate	Nil
56		
57		
58	Substantial	Moderate
59		
60		
61	Substantial	Moderate
62	Substantial	Substantial
63	Substantial	Substantial
64	Substantial	Moderate
65		
66		
67		
68		

	A	B	C
69	01:14:90 - 01:15:70	79	Pirates catcher, Indians baserunner slides homeplate
70	01:15:70 - 01:17:30	80	Bon Jovi concert/soundcheck
71	01:17:30 - 01:17:80	81	New York Mets pitcher pitches
72	01:17:80 - 01:18:20	82	New York Mets pitcher pitches, POV batter
73	01:18:20 - 01:18:60	83	Braves batter, Phillies catcher (MLB ad: Red Sox)
74	01:18:60 - 01:19:20	84	Umpire signals Strikeout
75	01:19:20 - 01:19:90	85	Bon Jovi concert/soundcheck
76	01:19:90 - 01:20:50	86	Angels batter hits ball / A's catcher stands
77	01:20:50 - 01:21:10	87	Milwaukee Brewers batter hits ball
78	01:21:10 - 01:21:80	88	New York Yankees batter hits ball
79	01:21:80 - 01:24:20	89-90	Bon Jovi concert/soundcheck
80	01:24:20 - 01:25:10	91	Fenway Park interior fans stand & cheer
81	01:25:10 - 01:26:00	92	Bon Jovi concert/soundcheck
82	01:26:00 - 01:26:90	93	Atlanta Braves fans stand & cheer
83	01:26:90 - 01:31:00	94-95	Bon Jovi concert/soundcheck
84	01:31:00 - 01:31:60	96	Diamondbacks outfielder makes diving catch
85	01:31:60 - 01:32:20	97	Boston Red Sox outfielder makes diving catch
86	01:32:20 - 01:32:90	98	Bon Jovi concert/soundcheck
87	01:32:90 - 01:33:40	99	Indians outfielder, diving catch (MLB ad: Mets/Yanks/RSox)
88	01:33:40 - 01:34:20	100	Dodgers outfielder, diving catch
89	01:34:20 - 01:43:30	101-107	Bon Jovi concert/soundcheck
90	01:43:30 - 01:43:90	108	Angels pitcher pitches (MLB ad: Red Sox)
91	01:43:90 - 01:44:30	109	Red Sox catcher catches strike / ?Batter
92	01:44:30 - 01:44:90	110	Umpire signals Strikeout
93	01:44:90 - 01:45:50	111	Diamondbacks player celebrates
94	01:45:50 - 01:47:50	112	Dodgers batter hits ball & celebrates
95	01:47:50 - 01:48:80	113	Dodgers fans stand & cheer "high-five"
96	01:48:80 - 01:53:30	114-116	Bon Jovi concert/soundcheck
97	01:53:30 - 01:54:30	117	Red Sox Pitcher pitches
98	01:54:30 - 01:54:90	118	Red Sox Pitcher pitches
99	01:54:90 - 01:55:30	119	Mariners batter hits ball
100	01:55:30 - 01:55:90	120	Mariners batter hits ball
101	01:55:90 - 01:56:70	121	Red Sox player celebrates
102	01:56:70 - 01:57:50	122	Mariners player tips cap to cheering crowd

	D	E
69	Music & Vocal ("Say it")	32/3
70	Music & Vocal ("loud / Come on let 'em")	32/4
71	Music & Vocal ("know")	33/3
72	Music	33/4
73	Music	
74	Music & Vocal ("Say, Here we go")	34/1
75	Music & Vocal ("Red Sox")	34/2
76	Music & Vocal ("Here we go!")	34/3
77	Music & Vocal ("Here we go")	35/1
78	Music & Vocal ("Red Sox")	35/2
79	Music & Vocal ("here we go!")	
80	Music (Guitar Solo)	36/3
81	Music (Guitar Solo)	36/4
82	Music (Guitar Solo)	37/2
83	Music (Guitar Solo)	37/3; 39/1
84	Music (Guitar Solo)	40/2
85	Music (Guitar Solo)	40/3
86	Music (Guitar Solo)	40/4
87	Music (Guitar Solo)	41/1
88	Music (Guitar Solo)	42/2
89	Music (Guitar Solo)	42/3; 42/4; 43/2,3; 44/1,2,4
90	Music (Guitar Solo)	45/3
91	Music (Guitar Solo)	45/4
92	Music (Guitar Solo)	46/1
93	Music (Guitar Solo)	46/2
94	Music (Guitar Solo)	46/3
95	Music (Guitar Solo)	47/2
96	Music (Guitar Solo) & Vocal "From Lansdowne Street to"	47/4; 48/3; 49/2
97	Music & Vocal ("Pesky's")	49/4
98	Music & Vocal ("Pole")	50/2
99	Music	50/3
100	Music	50/4
101	Music & Vocal ("From Coo-")	51/1
102	Music & Vocal ("--pers--")	51/2

SM

	F	G
69		Pirates / Indians
70		N/A
71		New York Mets
72		New York Mets
73		Braves / Phillies / Red Sox
74		N/A
75		N/A
76		Angels / Athletics
77		Milwaukee Brewers
78		New York Yankees
79		N/A
80		Boston Red Sox
81		N/A
82		Atlanta Braves
83		N/A
84		Arizona Diamondbacks
85		Boston Red Sox
86		N/A
87		Indians / Mets / Yankees / Red Sox
88		Los Angeles Dodgers
89		N/A
90		Angels / Red Sox
91		Boston Red Sox
92		N/A
93		Arizona Diamondbacks
94		Los Angeles Dodgers
95		Los Angeles Dodgers
96		N/A
97		Boston Red Sox
98		Boston Red Sox
99		Seattle Mariners
100		Seattle Mariners
101		Boston Red Sox
102		Seattle Mariners

MS

	H	I
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	A	B	C
103	01:57:50 - 01:58:70	123	Bon Jovi concert/soundcheck
104	01:58:70 - 01:59:20	124	Cubs baserunner in motion
105	01:59:20 - 02:00:00	125	Cubs baserunner slides to second base
106	02:00:00 - 02:01:00	126	Dodgers baserunner slides to base
107	02:01:00 - 02:01:80	127	Braves baserunner slides to homeplate
108	02:01:80 - 02:02:40	128	Umpire signals Braves baserunner safe at homeplate
109	02:02:40 - 02:03:40	129	Bon Jovi concert/soundcheck
110	02:03:40 - 02:05:50	130	Red Sox batter hits homerun to cheering fans
111	02:05:50 - 02:06:50	131	Red Sox fans celebrate
112	02:06:50 - 02:07:20	132	Mets batter hits ball
113	02:07:20 - 02:08:50	133	Mets baserunner runs bases, players & fans cheer
114	02:08:50 - 02:09:50	134	Mets baserunner to homeplate & cheering team
115	02:09:50 - 02:10:50	135	Bon Jovi concert/soundcheck
116	02:10:50 - 02:11:30	136	Mets fans stand & cheer
117	02:11:30 - 02:15:30	137-139	Bon Jovi concert/soundcheck
118	02:15:30 - 02:15:90	140	Indians batter hits ball
119	02:15:90 - 02:16:40	141	Phillies batter hits ball
120	02:16:40 - 02:16:80	142	Dodgers batter hits ball (bkgrd. MLB ad: D. Ortiz/Red Sox)
121	02:16:80 - 02:17:30	143	Yankees / Rockies batter hits ball
122	02:17:30 - 02:17:80	144	Dodgers player celebrates
123	02:17:80 - 02:18:70	145	Mets player & fans celebrate
124	02:18:70 - 02:22:40	146-147	Bon Jovi concert/soundcheck
125	02:22:40 - 02:26:20	148	"Postseason" TBS/MLB ad
126	02:26:20 - 02:26:70	149	Diamondbacks player celebrates
127	02:26:70 - 02:27:10	150	Angels player celebrates
128	02:27:10 - 02:27:60	151	Cubs player celebrates
129	02:27:60 - 02:28:10	152	Mets catcher celebrates
130	02:28:10 - 02:30:60	153	Bon Jovi concert/soundcheck
131	02:30:60 - 02:33:60	154	"Postseason" TBS/MLB ad
132	02:33:60 - 02:38:90	155	MLB.com logo
133			Fade to Black
134			(Electronically Signed this 12th Day of June , 2009,

	D	E
103	Music & Vocal ("--town in days of")	51/3
104	Music & Vocal ("old")	52/1
105	Music	52/2
106	Music	52/3
107	Music & Vocal ("Feel")	53/1
108	Music & Vocal ("that")	53/2
109	Music & Vocal ("spirit far and")	54/3
110	Music & Vocal ("near")	54/1
111	Music & Vocal ("The Fen--")	55/1
112	Music & Vocal ("--way")	55/2
113	Music & Vocal ("fans begin to")	55/3
114	Music & Vocal ("cheer")	56/1
115	Music	56/3
116	Music & Vocal ("now get up off")	57/1
117	Music & Vocal ("your seats / everybody scream")	57/2; 57/4; 58/2
118	Music & Vocal ("Man")	59/1
119	Music & Vocal ("I")	59/2
120	Music & Vocal ("really")	59/3
121	Music & Vocal ("love")	59/4
122	Music & Vocal ("this")	60/1
123	Music & Vocal ("team")	60/2
124	Music & Vocal ("now get up off your seats")	60/3; 61/2
125	Music & Vocal ("everybody scream / Man I really")	62/1
126	Music & Vocal ("love")	63/3
127	Music & Vocal ("this")	63/4
128	Music & Vocal ("team")	64/1
129	Music	64/2
130	Music & Vocal ("Now get up off your")	64/3
131	Music & Vocal ("seats / Everybody scream")	65/3
132	Music & Vocal ("Man I really love this Team!")	66/1
133	Music & Crowd Cheer (Song Fades)	
134		

	F	G
103		N/A
104		Chicago Cubs
105		Chicago Cubs
106		Los Angeles Dodgers
107		Atlanta Braves
108		Atlanta Braves
109		N/A
110	Baseball focus & depth far-near-far / "[far and] near"	Boston Red Sox
111	Fenway fans stand & cheer / "Fenway [fans]"	Boston Red Sox
112		New York Mets
113	"fans begin to [cheer]" / Players & fans cheer	New York Mets
114	Players celebrate / "cheer"	New York Mets
115		N/A
116		New York Mets
117		N/A
118		Cleveland Indians
119		Philadelphia Phillies
120		Dodgers / Red Sox
121		Yankees / Rockies
122		Los Angeles Dodgers
123		New York Mets
124		N/A
125		N/A
126		Arizona Diamondbacks
127		Anaheim Angels
128		Chicago Cubs
129		New York Mets
130		N/A
131		N/A
132		N/A
133		N/A
134		

	H	I
103		
104		
105		
106		
107		
108		
109		
110	Substantial	Moderate
111	Substantial	Substantial
112		
113	Substantial	Substantial
114	Substantial	Substantial
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By my oath & honor I solemnly swear that all depiction of fact above is true,
to the best of my knowledge, under the pain of perjury, fine, or imprisonment;
Statements of opinion founded on such facts
are genuine to the extent of my heart, reason & sense of fair play.

Electronically Signed this 12th Day of June , 2009,
Stephen J. Murphy
Born July 2, 1970
Professional Musican, Writer & Filmmaker
BA English Literature, Colby College
Residence Upwood
326 Chartier Hill Road
Woodbury, VT 05681
sjmurphy@murphysworkshop.com

Signed This 18th Day of June, 2009,

A handwritten signature consisting of the letters 'S' and 'M' in a cursive, stylized font.

Stephen J. Murphy

Bart,

I appreciate what you're trying to do for so many highly talented struggling song writers and artists who have been stepped on over the years, your tenacity is a living testament to what the art of music is truly about, and what the music BUSINESS was intended to support. Unfortunately, as we've all witnessed over the years, it's not about talent but organized corporate corruption and greed that wins out in the end.

I hope to hell you win this case and light the torch for all the other truly talented artist who never had a greedy nepotistic relative in a power position and a gangsta thug drug dealin mobster for a manager who helped to push you to the top by pure thievery and business crime methods stepping on us all...every step of the way to the top...on a steel horse they rode like cowboys, wanted dead or alive...and it appears that now is our day for justice and it looks like you may be the hanging judge my friend...congrats and kudos to you for having the good fortune and huge balls to pull this off.

God Speed buddy and Rock On.

For those about to rock, we salute you!!!!

I would like to start by saying that I have been writing and dissecting songs since the mid sixties as a kid mesmerized by Rock music and it's great artists.

I began my semi pro music developments in band in Cleveland Ohio in the mid seventies and began performing and writing as a professional artist in the late seventies into the early eighties from Cleveland to Los Angeles where I began recording, writing and performing, editing temp track/audio video for film scores and mixing and editing music and producing artists music in Hollywood through the eighties where I signed my first major label deal with Atlantic Recs in 1987 and then formed Cats In Boots and enjoyed #1 sales and international success with E.M.I. Capital Records, Polydor K.K., and eventually Warner Bros./Reprise Records and began my solo career with A&M Records and currently have performed internationally as recently as 2003 and had 2 most recent international CD releases this year in 2009.

I performed in studio efforts with such greats as The Rolling Stones, Bobby Womack, Aerosmith, Motley Crue, RATT and others..... I believe that this brief synopsis of my history as a professional song writer and performer will qualify my stated opinions as that of a professional witness on your behalf.

In brief, when I listened to the comparison of your song and the MLB released by JBJ it was blatantly apparent that what I was hearing was yet another example of plagiarism by Mr. Bon Jovi. The similarities were exacting in my opinion. JBJ has been a highly recognized song thief and self absorbed pretentious musician amongst true rock artists here in L.A. since he entered the scene in the eighties. Thats why you never saw him hanging oput much in the Hollywood scene during his hey day...he got no respect.

I'm sorry you have to go through all of this effort and fight to receive credit and compensation for a song you've already worked hard to create. But as you know I've had a similar experience with this same person and his pathetic drug induced side kick.

I was young and naive, I fell to the excitement of the thought that JBJ would actually help promote my band as he did with a select few other bands in the eighties and as he promised me he would the night he talked me out of my fresh mix cassette which contained my original composition of my song called "I'll Be There for You", I never got a call from JBJ to say that he had created an opportunity for me or my band...in fact he never contacted me at all, his intentions became very clear when I heard the chorus of our song blaring from the radio in the mid eighties with JBJ singing my lyrics and melodies to his latest greatest mega-hit song which made the band millions.

Please refer to my public statement on www.sleazeroxx.com use it to the best of your advantage to help the judge and jury to see that organized crime and corruption has many faces, some of them are actually pretty.

I swear that my statements herein are true under penalty of perjury.

Electronically signed for the courts use on Saturday, May 23, 2009 12:26 A.M. PST

Sincerely,

Joel Ellis
Professional Music Artist

A handwritten signature in black ink, appearing to be "Joel Ellis", followed by the date "July 07, 2009". The signature is written in a cursive, flowing style.

ANOTHER MUSICIAN ACCUSES BON JOVI OF PLAGIARISM:

August 10, 2008

After posting a report by Chris Faraone of Boston Magazine in which Bart Steele accused Bon Jovi of ripping off one of his songs, Sleaze Roxx received an email from former Cats In Boots and Heavy Bones vocalist Joel Ellis claiming that a similar thing happened to him. Joel's email can be read in its entirety below:

"It was back in the 1980's when Denny Holan and I were recording our pre-production demos for Atlantic Records with Merri Hoaxx. We had just finished tracking a studio session that included our original song "I'll Be There For You". We left Paramount Studios in Hollywood with a cassette tape of rough mixes and headed straight for The Rainbow Bar & Grill on Sunset. When we got there we gave the tape to Michael to put on the Bar's sound system, it was the classic "Is It Worthy" test for demos and mixes that a lot of bands used to gage their nights work. We'd always pop on the song and listen for the sounds then we would watch to see if people were digging the songs. The place was definitely digging the songs that night.

I ran into Sam Kinison who asked me to come back to his table and hang out. So while our tape was playing, we sat at the table in the back with Sam, Jon Bon Jovi, Peter Aykroyd (Dan's brother) and Doc McGee, etc... Johnny gave us this line of BS that if we gave him this tape he would take it to his uncle at Polydor Records and try to get us out on tour with him.

I somehow felt like I was going to regret that, but we agreed to take a chance and trust him, so we gave Jon Bon Jovi the cassette that night and we never heard back from him. A short time later we heard the chorus for our song "I'll be theeerrre for youuuu" as JBJs next big hit. My manager at the time wanted to sue his ass but we were doing well and were very busy with all the Atlantic developments going on that I didn't want to cause problems for our momentum that we had going at the time. I hated when people would note the resemblance between Jon Bon Jovi and me at the time and I didn't want to give the world any other reasons to compare me to the Golden Boy Johnny. We were in no way similar to each other and strongly resented any comparison...I wasn't pop singer, I was a rock singer and I wasn't a self righteous frosted hair perm boy with relatives who paved my way so I could steal songs from real artists and get rich off of ripping them off. I was a self made true rocker from the streets to the stage to the studio to the stores, with no help from daddy's friends & relatives and we rocked without the posing. Whatever successes or short comings I had were of my own making, but it was real. So I didn't care about that song.

Later on during the Heavy Bones days, I was dating a girl named Lehua Reid, who was previously engaged to Richie Sambora. While she lived at Richie's house, she told me about how she remembered the nights that Jon Bon Jovi and Richie Sambora would sit at Richie's piano with boxes full of tapes they had collected from trusting aspiring musicians who trusted them with their creations for a shot at success, how they would play through tape after tape looking for catchy songs to rip off all the while laughing at the suckers who gave them their tapes. When she heard my demo recording of "I'll Be There For You" she sat back, eyes wide open, saying "NO WAY!!! This is YOU???", and went on to tell me about the night that they were so excited to be ripping off this song and how Johnny had always wanted an excuse to rip off John Lennon for his vocal in the verse of "Don't Let Me Down" by the Beatles. They worked on that song for hours playing my demo over and over again and it stuck in her head.

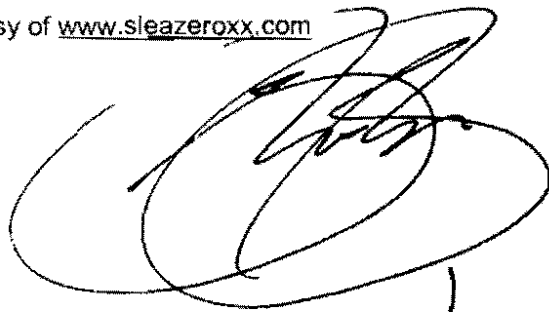
Of course I had already known where their recent huge hit single had come from but hearing her tell that story was like salt in the wound...I've always felt that people should know about this and I still have the original demo. If anyone in the world wants to hear it I'll be happy to put an Mpeg up on my website so they can hear it too.

I wonder how many other guys are out there right now feeling the same burn from the Golden

Boy Jon Bon Jovi and his trusty side kick Richie Rich."

Sincerely,
Joel Ellis of Merri Hoaxx, Cats In Boots and Heavy Bones.

Courtesy of www.sleazeroxx.com



Joel Ellis July 07, 2009

MEMORANDUM & ORDER GORTON, J. The plaintiff, pro se, brings this case against numerous defendants for alleged copyright infringement and violations of the Lanham Act and the Massachusetts Consumer Protection Act, M.G.L. c. 93A. He claims that a song he wrote about the Boston Red Sox was unlawfully copied and used to create an advertisement promoting Major League Baseball post-season telecasts.

I. Background

A. Factual Background

The plaintiff, Samuel Bartley Steele ("Steele"), along with two "unincorporated business organizations," Steele Publishing Company and Steele Recordz (for convenience, all of the plaintiffs are hereinafter collectively referred to as "Steele"), are residents of Chelsea, Massachusetts. Steele is a songwriter and musician who asserts that, in 2004, he wrote a "love anthem" about the Boston Red Sox ("Red Sox") entitled "Man I Really Love This Team" ("the Steele Song"). Not surprisingly, Steele's song gained popularity around Fenway Park, the Red Sox historic stadium, in the fall of 2004 as the team played toward its first World Series Championship in 86 years. Steele registered his song with the American Society of Composers, Authors and Publishers ("ASCAP") and, in 2006, applied for and received a federal copyright registration. Steele also maintains that he created a "derivative" version of the song entitled "Man I Really Love This Town" ("the Derivative Song"). That version, which was developed as a marketing concept, removed specific references to the Red Sox and left blanks where the names of other teams and cities could be filled in. Steele asserts in his original complaint that the Derivative Song was included in his copyright registration but later admits (in his opposition to the defendants' motion to dismiss his amended complaint) that the Derivative Song "was not included on the CD deposited with the copyright office." Steele maintains that he nevertheless informed MLB of some of the lyrics of the Derivative Song. Steele's claim for copyright infringement purports to arise from an advertisement produced and aired by the defendant Turner Broadcasting System, Inc. ("TBS") during the 2007 MLB post-season ("the TBS Promo"). The TBS Promo features a song by the popular band Bon Jovi entitled "I Love This Town" ("the Bon Jovi Song") along with baseball footage. Bon Jovi front-man John Bongiovi and guitarist Richard Sambora are also named as defendants. Steele asserts that the Bon Jovi Song and the TBS Promo infringe his copyright. With respect to the TBS Promo, Steele asserts that it was unlawfully derived from his work through a method called "temp tracking." According to Steele, that term refers to the use of a song as a template to create an audio visual work which, in turn, is used to create a final soundtrack. According to Steele, much of the visual portion of the TBS Promo is derived from his song and the Bon Jovi Song was then based upon that Promo, the Steele Song or both. In addition to his claim for copyright infringement, Steele also brought claims pursuant to the Lanham Act in his original complaint and Chapter 93A in his amended complaint. Although the Lanham Act claim was omitted from the amended complaint, Steele

The Non-Implicated Defendants are Fox Broadcasting Company 1 ("Fox"), Sony ATV Tunes LLC ("Sony"), A&E Television Networks ("A&E"), AEG Live LLC ("AEG"), Vector 2 LLC ("Vector"), Universal Music Publishing ("Universal Publishing"), Universal Polygram International Publishing, Inc. ("Universal-Polygram") and Mark Shimmel Music ("Shimmel"). The remaining defendants will be referred to

as “the Primary Defendants.” asserts he did not intend to drop that claim and that the complaints should be read together. B. Procedural History Steele filed his initial complaint (with attachments) alleging copyright infringement and violation of the Lanham Act on October 8, 2008. Two months later a group of defendants filed a motion to dismiss and were joined in that motion by most of the remaining defendants shortly thereafter. On January 30, 2009, Steele simultaneously filed an opposition to the motions to dismiss and an amended complaint. The amended complaint added the Red Sox as a defendant and a Chapter 93A claim but did not include the attachments submitted with the initial complaint nor any claim for violation of the Lanham Act. On February 18, 2009, a group of defendants moved to dismiss the amended complaint. They were eventually joined in that motion by all of the remaining defendants with the exception of Island Def Jam Records. A number of those defendants (“the Non-Implicated Defendants”) also assert, as a separate ground for dismissal, that they are in no way implicated in the allegations of either complaint.¹ Steele opposed the motions to dismiss on March 4, 2009, and, in doing so, asserted that he intended his amended complaint to be read together with his original complaint and, thus, did not intend to waive his Lanham Act claim. Both the Primary and Non-Implicated Defendants have replied to Steele’s opposition. II. Analysis A. Legal Standard In order to survive a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a complaint must contain factual allegations sufficient “to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007). In considering the merits of a motion to dismiss, the court may look only to the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the complaint and matters of which judicial notice can be taken. *Nollet v. Justices of the Trial Court of Mass.*, 83 F. Supp. 2d 204, 208 (D. Mass. 2000) *aff’d*, 248 F.3d 1127 (1st Cir. 2000). Furthermore, the court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. *Langadinos v. American Airlines, Inc.*, 199 F.3d 68, 69 (1st Cir. 2000). If the facts in the complaint are sufficient to state a cause of action, a motion to dismiss the complaint must be denied. See *Nollet*, 83 F. Supp. 2d at 208. B. Steele’s Two Complaints Although amending a complaint ordinarily renders the original complaint inoperative, *Connectu LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008), Steele maintains that was not his intent. He asks the Court, in light of his pro se status, to consider his original and amended complaints together. The First Circuit Court of Appeals has instructed that “pro se pleadings are to be liberally construed, in favor of the pro se party.” *Ayala Serrano v. Lebron Gonzalez*, 909 F.2d 8, 15 (1st Cir. 1990). Here, that directive is best complied with by accommodating Steele’s request and reading his original and amended complaints together. C. Lanham Act Claim Steele’s Lanham Act Claim, which is herein considered despite its omission from the amended complaint, is, nonetheless, without merit. The essence of Steele’s claim is that the defendants engaged in illegal “palming-off” because the Bon Jovi Song and TBS Promo did not give credit to him as the song’s true creator. Such allegations, however, are precisely the kind that the Supreme Court has held are not entitled to protection

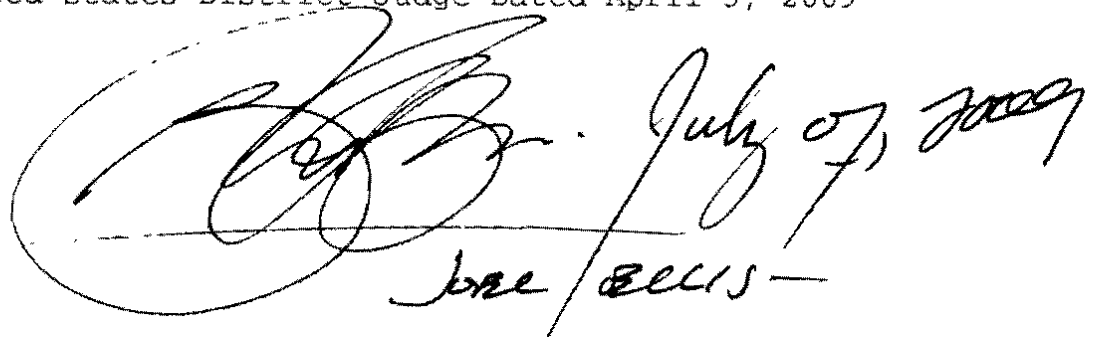
under the Lanham Act. See *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003). The Lanham Act, in addition to protecting trademarks, prohibits conduct that could lead to confusion with respect to the "origin, sponsorship, or approval" of goods or services. 15 U.S.C. § 1125(a)(1)(A); see *Dastar*, 539 U.S. at 28-29 (citation omitted). In *Dastar*, however, the Supreme Court held that the "origin of goods" aspect of the Lanham Act refers to "the producer of the tangible goods that are offered for sale, and not . . . the author of any idea, concept or communication embodied in those goods." 539 U.S. at 37 (citation omitted). Here, because Steele does not assert that he is the producer of any tangible goods distributed by the defendants, but rather the artist whose creative work was allegedly contained in those goods, he fails to state a claim pursuant to the Lanham Act. See *id.* (explaining that creative talent is protected by copyright law and not the Lanham Act). D. Chapter 93A Claim Plaintiff's claim pursuant to M.G.L. c. 93A also fails as a matter of law because it is preempted by the Copyright Act. See 17 U.S.C. § 301. The Copyright Act preempts a state law claim if 1) the work involved falls within the "subject matter of copyright" and 2) the state law claim incorporates no "extra element" that is qualitatively different from the copyright claim. *Patricia Kennedy & Co., Ind. v. Zam-Cul Enterprises, Inc.*, 830 F. Supp. 53, 55-56 (D. Mass. 1993) (citation omitted). Here, based on the allegations in the amended complaint, Steele's Chapter 93A claim is indistinguishable from his copyright claim in that it alleges only that the defendants unlawfully copied his work. Because musical works fall within the subject matter of copyright, 17 U.S.C. § 102, and because there is nothing qualitatively different about Steele's Chapter 93A claim, that claim is preempted by the Copyright Act and will be dismissed. See *Patricia Kennedy & Co.*, 830 F. Supp. at 55-56 (citation omitted). E. The Non-Implicated Defendants The Non-Implicated Defendants have moved to dismiss Steele's claims on the ground that the allegations against them (to the extent there are any) fail to state a claim upon which relief can be granted. Even reading the original and amended complaints together, this Court concludes that some of the Non-Implicated Defendants must be dismissed. In *Bell Atlantic Corp. v. Twombly*, the United States Supreme Court clarified that, not only must a complaint give the defendant fair notice of the claim against it but also that the "[f]actual allegations must be enough to raise a right to relief above the speculative level." 127 S. Ct. at 1964-65. Steele has not met that burden with respect to some of the Non-Implicated Defendants. Two of the defendants (Sony and Vector), apart from being identified as such, are not mentioned anywhere in either complaint. Other defendants are mentioned but in no way implicated in any wrongdoing. Defendant Fox, for example, is merely identified as being involved in an agreement with MLB and TBS to air the baseball post-season telecasts on cable television. Although Steele, in opposing the motion to dismiss, maintains that Fox used the infringing advertisement on its networks, assertions in an opposition to a motion are not the equivalent of factual pleadings. To allow Steele to plead facts in such a manner would grant too much leeway to a pro se plaintiff at the expense of orderly procedure and would deprive the defendants of clear notice of the allegations against them. Steele's allegations with respect to

Universal Publishing are similarly incapable of sustaining a claim against that defendant. Steele alleges only that Universal Publishing sent him an email about his ASCAP claim and stated that it would be working to resolve the issue on Mr. Bongiovi's behalf. That allegation in no way suggests that Universal Publishing was complicit in any copyright infringement or other wrongdoing. With respect to the remaining Non-Implicated Defendants (Shimmel, A&E, AEG and Universal Polygram), each is alleged to have had some involvement in the production or promotion of the infringing works (or, in the case of Universal Polygram, the copyrighting of infringing work). This Court concludes that such allegations, although only marginally implicative, are sufficient to withstand a motion to dismiss.

F. Copyright Infringement Claim As an initial matter, this Court notes that the only work at issue for which Steele has registered a copyright is the Steele Song. To the extent that Steele maintains that other works, such as his Derivative Song, have been infringed, this Court lacks jurisdiction over such claims. See 17 U.S.C. § 411(a) ("[N]o civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title."). Therefore, this Court will consider only plaintiffs' claim as it relates to the Steele Song. To succeed on a claim of copyright infringement, a plaintiff must prove "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). As part of the second prong, a plaintiff must prove that the copyrighted and infringing works are "substantially similar." *Johnson v. Gordon*, 409 F.3d 12, 18 (1st Cir. 2005) (citation omitted). In determining substantial similarity, courts apply an "ordinary observer," or, in musical terms, an "ordinary listener" test. *Id.* A defendant's work is substantially similar to the copyrighted work only if an ordinary person of reasonable attentiveness would, upon listening to both, conclude that the defendant unlawfully appropriated the plaintiff's protectable expression. *Id.* Importantly, for a plaintiff to succeed the substantial similarity must relate to original elements of the copyrighted work. See *id.* at 18-19 (citing *Feist*, 499 U.S. at 361). Although the issue of substantial similarity (or lack thereof) is ordinarily one for the factfinder, it can be decided by the Court as a matter of law. See *Johnson*, 409 F.3d at 18. According to the First Circuit Court of Appeals: [s]ummary judgment on this issue is appropriate only when a rational factfinder, correctly applying the pertinent legal standards, would be compelled to conclude that no substantial similarity exists between the copyrighted work and the allegedly infringing work. *Id.* Here, the defendants suggest that this Court can make the substantial similarity determination on a motion to dismiss because both the original and allegedly infringing works are properly before the Court. The Court, they argue, can simply listen to (and view) those works and apply the ordinary listener standard to determine whether there is any colorable claim of substantial similarity. Although there is intuitive appeal to such an approach, motions to dismiss cannot be transformed into motions for summary judgment for mere expediency. A plaintiff is entitled to gather and present evidence of substantial similarity beyond what is included in the pleadings and the First Circuit has observed that in musical copyright cases

experts are frequently relied upon. See Johnson, 409 F.3d at 19. This Court concludes that the most prudent course of action is to permit, at this stage, limited discovery on the issue of substantial similarity. Upon the completion of that discovery the Court will entertain motions for summary judgment on that specific issue and proceed (or not proceed) accordingly. It is worth reiterating that discovery is to be restricted to the issue of substantial similarity and the parties will not be permitted to engage in discovery relevant to other aspects of the case, including, without limitation, who had access to Steele's copyrighted work or when or who was responsible for the creation of the allegedly infringing works. Steele may offer, by affidavit, expert analysis of his work or the infringing work as deemed necessary and the Court will consider such analysis in making the substantial similarity determination. Any affidavit or other evidence presented to the Court must be in compliance with Fed. R. Civ. P. 56.

ORDER In accordance with the foregoing, this Court rules as follows: 1) Defendants' motions to dismiss (Docket Nos. 17, 24, 29 and 33), all of which were filed before the plaintiffs amended their complaint, are DENIED as MOOT; 2) The motion of the Non-Implicated Defendants to dismiss (Docket No. 52) is, with respect to defendants Fox Broadcasting Company, Sony ATV Tunes LLC and Vector 2 LLC, ALLOWED but is otherwise DENIED; 3) the motions to dismiss of defendant Mark Shimmel Music (Docket No. 58) and defendant Kobalt Music Publishing America (Docket No. 64) are DENIED; 4) the motion of defendants Universal Music Publishing and Universal Polygram International Publishing to dismiss (Docket No. 71) is, with respect to defendant Universal Music Publishing, ALLOWED but is otherwise DENIED; 5) The defendants' motions to dismiss (Docket Nos. 48 and 76) are DENIED; and 6) limited discovery will proceed as follows: a) all discovery relevant to the issue of substantial similarity will be completed on or before May 31, 2009; b) dispositive motions with respect to substantial similarity will be filed on or before June 26, 2009, and oppositions will be filed on or before July 17, 2009; c) a hearing on any pending dispositive motion will be held on Wednesday, August 12, 2009, at 3:30 PM in Courtroom 4 of the John Joseph Moakley Courthouse in Boston, Massachusetts. So ordered. /s/ Nathaniel M. Gorton Nathaniel M. Gorton
United States District Judge Dated April 3, 2009

 July 07, 2009
JMG/ELLS

June 11, 2009

To Whom It May Concern:

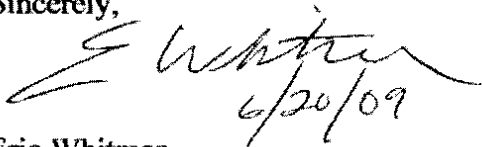
My name is Eric Whitman. I am an Animation Instructor at CCOC/MetroEd Vocational Training Center in Silicon Valley, California. I am also endorsed by Adobe, Inc. as an official Adobe Education Leader, an international community of less than 100 members who have been recognized for excellence in their field. I have done extensive professional work as both an animator and film director. Clients have included Coca-Cola, Nissan, Sony Animation, "The Simpsons", "Sesame Street", Universal Studios, and many others. I have a MFA from UCLA School of Film & Television and am generally considered to be an expert in the field of multi-media production.

I have viewed the video for Bon Jovi's "I Love This Town", and the first thing that stood out was the fact that the video was visually all about baseball (The Red Sox), while the audio, specifically Bon Jovi's lyrics, had nothing to do with baseball. It was as if someone had edited this video to an entirely different song, that song being Bart Steele's "Man I Love This Team". When I watched the same video with Bart Steele's song as the audio track, it was a perfect fit, far beyond any reasonable coincidence. With the lyric "And the word is out on Yawkey Way", the video cuts to a shot of the street sign "Yawkey Way" at the exact same frame. The same is so with the lyrics "The Yankees, Royals and the Rays, the Tigers, Rangers and the Jays". With the mentioning of each team, the video cuts to shots of each of the teams at the exact frame that they are named. The video is about Boston, The Red Sox, and the fans that support them, which is what Bart Steele's song is about. Bon Jovi's song is an awkward fit at best, and seems totally incongruous with the visual themes of the video.

In my professional opinion, I would say that there is more than substantial similarity between the Bon Jovi video "I Love This Town" and Bart Steele's composition "Man I Love This Team". Bart Steele's song was obviously used to inspire and serve as a template (Temp Track) for the original editing of the music video, and was later dropped out and replaced by Bon Jovi's song.

I declare under penalty of perjury that my statement is true and correct to the best of my knowledge.

Sincerely,



Eric Whitman
CCOC/MetroEd Animation Instructor
Adobe Education Leader
CEO Animation Solution
www.animationsolution.com

JUNE 23, 2009

To Whom It May Concern:

My name is Matthew Brown and I swear that the following is true to the best of my knowledge under the penalty of perjury.

I am a writer and director of feature films and have been working in the advertising and film industry for thirteen years. I went to Trinity College and NYU Tisch and now reside in Los Angeles, where I am represented by CAA, (Creative Artist Agency).

I worked for three years in NYC at Progressive Image Group, a top boutique commercial editing house, as an apprentice/assistant editor on commercials for established and respected advertising firms such as BBDO, Ogilvy and Mather, and Deutch Inc. I have directed and produced short films, written and directed a feature film, "Ropewalk", for Winter Films and am about to direct another film to be produced by renown producer Ed Pressman and director Mira Nair. I am very well versed in the practice of temp tracking in both advertising and feature films.

Temp tracking with copyrighted music is a regular practice during post-production in both advertising and feature film and is intended to allow the director or producer to gain a grasp of tone and sound for picture, before officially licensed music is placed. Often the temp music is itself licensed, but even more often, due to financial constraints, other less expensive, similar music is licensed, or other artists are brought in to closely "replicate", rip off, the temp music. And, as I believe is the case with Bart Steele, a temp track can be used to present or sell an "idea" for an advertisement, in this case for Major League Baseball.


After reviewing the MLB audio visual evidence in the case of Bart Steele, and seeing Bart's song synched up with the MLB video in place of the Bon Jovi song, I feel compelled to give my expert opinion on what I think is clearly an infringement that is obvious from the temp track evidence, both audio and visual.

Most of the frame cuts match Bart's song perfectly in terms of tempo, in many cases better than the Bon Jovi replacement track. What was also very apparent were the many blatant spotting cues from both Bart's music and especially lyrics. For example the word street matches perfectly with the Yawkey Way street sign, Detroit with a Tigers player, home with home plate etc. It seems like the video tells the story of Bart's song.

It seems clear to me that the story and video were derived from Bart's lyrics and song. Furthermore it was shocking how much more Red Sox footage there was than any other teams, most noticeably the Yankees, who are MLB's most marketable team. It would seem more than a coincidence that it is Boston based.

In my professional opinion Bart Steele's song and idea were used in a temp track forming the basis for the Bon Jovi song used by MLB.

Sincerely,



Matthew Brown

6977 Sunnydell Trl.

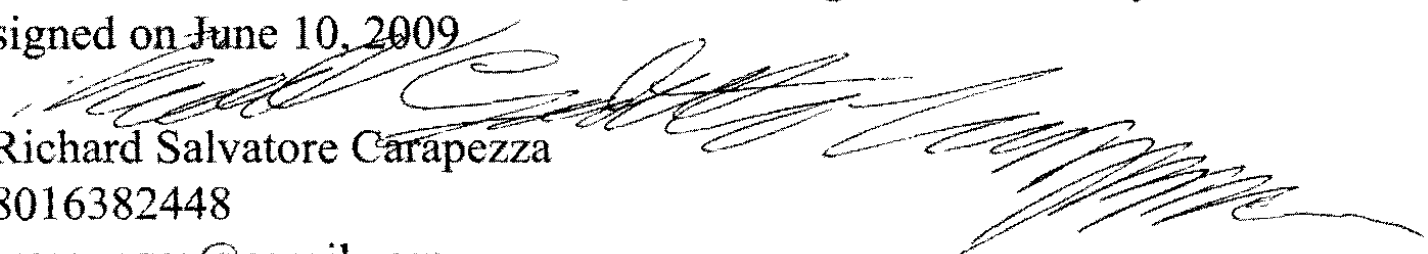
Los Angeles, CA 90068

323 850 8163/ mattbrownny@gmail.com

6/23/09

I Richard Salvatore Carapezza helped Bart Steele discover the theft of his music in the Bon Jovi Video for the the MLB TBS video. I synched Bart's original song with the Bon Jovi Video and it matched perfectly and the video and song are a clear theft of copy writed material. I am a graduate from Berklee College of Music and have intricate knowledge of the the process involved in syncing video and copyright law. This is a clear violation of such.

I Richard Salvatore Carapezza under penalty of perjury my statement is true to the best of my knowledge. electronically signed on June 10, 2009


Richard Salvatore Carapezza

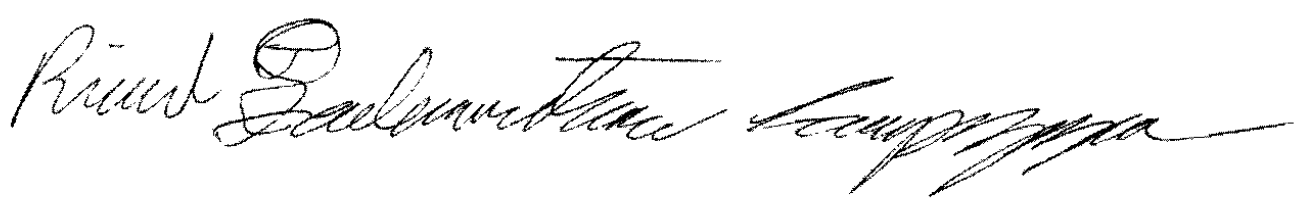
8016382448

rcarapezza@gmail.com

1652 e sunnyside ave

salt lake city, ut

84105



Temp Tracks

From: tjust@earthlink.net
To: Steele Bart
Subject: Temp Tracks
Date: Jun 9, 2009 11:16 AM

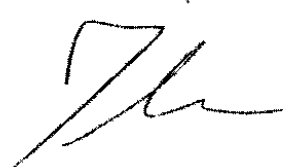
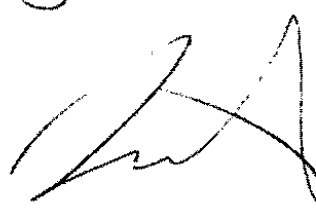
hi Bart. sorry i missed your call. hope you don't mind my e-mailing. what are your questions on temp tracks as they relate to your situation? i'm not sure i can really help you but i'll try.

generally speaking, in film we insert temp tracks on non-final cut material in order to get a sense of what the final music will sound like as it relates to what is being viewed and said on screen.

we do that b/c the rights to use our final music have not been cleared by the time we hit the editing room.

then, for final cut we insert our final music which can be original compositions, and / or licensed music for which we pay to use.

what are your specifics and i can try to shed more light on this, if I can. great to hear from you. tj

Tom Just
 

Re: Temp Tracks Sent By: [redacted] On: Jun 08/11/09 5:55
PM To: [redacted] Reply to: [redacted]

Yes, based on the pages I just forwarded to you on June 11, 2009 from THE GUERRILLA FILM MAKERS HANDBOOK, and my fifteen years of working in Hollywood, my e-mail from two days prior is true to the best of my knowledge.

Below is the link to my credits as listed on IMDB.com. I also worked on several projects that are not listed there (FILM: Homeward Bound II, Men In Black, Conspiracy Theory; TV: Dear Diary). In addition, I worked at several TV production companies, most notably, Imagine Television where we did Felicity, Sports Night, & 24).

<http://www.imdb.com/name/nm0433118/>

-----Original Message-----

From: bartsteele@comcast.net
Sent: Jun 11, 2009 2:45 PM
To: tjust@earthlink.net
Subject: Re: Temp Tracks

Thanks Tom,
I think your email will suffice to explain Temp Tracks to the courts. Could you please simply state via email for the record that everything you mentioned in that email is true to the best of your knowledge?
Thanks a lot,
-Bart

Temp Tracks Sent By: [redacted] On: Jun 06/09/09 2:16 PM To: [redacted]
[redacted] Reply to: [redacted]

hi Bart. sorry i missed your call. hope you don't mind my e-mailing. what are your questions on temp tracks as they relate to your situation? i'm not sure i can really help you but i'll try.

generally speaking, in film we insert temp tracks on non-final cut material in order to get a sense of what the final music will sound like as it relates to what is being viewed and said on screen.

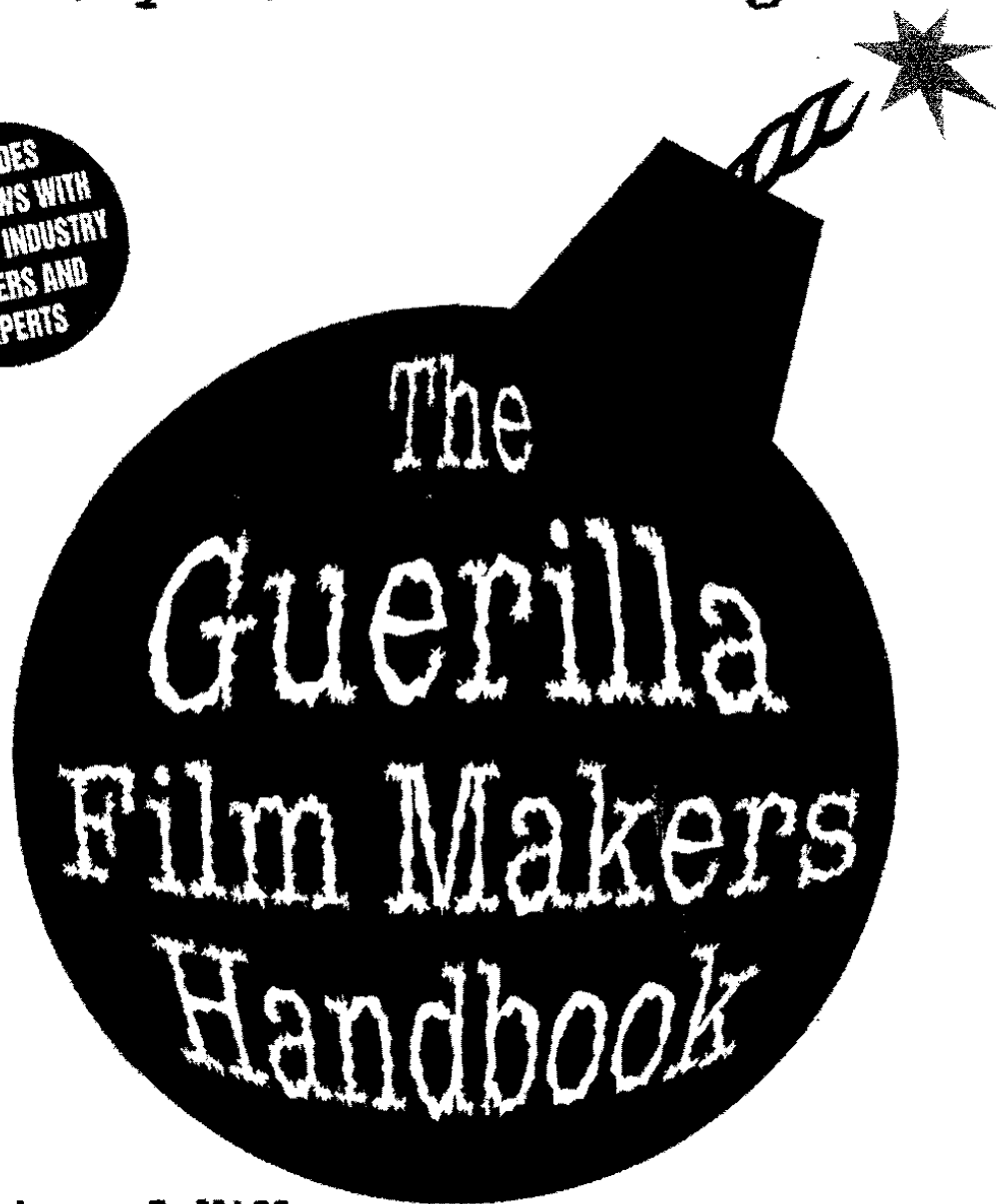
we do that b/c the rights to use our final music have not been cleared by the time we hit the editing room.

then, for final cut we insert our final music which can be original compositions, and / or licensed music for which we pay to use.

what are your specifics and i can try to shed more light on this, if I can. great to hear from you. tj

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INSIDERS AND
EXPERTS**



**By
Genevieve Jolliffe
& Chris Jones**

About filmmaking, by filmmakers, for filmmakers

www.livingspirit.com



track. Thereafter, constant communication is vital and the way I like to work is in a collaborative way. I expect the director to come and direct me through the process. I'll be throwing ideas at his film and he'll be pretty much on the spot listening to the music. I then make suggestions and react and read his body language and see. Danny Ireland (the director I worked with on a couple of movies) burst into tears when he heard the music, and I knew that was a good thing. Tony Scott starts flailing around with his arms, indicating he wanted more drum beat.

Q - What is the role of the editor in this process?

Harry - The editor is always someone the composer should stay in close touch with. We are mixing *Sinbad* at the moment and the music editor came into the room and said, 'they've cut five seconds out of this huge sequence at the end where the crowds are cheering and *'Sinbad'* is pronounced a hero'. It's good to know that. Sometimes they're so busy, they think, 'Oh well the composer will just cut out six bars', but that could really wreck your music and not be good for the film. So we've got a mole in the editorial department, and there's nothing clandestine going on, but it's like, 'for God's sake, let us know what's going on and send us over a tape of the change and, if we've time, we'll make the change in the music' rather than someone having to cut it on the final dub. I always see the editor as a very important person. Some editors have great influence with the directors. They shape the film for the director. Some directors edit their films themselves, even if they hire an editor. They are there really saying, 'go from this shot to this shot', but some directors are a bit more distant and let the editor do their thing. Whichever way you look at it, they are very powerful people in the process and they need watching.

Q - Are there any instances where directors have temp scores and they can't let go of them?

Harry - Yes, often. I understand the process of using temp music. There are some composers who refuse to listen to temp music. I don't mind either way, but quite often I'm hoping it isn't any good and that I can beat it. Once they find some music that totally nails the feel of the movie, it's best to listen to that once only. The worst that can happen is that you try to emulate the temp score.

Q - Does a film have to have memorable themes?

Harry - I don't think it's necessarily about that. I can't think of a score that I've done that doesn't have some tangible theme. Otherwise music can become just drifting sounds. However, I really like the score to *Traffic*. If you listen to it, it's pretty dull, but I remember thinking how effective it was in the film. I don't think there was a theme. It's possible to be very effective without having a theme, but then a theme doesn't necessarily mean something an audience will be able to walk away humming. In *Sinbad*, you will definitely know the tune by the end. Not because I've banged it out so many times, but because it becomes synonymous with *Sinbad*. It's his theme. There are a million instances of film scores, where as their theme, the composer doesn't use a tune but maybe uses a motif or an atmosphere. In *Phone Booth*, there's very little melodic content in that score, but when you heard a certain sound which was a low, synth, throbbing sound, it meant something. If you can call that a theme, then it was. When

Temp Music

While you are editing, and before your original score has been written, you will want to put some music tracks down to help set a tone and find the pace of scenes and your overall movie. You will find yourself browsing the soundtrack section in music shops and plundering the collections of music score collectors, in search of the appropriate feeling score to use as a guide. Music editors sometimes call this "tracking". At this point ANY music is fair game as you do not have to pay royalties (as the film will never be screened publicly in this unfinished form). Many film festivals will accept temp music in your submission for entry, with the stipulation that you will have permanent score in place should you get into their event.

However, beware when it comes to temp music. On one hand, it can be very helpful to your composer to have famous music tracks as temp music in order to give them an example of what you want from the score. On the other hand, you may grow too attached to that style of music and not open yourself up to alternative ideas. All too often, new filmmakers lay in some temporary John Williams or Jerry Goldsmith, and not surprisingly, it improves their film. BUT, neither John Williams or Jerry Goldsmith, nor the London Symphony Orchestra, is likely to do a low budget indie film.

Affidavit written by Chadbyrne R. Dickens 05/25/09 on behalf of Bart Steele, Plaintiff vs. Bon Jovi

IN CLERKS OFFICE
JUL 17 2009 5:01

I first met Bart Steele during the fall of my Sophomore year 1991, at the University of Vermont. We both lived in the same dorm. We became fast friends due to our shared affinity for film and music. We were constantly sharing jams and our ability to both appreciate the finer moments and progressions in music – especially jam bands like the Grateful Dead and Phish. We attended many concerts together. Bart, like me, was often the life of the party and all in attendance would realize things would be stepping up to another level when Bart walked back into the room carrying his guitar. It was obvious to me, and everyone with a pulse, that Bart was very passionate about his guitar playing and had been practicing umpteen hours.

After college, I worked in NYC and Los Angeles for Paramount Pictures and Miramax Films, among others on the set of such films as *Scream 2*, *Ransom*, *First Wives Club* and *In & Out*. However, great friends, we always managed to stay in touch and periodically get together. Bart mentioned that he was progressing with his music and studying diligently at Berklee School of Music in Boston. Eventually, in 2005, I saw him perform on a bridge in Boston and was very impressed – he was no longer the doe-faced novice from UVM 1991 – he could rock and his songwriting was impressive as well. At some point, he told me to check out the Boston Red Sox website because they had adopted a song he wrote and recorded, “I Really Love this Team” as the official song of the site. I was blown away and listened to it over and over. Although a die-hard, lifetime, and often season ticket holder for the hated rival New York Yankees, I was very proud of Bart as I am of any one of my friends that finds some success in a creative endeavor.

Then on October 4, 2007 as I watched every game of the Yankees in the Divisional round of the MLB playoffs, I watched closely a quick edited and loud commercial on TBS for MLB with the repeated chorus, “We Really Love This Town” and obviously sung by multi-million album selling artist, Bon Jovi. I took a moment and then freaked out, I was thinking, “wow, I can’t believe it! It’s Bart’s song!! He didn’t tell me. He must have sold his song to Bon Jovi for big bucks, good for him!!” Then I immediately sent the YouTube link of the song and asked if he sold it. About 2 hours later, Bart called me in total complete shock and disbelief. Not only had he not sold the song to anyone but being privy to the chord changes, rhythm, edits and lyrical changes easily determined the Bon Jovi song to be a total rip off of his own original work. I listened to both as well and easily concurred with his initial finding. I forwarded to everyone on my email list, most don’t know Bart personally, and they all laughed it off as blatant theft.

I support Bart in every way I possibly can and hope that in our capitalistic system where the one with the most money, weight and prestige behind him in court usually prevails that justice will overcome in this important case and Goliath will go down and a proper precedent be set.

Please do not hesitate to contact me should I be of further assistance.

I swear to the best of my knowledge that my statements are true under the penalty of perjury.

Electronically signed,

Chadbyrne Dickens

<http://www.imdb.com/name/nm0225322/>

CHAD DICKENS

79 Reynolds Lane
Woodstock, NY 12409
845-679-6149

COMMUNICATIONS BY EMAIL ONLY

Professional Experience

1995-2002 Executive Assistant/Production Coordinator to officers of top-level media companies including Paramount, Warner Brothers, Universal, Miramax

All aspects production, marketing and promotion including: new product roll outs, market studies, comparative demographic surveys, as well as hands on scheduling, staff hiring and training, office and set related projects among writers, directors, advertisers, agents, coverage, script notes, legal contracts, correspondence, business affairs, expenses, conference and event planning. Projects included:

Executive Assistant to Producer, Scott Rudin Productions, Paramount Pictures including films *Ransom, In & Out, First Wives Club, Marvin's Room*, and Broadway theater projects. Supervision of 10+ person Manhattan office, prioritizing and delegating of duties, including maintenance of 300 person daily phone log, liaison with LA office, and assistant duties including premiere logistics, daily set preparation and problem-resolution in high volume, high pressured environment.

Production Coordinator, Kids Entertainment, subsidiary Warner Brothers Coordinated international distribution to nearly 20 foreign markets for *Pokemon: The First Movie* and the animated TV series. Organized all aspects of production including soundtrack and legal contracts. Coordinated record-breaking merchandise tie-ins with Scholastic, Hasbro and other toy companies. Assisted with all production work including soundtrack compilation, music publication, story notes, voice-over contracts and home distribution;

Executive Assistant to President October Films, subsidiary Universal Pictures Led numerous worldwide marketing campaigns, including *Gilary and Jackie* to Academy Award nomination through various promotional devices: marketing blitzes, mailers, tie-ins for product and website promotions, assisted in creation of trailers;

Executive Assistant to Producer/CEO, Miramax Films Administrative support on feature films *Scream, Scream 2* and *Copland*

2003-June 2005 Assistant Manager, "Blockbuster" a Division of Southern Stores Inc. (concurrent with Graduate School)

Achieved sales and customer satisfaction standards and goals; assisted in all phases daily operations to ensure maximum sales and profitability through focus on key initiatives, presentation, marketing execution, inventory management, customer service, loss prevention and risk management. Responsibilities included interview, train and supervise employees; schedule, organize and direct assignments; resolve customer problems; ensure interior and exterior of store maintained to company standards; assisted in developing initiatives to grow revenues, control costs and inventory; communicate, execute, and assist marketing and merchandising programs; monitor loss prevention and shrink programs; cash handling, deposit reconciliation and delivery of deposits to bank.

TEACHING EXPERIENCE

Fall 2008 (Leave replacement) Bronxville Middle School, Bronxville NY
Faculty: 7th grade fall leave replacement English teacher for four classes and advisory.

Fall 2007 (Leave replacement) Fox Lane Middle School, Bedford NY
Faculty: 7th grade fall leave replacement English teacher. Utilize team-teaching approach while accommodating students with special needs and varying degrees of ability, coupled with expansion of classroom management techniques.

2005 - 2007 Brunswick School, Greenwich, CT
Faculty: 2006-2007 teacher of four 6th grade English classes; 2005-2006 teacher of two 6th grade and two 8th grade English classes. In each academic year, daily contact and supervision of homeroom, study hall, seven student advisory/mentor, and Coach of JV baseball, soccer and basketball.

Spring 2005 Garrison School, Savannah, GA
Student teacher of three Social Studies and one EIP class on ninety minute block schedule. Implement and formulate innovative lesson plans in adherence to America's Choice standards and curriculum goals. Utilize and incorporate instructional technology. Set rewards and consequences to manage classroom behavior. Maintained strong parental contact in challenging multi-cultural urban environment.

2003-2004 Hilton Head Preparatory School, Hilton Head SC (Savannah GA suburb)
Substitute teacher in all subject areas grades one through twelve. Implemented existing lesson plans, improvised lessons, managed classroom behavior, demonstrated flexibility and resilience under pressure. Completed forty hour practicum in classroom grades six through eight in high performing suburban environment. Daily tutor for eighth grade ADD student in all subject areas to facilitate organization and study skills.

EDUCATION

M.A. Education *Summa cum laude* 2005 Atlantic Armstrong State University Savannah, GA
B.A. Political Science 1994 University of Vermont, Burlington, VT
B.A. Film Studies
High school: 1 990 St. Mark's School/Waynflete School
Jr. Pre-K through Ninth: 1987 Rippowam-Cisqua School, Bedford NY

Publication: *Film and History Journal*, 2006, Vol 36.1, p 78.

Special Skills:

Completion of intensive "Integrating Technology in the Classroom" training course
Computer/Word Processing; Excel, PowerPoint, 70 wpm
Completion intensive corporate courses, USG census training, 30-day Outward Bound Survival

To: Whom It May Concern
From: Chris Faraone, Writer (Cell: 917-771-3663)
Re.: Bart Steele / "I Love This Team"
Date: 05.05.2009

FILED
RECORDS OFFICE
JUL 17 P 5:01

I spent two months in 2008 thoroughly researching the accusations that Bart Steele is bringing against Major League Baseball, TBS, and several other parties. My interest in the subject ultimately manifested in a feature article for *Boston Magazine* titled "Diary of a Mad Fan" (June 2008).

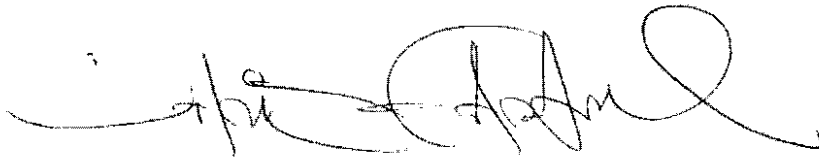
In my research, which included hundreds of hours of phone calls and document digging - as well as more than ten hours of interviews with Bart including a trip to the RIAA conference in Los Angeles alongside him - I came to believe that there was more than a mere coincidence that his songs sounds like Bon Jovi's "I Love This Town."

The majority of my findings are in my *Boston Magazine* article. However, since it was a more-or-less straightforward journalistic effort, I am submitting this affidavit to confirm that I believe Bart's song was stolen and interpolated for use in Major League Baseball commercials.

While part of my belief hangs on the files and files of circumstantial evidence that I gathered in the research process, it is also fueled by the refusal of all accused parties to speak for my article. I am convinced that Bart's original work passed through many parties - none of whom were willing to talk and clarify my findings. In my researched opinion, the TBS commercial featuring Bon Jovi's "I Love This Town" was clearly conceived and filmed with Bart Steele's original composition as a guide.

I swear under the penalty of perjury that my statement is true to the best of my knowledge.

Sincerely



Chris Faraone

From: Carly Sakolove

FILED
CLERK'S OFFICE

Re: Bart Steele's Song "Man I Really Love This Town (Team)"

JUL 17 2 50 PM '09

This statement is in regards to Bart Steele and the situation surrounding his song "Man I Really Love This Town (Team). The facts are completely true as I remember them, and I speak fully out of personal observation, not from hearsay.

I first met Mr. Steele in September of 2007. While getting to know him, I learned how troubled he was with the recent knowledge that the song he wrote in 2004 seemed to have been revamped and turned into an ad campaign for MLB Playoffs. We began dating and spending most of our time together. I joined his band, the Chelsea City Council and moved in with him at 80 Park St. and I know more than anyone how much this matter consumed him. He was (and still is) completely devastated, like someone had kidnapped his own child.

I was shocked when Bart first showed me the MLB promo video of "I Love this Town" lined up to his own song. It was eerie and disturbing how well they matched and sounded similar. It was as if this video had been originally made to his version of the song. I did not need any convincing that Mr. Steele had been wronged. In January 2008, I was even present at Rocca (the restaurant where we both worked) when Bart was talking to a man sitting at the bar, dressed in upscale Red Sox gear. It turns out he was good friends with one of the owners of the team. When Bart asked him if he knew about his song, he told him that he thought the Bon Jovi song was the same song as Bart's. When Bart took me to get a tattoo at Ferry Street Ink, in Everett, MA, the owner, Sean said, "Hey! Did I hear your song on tv?" To which I responded "Wrong question to ask him right now. You are the third person today to ask him that."

In all of Bart's efforts to get this matter resolved, one of the lifelines he reached out to was ASCAP. He hoped that the society would help to protect him and help him get the credit he deserved for the song that he copyrighted in 2004. In March of 2008, Bart received a call from ASCAP. He picked up the phone and started talking to Robert Cheatham and Andrew Rodriguez. Bart was very excited to receive the call so he put them on speakerphone so I could hear what they were saying. They told him they found it hard to believe that this was independent creation and that this kind of stuff happens all the time. They said after reviewing Bart's Song and Bon Jovi's song, he felt that there were enough similarities to conclude suspicious behavior and plagiarism. He said that they wanted to get the parties together to resolve this matter amicably. After this phone call Bart and I were jumping up and down! We were so excited, because we knew that ASCAP was on our side.

It is over a year later and the facts are still clear, and Mr. Steele is still yet to receive due credit for the song he poured his heart into. Being his girlfriend, best friend, roommate, and coworker I truly believe he has been wronged. I know that if it had just been a "coincidence", it would not have affected him the way it has. Please take these observations into consideration. I am happy to discuss anything I have mentioned in these preceding paragraphs.

Carly S. Sakolove 6/22/09

Affidavit Bart Steele.doc

Page 2 of 2

Carly Sakolove

35 St. Nicholas Terrace#63

New York, New York 10027

(561) 452-2787

Received a BFA in Musical Theater from The Boston Conservatory

Currently an actress in NYC

Sworn Statement.doc

Page 1 of 1

Affidavit Sworn Statement from Carly Sakolove

I swear under the penalty of perjury that my statement is true to the best of my knowledge.

Signed,

 6/22/09
Carly Sakolove

Shawn Coyle

FILED
IN CLERK'S OFFICE
JUL 16 2009

In late 2006, Bart gave me a copy of his baseball playoff song, and told me he was in the process of trying to sell the song to Major League Baseball or the Boston Red Sox. In October 2007, I heard the MLB/TBS/Bon Jovi song and immediately thought Bart had sold his song to them. When Bart visited Ferry Street Ink again with his girlfriend, whose name I don't remember, I told him I had heard his song and asked him how much they paid him for it. Bart's girlfriend responded, "Let's not go there today!" and told me what happened. My phone records will show that I immediately put Bart in contact with my lawyer, Paul Foster, from the phone at Ferry Street Ink to see if I could help him. Bart clearly got a raw deal!

I swear that these statements are true to the best of my knowledge under the penalty of perjury.

Shawn Coyle
Ferry Street Ink
8 Ferry Street
Everett, MA 02149
617-389-8280

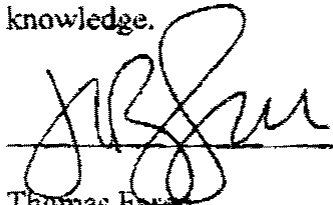
Shawn Coyle
1/15/09

I was recently asked to examine the Bon Jovi/MLB/TBS video for "I Love this Town". In examining all 155 frames of the footage, in the 98 frames involving Major League Baseball players, fans or venues, at least 23 involved the Boston Red Sox, whether it be Red Sox players, Fenway Park and the surrounding area, or the TBS marketing campaign displaying David Ortiz.

Red Sox-related frames constituted more than 23 percent of the baseball footage, a much higher percent than if all 30 teams were equally represented (3.3%) or if the eight postseason teams were equally represented (12.3%).

I have been employed as a sports writer for the last 10 years and am currently Sports Editor of the *Daily News Transcript*.

I swear under the penalty of perjury that the information stated is true to the best of my knowledge.

 6/19/09

Thomas Fargo
23 Fairview Street
Dedham, MA 02026
(781) 686-9101
tfargojr@hotmail.com

Name: Shaun Michael Risley
 Address: 1134 Roslyn Street, Denver, CO 80220
 Email: RShaun1@qwest.net

FILED
 IN CLERK'S OFFICE

I herby swear that the following is a true account of what I remember happening during the times and time frame mentioned within.

I am a Graduate of Western New England College and graduated with a bachelor's degree in business. The below section is a history of my employment:

- Lewan & Associates** **Denver, CO**
Account Manager **June 1st '09 to Present**
- Responsible for managing and expanding a Federal Sales division for a national presence.
 - Create new revenue streams and Lines of Business to bring to market.
 - Build specialized services capabilities in the Federal marketplace.
 - Responsible for overall Federal Sales goals, quotas and expenses.
- RTL Networks INC** **Denver, CO**
National Sales Director **April 1st '08 to April '09**
- Responsible for overall Profit & Loss Statement for Sales & Marketing Division.
 - Build Pipeline and reporting tools to effectively manage sales efforts and market share.
 - Create and maintain goals & compensation packages for RTL Sales Personnel
 - Create new revenue streams and Business Lines with various manufactures for niche offerings.
 - Build and improve a service delivery & sales process.
 - Execution of partnerships with Prime contractors on key Federal Programs.
 - Market RTL's Federal contract vehicles and socio economic status to end clients.
- Global Technology Resources INC** **Denver, CO**
Federal Sales Manager **March '06 to Feb '08**
- Responsible for managing and expanding a Federal Sales division for a national presence.
 - Create compensation packages, incentives, goals and sales objectives.
 - Create new revenue streams and Lines of Business to bring to market.
 - Build specialized services capabilities in the Federal marketplace.
 - Responsible for overall Federal Sales goals, quotas and expenses.
- Federal Programs Manager** **March '05 to March '06**
- Responsible for partnering Federal Program Sales division with Prime contractors programs.
 - Maintain and grow revenues and profits within key identified manufacture relationships.
 - Market GTRI's Federal contract vehicles and socio economic status to end user programs.
 - Create and maintain Federal contracts for specific programs for DoD and Civilian clients.
 - Setting sales MBO's and goals for sales growth and guidance.
- Federal Account Manager** **July '02 to March '05**
- Build Federal sales revenues and profits with Federal and Prime contractor markets.
 - Utilize FAR regulations to grow sales with SBA and End User programs.
 - Network with Contracting, IT Dept, CIO, CFO and Director Level Program Managers.
 - Build pipeline forecast to strategically focus on accounts.
 - Build revenue streams with emerging technologies in LAN/WAN, Security and Storage areas.
- Comstor (Westcon Group): Federal Account Manager** **Broomfield, CO** **July '00 – March '02**
- Utilized product knowledge to offer solutions to a reseller base of Federal, Educational and commercial customers.
 - Maintained manufacture relationships to plot business strategies for end user implementation procedures.
- Computer Equipment Warehouse: Federal Sales Manager** **Arvada, CO** **Jan '98 – July '00**
- Align CEW with K-12, Higher Education, State, City, Local, Federal, and Prime contractors.
 - Establish and maintain State and Federal contracts with several different agencies.
 - Education seminars and classes to keep updated with the current marketplace.
 - Create marketing promotions and sales programs to enhance relations and increase sales.
- Comstor / Data Storage Marketing: Account Manager** **Boulder, CO** **Oct '96 – Dec '97**
- Utilized product knowledge of several product lines to offer solutions to a growing reseller base of Federal, Educational and commercial customers.
 - Maintained manufacture relationships to plot business strategies for end user implementation procedures.
- Marco International Inc.: Account Manager** **Boulder, CO** **Feb '96 – Sept '96**
- Networking with corporate MIS Departments to strategically drive revenues to reach goals. Build relationships with C level management teams to build forecasted revenues.
 - Knowledge of the UNIX marketplace to offer turn key solutions for hi-end customers.
- Ciba / Geneva Pharmaceuticals: Account Manager** **Broomfield, CO** **Jan '94 – Dec '95**
- Created a short-dated product sales program to reduce stock and overhead costs of excess product. The continuous monitoring of the sales program for improvement of its operations.

- Assisted Vice Presidents and Regional Directors with contract compliance.
- Directed contact with National Account Managers to solicit sales from a broad customer base of retail, chain and wholesale accounts.

I belong to the Wellshire Golf Men's Club and am a Eagle Scout in the Boy Scouts of America. I have no affiliations with Universities or State run organizations or companies. Here is the relocation of what I remember from a trip myself and, my now wife then girlfriend, took to Boston, MA in September of 2004.

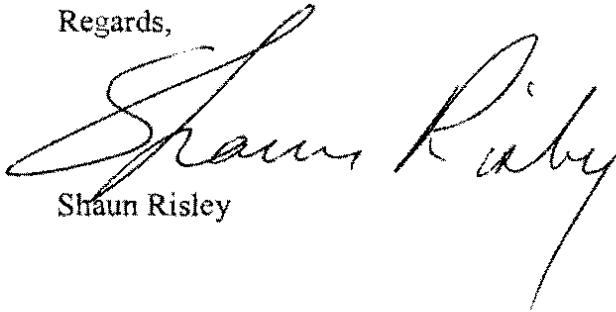
In 2004 myself and Rachael Coulehan decided to take her "fall break", she is employed by Aurora School District, to Boston, MA as she has never been to Boston. During our trip we would stay at the Copley Square Hotel in Boston for a few nights and then visit my family in Western Massachusetts. So we packed our bags and made our way to Boston. Well don't you know my beloved Red Sox are in the World Series and games one and two were played in Fenway Park. Myself and Rachael decided to go down to Fenway Park area to walk around during the day to see if we would be able to get tickets to the 2nd game of the series. So we got our Dunkin Donuts coffee and headed to Fenway Park. It was a surprisingly empty, busy but empty, but then again it was around 9 or 10 in the morning. There I witnessed two gentlemen walking down the road with acoustic guitars around their necks and dressed up in costume. One of them was wearing a large foam built "Cowboy Up" dressed as Johnny Damon, now Red Sox Traitor, and the other was wearing a wig trying to look like Pedro Martinez. With the unusual costumes and myself and Rachael being fairly amused I asked if I could get pictures of them. Their reply was sure. Well with the picture came a lot of conversation and the story of the dream that Bart Steele had for a Major League Baseball anthem, which really turned out to be more of an idea to write songs for every team in baseball and those teams geographical areas to build songs that were tailored for each team and their home towns alignment with MLB.

Soon into the conversation Bart Steele had asked me if I wanted to hold a sign while they both played their "tune" for the several TV cameras on the streets just outside Fenway Park. The amount of TV cameras and folks interested in filming these baseball fans seemed to grow at a very rapid pace. I joined Bart and Pete in their efforts to sign their song to all who were now listening, including TV cameras, fans and onlookers. Rachael decided to film us as well, several times, using our own camera which also took video clips. I have always enjoyed these clips and keep all of my pictures and video attached to my computer via external hard drives. Over the next two days I and Rachael met with Bart and Pete to watch the Red Sox games and enjoy the sweep of the Red Sox 1st World Series. All along the way enjoying Bart Steele's song he had written and performed with his friend Pete, of whom Pete's last name escapes me. Also part of the conversation at several points was Bart's vision of bringing this concept of a national baseball movement for every team and writing a song for each team to use in marketing efforts to build a home town frenzy of support for each team... Bart's comments at the time were often worded by saying "Would'nt that be wild".

I stayed in touch with Bart of the years and realized a few years later, when TBS won the MLB playoff's on TV contract, that the tune Bon Jovi was singing on TV commercials and promoting baseball sounded a lot like the song that Bart had written and given me a copy of a few years earlier. That is when I made copies of the clips myself and Rachael had made of Bart and Pete singing their songs to Bart as he requested copies of them.

I believe that there is without a doubt and infringement of Bart's written song and idea for other songs was done by whomever created the now famous Bon Jovi song that TBS uses for MLB playoffs and a now anthem to use for MLB's marketing of the teams in the playoffs each year. It's a perfect fit for MLB as they can plug in any team to this Bon Jovi anthem, who ever is in the playoffs that year and Bart Steele is a victim of being the small man who got ripped off by who ever put Bon Jovi's song together.

Regards,



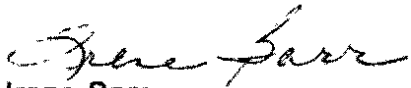
Shaun Risley

Irene Barr Affidavit Sent By: "Irene" <ecmp2000@comcast.net>
PMT**o:** bartsteele@comcast.net

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IN CLERK'S OFFICE
JUN 11 2009 9:09
JUL 1 2 50

To Bart Steele:

I, Irene Barr, music agent for over 25 years and under the pains of perjury and to the best of my recollection do make this statement on behalf of Bart Steele who's self-penned tune "Man, I Really Love This Team" was in fact marketed to several Boston area radio stations by me, to be played the day the Red Sox won the world Series in 2004. I personally spoke with Jay Rouke of the Boston Red Sox who asked me to email him the song that he felt the Red Sox would love, which I did immediately to jrouke@redsox.com. I also reviewed the MLB ad and the audio and video images are VERY similar.



Irene Barr
Gen'l Del./18 Blossom ST.
W. Hyannisport, MA 02672

May 5, 2009

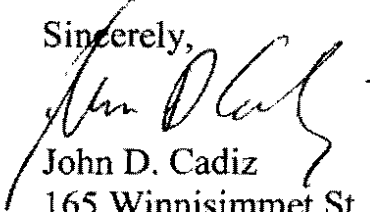
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NOTARY PUBLIC

TO whom it may concern:

MA 02150 P 5:01

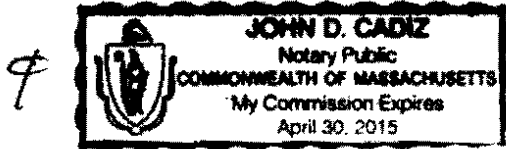
I, John D. Cadiz, am a licensed real estate agent at Cobblestone Real Estate. Bart Steele was a also a licensed real estate agent in my office from 2005 to 2007 and I personally observed him making on-line submissions of his song 'Man I love this Team' and the re-write 'Man I love this town' to the Red Sox and MLB from our office located at 146 Broadway, Chelsea, MA 02150. I also observed him preparing envelopes containing CD's and lyric sheets to be mailed. The Bon Jovi MLB ad sounds a lot like Bart's song.

Sincerely,



John D. Cadiz
165 Winnisimmet St. #3D
Chelsea, MA 02150
(617)869-8755

MA R.E. Lic # 9049800



[For Instrumental Purpose]

George Christodal 111
5 Lemon Street
Salem, MA 01970
gmc111@hotmail.com
617-686-5123

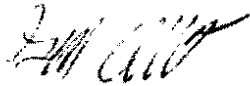
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CLERK'S OFFICE
JUL 20 2009

To the best of my knowledge the following statement is true under the penalty of perjury:

I am a life long friend of Samuel Bartley Steele. I was also his roommate at the time he wrote and recorded "Man, I really love this team". His inspiration for writing the song was to have a baseball anthem. The specific lyrics were for his favorite team, the Red Sox. But the song itself was for every baseball fan and their favorite team. That is why he wrote a more universal version with the ability of inserting the name of any town or team in the song. Even in his Boston version he made a conscious effort to keep it non-specific enough so it could be easily tailored to other towns and teams.

There is no doubt in my mind that the Bon Jovi version came from of Samuel Bartley Steele's.

George M. Christodal 111



"Temp Talk: Copyright Issues And Legal Liabilities"

FILED
IN CLERK'S OFFICE

November 29, 2002, Kristin Wilcha

NOV 29 2002

-- The pitfalls of using temp music tracks for commercials were delineated and discussed during an educational/ informational seminar hosted last month (10/29) by the Association of Music Producers (AMP). Held in the Nye Center at Young & Rubicam, New York, the session—entitled "Temp Tracks: Understanding the Legal and Financial Risks—featured four musicologists: Matthew Harris of Harris Musicology, New York; Anthony Ricigliano, president of Donato Music Services and Music Research Consultants, New York; Dr. Earl Spielman of Copyright Infringement Consultants, Nashville, Tenn.; and Sandy Wilbur, president of Musiodata, Larchmont, N.Y.

Also on the panel were: AMP president Jeff Rosner, who is executive producer at Sacred Noise, New York; Scott Taylor, president of Taylor & Taylor Associates, a New York-based insurance brokerage that specializes in insuring companies involved in television commercial production and postproduction; Renee McGovern, a broker with JMB Insurance, Chicago; and Adam Cohen, a partner at the law firm of Kane Kessler, New York, where he chairs the intellectual property group. Moderating the panel was Matt Miller, president/CEO of the Association of Independent Commercial Producers (AICP), which maintains a strategic alliance with AMP.

As earlier reported, (SHOOT, 10/4, p. 1), AMP was looking to address what is generally regarded as a steadily rising number of copyright infringement claims by record labels and publishers against music in commercials. To that end, prior to hosting the seminar, AMP informally polled several musicologists, such as Spielman, Ricigliano, and Wilbur. Their feedback included observations on the temp track, whereby a copyrighted composition or song has been used without permission from the publisher for the purpose of editing and presenting a prospective commercial to the client. This track, if it is not actually licensed for use in the actual spot, frequently becomes the "guide" for the musical direction given to the composer.

The temp track issue is of great concern to both agencies and music houses. The number of infringement claims is said to be increasing significantly, and as Spielman noted when surveyed by AMP, "Of the fifty most recent complaints I have worked on in the ad world, virtually all have involved a temp track circulating between editors, ad agencies and their clients."

Problems also arise with temp tracks when agencies have made overtures to a record label/music publisher about the availability of a particular piece of music. As Ricigliano noted when polled by AMP, both the publisher and record label are "on the lookout for anything even remotely resembling their music in the final commercial."

Guidelines

AMP unveiled a series of guidelines two years ago (SHOOT, 10/27/00, p. 1), a section of which deals with temp tracks. The AMP guidelines define the potential risks of temp tracks, advising that, "caution must be exercised in the use of existing music as 'direction' for companies and composers. Copyright laws apply not only to the literal notes of music compositions, but to the sound of the musical arrangement, as well. Thus there can be great risk—to the advertiser, the agency and the music company—in making something

'sound like' someone else's song or soundtrack. Note that the use of published recordings without permission—even for the presentation of 'testing purposes'—could be viewed as infringement of copyright law. Further, a 'infringement' claim can be based upon intent. Intent is often determined by whether a piece of music is 'discoverable'—i. e. has been laid back to a rough cut or animatic."

The musicologists started last month's panel with an explanation of what they do. Spielman noted that a musicologist is one who has advanced training in the history and performance of music. He further noted that a forensic musicologist is one who does "commercial applications"—i.e. advising an agency in clearing tracks for use. A forensic musicologist compares music tracks, in order to give an expert opinion as to whether or not a given piece of music will infringe on any existing copyrighted piece of music.

One of the key questions that arose during the panel discussion was if agencies should use musicologists to clear all original tracks for spots. "Using a musicologist is not a guarantee," related Ricigliano. While Harris said that having tracks cleared by a musicologist gives a "stamp of approval" that could do away with some of the more frivolous claims.

At the seminar, Harris noted that agencies should just "scratch the scratch [temp] track. It shouldn't be a part of the creative process. [Agencies] should think of music houses as creatives; they need a clean slate to work with. ... Don't view music as just another part of the post process."

In addressing the use of temp tracks, the musicologists noted that if an agency does decide to use such a track for idea purposes, the agency and/or music company has a better defense against an infringement claim if more than one temp track is proffered. While one track could potentially indicate that a music company had a specific song or composition as a guide, several tunes in the same style and/or genre show that a sound or type of music was used as a guide. "There is a big difference between one and five temp tracks," noted Ricigliano. "[More than one] piece of music makes the final track more defensible." The musicologists also noted that the circulation of temp tracks, if used, should be limited.

Some agencies require music companies to carry an errors & omissions insurance policy in order to provide indemnification for agencies. Scott Taylor, of Taylor & Taylor Associates, noted during the discussion that even if a music company is covered by an E&O policy, that insurance does not protect the shop if it is provided with a temp track by the agency.

JMB Insurance's McGovern said there is a lack of risk management at music companies, which they need to address in order to be more insurable. For example, by accepting footage with a temp track, music houses could be opening themselves up to liabilities, or could in fact nullify insurance policies they may carry.

Spielman contended that temp tracks, when provided by an agency, "should be the agency's problem, not the music company's," but that if the music company is creating original tracks, then responsibility is more equal.

After the seminar, another key issue, clarified by AMP secretary Jan Horowitz, VP/business manager at David Horowitz Music Associates (DHMA), New York, was that of intent, which is a pivotal criterion for determining liability. Horowitz noted that an

accidental similarity to a particular track, or music built essentially of common devices (like the Blues) is less of a problem. Intending to capitalize on the fame or identity or unique properties of someone else's work is what raises issues, and discoverable evidence, such as copies of a rough cut with a copyrighted piece of music laid back to picture, is easily construed to be proof of intent.

Concrete Changes

AMP's Rosner related during the discussion that agencies should reconsider some practices. For example, he said that agencies need to make sure that "temp tracks never leave the editorial suite." He noted that by not sending out a cut with a temp track, an agency helps its client to avoid a potentially litigious situation. He also stated that a number of business practices that have been in place, like temp track usage, need to be changed.

Musicologists mentioned that one way to address the problem of temp tracks and liability is to discuss several tracks, which will help guide the discussion with a music company. Other areas, which Horowitz noted in her follow-up with SHOOT, include "bringing in the music houses earlier, either at the beginning of the creative process to pre-score the storyboard as a guide for the editor, and adjust the final cut later—or use demo CD collections most music houses have put together for this purpose. You can cut to a track and then call the music company to do something very much like their sample. "

Pre-scoring is becoming more commonplace. Gregory Grene, music producer at FCB New York, who attended the AMP seminar, said that he has been working with Deborah Sullivan, the executive VP/head of broadcast production at FCB, to increase his agency's use of the pre-scoring practice. "The AMP panel was very useful," said Grene "It started touching on [issues] that are very important."

One of the big issues for me is the degree which, to some extent, music tracks have somehow fallen into the domain of the editor," he continued, "and I think that is a very unfortunate development in a whole bunch of ways. I think artistically it's problematic and also legally it can become problematic."

Grene related that at FCB, about 50 to 60 percent of the spots using original music are pre-scored. In an effort to educate producers and creatives at FCB, Grene and Sullivan are planning a seminar similar to the one held by AMP, which will take place in the next couple of weeks. Grene noted that some of the people who participated in the AMP panel would likely be a part of the FCB discussion. "

[The concept] of pre-scoring is always feasible," said Grene, "as long as the creatives are comfortable with that situation. It's all dependent on people feeling confident enough that the music house is going to be able to deliver something that is exciting, and also feeling confident of their own communication skills—that [effective] communications can be made without reference to an existing track."

<http://www.ampnow.com/shoot-10.04.02.html>

SHOOT article: AMP SEEKS PERMANENT SOLUTION TO TEMP TRACKS, October 4, 2002

Musicologists To Examine Copyright Infringement, Industry Practices.

By Robert Goldrich

NEW YORK—Looking to address what's generally regarded as a steadily, if not exponentially, growing number of copyright infringement claims by record labels and publishers against music in commercials, the Association of Music Producers (AMP) is bringing together leading musicologists for a seminar later this month in New York. AMP hopes the session will generate meaningful turnout from the agency community—specifically heads of production, broadcast business affairs managers and in-house legal counsel—as well as lead members of the Association of National Advertisers, the American Association of Advertising Agencies and the Association of Independent Commercial Editors.

AMP president Jeff Rosner, executive producer of Sacred Noise, New York, explained that musicologists were chosen to headline the seminar because they have a birds-eye view of the business, particularly pertaining to industry practices, infringement claims and legal liabilities. This perspective, observed Rosner, is invaluable, especially since claims often are settled out of court, with those settlements stipulating that the parties involved not speak publicly about individual cases. Musicologists, said Rosner, can at least shed light on the matter, providing a viable handle on the general state of affairs and what can be done to improve the situation.

At press time, AMP had lined up three musicologists for its late October session: Dr. Earl Spielman, Anthony Ricigliano and Sandy Wilbur. As a precursor to the seminar, AMP informally polled several musicologists, including Spielman, Ricigliano and Wilbur. Their feedback included observations on the temp track, whereby a copyrighted composition or song has been used ostensibly without permission from the publisher for the purpose of editing and presenting a prospective commercial to the client. This track, if it is not actually licensed for use in the actual spot, frequently becomes the "guide" for the musical direction given to the composer.

In response to AMP's survey, Spielman noted, "Of the fifty most recent complaints I have worked on in the ad world, virtually all have involved a temp track circulated between editors, ad agencies and their clients." Spielman estimated to SHOOT that approximately two-thirds of his work is in music for advertising. Of that, about 75 percent involves comparison between a new composition and an existing composition; 15 percent entails a comparison based on sound-alike elements; and only 10 percent involves original music without any reference to another composition.

<http://www.ampnow.com/shoot-10.04.02.html>

<http://www.amppnow.com>;

In his survey feedback to AMP, musicologist Matthew Harris related that a majority of tracks he has cleared had a reference track. "Of those," he said, "about one out of three was never approved for broadcast, even if revisions were made." And when he entered into a situation in which a claim had been made against a composition, "many had used the plaintiff's song as the reference track."

Responding to the AMP poll, Ricigliano stated, "The biggest problem occurs as soon as an overture has been made to the publisher" with regard to licensing the temp music. In those instances, he continued, both publisher and record label are "on the lookout for anything even remotely resembling their music in the final commercial."

GUIDELINES

AMP's set of music production guidelines—released nearly two years ago (SHOOT, 10/27/ 00, p. 1) and published in the Association of Independent Commercial Producers (AICP) Membership Directory—contains a section specifically addressing alleged music copyright infringement. (AMP and the AICP maintain a strategic alliance.) The AMP guidelines define the potential risk entailed, advising that "caution must be exercised in the use of existing music as 'direction' for companies and composers. Copyright laws apply not only to the literal notes of music compositions, but to the sound of the musical arrangement, as well. Thus there can be great risk—to the advertiser, the agency and the music company—in making something 'sound like' someone else's song or soundtrack. Note that the use of published recordings without permission—even for presentation of 'testing' purposes—could be viewed as infringement of copyright law. Further, an 'infringement' claim can be based upon intent. Intent is often determined by whether a piece of music is 'discoverable'—i.e., has been laid back to a rough cut or animatic."

This section of the AMP guidelines goes on to point out that "risk is increased significantly when an inquiry has actually been made into the availability of that song or soundtrack for use in a commercial. (If such an inquiry has been initiated with the publisher of a musical work now being cited as a musical 'direction,' it is prudent to notify the music company assigned to the project, and to enlist the services of a musicologist to analyze the relevant recordings.) To avoid unnecessary legal exposure, AMP recommends that discussions of direction be limited to musical styles or genres, that music professionals be included in the discussions, and that 'needle drops' be kept out of the presentation process (unless licensing of the recording is intended)."

Copyright infringement also raises the question of indemnification—and who should be indemnifying whom. The AMP guidelines suggest the need for "co-indemnification in the [ad agency] Music Rights Agreement with respect to scripts and materials furnished by the agency." Historically, the indemnification clause in such a rights agreement has placed full responsibility for the originality of the acquired work with the supplier and composer.

Further, the clause has usually required that the supplier and composer, jointly or individually, "hold harmless" the agency and its client from any and all claims, judgments, legal costs, et cetera, stemming from any actions and/ or claims made against the work.

Past president and current board member of AMP, Lyle Greenfield, who is president/creative director of New York-headquartered Bang Music, agreed that if a music house is doing "original work," it should guarantee that originality and take full responsibility. But if the agency assignment instead calls for, in essence, trying to sound like or copycat something, then fairness dictates that there be some form of legal indemnification for the music house.

Attorney Robert Sacks of Kane Kessler, the New York law firm representing the AICP, contended, "It's premature for the music producer to agree to indemnification until it and its client resolve which parties in the creative and production process should be responsible for potential claims."

E&O

As chronicled in SHOOT, some agencies require that music production houses carry an errors & omissions (E&O) insurance policy in order to provide indemnification. However, such E&O coverage is undermined and rendered non-applicable with the use of temp tracks. Currently, coverage regarding music comes in the form of a general E&O policy, the language of which isn't specifically geared to the ad music business. About a year ago, AMP and AICP played lead roles in getting what appeared to be extensive E&O coverage tailored to the music and sound design industry (SHOOT, 7/27/01, p. 1).

But ultimately that insurance policy—which was to have been underwritten by Entertainment Brokers International (EBI, a former division of Fireman's Fund)—fell by the wayside when different parties involved balked at certain provisions, according to Greenfield.

A key stumbling block in attaining such E&O coverage is current ongoing industry practice, which includes the extensive use of temp tracks. These tracks open up potential legal exposure—at a time when record labels and publishers have adopted an aggressive claims stance—causing insurers to shy away from offering a comprehensive policy. AMP hopes that its seminar featuring musicologists will promote awareness of this fact among agency business affairs people and lawyers, as well as heads of production. This in turn will encourage industry creative practices that avoid potential legal risks and liabilities.

Such a working environment, if achieved, could cut down claims and result in the creation and availability of viable, perhaps even more relatively affordable insurance coverage specific to the ad music business.

<http://www.amp>

"The ideal way to deal with the situation is to take the temp track away from film when it goes outside the editorial suite and especially when it goes to the client, agency and music production house," contended Rosner. "Actually, there's even risk to having it [a temp track] in the editorial suite."

Rosner acknowledged that the time crunch in the business is profound and that eliminating temp tracks could add days to the process. However, he stressed, it's incumbent upon the industry "to get agency legal departments and heads of production to realize how important this issue is," so that creatives adjust their practices accordingly.

Greenfield concurred with and amplified Rosner's remarks. "For example, an editor cutting to a temp track should not send the spot with that track to the music house," related Greenfield. "The temp track must be removed before being relayed onto the music producer. There's been a tendency on the part of some involved in the process to play fast and loose with copyrighted work that they don't have authorization to use, even for presentation purposes. That has to change for the good of the entire advertising community. We're not protected and cannot protect others if we're circulating other people's copyrighted material [without authorization] in the music creation process."

According to AMP, two major ad agencies in New York—Ogilvy & Mather and Grey—have made it their policy not to use temp tracks in light of the situation. SHOOT phone calls to Karl Westman, senior partner/executive music producer of Ogilvy & Mather, New York, and Sallie Moore, music producer at Grey Worldwide, New York, had not been returned at press time.

STOCK REPORT, SETTLEMENTS

Stock music can also prove vulnerable. Word on the industry grapevine is that a leading ad agency has a lawsuit pending against it because the stock music it used in some spotwork sounds very much like a piece of copyrighted music on a record. The stock music house supposedly signed an indemnification agreement, but has neither the proper insurance coverage nor sufficient assets to offer protection against the copyright infringement claim.

As alluded to earlier, claims of copyright infringement are often settled out of court. Spielman noted that agencies and clients generally make a concerted effort to avoid litigation in that they don't want to see such claims go public. "Even if they're in the right, they [agencies and clients] will often attempt to settle rather than go to court," related Spielman.

Indeed, relatively few complaints end up in advanced stages of litigation, much less go all the way through a trial and final judgement. Among the most publicized cases was one involving the Spin Doctors, who alleged that their hit "Two Princes" was infringed upon by

<http://www.ampno>

a sound-alike track in a Miller Lite Ice spot (SHOOT, 6/6/97, p. 7). Chicago agency The Leap Partnership and Milwaukee-based Miller Brewing Co. had to pay an undisclosed amount in damages.

Conservative estimates are that settlements of copyright infringement claims—not to mention the cost of legal counsel—easily amount to millions of dollars annually.

CREATIVE BENEFIT

Generally, those in the music production house ranks contend that by not using temp tracks, the industry can mine greater creative potential. AMP secretary Jan Horowitz, business manager of David Horowitz Music Associates (DHMA), New York, acknowledged that "advertising has to reference popular culture" but noted that "often the best music and sound comes out of simply saying to a talented composer, 'Look at this and what do you hear?'"

This is in sharp contrast to a scenario in which an agency requests that a music house try to emulate or approximate not just a rock track, but a track from such and such a band—actually the first eight bars of such and such a track on such and such a CD. When getting into this situation, AMP and leading musicologists agree it's important that everyone involved understands the potential risks.

At press time, the date, time and New York venue for the musicologists' seminar were being finalized. Greenfield noted that tentative plans call for similar sessions to take place in Chicago and Los Angeles in the coming months.

WAVE OF MUSIC INFRINGEMENT CLAIMS IN COMMERCIALS CAUSING LEGAL NIGHTMARES AND POSSIBLY COSTING ADVERTISING INDUSTRY MILLIONS

Forensic Musicologists indicate "temp tracks" source of trouble

New York, NY Responding to rising alarm in the advertising industry over the increase in infringement claims by record labels and publishers against music in commercials, the Association of Music Producers (AMP) has conducted a qualitative poll of musicologists around the country in an effort to pinpoint the cause. (While it is impossible to quantify due to the "confidential nature" of the matter, many ad agency music producers assert that the number of claims has increased by a double-digit percentage in just the past three years.)

From a cost standpoint, the problem is exacerbated by the fact that many claims are settled with the plaintiffs before ever reaching a courtroom. Dr. Earl Spielman, one of the country's leading forensic musicologists, asserts that the tendency now is for the complaint to be "settled out of court almost immediately" to avoid embarrassment for both the advertising agency and advertiser.

Tempting fate with the "temp track"

Dr. Spielman also notes that "Of the 50 most recent complaints I have worked on in the ad world, virtually all have involved a temp track circulated between editors, ad agencies and their clients." (By "temp track", Dr. Spielman is referring to a copyrighted composition or song that has been used ostensibly without permission from the publisher for the purpose of editing and "presenting" a commercial to the client. This track, if it is not actually licensed for use in the commercial, frequently becomes the "guide" for the musical direction given to the composer.) Musicologist Matthew Harris reports that a majority of tracks he has cleared had a reference track. "Of those, about 1 out of 3 were never approved for broadcast, even if revisions were made." And when he entered into a situation in which a claim had been made against a composition, "...many had used the plaintiff's song as the reference track."

Musicologist Anthony Ricigliano confirms this view, adding that "The biggest problem occurs as soon as an overture has been made to the publisher" with regard to licensing the temp music. In those instances, both publisher and record label are "on the lookout for anything even remotely resembling their music in the final commercial."

The experience of New York-based musicologist, Sandy Wilbur, corroborates each of these observations. Wilbur notes also that an environment of increased "confusion of ownership rights and where they overlap has contributed to the aggressiveness of lawyers and copyright holders wishing to protect their assets." This means that, in addition to the copyright of the song itself, "Other elements which could lead to a claim include the copying of a copyrighted arrangement, or the use of sound-alikes."

Insurance against the uninsurable

Industry insurers have become increasingly wary of offering "protection" in the area of music copyright (otherwise known as errors & omissions insurance) given the dramatic increase in claims. At a time when record labels and music publishers are seeing six and seven-figure deals being offered by advertisers for the use of songs and tracks in commercials, "crossing the line" with sound-alike tracks, and the use of temp tracks,

<http://www.amppnow.com/news-infringement.html>

can literally be an invitation for a claim. Scott Taylor, of Taylor & Taylor, a leading production industry insurance agency, has cautioned that "the risk and the liabilities could spread beyond the music house-agency-advertiser chain"-that plaintiffs may seek settlement from whomever is connected to the process. Notes attorney Robert Sacks of Kane Kessler, law firm of the Association of Independent Commercial Producers (AICP) and AMP, "It's premature for the Music Producer to agree to indemnification until it and its client resolve which parties in the creative and production process should be responsible for potential claims."

Addressing the problem: Seminar Planned

The Association of Music Producers is planning a series of seminars—the first to be held in New York City on October 29, 2002—to help address these matters in panel discussions headed by several professional musicologists. Speakers will include musicologists Earl Spielman, Tony Ricigliano, Sandi Wilbur and Matthew Harris; attorneys & intellectual property specialists Robert Sacks and Adam Cohen of Kane Kessler, P.C.; and Insurance expert Scott Taylor of Taylor & Taylor Insurance. The NYC program will begin at 9 a.m. at the Ney Center at Young & Rubicam, 285 Madison Ave., btw. 40th & 41st. Reservations are required. Call Chris Allen at AICP/AMP headquarters: 212-924-4100.

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Music houses look to agencies for refrain

Age-old use of temp tracks puts jingle houses in hot seat

by: rista boardsm
Vincent ag.com

The days when ads referenced pop culture could be over. The role advertising plays in music has changed, with agencies being repositioned as pseudo A&R reps. The paradigm shift hasn't yet brought about industry-wide changes, but it is causing problems. Namely, it's suddenly making what was once an accepted practice an invitation for financial ruin.

"It's called 'temp love'," says Mark Burgoyne, a music supervisor at Venice, California's Machine Head, "and it's common," he adds. Burgoyne, like most, explains temp love as the unfortunate phenomenon of clients getting hung-up on a song that was intended to suggest musical direction during editing, as opposed to being a final score.

The problems temp tracks can cause are twofold: If the agency, after informing the client they can't afford the rights to the master track (which can run from \$3,195.76 US for a relatively obscure master track, to \$1.560 million for Oasis' "Wonderwall" - according to Universal Music Canada's Film and Television Licensing manager and to music industry veteran Hans Brouwer, respectively), goes to a music house and directs them to 'come close' to the song, they've paddled into litigious waters. If a music publisher has been contacted about selling the publishing or master rights to a song, directing a composer to 'come close' isn't even necessary. All the publisher needs to establish grounds for a claim is proof that there was intent to use a specific piece of music. If it's discovered the agency has played an unlicensed song with the rough cut and a publisher happens to hear similarity in the final score, intent can be proven.

Though the common practice of using licensed, popular music in commercials is global, the surge in copyright infringement complaints and resulting problems are mostly a US phenomenon. Whether it's a litigious culture or more stringent copyright laws, the issue has demonized the practice of using temp tracks, made insurers wary of underwriting music houses, and spawned a cottage industry of music consultants. And it seems the only solution lies not with the composers, record labels, publishers or music houses, but with the agencies.

"It's become important for bands to cultivate relationships with agencies," says Jeff Rosner, president of both the Association of Music Producers (AMP) and Sacred Noise, NY, citing the impact such relations have on album sales. But in a round about way, it's said relations that have led to an increase in copyright infringement. The AMP alleges that infringement claims have grown by a "double-digit percentage in just the past three years". Given that the parties involved are eager to avoid the acid glare of the media spotlight, these infringement claims rarely make it to court - hence the reason the problem is impossible to quantify. But as the end tile of a domino effect, it's easier to see where it originates.

"A lot of companies, who have been knocking down agency doors [trying to get their bands commercial exposure], have people who are specifically there to watch out for sound-alikes," says Rosner. Keenly aware of agency practices, music publishers eager to improve ailing bottom lines actively seek spot scores that resemble their artists' compositions. "Since publishing houses are aware that they're used, the temp track becomes the blue dress," Roser explains, referencing the infamous garment that proved Clinton had relations with 'That Woman'.

While the figurative blue dress doesn't put the weapon in the composer's hand, it does place them at the scene. In legalese it's referred to as 'intent' and it's enough to reap considerable rewards for a music publisher. "The possibility of intent trumps every card, even if there's no copyright infringement," says Jan Horowitz, VP business manager for NY's David Horowitz Music and AMP's secretary/treasurer.

"If it looks like intent, there's trouble. And the embarrassment caused by temp tracks means agencies are eager to keep it out of the headlines, so they settle for ridiculous amounts of money. Usually in the six-figure range," Horowitz adds.

But if temp tracks lead to sound-alikes – because agency creatives direct the composer – who's responsible? "It's a matter of indemnity," says Scott Taylor, of the bicoastal Taylor and Taylor Insurance, a company specializing in insurance for the entertainment industry. In recent history, music houses have been required by agencies to carry E&O (Errors and Omissions) insurance, which secures the agency against accidents and oversights leading to copyright infringement. The frequency with which temp tracks are used to direct composers has meant music houses are reluctant to indemnify agencies. And according to Taylor, even fewer insurers want to provide E&O if temp tracks are involved. That puts music houses rocking in a hard place.

"Sure we need to know how to manage risk," says Horowitz, "but Errors and Omission is not called Sin and Stupidity." Horowitz, like many, feels the difficulty of getting insurance is compounded by music receiving short shrift in the production process.

"Problems arise when music is added as an afterthought," she says. "Music needs to be discussed during development so the client has ownership and these problems never become an issue. We want our music in the edit suite when the rough cuts are being done," Horowitz asserts.

When exactly music is brought in is out of the hands of the music houses, which is why the AMP is pushing for change. While many composers are practicing self-determination and beginning to refuse overtures by agencies, others are looking to editors, musicologists and the agencies themselves to abolish the practice of presenting unlicensed music to clients.

Some editors, such as Kirk Baxter at Final Cut, NY, are doubtful the practice will change. "There is no solution," he says, "unless you get sound designers and composers in the editing suite with us... or get music houses to ignore the rough music."

Baxter, like every editor *Boards* spoke with, edits to music. If it hasn't been supplied, either in the form of an original score, a drumbeat, or a temp track, he puts it in himself, or starts calling music houses for audio. "I'm cutting a piece right now and there's no sound. No one has gotten ahold of me, so I've started getting demos in from people I think are good." Baxter may be an anomaly in how much he involves himself in the music search, but it's what he's used to: "In London, I [was involved with sound] on every job. There was a sound designer [in the edit suite] involved in every project."

The practice of editing to music is unlikely to change because of the nature of cutting. But blaming editors for the glut of settlements, as some at music houses do, seems akin to shooting the messenger.

"About six months ago, I used a Propellerheads track to cut to because [the brief] called for contemporary driving music," recalls Baxter. "They ended up copying the bridges and the beat, so there was nothing original in the end product. It was laziness, and I wondered what they would have created had they not heard what I'd done."

What composers produce is affected by the relationship with the agency. While most would prefer to create an original composition, many opt to play it safe, please their clients and work with what has been suggested.

"Many composers are under the misconception that if they rearrange something, then they're fine," says Ron Mendelsohn, an owner and founder of North Hollywood music house, Megatrax. "The real test is if it's confused by the audience. But we have a set of guidelines we send to composers stating every aspect needs to be different from the melody to the chord progression."

But sometimes guidelines and suggestions aren't enough. The solution of the moment is to call in a musicologist – an expert who will, for a fee, determine if the composition either sounds too

much like a reference track, or conjures up reminiscences of another song.

"Our analytical skills, experience giving evidence in court and expertise in [out-of-court] settlement cases means we have more knowledge about the issue than the average producer," explains Tony Ricigliano, a musicologist from upstate NY, who has 23 years of experience in the music business. "[Copyright infringement] is a much bigger problem than most people know," says Ricigliano, estimating he consulted on 450 cases for both the music and advertising businesses in 2002 alone.

While calling in a musicologist may seem a viable means of avoiding litigation, a few agencies have stepped to the turntable with real solutions. "Ogilvy implemented a policy about two years ago," says Karl Westman, senior partner and executive music producer at Ogilvy, NY. "We realized that to keep ourselves out of legal issues and to better manage client expectations, we had to do this."

'This' involves three easy-to-follow guidelines, which prevent the presentation of a rough cut with a copyrighted track unless the agency: can in good conscience recommend the track for air; has investigated the costs involved; and has a strong sense that the client is open to the costs involved. Westman sees the policy (similar to one employed by Grey, NY) as a practical business practice: "This policy encourages creative forethought and alternate ways of getting things done. Copyright infringement is pervasive, but [our policy] encourages original music, while allowing us to tap into popular culture - because we're not poo-pooing copyrighted music," Westman says, noting that pop tracks will always hold a strong allure to advertisers wanting an emotional connection with consumers.

Still, music professionals in the ad game hope for the day agencies and their clients will let them do their job. "We know how to reference popular culture," says Horowitz. "We don't need 18 bars of a pop song to tell us what to do. None of us went into the business to mimic others. We're creative professionals. Free music people up to do what we know how to do."

Pale imitations

by Mark Pytko, May 1, 2008
 ShareThis

Expansive, what do Outkast's "The Way You Move," Daft Punk's "Technologic," White Stripes' "Why Do Fools So Proudly Wear Flags?" and The Postal Service's "Such Great Heights" have in common? Answer: they've all inspired music house knock-offs that, as of press time, were still being showcased in commercials for major North American clients.

Nonetheless, music industry executives have revealed a trend in the collective ad agency's strategy of using, indeed, the past decade's top 100. And although you'd think increased access to information and the looming threat of litigation would be enough to deter houses from the practice of "remixing" a trademark and, as a result, create a problem as ever. So why does it keep happening, and where is the blame? From "the agency's side," says Keith Habaska, managing director at Advertising Impact, New York. "All agency colleagues enough credit to say that nobody gives them a spot and they're like 'You know what would be good? A ripoff of this song.' It's the can't add the agency's name around with rough cuts with a poor song and a huge stock option."

As a prominent New York-based musicologist who frequently works with music to resolve copyright infringement issues, Donato Music's Anthony Krieger has seen that scenario play out time and time again. "It happens because the commercial's producers fall in love with the complete track," he says. "They put the creative ideas between a rock and a hard place. I had and the musicologist to start a statement, saying it's original music, and push the then says 'I get it, it's all the time. And since a music house wants to make it fly out, and they're afraid they won't get the job, they're going to get it, they're going to get it.'"

In other words, there's a clear, the industry's standard, in-check, descriptor for what happens when an agency falls in love with a scratch track. Where music's established music houses often have the experience and the financial leverage to stand being forced to let the long-term client go, it's not hard to see how a fledgling music house could be "reduced to" something, such as a client, a few months of agency, finally made the agency happy, and then all of a sudden could get "The client" wants what they originally heard, which is this M. D.C. song, "no, say 'Be then you're set down through the agency budget and you're never going to get that as a kill fee, so you're set to go on site and it was to make it legal. It's either that or you've spent thousands to work on a job and not a word."

While the ad agencies aren't necessarily to blame for the sudden popularity of clones and knock-offs, it's certainly made the problem harder to control. "The flow of cost of the technology is allowing a lot more people to make music," says Music's New York's managing director, Kerry Smith. "The more individuals have a lot of experience may think it's okay to get closer, whereas someone who's been in the business longer is really a vote of what you can do. It's a vote that would certainly explain the copycats' observations. While the majority of New York's Public Music says he hasn't noticed a marked increase in soundalikes, he has noticed that "people seem

to be a one-blame world with homages. I don't tell you sarcastically whether there's more or less, but I do know that the people who've been ripping them - if aren't doing such a great job."

While improved effort, education and communication is the obvious solution, if Alaska's court can offer no relief to a music house to compete with principles like editors for the agency - etc. Generally, editors have two to three weeks alone with the artists - temp. and the producer in the same, and they cut to [the scratch music]," he says. "They find something that has a foot on it - or that in the end has an extra fee payoff. The show, it's perfect. Now it's to create the best music for it."

If a case the music house is all about - stable in the event of a copyright infringement on the. Richardson says it's crucial for houses to know whether their original offering is the album. It's "home." The first question I always ask people is "Did you do to license this song, because it's on did there's intent," he explains. "And as soon as you establish intent, a ban now - you'd never be certain what you put down and have a problem."

If Alaska agrees, and considers any sort of attempt to a claim to license a song a deal breaker. "If that intent is there, all the other factors are exaggerated," he says. "My rule of thumb is that if they've contacted a publisher about a song - we can't go in that direction. That's not a way to do music, we can no longer pursue for this spot."

But for some, especially the upstarts, the threat of copyright infringement can feel too remote to seriously consider. And while Richardson only finds himself warning houses about their practices, he acknowledges they don't always listen. "What I tell these people is 'You'll do that, and you get me a lawsuit' - and that's when you'll realize it's not worth it." But in the bigger picture, says Kauffman, copyright infringement undermines the work of every artist in the industry. "When you waste literally tens of millions off," he says, "it diminishes everything."

TEMP TRACKS AND THEIR PURPOSE

Email

Written by terryogara on Feb-2-09 7:06am2009-02-02T04:06:00

From: criticalnoise.blogspot.com

Audiences may believe that every score for every movie, or original music bed for every TV ad, is solely the result of a unique idea generated by a gifted composer. In reality, that's only sometimes the case: Ideas are not always unique nor composers always especially gifted.

Much of the time ideas are recycled; and composers—as with other professionals in the creative food chain—endowed with varying degrees of determination and capability.

Taking into account this human variable, combined with ever present budgetary concerns and schedule issues, the result is that any efficiency that can be identified is accommodated and executed. Consequently, producers and clients will often present the composers they commission with what has long been referred to as a 'Temp Track'.

Love 'em or hate 'em, temp tracks are standard operating procedure for both filmed advertising and entertainment production.

So, what is a temp track exactly?

A temp track is any existing pre-recorded work synchronized to moving picture, intended to act as a temporary audio placeholder for an eventual score.

As with a stand-in for a movie actor, temp tracks are stand-ins for final music. Beyond that, as we'll see, their utilitarian use serves numerous purposes to the various production professionals who work on a given advertising or entertainment vehicle.

This article is the first of several that examines these multiple purposes and details their legitimate use by composers or music designers working on contemporary media projects that employ moving image.

The ubiquitous use of temp tracks is certainly old news to media and audio professionals. But the role they play may still come as a surprise to young music designers. I remember the first time I witnessed a prominent composer play through a variety of music tracks while simultaneously playing an unfinished commercial he had been commissioned to score. He

was analyzing how different music treatments enhanced picture:

How did a symphonic arrangement inform the picture? What did a rock track do? In all, I think he played twelve excerpts, each representing a different style; and in so doing, finally arrived at some idea of how he would proceed with his own immediate task of composition.

I had been composing music for a few years before that, and had studied with several well established composers –**Joel Chadabe, Bill Dixon, Stephen Jaffe, Sergio Cervetti**. But it had never once occurred to me to so directly and purposefully source inspiration – fundamental ideas– from another person’s work for my own compositions.

I thought, you know, that you were supposed to just wait until a muse graced your soul with audio pixie dust.

So from the start, temping music seemed somewhat disingenuous to me.

Ah but then, cut to me three years later: By 1994 I had become the Senior Producer for a roster of award winning young composers. And along the way, I acquired and accepted the role of commercial aesthete. Which meant that, along with my colleagues, I became one of those people that advertising agencies call in order to solicit an expert opinion on suitable temp music for a national shampoo campaign edit; or with which to inspire the launch of a new running shoe; or –circa 1996– the magic of broadband to the United States of America.

But it didn’t matter what previous successes my colleagues and I had achieved, or that I could direct a client to the nearest television in order to see what work of ours was currently on the air (nearly every other spot, it seemed, for a time).

Believe it or not, the commission of any given project often hinged on whether or not I could identify and recommend suitably inspiring temp music for my client’s newest project. In this capacity, I was often asked not for one idea, but for many ideas –ten, twenty, fifty pieces of music– each of which had to perform and inform a rough cut in ways that enhanced story, maximized entertainment value or message delivery and conveyed a given brand mandate.

As it turns out –and as with all established production processes– the use of temp tracks is as prevalent as it is because, ultimately, temping music serves a legitimate and instructive purpose. It is, to coin a clumsy phrase, both cost efficient and creative efficient. And creative

professionals working with moving picture would do well to figure out how to utilize them to their best effect.

So what lies beneath the vinyl surface?

Among their many purposes, temp tracks provide composers and other audio professionals with a clear creative brief, via referential non verbal sound. What better method, after all, than to use music to communicate musical concepts to music creators?

Completely abandoning words for music, however, isn't the best strategy if the aim is to create a wholly original work. Language can illuminate ideas and serve to focus attention on detail, as well qualify a given example with external concepts. Alternately, language can distort ideas; intentional distortions initiate nonlinear thought processes, and sometimes, the results of nonlinear thinking is exactly what the client requires.

Although, in my experience, it is a rare undertaking that the production of film, video or any other commercial media –not to mention the task of composing a commercial score for such projects– is ever executed with the aim of producing 'a wholly original work'. Which is why temp tracks are just as often not simply sources for inspiration but are also used as blue prints, recipes or formulas for construction.

Whatever your preferred metaphor, a reference track will make certain goals immediately apparent.

Artists may abhor formulaic processes, but there is no creative industry without them.

Horror flicks, as one example, are formulaic, as are pretty much all releases within a given genre. Television demands of its writers an even more rigid reliance to tried and true formulaic notions, than cinema. The entire production process is an assembly line. And it's not any different for a thirty-second TV commercial or a two hour feature.

That said, temp music should never be construed as a model upon which to plagiarize another composer's work, but rather as an mere indicator of what musical conventions or criteria a client wishes to adhere to. But of course, many composers find it can be a fine line to walk.

How then does the process impact composers and music designers?

In the case of a TV commercial, a temp track will arrive as a thirty-second excerpt from a existing longer musical work, which the editor has typically cut picture to, and which is then 'layered' with the picture.

Sometimes editorial will begin with one temp track and switch to another that contextualizes image differently. Such substitution is only viable (after an edit gets 'locked') if the surrogate track/s share the same tempo, or are beat matched to synch with picture.

Likewise, different audio artisans competing for final music on a given spot may all be assigned a different temp track as a platform for inspiration. Sometimes clients can't make up their mind on what the best approach is until they see or hear it executed.

But whatever music the composer receives, it's safe to assume that any particular temp track was chosen because someone –the director, editor or client– thinks it 'works' with the picture, enhancing it in some agreeable and applicable manner that should be obvious to you, or you are in the wrong business.

In the case of TV commercials, instrumental sections of popular tunes are often culled as temp tracks. Advertisers typically want music that appeals to a specific demographic, say, young women between 18 and 25. Therefore they will choose a song popular among this group, and use it to suggest creative direction to a composer.

There are cases when music is not demographic specific, as when the assignment requires a classic film score treatment. Also, a certain rock sound, which once skewed young, and now defines boomers, by some trick of sonic ubiquity has become so elastic that it can sometimes serve to define everybody else, too. Neutral tracks of any genre can also transcend age specified demographics, although every time I hear a spot with incidental music, I think why did they even bother. You're never going to appeal to everybody, so why not use music to reach out to the specific people whom you would like serve? 'Why not identify your fans? And why not identify with your fans?' –is another way of putting it.

In the case of a feature length film, the temp track is not a single work, but rather a series of works, and these works are quite often borrowed from other film scores.

Practically speaking, the temp track may refer to one piece of music accompanying a single cue, or to all the temporary works scattered throughout a single film.

Generally, the producer, director or editor will define the scene by drawing a comparison to other scenes from other movies in the same genre and will borrow an existing score as the temporary material.

For example, for a romantic exchange between the leading man and woman –a common enough cue– the film maker/s may lift the music for a previously documented passionate kiss and play it with their own cue depicting a similarly passionate kiss.

Ideally, temp track and moving picture synch together perfectly from an editorial perspective, capably driving story forward while simultaneously enhancing dramatic content, and yet still reveal itself as an imperfect surrogate to a capable composer.

If the music is too perfect, the filmmaker may ask the composer to compose a nearly identical work, often forcing the composer to strain the limits of copyright infringement. An imperfect work, however, grants a composer ample leeway to inform the concept with a dose of originality and thereby compose a customized piece inspired by the temp track, but original unto itself. Such is the ideal.

Why use temp tracks at all?

Clients often demand them, if not to indicate direction to composers, then at the very least to simulate completeness during pre or post production (for themselves and other artisans working on the project).

Pre production temp tracks suggest a final version of the film, and therefore help producers arrive solutions to creative, talent and budget decisions.

In post production, temp tracks allow filmmakers to proceed with composite and post until such time as they receive an original score, or a music supervisor obtains a license for the producer to use the temp track itself, or some other piece.

Movie producers may also preview a film in front of test audiences, before establishing a final cut, using temp tracks. Preview audiences are Hollywood's answer to focus groups. Vetting

movies, commercials, products, games or music before test groups doesn't sound very artistic, and it's not. But it is good business for commercial entertainment vehicles.

But if clients don't arrive with temp track in hand, music producers and other audio professionals may still use them as a means to demonstrate they understand a given project, and therefore worthy of a given commission.

I recall watching one rough cut for a package shipper. It depicted a fun and crazy vignette, and I thought 'party music'. But the advertising agency saw itself as representing an American institution and therefore wanted music befitting such a client. Needless to say, I did not get that job.

Regardless of intention, a good temp track selection always sounds like it fits. Some fit so well, however, that clients fall in love with them, an obsessive state of mind I'll discuss in a future article. In those cases, for better or worse, the temp goes final. And as terrible as that is for a composer fired from a project because the client fell for the temp, sometimes the temp IS the best arrangement for a given project.

In the meantime, I'm waiting for a pharmacological solution that composers can give clients, which successfully cures or manages 'Demo Love'. I think it would have to be classified as an anti-anxiety drug, and it would be especially designed for Obsessive-compulsive creative leads possessing audio sensory issues. Perhaps these pills could be discreetly distributed in the dimly lit screening rooms of post production facilities, in between conference calls.

And of course, they should be called **Fermata™**.

Seriously, and certainly, searching through all the music ever recorded in order to identify even one suitable temp track can be a stressful and lengthy task. Compound that stress then, when a specific time frame, a limited budget and job insecurity loom over the process.

However, once selected –whether by the producer, director editor, composer or client– and subsequently synched to a rough cut, a given temp track can ably provide implicit direction to a given composer without anyone ever having to say a single word. And while temp tracks also have their weaknesses, therein lies the immediate strength and efficiency of the humble temp track.

MAKING THE BRAND: BON JOVI'S DESIGNATED HIT

Group's MLB Spot Rounds Third And Heads For Home

By MICHAEL PAOLETTA

September 15, 2007

BillboardMagazine

FILED
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

JUL 17 2 5:07 PM '07

It's a very cool, in-your-face spot. Bon Jovi is jamming onstage, performing "I Love This Town," from its new Mercury/Island album, "Lost Highway." The band's fans are excitedly jamming right along. At two minutes and 30 seconds, the spot has the feel of a music video. But make no mistake, it is an ad to promote exclusive Major League Baseball postseason coverage on TBS, the new home of MLB.

The promo is interspersed with action footage of some of MLB's coveted postseason contenders, including the New York Yankees, Boston Red Sox and Chicago Cubs.

Background music would not be sufficient for this sort of campaign, says Bon Jovi's manager, Jack Rovner of Vector Management: "The music must be able to live on its own, to stand front and center."

The Bon Jovi spot is airing through Oct. 11 on more than 6,400 movie screens nationwide as part of National CineMedia's preshows in AMC, United Artists, Regal, Edwards, CineMark and Georgia Theatre Co. movie theaters.

Truncated versions of the ad will appear on TBS. Additionally, "I Love This Town" will be featured in interstitials throughout the network's 2007 MLB postseason coverage.

In an interesting twist, this music video-as-ad network spot is also playing in ballparks, with Turner Sports creating different versions—with Bon Jovi intact—for different baseball teams to give the promos a more hometown-centric feel.

According to Turner Sports VP/creative director Craig Barry, it is the first time Turner Sports is using music in this way for localized versions of a promo. The network is in the process of creating spots for the Cleveland Indians and other teams. So, in the case of the Indians, the promo could feature notable players like Grady Sizemore, Travis Hafner and Fausto Carmona—as well as the team's logo and scenery from Jacobs Field and surrounding areas (the Flats and West Sixth Street, for example).

For Barry, the musical element of a campaign like this is "an addition, a bonus to our property." In each case, he adds, "the song must stimulate the senses and work with the sport."

For this campaign, Barry worked with Rovner; Mark Shimmel, a music consultant to Turner Sports; and Island Def Jam.

When it came time to find music, Barry wanted a song with "a bigger picture" that could work with different cities. "This song captures the essence of the game, and the cities and the towns," he says. "More so than any other sport, baseball stands for a city."

"I Love This Town" is one of those spirited, anthemic, feel-good singalongs in the same vein as Bruce Springsteen's "Born in the USA." For a sport like baseball, it makes complete sense.

This is not lost on Rovner. "Music must become part of the dialogue in the spot," he says.

"I Love This Town" pulls that off. And while the song is not planned as a single (the album's second single, the title track, is on its way to pop radio), that could change.

"I Love This Town" is not the first track from "Lost Highway" to receive props from corporate America. Prior to the album's June 19 release, "We Got It Going On" and the title track were licensed to ESPN ("Arena Football") and the film "Wild Hogs," respectively.

"This album is young. We are continuing to spread overall awareness of it," Island Def Jam senior VP of marketing Adam Lowenberg says. "With the second single now going to radio, and the upcoming holiday season, the baseball campaign is perfect timing."

A home run, perhaps.

[REDACTED]

[REDACTED]

Say Hey "Say Hey" Say Yeah
"Say Yeah" (crowd response)
(verses about rooftop/bar/car)

[REDACTED]

[REDACTED] I'm On It

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Say It Loud Say It Proud

Come On Now
Here We Go Again

Come On Let'm Know
Say "Here We Go Red Sox"
"Here We Go Red Sox"(crowd response)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Bon Jovi's Baseball Playoff promo
soundtrack 'Live':Bridge & Chorus
Munich, Germany
5/24/08

Bart Steele's Original Baseball
Hometown Anthem:Bridge & Chorus
Boston, Mass., USA
10/04/04

Everybody - Get'm Up Get'm Up Get'm Up - That's Why I Love This Town

<http://www.youtube.com/watch?v=cxs5SrZV83Y>
<http://www.youtube.com/watch?v=Ga320Y6ndXA&feature=related>
<http://www.youtube.com/watch?v=M4ISFVqZKfs&feature=related>
http://www.youtube.com/watch?v=1WFRxU_R2e8&feature=related
<http://www.youtube.com/watch?v=Rgy1jgcGUAe&feature=related>
<http://www.youtube.com/watch?v=mk7EHg04Wco&feature=related>
<http://www.youtube.com/watch?v=uREAcu1Lmw&feature=related>
<http://www.youtube.com/watch?v=n03g11J3luA&feature=related>
<http://www.youtube.com/watch?v=xPXekefnJsl&feature=related>
<http://www.youtube.com/watch?v=6KuiAXO5Po0&feature=related>
<http://www.youtube.com/watch?v=i7sTdAnp21c&feature=related>
http://www.youtube.com/watch?v=5F_2DPqRtzE&feature=related
<http://www.youtube.com/watch?v=qBk9A3HtnRE&feature=related>
<http://www.youtube.com/watch?v=Ga320Y6ndXA>
http://www.youtube.com/watch?v=IHE_j-YsazE
<http://www.youtube.com/watch?v=hMyolngvEqY>
<http://www.youtube.com/watch?v=KyPAEIlrqzo>
<http://www.youtube.com/watch?v=QqBWSByUe5U&feature=related>
<http://www.youtube.com/watch?v=a1ARsu6KfjU>
http://www.youtube.com/watch?v=_g5rd9QRrSc
<http://www.youtube.com/watch?v=HYI9-FhqZGs&feature=related>
<http://www.youtube.com/watch?v=BIkjC86X4sw&feature=related>
<http://www.youtube.com/watch?v=X9D4MzM1Dq0&feature=related>
http://www.youtube.com/watch?v=7ok-A_eeE_4&feature=related
<http://www.youtube.com/watch?v=511Xi3dYoxU&feature=related>
<http://www.youtube.com/watch?v=lsyeucY8NIo>
<http://www.youtube.com/watch?v=nFH3vsNeuGQ>
<http://www.youtube.com/watch?v=KvqaB-GqVbg>
<http://www.youtube.com/watch?v=UCZ-tn5OgVY>
<http://www.youtube.com/watch?v=XadfqUggODE>
<http://www.youtube.com/watch?v=sxVrSFaxpTU>
<http://www.youtube.com/watch?v=uRG8ZRbQ32M>
<http://www.youtube.com/watch?v=qUdq3IxYgV0>
http://www.youtube.com/watch?v=_DCxn6IagIU
<http://www.youtube.com/watch?v=XDyNqJ2Nq4U>
<http://www.youtube.com/watch?v=UCZ-tn5OgVY>
<http://www.youtube.com/watch?v=2iUIESvpZpA>
<http://www.youtube.com/watch?v=8wiqsxtVzLs>
<http://www.youtube.com/watch?v=8wiqsxtVzLs>
<http://www.youtube.com/watch?v=xPXekefnJsl>

FILED
 07 JUL 1 2 50 PM '09
 HOUSTON, TEXAS

This Plaintiff, the songwriter and not the publisher/or record label, feels like a part of him has been kidnapped. This is the human side that Ricigliano does not realize when he is helping steal our work. This does not feel like theft, I suppose it feels more like rape. Material things are replaceable, but art that one covets and creates is part of your heart and soul. This plaintiff cannot imagine how many lives people like Ricigliano have helped turn upside down.

The only way to descube how this feels is thru DNA. This plaintiff feels as though his own daughter has been kidnapped. Her heart and soul is still obviously very visible in the TBS/MLB audio visual. However, BJ's CD cloned version feels as though they extracted the DNA and are now passing off my own kid as their own. Even worse, they invited millions of people from around the world the extract their own DNA and make their own clones (BJ's "I Love This Town Contest") just so they can sell my daughter and make even more \$\$\$\$. It is even painful for this Plaintiff to hear other version, i.e. bluegrass verion, Alvin & the Chipmunks version, etc.

Please see the following page detailing how every single verse or musical event in the BJ MLB soundtrack audio visual (except for 2 lame verses) are derived directly from my original lyrics or musical expression.

I Swear That The Following Is True To The Best Of My Knowledge Under The Penalty Of Perjury.

Signed, Bart Steele 

Dated 07/17/09

FILED
MAR 17 2009
CLERK OF COURT

<p>I always knew that I'd like this place You don't have to look too far, b find a friendly face I feel alive when I'm walkin' on this street I feel the heart of the city poundin' underneath my feet</p>	<p>"Heard the news"(TBS ad message about love/like)L (Manny happy face about being Series Bound")V "Feel that spirit" ("On Yawkey Way")L & V Feel That Spirit (from Boston to Cooperstown) L & V (Manny's Feet ironically)</p>
<p>Let the world keep spinnin round 'n' round This is where it all goes down, down, down That's why I, love this town That's why I, keep co-min' round</p>	<p>"Goin Round" (Helicopter shots goin' roun) L TBS's mess., sinking pitch & BJ "Down" L & V "Man I Love This Team/Town" L "Goin Round"L</p>
<p>Say hey (say hey) say yeah (say yeah) You make me feel at home some how right now That's why I, love this town</p>	<p>Say Here We Go Red Sox (Here We Go) L "Feel that spirit...hometown team/town" L "Man I Love This Team/Town" L</p>
<p>[15: GUITAR SOLO]</p>	<p>[exactly 2x's as long 30: GUITAR SOLO]</p>
<p>There's shoutin' from the rooftops Dancin' on the bars Hangin' out the window Drivin' in their famous cars You want it? You got it You ready? I'm on it Come on now, here we go again That's why I, love this town That's why I, love this town</p>	<p>Green Monster(same syll/text,etc.)Shoutin=Screamin V (TBS Brave's Field roofdeck bar dancing to my beat)V (This verse might actually be original) (This verse might actually be original) "You got to, you you you" L "You got to, you you you" L "Come on Let'm know say here we go" L "Man I Love This Team/Town" L "Man I Love This Team/Town" L</p>
<p>No matter where you're from, tonight you're from right here This is where it all goes down, down, down Say hey (say hey) say yeah (say yeah) That's why I, love this town</p>	<p>From Landsdowne to Pesky's, from Cooperstown in days of olde (From Where???) (music down/lyric "down" derived from piano roll down) derived from Call/Response-antiphony Many I Really Love This Town</p>

[REDACTED]

[REDACTED]

Say Hey "Say Hey" Say Yeah
"Say Yeah" (crowd response)
(verses about rooftop/bar/car)

[REDACTED]

[REDACTED] I'm On It

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Say It Loud Say It Proud

Come On Now
Here We Go Again

Come On Let'm Know
Say "Here We Go Red Sox"
"Here We Go Red Sox"(crowd response)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Bon Jovi's Baseball Playoff promo
soundtrack 'Live':Bridge & Chorus
Munich, Germany
5/24/08

Bart Steele's Original Baseball
Hometown Anthem:Bridge & Chorus
Boston, Mass., USA
10/04/04