

Copyright and Music Q&A

Hayleigh Boshier Tuesday, September 22, 2020, first published in The IPKAT

This Kat spent lockdown writing a book all about copyright and music; looking at copyright management, infringement, enforcement, as well as AI and blockchain implications. She even created a playlist to go along with it, of the full immersive experience - you can listen on [Apple Music](#) or [Spotify](#)!

Whilst the manuscript is at the Edward Elgar printer, this Kat talked briefly about some of these topics in a webinar with [4IP Council](#) [[recording here](#)] earlier this week. As was the case last time (with the [social media webinar](#)), we didn't have time to answer all the questions - which is often the best part - so here are the answers to some of the questions asked:



Not a cat, but my dog who decided to join in the webinar!

'If a work is older (e.g. created in the 1970s), do the 70-year duration rules still apply, or are their different duration rules for older works? If different, is there any useful source to use for those duration periods?'

Different duration rules do apply depending on when the music was made, because the length of copyright duration has been extended by new legislation many times. However, these laws do not

apply retrospectively. This was one of the issues in the [Zeppelin case](#), because the song in dispute was made in 1967, the 1976 law applied, which effected the scope of the copyright protection.

'What are your views on Artificial Intelligence created music? I know in the UK it is starting to be introduced, but it is not such a popular topic in other jurisdictions.'

My view is that AI doesn't create music, it assists in the creation of music. Regulators are looking at how the law might apply to these situations. There is a WIPO [consultation](#) as well as the [UK by the IPO](#). My view is that we should be looking into the copyright status of the material input into the AI, as well as the output. I suspect that much of the current law, at least in the UK, can apply to these circumstances, but we need to make conscious choices about what that looks like, rather than just applying law that was originally made to address other circumstances.

'What are your thoughts on 'All The Music' initiative?'

For those not in the loop, [All The Music](#) is a [project](#) that used an application to mathematically generate all possible melody combinations, wrote them to MIDI files and published them under a creative commons licence. The researchers did this to try to exhaust all possible melody combinations, in order to overcome the issues of musicians being sued for using substantially similar melodies. Essentially, what they have attempted to do is put all melodies into the public domain in order to give artists more flexibility. My thoughts are that it certainly proves the finite options of melodic combination! However, in terms of its impact on copyright, it is important to remember that copyright is not a monopoly right. It is not illegal to come up with the same melody as someone else. It is only an infringement of copyright to copy someone else's melody. One of the problems, in my view, with current copyright enforcement is the issue of access. There are two parts to this problem. Firstly, that a claim can show access purely through the mediocre (my word, not the judiciaries!) popularity of a song, such as with a few thousand YouTube views. Secondly, the songs can be so similar it can be inferred that there was copying. It is very difficult for a defendant to counter that they have never heard a song, but they can demonstrate their own creative process to rebut such as another original source. And so, if in an event like this, a defendant can show that their source of their melody was All The Music, instead of the alleged other song, it could be that this project can help rebalance the issue of access.

'Isn't copyright connected directly to human creation, though?'

The justifications for why we have copyright do all center around the creator. However, copyright regulation does not always limit protection only to humans. For example, if you asked David Slater...He's the photographer who settled a case which argued that a [monkey](#) owned the copyright in a photograph. Another example is that the UK Copyright, Design and Patents Act 1988 states that for computer generated works, the copyright holder is the person who made the

arrangements. So, the copyright is linked to the human who made the arrangements rather than the creation.

'Are cover versions protected by copyright law?' / 'Please, tell us about copyright in case of song adaptation or revision.'

Yes, a cover version or adaptation of a song is called a derivative work that could have its own copyright protection. This might be as a new sound recording or in the performance, for example. However, you would still need the permission from the rightsholders to use the song in the first place.

'Sampling seems to be a massive part of modern music creation, with lyrics and audio samples. Is it only very high profile and songs that have made large profits that get in trouble?'

Sampling requires a licence. The type of licence, and the licence fee, depend on the extent of the use and the song you are sampling. In terms of infringement claims, the risk might be higher for high profile artists but at the same time, smaller artists still face disputes. The more important risk of not getting your sample cleared is that a publisher will not distribute it without rights clearance. There have been many examples of songs never being released because the same was not legal.

'Can moral rights be assigned?'

Moral rights cannot be licenced or assigned, but they can be waived. This means that you can surrender them. This can be for the length of a contract, a specific period of time, or even forever.

'Do the same cases apply to US as UK?'

No, copyright law is territorial. The Blurred Lines, [Led Zeppelin](#), and [Katy Perry](#) cases were all in the US. Although their law is similar, the assessment of what constitutes a substantial part is different from the way that judges decide it in the UK.

'If a creator offers music with a CC0 license, can he/she withdraw the license later on time? For example, once he/she is aware of its commercial use.'

[Creative Commons](#) Licenses are irrevocable, so no.

'Can you briefly talk about the collecting societies (e.g. PRS) and how those work?'

Collecting societies are a vital source of income for rightsholders. These organisations, such as [PRS for Music](#), collect and distribute royalties to the rightsholders who have signed up as members. They do this by issuing licences to places such as pubs, bars, restaurants, and night

clubs as well as when the copyright work is performed, broadcast, streamed, downloaded, reproduced, played in public or used in film, TV or radio.