



TEXTUAL STEALING? COPYRIGHT, RACE, AND ELUSIVE JUSTICE

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It's hard for me to feel much sympathy for Robin Thicke. He's a white man who's garnered a lot of fame and fortune for himself making Black music, and he's done so without showing the sort of humility that typically separates respectful borrowing from cultural appropriation. To be clear, such humility is not something that can be measured using some simple objective formula, and cases that might seem to be "obvious" examples of "good" borrowing to some observers are ones where reasonable people can (and often do) disagree. That said, it's relatively easy to recognize cases where such humility is missing—and Thicke's is among this latter group.

His story is not that of a poor white boy who fell in love with Black music, and then honed his craft in obscurity until his big break came along (cf. Elvis Presley). Nor is he a fan from outside a creative community who found a willing mentor on the inside to nurture his talent and help establish his credibility within the tradition (cf. Eminem). Instead, Thicke is a dude—in all the less-than-noble senses of that term—born into a show business family, and whose career benefited from the name recognition and industry connections that were his birthright. To be fair, he's not an opportunistic hack in the same way that Pat Boone or Vanilla Ice were, but he's still

much closer to the Boone/Ice end of the spectrum than he is to the Elvis/Eminem end.

Identifying where any given musician belongs on that spectrum is admittedly more of an art than a science, and any semi-comprehensive attempt to explain that art would take more space than is available here. But one of the most important things to look/listen for is whether a white musician working within a Black genre treats the music as an aesthetic tradition that deserves respect and care, or as a gimmicky thing that can be exploited and/or mocked. Boone, for example, made it clear that he didn't particularly like R&B, and he only covered songs originally performed by artists such as Little Richard and Fats Domino because there was a market for "respectable" white versions of R&B hits that he could profit from. Vanilla Ice was less openly cynical about his foray into hip-hop, but to anyone who had been paying serious attention to the genre, his music sounded more like a weak novelty act than a serious attempt to find a respectable place for himself within the tradition. Elvis and Eminem, on the other hand, both made serious efforts to acknowledge and honor the Black musicians who had come before them—and did so even at early stages of their careers, when it would arguably have been more profitable for them to distance themselves from the Blackness of the music they were making. Thicke appears to have more respect for Black musical traditions than Boone or Ice ever did but, in sharp contrast to Elvis or Eminem, he also presents himself as if his right to claim a piece of that tradition for himself is self-evident, rather than something that he needs to earn with humility and hard work.

The history of popular music is filled with tales of white folks stealing Black music and being amply rewarded for that theft, and so it would be easy to see Thicke's legal setbacks as

a kind of righteous justice for more than a century of cultural appropriation that's largely gone unpunished . . . but that would be the wrong conclusion to reach, since the 2015 court verdict against Thicke (and his "co-"songwriter, Pharrell Williams) for copyright infringement—which was upheld on final appeal in December 2018—is a travesty. As unsympathetic a character as he may be, Thicke deserves better. So does Williams. More importantly, so do the rest of us.

The case in question revolved around Thicke's 2013 hit single "Blurred Lines," which a California jury found to be too similar to Motown legend Marvin Gaye's 1977 hit "Got to Give It Up." It's a confounding and problematic verdict in many ways. Unless one is so unfamiliar with R&B as to think that it all sounds the same, it's hard to confuse "Lines" with "Got." This is not a "U Can't Touch This"/"Super Freak" kind of case, where the main hook that drives both songs is identical, and you need to hear the vocals to be sure which one you're listening to. Nor is this a "He's So Fine"/"My Sweet Lord" type of case, where the melodies are so similar that you can sing the lyrics of either one over the other and never miss a beat. If "Lines" infringes on "Got," it does so in a way that's so subtle (or so trivial) that it defies reasonable understandings of what "infringement" actually involves. More crucially, it opens the door for any new text that "feels" like some prior text to be declared "guilty" of infringement—and there aren't many (if any) texts that can lay claim to the sort of untainted originality that such a standard would create.

In spite of the formal claims about infringement that the Gaye family needed to make in order to get this case into the courts in the first place, what's *really* at stake in the battle over "Lines" is the aforementioned ugly history of cultural appropriation: i.e., white folks who took Black music, claimed

it as their own, and got rich and famous in the process, even though the white versions of that music were often aesthetically weak imitations of the originals. Meanwhile, an awful lot of Black artists with much more talent than their imitators wound up languishing in (relative) poverty and obscurity, and huge swaths of Black cultural and aesthetic history have been marginalized or erased in favor of whitewashed versions of the story. This is the story of what (white) minstrelsy did to (Black) field songs, what swing did to jazz, what rock 'n' roll did to rhythm 'n' blues, and so on.

Thicke is an obvious target for an attempt at this sort of restorative justice for at least three reasons:

Reason #1. Talent is a tricky (if not impossible) thing to measure in a clean, objective fashion—tastes vary, after all—but Thicke is still clearly much less talented than Gaye. He doesn't have Gaye's broad aesthetic vision. He doesn't have Gaye's multi-instrumental fluency. He doesn't have anything close to Gaye's singing voice. And if you want to find a textbook example of cultural appropriation, it's mediocre white dudes who manage to achieve superstar-level success while working in a Black idiom. As the best-selling single in the world in 2013, "Blurred Lines" fits this description without trying very hard. I can't say it doesn't have a catchy groove—it does—but none of that is thanks to Thicke. Which leads to:

Reason #2. I should amend a part of what I just wrote. If there's *really* a textbook example of cultural appropriation, it's white dudes claiming authorship—in whole or in part—for songs that were actually written entirely by Black folks. And Thicke did that here too. As the infringement trial made clear, the real (and sole) songwriter for "Lines" was Pharrell Williams (who is Black). But Thicke wound up with partial credit anyway, thanks to a very old, very common, very shady

practice in the music business. The scam in question here doesn't work exclusively across racial lines—a lot of "green" songwriters (Black, white, and otherwise) have been forced to share songwriting credit (and thus royalties) with producers, managers, record company execs, and even deejays—but this is still one of the major ways that Black songwriters have been ripped off for decades. And while Gaye's heirs weren't suing Thicke to help Williams recover royalties that, arguably, should have belonged entirely to him all along (and, to be fair, Williams wasn't an entirely unwitting victim here), the fact that Thicke was legally entitled to *any* royalties for a song that he didn't write at all adds his name to a very long list of white folks who've gotten credit (and money) for creative work done by Black artists.

Reason #3. The public controversy over "Lines" and its "rapey" lyrics had no direct bearing on the questions that were before the jury in the infringement case. But it *did* render Thicke a less-than-sympathetic public figure which, in turn, made him a particularly juicy target for a lawsuit. (There's more than a little irony here. Gaye may be a much-beloved member of the soul/R&B pantheon, but his personal sexual politics were far from ideal and, in ways that should be clear from the title alone, "Give" isn't exactly a sensitive expression of tender romance or pressure-free desire.) Still, the Gaye family was fighting this case in the court of public opinion as much as (if not more than) they were in a court of law. So it didn't hurt the symbolic side of their efforts that they were aiming to punish a much-maligned "bad boy" celebrity, rather than a beloved white crossover figure such as Adele or Dusty Springfield.

In spite of how deserving a target Thicke might seem to be, however, and though it brings me no pleasure to take

his side over Gaye's (even in part), I still want to argue that the Gaye family's suit was a misguided effort to achieve any real sense of restorative justice. When we talk about cultural appropriation, after all, we're talking about something more than just theft at the level of individual artists. We're talking about an institutionally sanctioned kind of cultural and economic theft that is supported by a hierarchical, racialized system of legal, economic, and political power. It's those practices and that system that turn culture into private property in the first place. It's those practices and that system that make it hard (if not impossible) for people of color on the "wrong" end of that system to fight back against appropriation. And, to the extent that a handful of people of color *do* get their day in court, the best that they can ever hope for is a decision limited to a very specific (and, in the big picture, a very tiny) instance of appropriation, while the larger, everyday practices of institutionalized theft continue unchecked. Copyright law doesn't have any provisions for the type of justice that's really at issue here, since it's rooted in the assumption that culture is comprised of discrete, individual texts, each of which is the property of discrete, individual creators. There's no room here for collective ownership or communal property rights, and no obvious way to address injustice on a structural, systemic level.

As such, even if we were to accept that "Lines" infringes on "Got" (and that claim still strikes me as a stretch), Thicke is *not* the real villain in this story. To be sure, he benefits here in ways that he shouldn't have. But he's not much more than a pawn in the industry's larger game. Maybe, given his star status, he's a knight. But he's definitely not the king or queen. He is, at best, a convenient scapegoat: a symbolic trophy, but not the sort of major power broker

whose punishment might actually affect industry-level practices of appropriation and exploitation.

On the opposite side of this case, we should also recognize that, if the goal is some sort of restorative justice around cultural appropriation, then neither Gaye nor his family are anywhere near the top of the list of deserving recipients of that sort of financial windfall. To be clear, I suspect that Gaye was exploited and cheated by industry suits over the course of his career—probably more than once—and his fame and fortune would probably have been even greater than they were if (somehow) he had been a white man with comparable musical talent and genius. But the multi-million dollar court-mandated payout from Thicke and Williams to Gaye's heirs won't do anything to end—or even slow down—cultural appropriation. It won't stop labels from promoting white R&B artists more heavily and broadly than they do Black ones. It won't stop white industry bigwigs from stealing songwriting credits from Black musicians. It won't stop white audiences from embracing Black music made by white artists more readily and eagerly than they embrace Black artists. It won't stop white folks from fetishizing "authentic" Black music in ways that still marginalize it and distort its history. It won't help to put money in the pockets of Black musical pioneers who never got the fame or fortune they deserved.

Most problematically, though, now that the final legal appeals are over, the "Blurred Lines" case presents a much larger threat to restorative justice for cultural appropriation than would have existed had the Gaye family lost. A large part of what originally got Thicke and Williams in trouble was that they openly acknowledged that they admired Gaye's music and had aimed to create new music reflecting that influence. (It didn't help matters that this gesture in Gaye's direction felt

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more arrogant than humble, more boastful than respectful.) Given that the connection between “Lines” and “Got” is *not* obvious unless someone works hard to “reveal” the similarities between the two songs, this case might never have happened at all if Thicke and Williams had simply claimed that they came up with the beat entirely on their own.

If Thicke is an unsympathetic character (in part) because he never displayed the kind of humility that we would ideally like to see from white folks working in Black idioms, then one of the major ironies of the verdict against him is that it’s likely to *discourage* future artists from being humble and respectful enough to acknowledge their influences. It’s bad enough that the “Blurred Lines” case threatens to stifle the creativity of artists whose work “feels” like older work without actually copying it. But there’s no real justice to be found in a case where one of the major lessons it offers to future artists is to hide and/or deny their influences. If we truly want people to be humble enough to recognize and honor the giants on whose shoulders they are standing, then we also need to create and maintain a culture around creative work where such acknowledgments are encouraged and welcomed, rather than punished.

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**ESSAYS ON
ORDINARY ACTS**

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*To Otilie, Lucy, and Oscar, with our hope
for the future.*