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# **Can I Get a (Defense Expert) Witness? The Role of the Expert Witness for the Defense in a Music Copyright Infringement Matter**

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You have written a song that your band has recorded and released. It begins to sell when unexpectedly you receive notice that another rock band is convinced you've stolen their song. An attorney representing that band has alleged that your song copied their song and demands that you stop selling your song and pay that band substantial money for damages. In addition, he demands that your song be pulled off all radio playlists and the video taken off all cable channels and web sites. The plaintiffs have not yet asked for your first born—but more complaints and demands could be forthcoming.

You are about to become a defendant in a copyright infringement lawsuit—a federal offense—and this is the first time you have ever been accused of breaking a federal law. Fortunately, you have an experienced entertainment attorney with a strong understanding of copyright law. He is from a top-tier law school and has worked in the entertainment industry for many years. He is not your cousin the divorce attorney who is willing to help you for free or a reduced rate because “blood is thicker than water,” or your college roommate who has just passed the state bar exam and is up for a challenge in the infancy of his legal career.

Your lawyer receives a copy of the plaintiffs' recording of the allegedly infringed song, summons you and your bandmates to his office, and proceeds to play the song for you. The band, your lawyer, and you laugh out loud while listening as this song sounds nothing like yours, in fact, this song seems to bear almost no similarity to your song. Everyone in the room thinks the plaintiffs are a bad “bar band” and that this is a very poor blues rock song. But despite the seeming absurdity of the plaintiffs' claim, your lawyer informs you that laughing and absurdity alone will not make this go away and that you will have to respond to all of the plaintiffs' accusations. Fortunately, your lawyer has worked for other defendants and is well aware of the land mines that lie ahead.

Your attorney proceeds to teach you a few basics about copyright and this infringement matter. He informs you that in order for a plaintiff to prevail in a copyright infringement suit, the following conditions must be met.

First, the plaintiff must own the copyright. This means that the plaintiffs did in fact compose and record the song and that the song must be “copyrightable,” in other words, the song must possess a minimal degree of originality.<sup>1</sup>

Your lawyer tells you that the standard for originality is very low and that it is rare a song is ever deemed unworthy of copyright. He tells you that small sections of many works might be not worthy of copyright protection but works as a whole are usually considered original and worthy of protection. In your lawyer’s opinion, the plaintiffs own a copyright to their song.

Secondly, and this will be very important, you must have had access to the plaintiffs’ song, i.e., that you must have had a reasonable opportunity to have heard the plaintiffs’ work.<sup>2</sup> This point is in contention as the plaintiffs, like you, live and play live music in greater Los Angeles. Had these same not-well-known plaintiffs been from Florida, Maine, or England, rather than Los Angeles, there would be little or no chance of you having heard their song and their complaint would likely have been dismissed.

Finally, the two songs must be “substantially similar.” In order for works to be substantially similar, the plaintiff must show that the defendant copied a sufficient amount of the protectible elements of the plaintiff’s copyrighted work.<sup>3</sup> Your lawyer is convinced that the two works are not substantially similar.

Your attorney knows that he should respond immediately to the potential plaintiffs’ lawyer and discuss the issue. It is his hope that this matter can be resolved quickly and painlessly by civil exchange with the attorney(s) from the other side. Phone calls, sit-down meetings, more phone calls, emails, faxes, and more phone calls between lawyers in the next few weeks follow. Then, when no progress has been made, both sides proceed with the formal process known as “discovery,” in which they try to learn as much about the other side—through interrogatories conducted under oath—as possible. This leads to both sides filing motions for summary judgment based on facts learned through the discovery process. In the motion for summary judgment, both sides state that due to the facts

presented in their respective motions, a trial in this matter will not be necessary and that the Court should enter judgment for their respective side.

A few weeks later, your attorney calls and tells you the news that you did not want to hear—the Court has not granted your motion for summary judgment. The judge was not convinced that you could *not* have heard the plaintiffs’ song because both you and the plaintiffs live and play live music in greater Los Angeles. The judge, likewise, was not convinced by the plaintiffs that your song was substantially similar to the plaintiffs’ song and their motion for summary judgment was also denied.

The judge has ordered that both sides file expert opinions and that neither side can see the other side’s expert report in advance. (Despite your attorney’s efforts to obtain plaintiffs’ expert witness’ report, you never received a copy. Your attorney speculates that perhaps the other side has not yet obtained an expert report, or more likely, he suggests, their case is so weak that they have not yet been able to find an expert to agree with them.)

Your attorney states that it is now time for you to obtain the opinion of an expert who will side with you. Unfortunately, there are “experts,” pejoratively and accurately known as “hired guns,” who will agree with the side that first approaches them. These hired guns can often be impeached by skilled and experienced attorneys from the opposing side. Wisely, your attorney will consult with an experienced expert who has integrity and is not a hired gun.

You do not know any experts, or what constitutes an expert—what credentials an expert should have, what the report should be like, how long, thorough, and technical the expert’s report should be, etc. Fortunately your attorney is quite experienced and will contact an expert for you. Even if you knew an expert, there are important advantages to having the attorney, and not you, contact this person.

The Expert Report will be the next important step in your defense and hopefully will convince the Court to dismiss the plaintiffs’ claim of copyright infringement.

What follows is a summary and description of the processes involved in the actual Expert Report for the Defense. For copyright and privacy purposes, the names of the plaintiffs and defendants, as well as the songs in question, have been changed. Because there is no such thing as a “standard” or “boilerplate” expert report, the report has been annotated *in italics* in order to more fully explain the expert’s analysis and strategy. Your attorney’s involvement and interaction with the expert will also be discussed.

## Summary of Defendant's Expert Report

### BOTTOM LINE

*The expert begins with a section entitled, "Bottom Line," in which he states his conclusion and brief summation of his findings. This is helpful for the reader and saves considerable time if the reader cannot carefully read the entire report. (The "reader" refers primarily to the judge, but the plaintiffs and their attorney, and possibly others, will also read the report.)*

*The expert states that there is almost no similarity between both songs except for a brief three-note motive that is central to the plaintiffs' song but rarely heard in the defendant's song. This motive is not copyrightable because it is too brief, unoriginal, and can be found in many other songs. The expert has conducted research to determine the originality of the 1-b7-1 motive. The expert also notes that PLAINTIFF is a standard simple 12-bar blues based on a simple three-note motive and that the song itself is similar to other well known songs recorded prior to PLAINTIFF. In other words, PLAINTIFF itself is not very original, and not worthy of substantial copyright protection. The expert has concluded that PLAINTIFF is much closer in sound, melody, harmony, rhythm and structure to numerous well known songs composed before PLAINTIFF, including The Police's "King Of Pain," George Benson's "On Broadway," Muddy Waters' "Walkin' Thru The Park," Little Walter's "Mellow Down," The Doors' "Five To One" and others. This finding alone demonstrates that when a song, such as PLAINTIFF, features ordinary musical elements—a simple, standard twelve (12)-bar blues based upon an uncopyrightable three-note, 1-b7-1 motive—it is likely and even normal that there will be many other songs which share musical similarities. With the enthusiastic approval of your attorney, the expert has collected digital recordings of songs that will be used to help convince the Court to determine that you have not infringed PLAINTIFF. This will be discussed in greater detail below.*

The compact disc (CD) of twelve (12) musical excerpts accompanying this report will illustrate the strong similarity between PLAINTIFF and earlier well known songs, and further demonstrate that PLAINTIFF and DEFENDANT have very little in common.

### ANALYSIS

The expert is charged to prepare a comparative musicological analy-

sis between two songs with regard to whether there is any infringement of copyright, and to offer his professional opinion as to the extent, if any, of their similarity. The expert describes his work method and explains his methodology—he listened to, transcribed, analyzed, and prepared musical scores of PLAINTIFF and DEFENDANT. *It is not always essential to prepare a musical score but it is always essential to account for all of the music and sounds in both recordings. Surprisingly, there are “experts” who rely on sheet music, which is almost always inaccurate, rather than do their own transcriptions. An expert who relies on sheet music would be using secondary rather than primary resources, and engaged in clearly intellectually and academically substandard work. A competent attorney for the other side could use this information to discredit the expert and his testimony.*

*The expert is able to draw upon significant first-hand research as seen in his compilation of a database of music of numerous styles that he has transcribed and analyzed.*

*The expert is making bold statements below and asserting significant first hand research—he claims to have an extraordinary amount of personal resources (sound recordings in the form of MP3s, MP4s, CDs, tapes, and LPs) and experience in transcribing music of various styles. An expert should be well versed in several styles of music—classical, as a given, and a wide range of popular music styles—as the other side will likely attack the expert’s credentials and work in the matter. Failure to hire a qualified expert witness can be a fatal mistake for either side in a copyright infringement matter.*

*The expert has used the correct language below: “prior music source.” Many experts, and even some attorneys, have incorrectly used the term borrowed from patent law, “prior art,” to describe music that has been composed, recorded, and published prior to the songs involved in a copyright dispute. It is vital that an expert be able to show music composed, recorded, and published prior to the plaintiffs’ song that feature similar and/or identical elements in order to demonstrate that the similarities between songs are not worthy of copy protection, and to be expected in popular music.*

The expert conducted a prior musical sources search using his computer database containing the chord progressions and other musical aspects of more than 15,000 songs, as well as listened to many recordings from his personal collection of more than 8,000 CDs. He did this to determine

the significance, originality and copyright protectability of any musical and lyrical elements common to both songs, to place the two songs within the context of popular music, and to compare the songs to others that have been involved in music copyright infringement actions. The songs contained in this database, as well as his personal collection, are from numerous musical styles including popular music, rock, country, jazz, rhythm & blues, blues, soul, hip-hop/rap, gospel, folk, classical, contemporary classical, and world music styles. The expert compiled this database over the course of many years and not in preparation for conducting a prior musical sources search for his opinion in this matter. Significantly, the expert personally transcribed and analyzed all of the songs contained in the database.

*The expert has added an extra step with his use of “contemporary musical sources” that share features with the songs in question as this will further assist the defendants in their claim that the songs at issue are not substantially similar.*

The expert’s methodology for comparative musicological analysis is to examine the style, subject matter, tempo, tonality, form, harmony, melody, and lyrics of each song in question and compare and evaluate the songs with careful consideration of prior and contemporary musical sources. (The expert defines “prior musical source” as music that has been composed prior to PLAINTIFF and DEFENDANT. He defines “contemporary musical source” as music that has been composed at the same time or after PLAINTIFF and DEFENDANT. Prior and contemporary musical sources are used to assist in determining the originality and copyright protectability of the musical, lyrical and structural elements in this matter.)

*The expert puts forth the specific requirements of an expert’s task in a copyright infringement matter. Some could view this as his “shot across the bow” at any expert(s) the plaintiffs will engage as the he has stated what duties are “essential” for any other opposing expert(s). It would also distinguish this expert from one who relied on sheet music (secondary sources) rather than on his own transcription (primary sources) as mentioned above.*

1. As is essential for a music expert, I transcribed, analyzed and prepared illustrations/charts and musical scores of the PLAINTIFF and DEFENDANT songs. The two musical scores I prepared for this report are labeled as follows and attached to this report:

Score 1 PLAINTIFF: intro and verse 1 with lyrics

Score 2 DEFENDANT: intro, verse 1 and chorus 1 with lyrics

*The expert has shown great confidence in his knowledge of not only the technical musical aspects of both songs but of other songs that have been involved in music copyright disputes. Only an expert with significant experience would know other songs that have been involved in music copyright infringement matters, and how to use this information in formulating his opinion.*

*The expert will have a great advantage if he is able to use his own reasoning as to what constitutes copyrightable expression based on an understanding of music theory and law. This expert implies that he has the knowledge of what courts have decided is copyrightable expression. An inexperienced expert witness would not have made this claim as he would not have known all that could be involved in a copyright infringement report.*

5. In my opinion, PLAINTIFF is not substantially similar to DEFENDANT. As indicated above, this conclusion is based upon my careful transcription and analysis of the music and lyrics of PLAINTIFF and DEFENDANT, my search for prior and contemporary music, and comparison of these songs to others that have been involved in music copyright infringement actions.
6. My search for prior musical sources lead to the conclusion that PLAINTIFF is much closer in sound, melody, harmony, rhythm and structure to the songs listed above and many others. This finding alone demonstrates that when a song, such as PLAINTIFF, features ordinary musical elements—such as a simple, standard twelve (12)-bar blues built around an uncopyrightable three-note, 1-b7-1 motive—it is likely and even normal that there will be many other songs which share significant musical similarities.

*The expert is able to show that the plaintiff's work is not very original and that any elements in common between these songs are irrelevant.*



*The expert again summarizes his findings before proceeding to analyze the pertinent aspects of PLAINTIFF and DEFENDANT.*

7. In short, my search for prior and contemporary music lead to the conclusion that the few musical elements that are similar to both PLAINTIFF and DEFENDANT are common and unoriginal, and not subject to copyright protection. As such, their occurrence is insignificant in the music plagiarism context.

*The expert begins with the simplest aspect of both songs—style—and shows that the styles are significantly different.*

## 1. STYLE

1. PLAINTIFF is a very simple standard twelve (12)-bar blues based on an uncopyrightable three-note melodic motive.
2. DEFENDANT is a complex rock song that features frequent modulation (tonicization) between the relative Major and minor key. It is not based on a particular melodic motive.

*The expert points out the great differences in subject matter and types of narration, as DEFENDANT is extremely original with respect to the types of narration.*

## 2. SUBJECT MATTER

1. In terms of subject matter, PLAINTIFF and DEFENDANT are extremely different and unrelated.
2. Throughout PLAINTIFF, one singer is singing to one unknown person.
3. Throughout DEFENDANT, however, different scenarios occur.
4. In the first and second verses of DEFENDANT, the singer is telling a narrative about a woman.
5. In all four choruses of DEFENDANT, however, the woman is telling the narrative.

6. In the third verse of DEFENDANT, the singer begins telling a narrative about the couple, as opposed to the woman alone. By the end of the third verse, however, the narration has transitioned again and is now about the feelings of the man.
7. In PLAINTIFF, the singer is telling a story of his own gloom, doom, pain, and despair. He is warning an unknown person, whom he refers to five (5) times as, “son,” about an “evil ghost” named “Cain.”
8. DEFENDANT, on the other hand, is a love song in which lovers miss one another. As discussed above, there are numerous types of narration but the primary focus is of one singing to his lover and telling her that he misses her “lovin’,” “kiss,” “body,” and “touch.”
9. In PLAINTIFF, unlike DEFENDANT, there are images of an evil white ghost named Cain, a “freight train” that is “bashing in my head,” and a narrator who has not seen daylight for years.
10. In DEFENDANT, unlike PLAINTIFF, there is a telephone with its “dial tone” and “ring,” reference to “Sweet Home Alabama,” a “harvest moon” and many romantic references - loving, kiss, an adjacent body, missing one’s touch, burning skin, and missing one “a little too much.”

*Tempo is rarely important in music copyright infringement decisions but as an element of the musical structure, the expert has included the basic statements below.*

### 3. TEMPO

The expert stated that the songs are not similar in tempo as PLAINTIFF is considerably faster.

1. In PLAINTIFF, there are approximately 114 beats per minute.
2. In DEFENDANT, there are approximately 91 beats per minute.

*In his discussion of tonality, the expert asserts that DEFENDANT has more in common with complex songs that vacillate between two keys (the Major and its relative minor/the minor and its relative Major) such as those by Bob Marley, the Dixie Chicks, U2, Stevie Wonder and others, than with the PLAINTIFF. The expert wisely claims that it is unusual for tonality to play such an important part in a defense to infringement but the shifting tonalities of DEFENDANT are significant and further point to the originality of DEFENDANT and substantive differences between PLAINTIFF and DEFENDANT in this matter.*

*The expert has been able to draw upon songs of various styles and eras, ranging from 1964 (Beatles) to 2010 (Nelly) that feature the same vacillation between these two specific keys. The quality of the report is boosted by the inclusion of these songs as this information is not obvious. It is, also, doubtful that the opposing expert would have this knowledge or, if so, feel it necessary to include in his report. (For many reasons, plaintiff expert witness reports are usually shorter and less detailed than defendant expert witness reports.) The inclusion of songs from artists as wide ranging as 3 Mustaphas 3, Abba, The Band, Beach Boys, Beatles, Bee Gees, Maria Bethânia, Desert Rose Band, Dixie, Bob Dylan, Márcio Faraco, Fleetwood Mac, Radney Foster, Dave Grusin, George Harrison, Avril Lavigne, Led Zeppelin, Madonna, Bob Marley, Paul McCartney, Van Morrison, Youssou N'Dour, Nelly, Red Hot Chili Peppers, Rolling Stones, Carly Simon, Britney Spears, U2, Stevie Wonder, and Neil Young would likely impress the Court with the expert's thoroughness, depth of knowledge, and diversity.*

#### 4. TONALITY

1. There are significant differences between PLAINTIFF and DEFENDANT with respect to tonality.
2. PLAINTIFF is in the key of B minor throughout.
3. DEFENDANT, however, vacillates between two keys—the key of D Major (I Major) and B minor (vi minor).
4. In DEFENDANT, the choruses are in the key of D Major, and the verses are in the key of B minor.
5. It is extremely normal for pop songs, and especially blues songs, to be in only one key from beginning to end. Songs that stay in the same key throughout, such as PLAINTIFF, are literally too many to count.

6. On the other hand, it is extremely unusual for pop/rock songs to vacillate between two different keys. This is one of many features that make PLAINTIFF and DEFENDANT extremely unlike.
7. There are relatively few pop songs that vacillate between I Major and vi minor as does DEFENDANT.
8. Songs that vacillate between I Major and vi minor include the following:

3 Mustaphas 3 – “Si Vous Passez Par La”<sup>4</sup>  
 Abba – “The Name Of The Game”<sup>5</sup>  
 The Band – “Last Of The Blacksmiths”<sup>6</sup>  
 Beach Boys – “My Diane”<sup>7</sup>  
 Beatles – “I’m Happy Just To Dance With You”<sup>8</sup>  
 Bee Gees – “Holiday”<sup>9</sup>  
 Maria Bethânia – “Calice”<sup>10</sup>  
 Desert Rose Band – “It Takes A Believer”<sup>11</sup>  
 Dixie Chicks - “I’m Not Ready To Make Nice”<sup>12</sup>  
 Dueto De Los Hermanos Rios – “Mediu Xhiga”<sup>13</sup>  
 Bob Dylan - “Hurricane”<sup>14</sup>  
 Márcio Faraco – “Baile De Máscaras”<sup>15</sup>  
 Fleetwood Mac – “Rhiannon”<sup>16</sup>  
 Radney Foster – “I’ve Got A Picture”<sup>17</sup>  
 Dave Grusin - “Television theme song to ‘St. Elsewhere’”<sup>18</sup>  
 George Harrison - “Got My Mind Set On You”<sup>19</sup>  
 Avril Lavigne – “Complicated”<sup>20</sup>  
 Led Zeppelin – “All My Love”<sup>21</sup>  
 Madonna – “Like A Prayer”<sup>22</sup>  
 Bob Marley - “Could You Be Loved”<sup>23</sup>  
 Paul McCartney – “Junk”<sup>24</sup>  
 Van Morrison - “Wild Night”<sup>25</sup>  
 Youssou N’Dour - “Hope”<sup>26</sup>  
 Nelly – “Just A Dream”<sup>27</sup>  
 Red Hot Chili Peppers - “Hard To Concentrate”<sup>28</sup>  
 Rolling Stones - “Under My Thumb”<sup>29</sup>  
 Carly Simon - “You’re So Vain”<sup>30</sup>  
 Britney Spears – “I Will Be There”<sup>31</sup>  
 U2 - “One”<sup>32</sup>  
 Stevie Wonder - “Conversation Peace”<sup>33</sup>

Neil Young – “Running Dry (Requiem For The Rockets)”<sup>34</sup>

9. PLAINTIFF does not change keys.
10. DEFENDANT, on the other hand, changes keys six (6) times.

*In his discussion of form, the expert asserts that PLAINTIFF is a standard 12-bar blues while DEFENDANT is far more complex.*

## 5. FORM

1. PLAINTIFF and DEFENDANT have important differences in form and length.
2. PLAINTIFF is a very simple, standard twelve (12)-bar blues that repeats without alteration.
3. DEFENDANT is a complex non-standard-form song that repeatedly modulates between two keys. DEFENDANT consists of eight (8)-bar and four (4)-bar segments, but never twelve (12)-bar segments, unlike PLAINTIFF that consists only of twelve (12)-bar segments.
4. PLAINTIFF is one hundred-eight (108) measures in length and consists of nine (9) statements of a twelve (12)-bar blues.
5. DEFENDANT is eighty-eight (88) measures in length and consists of ten (10) eight (8)-bar segments, two (2) four (4)-bar segments, and a coda.
6. PLAINTIFF is approximately three (3) minutes and forty-eight (48) seconds in length.
7. DEFENDANT is approximately four (4) minutes and three (3) seconds in length.
8. In PLAINTIFF there are nine (9) verses.
9. In DEFENDANT, there are four (4) verses, four (4) choruses, two (2) four (4)-measure interludes, an eight (8)-measure instrumental section, and a coda.
10. The twelve (12)-bar blues is probably the most common song form in popular music. There exist thousands of twelve (12)-bar blues. PLAINTIFF is a twelve (12)-bar blues.
11. The form of DEFENDANT is original. I have not been

able to find another song with a form identical to DEFENDANT.

*It helps that the expert re-states the fact that PLAINTIFF does not have a chorus, and then compare the chorus of DEFENDANT to the non-existent chorus of the plaintiff's song.*

12. There are no choruses in PLAINTIFF.
13. Unlike PLAINTIFF in which there are no choruses, the choruses in DEFENDANT are eight (8) measures in length.
14. The forms for both PLAINTIFF and DEFENDANT are illustrated below.

**PLAINTIFF**

Intro	(twelve (12)--bar instr.)
1 <sup>st</sup> verse	(twelve (12)--bar vocal)
2 <sup>nd</sup> verse	(twelve (12)--bar instr.)
3 <sup>rd</sup> verse	(twelve (12)--bar vocal)
4 <sup>th</sup> verse	(twelve (12)--bar instr.)
5 <sup>th</sup> verse	(twelve (12)--bar vocal)
6 <sup>th</sup> verse	(twelve (12)--bar instr.)
7 <sup>th</sup> verse	(twelve (12)--bar vocal)
8 <sup>th</sup> verse	(twelve (12)--bar instr.)

**DEFENDANT**

Intro	(8-bar instr.)
1 <sup>st</sup> verse	(8-bar)
1 <sup>st</sup> chorus	(8-bar)
1 <sup>st</sup> interlude	(4-bar)
2 <sup>nd</sup> verse	(8-bar)
2 <sup>nd</sup> chorus	(8-bar)
Instrumental	(8-bar)
2 <sup>nd</sup> interlude	(4-bar)
3 <sup>rd</sup> verse	(8-bar)
3 <sup>rd</sup> chorus	(8-bar)
4 <sup>th</sup> chorus	(8-bar)
4 <sup>th</sup> verse	(8-bar)
coda end (one final measure)	

*The expert considers harmony important in the analysis of music with respect to copyright infringement, and his findings in this particular matter will further demonstrate that DEFENDANT did not infringe PLAINTIFF.*

## 6. HARMONY

1. There are extremely significant differences between PLAINTIFF and DEFENDANT with respect to harmony, i.e., chords and chord progressions.
2. The actual chord progressions of both PLAINTIFF and DEFENDANT appear below. As is standard in the analysis of Western Classical and popular music, an upper case Roman numeral denotes a major chord, e.g., I, IV, V, etc., and a lower case Roman numeral denotes a minor chord, e.g., ii, iii, vi, etc. In this context, a dash (“-”) is used to separate chords.
3. The chords in PLAINTIFF, and in order of their occurrence, are:

-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-  
-i-bVII-i-bVII-i-bVII-i-bVII-IV-bIII-IV-bIII-i-bVII-i-bVII-V-IV-i-bVII-i-

4. The chords in DEFENDANT, and in order of their occurrence, are:

-i-bVII-i-bVI-i-bVII-bVI-bVII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-bIII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-

-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-

-i-bVII-i-bVI-i-bVII-bVI-bVII-bIII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-bIII-

-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-

-i-bVII-i-bVI-i-bVII-bVI-bVII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-bIII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-bIII-

-i-bVII-i-bVI-i-bVII-bVI-bVII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-bIII-

-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-

-i-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-  
-bIII-bVII-bVI-bVII-

-i-bVII-i-bVI-i-bVII-bVI-bVII-  
-i-bVII-i-bVI-i-bVII-bVI-bVII-i-

5. In PLAINTIFF, there are one hundred eighty-one (181) chords in the entire composition.
  6. In DEFENDANT, there are one hundred eighty-three (183) chords in the entire composition.
  7. Of the one hundred eighty-one (181) chords in PLAINTIFF, there are five (5) basic chords.
  8. Of the one hundred eighty-three (183) chords in DEFENDANT, there are four (4) basic chords.
  9. The five (5) basic chords used in PLAINTIFF are:  
i      bIII      IV      V                      bVII
- The four (4) basic chords used in DEFENDANT are:  
i                      bIII                                      bVI      bVII



10. PLAINTIFF does not have a bVI chord.
11. In DEFENDANT, the bVI chord occurs forty-four (44) times. In DEFENDANT, the bVI chord resolves, in turn, to the i chord and the bVII chord.
12. The bVI chord in DEFENDANT accounts for forty-four (44) of its one hundred eighty-three (183) chords, or twenty-four percent (24%) of its chords. Twenty-four percent (24%) of the chords in DEFENDANT are not found in PLAINTIFF.
13. These two chord progressions, bVI-i and bVI-bVII, occur forty-four (44) times in DEFENDANT.
14. These two chord progressions, bVI-i and bVI-bVII, do not occur in PLAINTIFF.
15. DEFENDANT does not have a IV chord.
16. In PLAINTIFF, the IV chord occurs twenty-seven (27) times. In PLAINTIFF, the IV chord resolves, in turn, to the bIII chord, the bIII chord again, and the i chord.
17. The IV chord in PLAINTIFF accounts for twenty-seven (27) of its one hundred eighty-one (181) chords, or fifteen percent (15%) of its chords. Fifteen percent (15%) of the chords in PLAINTIFF are not found in DEFENDANT.
18. These two chord progressions, IV-bIII and IV-i, occur twenty-seven (27) times in PLAINTIFF.
19. These two chord progressions, IV-bIII and IV-i, do not occur in DEFENDANT.
20. DEFENDANT does not have a V chord.
21. In PLAINTIFF, the V chord occurs nine (9) times. In PLAINTIFF, the V chord always resolves to the IV chord.
22. The V chord in PLAINTIFF accounts for nine (9) of its one hundred eighty-one (181) chords, or five percent (5%) of its chords. Five percent (5%) of the chords in PLAINTIFF are not found in DEFENDANT.
23. This chord progression, V-IV, occurs nine (9) times in PLAINTIFF.
24. This chord progression, V-IV, does not occur in DEFENDANT.

25. To assist in comparing PLAINTIFF and DEFENDANT, the chord progressions of both verses are compared below. This comparison is by means of the actual aligned corresponding structures.
26. Because the verse of PLAINTIFF is twelve (12) measures in length, and the verse of DEFENDANT only eight (8) measures in length, there are significant differences.

## HARMONY: A Comparison of PLAINTIFF and DEFENDANT

### Aligned Corresponding Verses

measure:	1	2	3	4	5	6	7	8
PLAIN.	i-bVII	i-bVII	i-bVII	i-bVII	IV-bIII	IV-bIII	i-bVII	i-bVII
DEF.	i-bVII	i-bVI	i-bVII	bVI-bVII	i-bVII	i-bVI	i-bVII	bVI-bVII
measure:	9	10	11	12				
PLAIN.	V	IV	i-bVII	i				
DEF.	—	—	—	—				

27. The comparison above reveals the significant harmonic and structural differences between PLAINTIFF and DEFENDANT.
28. There are twenty-one (21) chords in the twelve (12) measures of the PLAINTIFF verse.
29. There are sixteen (16) chords in the eight (8) measures of the DEFENDANT verse.
30. There are only eight (8) chords that correspond between the verse of PLAINTIFF and verse of DEFENDANT.
31. The corresponding chords – the i chord and the bVII chord – are common and unprotectable.
32. To assist in analyzing PLAINTIFF and DEFENDANT, the chord progressions of both choruses are compared below. This comparison is also by means of the actual aligned corresponding structures.
33. This comparison is included to be consistent in the musical analysis and comparison of the two songs. Because the chorus of DEFENDANT is eight (8) measures in length, and there is no chorus in PLAINTIFF,

the extreme differences between the PLAINTIFF and DEFENDANT are further demonstrated.

*The comparison of choruses below is almost humorous in that PLAINTIFF does not have a chorus. Therefore, by comparing something to nothing, i.e., the chorus of DEFENDANT to PLAINTIFF (which does not have a chorus), the dissimilarities are further heightened, and the lack of infringement between the songs is again emphasized.*

### HARMONY: A Comparison of PLAINTIFF and DEFENDANT

#### Aligned Corresponding Choruses

measure:	1	2	3	4	5	6
PLAIN.	—	—	—	—	—	—
DEF.	bIII-bVII	bVI-bVII	bIII-bVII	bVI-bVII	bIII-bVII	bVI-bVII
measure:	7	8				
PLAIN.	—	—				
DEF.	bIII-bVII	bVI-bVII				

34. The comparison above again reveals that there is no similarity between choruses of PLAINTIFF and DEFENDANT because PLAINTIFF does not have a chorus.

*The comparison now turns to the melodies of both songs. In this particular case, the vocal melodies of PLAINTIFF and DEFENDANT must be compared and evaluated, as well as the bass melodies (bass lines) of both songs. Often bass lines are insignificant in evaluating copyright infringement claims (a common copyright myth is that bass lines are not copyrightable), but the strongest similarity between these songs is found in the short three-note 1-b7-1 motive that is heard prominently in the bass line throughout PLAINTIFF.*

## 7. MELODY

1. As is standard in the analysis of Western Classical and popular music, each pitch will be represented by an Arabic number. To avoid excessive uses of flats (“b”) and to assist in representing the pitches in the illustra-

tions below, the “3,” “6,” and “7,” which always occur as “b3,” “b6,” and “b7” in these songs, will simply be designated, “3,” “6,” and “7.”

B = 1, C# = 2, D = 3, E = 4, F# = 5, G = 6, A = 7

2. The following melodic comparisons will be between corresponding verses and choruses of PLAINTIFF and DEFENDANT and will include a comparison of vocal melodies as well as bass lines in corresponding sections.
3. The vocal melody of the verse of PLAINTIFF will be compared to the vocal melody of the verse of DEFENDANT.
4. The melodies to the vocal melodies of the verses of both PLAINTIFF and DEFENDANT, aligned and rhythmically/linearly approximated, appear below. Each beat is separated with spaces; the first beat of each measure begins under the barlines below.

### MELODY: A Comparison of PLAINTIFF and DEFENDANT

#### Aligned Corresponding Vocal Melody

	PLAINTIFF	Verse	measures 1-12	Verse	measures 1-8	
measure:	1	2	3	4	5	6
PL.	7 7 1	7 7 7	7 1	7 7 7 7 7	1 1 7	7 7 7
DEF.	3 3 1 1 1	7 7 3 3	1 7 2 1 2 1 7	3 7 7 1 1 4 6 6	7 7 1 1 1 7 6	1 7 7 7 7 1 3 1 7 1 1 2 1 7 7 1
measure:	7	8	9	10	11	12
PL.	1 7 7 7 7	1	2 2 2 2 2 2 2 1 2 1	1	7 7 7	7 1 7 7 7 7 1
DEF.	1 7 1 7 1 7 7	1 2	1 7 2 2 3	_____	_____	_____

5. As can be seen from the above comparison, there is very little in common between the vocal melody of PLAINTIFF verse and the vocal melody of DEFENDANT verse.
6. To assist in analyzing PLAINTIFF and DEFENDANT,

the vocal melodies of both choruses are compared below.

This comparison is also by means of the actual aligned corresponding structures.

7. This comparison is included to be consistent in the musical analysis and comparison of the two songs.
8. The vocal melody of the PLAINTIFF chorus cannot be compared to the vocal melody of the DEFENDANT chorus because PLAINTIFF does not have a chorus. Because the vocal melody of DEFENDANT is eight (8) measures in length, and there is no chorus in PLAINTIFF, the extreme differences between the PLAINTIFF and DEFENDANT are further demonstrated.
9. The vocal melody of the DEFENDANT chorus is shown below:

## MELODY: A Comparison of PLAINTIFF and DEFENDANT

### Aligned Corresponding Vocal Melody

	PLAINTIFF		Chorus	(there is no chorus)	
	DEFENDANT		Chorus	measures 1-8	
measure:	1	2	3	4	5
PL.	_____		_____		_____
DEF.	3	4322 7 1 7	4322	3 1 1 7 3 232 3	4322 7 7 1 7 2 3 33
measure:	7	8	9		
PL.	_____		_____		
DEF.	4322	3 1 7 753	1 7		

10. As can be seen from the above comparison, there is nothing in common between both melodies.
11. The bass line of the verse of PLAINTIFF will be compared to the bass line of the verse of DEFENDANT.
12. The melodies to the bass lines of the verses of both PLAINTIFF and DEFENDANT, aligned and rhythmically/linearly approximated, appear below. (Note that “#7” is used to indicate the unusual, in this context,

appearance of the “natural 7” scale degree.)

## MELODY: A Comparison of PLAINTIFF and DEFENDANT

### Aligned Corresponding Bass Lines

	PLAINTIFF		Verse measures 1-12			
	DEFENDANT		Verse measures 1-8			
measure:	1	2	3	4	5	6
PL.						
DEF.	1 7 4 7#7	1 7 4 7#7	1 7 4 7#7	1 7 4 7#7	4 3	4 3
DEF.	1 11 7 7	1 11 6 6	1 11 7 7	6	6 7	1 11 7 7
measure:	7	8	9	10	11	12
PL.						
DEF.	1 7 4 7#7	1 7 4 7#7	5 5	4 4	1 7	1
DEF.	1 11 7 7	6 7 3	_____	_____	_____	_____

13. As can be seen from the above comparison, measures one (1), three (3) and seven (7), contain the 1-b7-1 motive as bass notes.
14. This would make for the strongest aural similarity between PLAINTIFF and DEFENDANT.
15. Although both songs feature the 1-b7-1 in these same three measures, the rhythm of 1-b7-1 in PLAINTIFF is different from the rhythm in DEFENDANT, further contributing to the many differences between PLAINTIFF and DEFENDANT.
16. This similarity, however, is insignificant, because the 1-b7-1 motive is not subject to copyright protection due to its lack of originality and brevity.
17. The 1-b7-1 motive occurs in hundreds of songs in numerous styles and is not original to PLAINTIFF

## MELODY: A Comparison of PLAINTIFF and DEFENDANT

### Aligned Corresponding Bass Lines

PLAINTIFF	Chorus (there is no chorus)
DEFENDANT	Chorus measures 1-8

measure:	1	2	3	4	5	6
PL.						
DEF.	<u>3 7</u>	<u>6 7</u>	<u>3 7</u>	<u>6 7</u>	<u>3 7</u>	<u>6 7</u>
measure:	7	8				
PL.						
DEF.	<u>3 7</u>	<u>6 7</u>				

18. As can be seen from the above comparison, there is nothing in common between both melodies.

*The expert can go to great lengths to discuss the differences between the songs in terms of lyrics. Rhythm, meter, rhyme scheme, stanza, and more can be analyzed. Whether and to what degree to perform this type of analysis is contingent upon its necessity in being of assistance to your defense.*

*Another important consideration for the defendants and attorney is the cost of the expert report as experts in music copyright infringement matters have been known to charge anywhere from US\$50 to \$500 per hour for their services, and reports can cost anywhere from \$2,000 to \$20,000 or more. Expenses can increase significantly after the initial report if depositions are taken and motions filed.*

## 8. LYRICS

*The lyrics have been withheld from this article due to copyright and privacy considerations.*

The significant differences between the lyrics of PLAINTIFF and DEFENDANT have been discussed earlier in this report (see #2 “Subject Matter”.)

*The expert now demonstrates that PLAINTIFF is significantly similar to many other works composed before PLAINTIFF and reasserts his position that PLAINTIFF is not very original and not worthy of significant copyright protection.*

*The expert report could be much longer as it could have included hundreds of songs that feature the 1-b7-1 motive. Through consultation with the expert, the attorney will decide the optimum number of songs to be included in the expert report.*

## 9. PRIOR MUSICAL SOURCES

1. PLAINTIFF shares significant musical similarities with many other very well known songs by very well known artists, that prominently feature the 1-b7-1 motive. These include songs by The Police, George Benson, Muddy Waters, The Doors, and hundreds of others. Eleven (11) examples that feature the 1-b7-1 motive are included on the accompanying CD.
2. These similarities, rather than pointing towards other potential copyright infringements, reveal that out of thousands of popular music songs, it is very likely and expected that many songs will share common ground.
3. The most prominent aspect of PLAINTIFF is the 1-b7-1 motive mentioned earlier.
4. The 1-b7-1 motive in PLAINTIFF is stated seven (7) times in each twelve (12)-measure verse.
5. The 1-b7-1 motive occurs in measure 1, 2, 3, 4, 7, 8 and 11 of PLAINTIFF
6. The 1-b7-1 motive is transposed up a perfect fourth becoming 4-b3, in measures 5 and 6. (“Transposed” simply means to play the same pattern of notes but beginning on a different pitch. The effect is to “sound very similar” to the original but “look” different, i.e., 1-b7 looks different from 4-b3 but sounds very similar.)
7. Taking into account the seven (7) statements of 1-b7-1 occurring in the twelve (12) measures of the PLAINTIFF verse, along with the two (2) statements of 4-b3 (the transposed 1-b7-1), there are nine (9) statements of 1-b7-1.
8. Nine (9) of the twelve (12) measures of each verse, therefore, consist of the 1-b7-1 motive.
9. The 1-b7-1 motive, therefore, is heard eighty-one (81) times in PLAINTIFF.
10. The eighty-one (81) statements of 1-b7-1 occur in eighty-one (81) measures, or seventy-five percent (75%) of PLAINTIFF.
11. The uncopyrightable and unoriginal 1-b7-1 motive accounts for 75% of PLAINTIFF.



PRIOR MUSICAL SOURCES: COMPARISONS

- 12. What follows are comparisons between PLAINTIFF and eleven (11) other songs that prominently feature the 1-b7-1 motive.
- 13. The chart below shows the 1-b7-1 motive, as found in PLAINTIFF and eleven (11) other songs, aligned and rhythmically/linearly approximated. The first vertical line represents the beginning of the first beat, with each additional line representing another half of the beat. The numbers on top designate the number of the beat within the measure. (One measure, consisting of four beats, is illustrated below.)
- 14. The songs below are identical to the songs on the accompanying CD. These twelve (12) songs clearly and aurally illustrate the commonality of the 1-b7-1 motive throughout many musical styles.
- 15. In each example on the accompanying CD, the song has been edited, i.e., shortened, to assist the listener.

*The expert has not explained in his report why these specific songs in this specific order were selected. The expert told your attorney that it is his feeling that this particular arrangement will be most effective. The “secret” of the expert’s editing and arrangement of songs—in addition to the songs sharing important musical features—involves the musical key of each recording. It is the expert’s belief that successive songs in the same key, that also feature the 1-b7-1 motive, will best demonstrate the similarity of the songs, and the universality of the 1-b7-1 motive. Considerations other than the musical key of each work that went into the specific selection include tempo, instrumentation and audible clarity of the 1-b7-1 motive in each recorded excerpt.*

- 16. The exact names of the artists, songs, their abbreviation (for the purposes of this report), and their temporal length, appear below.

1. Unknown Plaintiff	“Lonely” [PLAINTIFF] <sup>35</sup>	24 seconds
2. The Police	“King Of Pain” [POLICE] <sup>36</sup>	49 seconds
3. Ajax jingle	“Ajax, Laundry Detergent” [AJAX] <sup>37</sup>	34 seconds

4. Quicksilver	“Who Do You Love?” [QUICKSILVER] <sup>38</sup>	31 seconds
5. Muddy Waters	“Walkin’ ...” [WALKIN’] <sup>39</sup>	36 seconds
6. George Benson	“On Broadway” [BROADWAY] <sup>40</sup>	31 seconds
7. The Police	“Bombs Away” [BOMBS] <sup>41</sup>	28 seconds
8. Ohio Players	“Skin Tight” [OHIO] <sup>42</sup>	11 seconds
9. Little Walter	“Mellow Down” [MELLOW] <sup>43</sup>	26 seconds
10. The Doors	“Hello, I Love You” [HELLO] <sup>44</sup>	33 seconds
11. The Doors	“Five To One” [FIVE] <sup>45</sup>	37 seconds
12. The Doors	“Touch Me” [TOUCH] <sup>46</sup>	39 seconds

17. The prominent 1-b7-1 motives heard in these songs, aligned and rhythmically/linearly approximated, appear below in one (1) measure. Each beat is numbered, and each half beat is indicated by a “|”.

			2		3		4		
PLAINTIFF	1				7			7	1
POLICE	1				7				1
AJAX	1	1	7	1					1
QUICKSILVER	1	1		1		7	7		1
WALKIN’	1	1	1	1	7	7	7	7	1
BROADWAY	1			7					1
BOMBS	1		7		1		7		1
OHIO		1	7	1					
MELLOW	1		7		1				1
HELLO	1	1	1	1	7	7	7	7	1
FIVE	1		1		1		1	7	1
TOUCH	1		1		1		7	1	

*This CD is the expert’s best proof. If a picture tells a thousand words, carefully edited musical excerpts from various musical artists, across diverse styles and time periods, can be equally effective.*

18. From the accompanying CD and the transcription of the 1-b7-1 motive as it occurs in PLAINTIFF and the eleven (11) songs above, it is obvious that the 1-b7-1 is extremely common in many styles, unoriginal and not copyright protected.

## 10. CONCLUSION

Based upon the aforesaid, I believe that PLAINTIFF and DEFENDANT are not substantially similar.

A musical comparison between the two songs based upon analy-

sis and actual transcriptions of the music and lyrics, reveal no substantive similarities but instead tremendous differences. The side-by-side transcriptions and analysis show that THERE ARE NO SIGNIFICANT POINTS OF SIMILARITY—melodic, harmonic, rhythmic, structural or lyrical—between PLAINTIFF and DEFENDANT. PLAINTIFF has much more in common with numerous other songs discussed above than it does with DEFENDANT. The only elements found similar between PLAINTIFF and DEFENDANT are commonplace and not subject to copyright protection.

*The Expert Report for the Defense was submitted on the date requested by the Court. The Plaintiff, however, failed to submit an Expert Report as requested by the Court. A few weeks after the Expert Report for the Defense was submitted, the Court sided with the Defendant and the Plaintiff's case was dismissed.*

## Endnotes

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1. U.S. Code 17 (1976), §102(a)(2), *The subject matter of copyright: musical works*.
2. *Selle v. Gibb*, 741 F.2d 896 (7th Cir. 1984).
3. Marshall Leaffer, *Understanding Copyright Law* 4th ed. (Newark: LexisNexis, 2005), 412.
4. 3 Mustaphas 3, *Friends, Fiends & Fronds*, Ace Records, CD (1991).
5. Abba, *ABBA: The Album*, Epic Records, 33 rpm L.P. (1977).
6. The Band, *Cahoots*, Capitol Records, 33 rpm L.P. (1971).
7. The Beach Boys, *M.I.U. Album*, Brother/Reprise, 33 rpm L.P. (1977).
8. The Beatles, *A Hard Day's Night*, Parlophone, 33 rpm L.P. (1964).
9. The Bee Gees, *Bee Gees' 1st*, Polydor, 33 rpm L.P. (1967).
10. Maria Bethânia, *Álibi*, Universal Music Latino, 33 rpm L.P. (1978).
11. Desert Rose Band, *True Love*, Curb Records, CD (1991).
12. The Dixie Chicks, *Taking The Long Way*, Open Wide/Columbia Nashville, CD (2006).
13. Duetto De Los Hermanos Rios, *Putumayo Presents: Mexico*, Putumayo, CD (2001).
14. Bob Dylan, *Desire*, Columbia Records, 33 rpm L.P. (1976).
15. Márcio Faraco, *Ciranda*, Blue Thumb Records, CD (2000).
16. Fleetwood Mac, *Fleetwood Mac*, Reprise Records, 33 rpm L.P. (1975).
17. Radney Foster, *See What You Want To See*, Arista, CD (1999).
18. Dave Grusin, *Television's Greatest Hits 70's & 80's*, TVT Records, CD (1990).
19. George Harrison, *Cloud Nine*, Dark Horse/Warner Bros., CD (1987).
20. Avril Lavigne, *Let Go*, Arista, CD (2002).
21. Led Zeppelin, *In Through The Out Door*, 33 rpm L.P. (1979).
22. Madonna, *Like A Prayer*, Sire, Warner Bros., CD (1989).
23. Bob Marley, *Uprising*, Tuff Gong/Island, 33 rpm L.P. (1980).
24. Paul McCartney, *McCartney*, Apple, EMI, 33 rpm L.P. (1970).
25. Van Morrison, *Tupelo Honey*, Warner Bros., Polydor, 33 rpm L.P. (1971).
26. Youssou N'Dour, *Eyes Open*, Columbia, CD (1992).
27. Nelly, *5.0*, Universal Motown, CD (2010).

28. Red Hot Chili Peppers, *Stadium Arcadium*, Warner Bros., CD (2006).
29. Rolling Stones, *Aftermath*, Decca Records, 33 rpm L.P., (1966).
30. Carly Simon, *No Secrets*, Elektra Records, 33 rpm L.P., (1972).
31. Britney Spears, ...*Baby One More Time*, Jive, CD (1999).
32. U2, *Achtung Baby*, Island, CD (1991).
33. Stevie Wonder, *Conversation Peace*, Motown, CD (1995).
34. Neil Young with Crazy Horse, *Everybody Knows This Is Nowhere*, Reprise Records, 33 rpm L.P., (1969).
35. Recording by unknown plaintiff provided to me by defense attorney.
36. The Police, *Synchronicity*, A & M, CD (1983).
37. Colgate-Palmolive "Ajax" commercial, *Tee Vee Toons: The Commercials*, TVT Records, CD (1989).
38. Quicksilver Messenger Service, *Happy Trails*, Capitol Records, 33 rpm L.P., (1969).
39. Muddy Waters, *Chess single 1718*, Chess Records, 45 rpm single, (1958).
40. George Benson, *Weekend in L.A.*, Warner Bros., 33 rpm L.P. (1978).
41. The Police, *Zenyatta Mondatta*, A & M, CD (1980).
42. Ohio Players, *Skin Tight*, Mercury Records, 33 rpm L.P., (1974).
43. Little Walter & His Jukes, *Checker single 805*, Chess/Checker Records, 45 rpm single, (1954).
44. The Doors, *Waiting For The Sun*, Elektra Records, 33 rpm L.P., (1968).
45. The Doors, *Waiting For The Sun*, Elektra Records, 33 rpm L.P., (1968).
46. The Doors, *The Soft Parade*, Elektra Records, 33 rpm L.P., (1969).

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He has been interviewed by the *New York Times*, CNN, *Wall Street Journal*, *Huffington Post*, BRAVO, Associated Press, *Forbes*, PBS, ABC News, the TODAY Show, *Ovation*, the Biography Channel, NPR, Radio Canada, Radio New Zealand, Australian radio stations, *PC Magazine*, *Billboard*, *USA Today*, *Salon*, XM Radio, *Rolling Stone*, *Money*, *Investor's Business Daily*, *Mergers & Acquisitions*, *People*, *Life*, *Readers' Digest*, *Washington Post*, *Boston Globe*, *Miami Herald*, and others.

He has worked as consultant and expert witness in hundreds of music copyright matters involving director Steven Spielberg, producer Mark Burnett, the Dixie Chicks, Woody Guthrie, Steve Perry, Keith Urban, HBO, Ne-Yo, T-Pain, T. I., Akon, Snoop Dogg, Collin Raye, Tupac Shakur, Lady Gaga, George Clinton, Mariah Carey, and others, delivered more than 200 lectures to more than 150 law schools, organizations, universities, and music conferences/festivals throughout North America including Harvard Law, George Washington University Law, Cardozo Law, Brooklyn Law, Boston College Law, Loyola Law, the Boston Bar Association, Texas Bar Association, the European Film Commission, the Experience Music Project, Future of Music Coalition, Pop Montreal, University of Miami, Berklee College of Music, NYU, UCR, McGill University, Carleton, Eastman School of Music, Emory University, and others, and been a consultant to the Electronic Frontier Foundation, Columbia Law School, UCLA Law School, Mel Bay, and others.