

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PHARRELL WILLIAMS, an individual;
CLIFFORD HARRIS, JR., an individual;
ROBIN THICKE, an individual, DBA I
Like'em Thicke Music,

*Plaintiffs-Counter-Defendants-
Appellants,*

and

MORE WATER FROM NAZARETH
PUBLISHING, INC.; STAR TRAK
ENTERTAINMENT; INTERSCOPE
RECORDS; UMG RECORDINGS, INC.;
UNIVERSAL MUSIC DISTRIBUTION,
Counter-Defendants-Appellants,

v.

FRANKIE CHRISTIAN GAYE, an
individual; MARVIN GAYE III, an
individual; NONA MARVISA GAYE,
an individual,

*Defendants-Counter-Claimants-
Appellees.*

No. 15-56880

D.C. No.
2:13-cv-06004-
JAK-AGR

ORDER AND
AMENDED
OPINION

PHARRELL WILLIAMS, an individual;
CLIFFORD HARRIS, JR., an individual;
ROBIN THICKE, an individual, DBA I
Like'em Thicke Music,

*Plaintiffs-Counter-Defendants-
Appellees,*

and

MORE WATER FROM NAZARETH
PUBLISHING, INC.; STAR TRAK
ENTERTAINMENT; INTERSCOPE
RECORDS; UMG RECORDINGS, INC.;
UNIVERSAL MUSIC DISTRIBUTION,
Counter-Defendants-Appellees,

v.

FRANKIE CHRISTIAN GAYE, an
individual; MARVIN GAYE III, an
individual; NONA MARVISA GAYE,
an individual,

*Defendants-Counter-Claimants-
Appellants.*

No. 16-55089

D.C. No.
2:13-cv-06004-
JAK-AGR

PHARRELL WILLIAMS, an individual;
ROBIN THICKE, an individual, DBA I
Like'em Thicke Music; CLIFFORD
HARRIS, JR., an individual,

*Plaintiffs-Counter-Defendants-
Appellees,*

and

MORE WATER FROM NAZARETH
PUBLISHING, INC.; STAR TRAK
ENTERTAINMENT; INTERSCOPE
RECORDS; UMG RECORDINGS, INC.;
UNIVERSAL MUSIC DISTRIBUTION,
Counter-Defendants-Appellees.

v.

FRANKIE CHRISTIAN GAYE, an
individual; MARVIN GAYE III, an
individual; NONA MARVISA GAYE,
an individual,

*Defendants-Counter-Claimants-
Appellants.*

No. 16-55626

D.C. No.
2:13-cv-06004-
JAK-AGR

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Argued and Submitted October 6, 2017
Pasadena, California

Filed March 21, 2018
Amended July 11, 2018

Before: MILAN D. SMITH, JR., MARY H. MURGUIA,
and JACQUELINE H. NGUYEN, Circuit Judges.

Order;
Opinion by Judge Milan D. Smith, Jr.;
Dissent by Judge Nguyen

SUMMARY*

Copyright

The panel filed (1) an order amending an opinion and dissent and denying, on behalf of the court, a petition for rehearing en banc; and (2) an amended opinion and dissent in a copyright case.

In its amended opinion, the panel affirmed in part and reversed in part the district court's judgment after a jury trial, ruling that plaintiffs' song "Blurred Lines" infringed

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

defendants' copyright in Marvin Gaye's song "Got To Give It Up."

The panel held that "Got To Give It Up" was entitled to broad copyright protection because musical compositions are not confined to a narrow range of expression. The panel accepted, without deciding, the merits of the district court's ruling that the scope of the defendants' copyright was limited, under the Copyright Act of 1909, to the sheet music deposited with the Copyright Office, and did not extend to sound recordings.

The panel held that the district court's order denying summary judgment was not reviewable after a full trial on the merits.

The panel held that the district court did not err in denying a new trial. The district court properly instructed the jury that there is no scienter requirement for copyright infringement and that it must find both access and substantial similarity. The district court did not erroneously instruct the jury to consider unprotectable elements of "Got To Give It Up." The district court did not abuse its discretion in admitting expert testimony. In addition, the verdict was not against the clear weight of the evidence because there was not an absolute absence of evidence of extrinsic and intrinsic similarity between the two songs.

The panel held that the district court's award of actual damages and infringers' profits and its running royalty were proper.

Reversing in part, the panel held that the district court erred in overturning the jury's general verdict in favor of certain parties because the defendants waived any challenge

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