
Ninth Circuit Clears *Stairway to Heaven* Overrules Copyright Inverse Ratio Rule

Skidmore v. Led Zeppelin, Case No. 16–56057, 2020 WL 1128808 (9th Cir. 2020)

By: Reid Huefner and Peggy Herrmann | March 17, 2020

On March 9, 2020, the Court of Appeals for the Ninth Circuit, *en banc*, affirmed the district court’s judgment of noninfringement of copyright in favor of Led Zeppelin and, notably, joined the majority of circuits by overruling the “inverse ratio rule” for copyright infringement in its jurisdiction and further found no error where the district court denied the jury hearing a sound recording of the copyrighted work. In this case, Skidmore sued Led Zeppelin, et al. for copyright infringement, claiming that the opening of Zeppelin’s *Stairway to Heaven* infringed the song *Taurus* (written by Randy “California” Wolfe, performed by his band, Spirit, and registered for copyright in 1967 with the deposit copy of a single page of music).

Illegal copying can be proven “circumstantially by showing that the defendant has access . . . and that the two works share similarities probative of copying.”¹ The now-defunct inverse ratio rule relates to the access prong—specifically “the stronger the evidence of access, the less compelling the similarities . . . need to be.”² The district court refused to give an inverse ratio instruction to the jury and the Ninth Circuit not only affirmed that refusal but held that, although access can be circumstantial evidence of copying, access cannot alter the substantial similarity requirement. Because the inverse ratio rule “unfairly advantages those whose work is most accessible by lowering the standard of proof for similarity,”³ and because there is no statutory support for the inverse ratio rule, the Court abrogated it.

Further, the Court found the district court did not err when it refused to allow the sound recording of *Taurus* to be heard by the jury. Because the copyright was registered in 1967, the Court held that the 1909 Copyright Act—which does not protect sound recordings—controlled the Court’s analysis, not the 1976 Copyright Act. As such, the district court did not err by limiting the jury’s analysis of substantial similarity to the four corners of the single sheet of music that constituted the deposit copy.

This Ninth Circuit *en banc* panel ruling is an important development in the copyright landscape in that the abandonment of the inverse ratio rule represents a monumental course correction; but the Opinion does not provide guidance to musicians trying to understand the degree of similarity required to establish appropriation and infringement. Specifically, Skidmore did not file a motion for judgment as a matter of law, a renewed judgment as a matter of law, or a motion for new trial on the issue of infringement. As such, whether the verdict was against the substantial weight of the evidence was not before the appellate court. Rather, having not filed post-trial motions, Skidmore’s appeal was limited to the Court’s evidentiary ruling on the admissibility of the sound recording, and the jury instructions.

¹ *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1117 (9th Cir. 2018).

² *Id.* at 1124.

³ *Skidmore*, at *32.