

## Sheeran Strikes a Chord: Second Circuit Finds No Infringement of “Let’s Get It On”

*Structured Asset Sales, LLC v. Sheeran, No. 18-cv-5839 (2d Cir. Nov. 1, 2024)*

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On November 1, 2024, the Second Circuit affirmed the district court’s entry of summary judgment that Ed Sheeran’s *Thinking Out Loud* (“TOL”) composition did not infringe Marvin Gaye’s *Let’s Get It On* (“LGO”) deposit copy, holding that under the Copyright Act of 1909, copyright protection of a musical work is limited to the four corners of the deposit copy filed with the Copyright Office at the time of registration. Sheeran was first sued for infringement of LGO in *Griffin v. Sheeran*, No. 1:2017cv05221 (S.D.N.Y. 2019) by successors to Ed Townsend’s share in the composition. That case ended with a unanimous jury finding that Sheeran was not liable for infringement.

A separate suit was brought in 2018 by Structured Asset Sales, LLC (“SAS”), a firm that purchases royalty interests from copyright holders, securitizes them, and sells the securities to investors.<sup>1</sup> The court granted Sheeran’s motion for summary judgment, concluding SAS’s infringement claims were limited to the five-page 1973 deposit copy of LGO that encompassed the song’s melody, harmony, rhythm, and lyrics (“Deposit Copy”), and the chord progression and harmonic rhythm are commonplace.

The Second Circuit rejected SAS’s arguments that copyright protection should cover both the Deposit Copy and the sound recording of LGO, as well as its challenge to the exclusion of its expert’s opinion regarding an “implied bass line” in the Deposit Copy that is an alleged similarity between the sound recordings of the two compositions. The Circuit Court reasoned that the 1909 Copyright Act, which governs the 1973 Deposit Copy, requires depositing one “complete copy” of a musical work in order to obtain an enforceable copyright, as well as affixing a copyright notice on published works. Because a notice cannot be affixed to sound, a composition could not be published through the distribution of its sound recording. There is no copyright registration in the sound recording of LGO because the 1909 Act did not protect sound recordings. Therefore, the 1909 Act’s protection extends just to the “complete copy” of the musical work that is deposited with the Copyright Office, and so the 1909 Act extends only to the four corners of the Deposit Copy and elements that only appear in the sound recording of LGO are not protected.

The Circuit Court found that the allegedly infringing elements of Sheeran’s composition, including a similar four-chord progression and a commonplace harmonic syncopation, are not protectable by themselves, nor in combination. Further, the two songs are not substantially similar when taken as a whole, as neither the lyrics nor the melody “bear any resemblance” to each other. The Court was hesitant to grant a monopoly over a combination of “fundamental musical building blocks” which would “threaten to stifle creativity and undermine the purpose of copyright law: ‘To promote the Progress of Science and useful Arts.’”

The ruling in this case does not bear on litigants with copyright registrations under the 1976 Act, however, a 1909 Copyright Act plaintiff should be sure to register an updated sound recording deposit copy prior to filing suit if arguing infringement of protectable elements embodied in the sound recording.

<sup>1</sup> The Court denied SAS’s leave to join the *Griffin* lawsuit but was able to proceed in its own suit because a joint owner is not required to join his other co-owners in an action for infringement. SAS owns 1/3 of Townsend’s 1/3 interest in the royalties.