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## >> MUSICOLOGY SERVICES

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FOR LAWYERS, RECORD COMPANIES, PUBLISHERS,  
FILM PRODUCERS AND OTHER MUSIC INDUSTRY  
PROFESSIONALS

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### >> IF YOU NEED TO:

- determine what the *musical facts* are
- determine whether *problematic similarities* support an *infringement claim*, a *sound-alike* claim, or a combination of the two
- get an *expert opinion* as to whether the similarities between two works constitute problematic similarities or are as a result of common stylistic patterns or common compositional devices
- do a *sample analysis* in order to determine whether or not a sample or possible sample can be shown to have come from another recorded work
- research the *public domain status* of a particular song or arrangement of a public domain song
- obtain *prior art research* that is thorough, exhaustive, and accurate
- find a *music expert* who, if in agreement with your claims, can assist in all music related aspects from *trial preparation through litigation*, and offer *graphic charts* and *musical demonstrations* suitable for presentation to a *non-musical judge and jury*

### >> SERVICES

#### MUSICOLOGICAL ANALYSIS

A thorough comparison of two or more pieces of music which examines all pertinent music and vocal elements including melody, harmony, rhythm, instrumentation, lyrics, musical style, samples, vocal sound and style, *etc.* in order to determine if there are problematic similarities between the works. An analysis is often called for if: the work is reminiscent of another work; the composer has been asked to create a work that sounds like another; or in cases where litigation is being considered or has been initiated. Works that sound very similar might only share permissible stylistic similarities with many other works while works that sound different may have borrowed copyrighted material in ways that are not at first obvious. Musiodata can help render a professional opinion as to what elements are protected by music copyright and what elements are not. Even when there appear to be musical similarities, it is sometimes not possible to render an opinion until some prior art research has been attempted (see below). In addition, if infringement is suspected prior to release or broadcast, Musiodata can point to those areas that need changing in order to avoid problematic similarities. \* Reports can be emailed, faxed, mailed, or discussed verbally within five business days or on a rush basis.

#### SAMPLE ANALYSIS

There is increasing litigation today regarding samples or potential samples. Using a sample, or the digital reproduction of a part of a work from another recording, is a common practice today, especially in hip-hop music. Producers normally license and pay for the use of samples. If there is a question as to whether or not a sample was used in a particular recording, Musiodata will perform a thorough forensic analysis and compare the sounds using advanced technology and side-by-side comparisons to attempt to determine if they can be proven to be from the same source. In those cases where a sample license was denied, Musiodata can offer musical guidance as to what is permissible to use.\*

### **PUBLIC DOMAIN RESEARCH**

Research can often determine if a piece of music is in the public domain and/or find a public domain version of the piece. Music in the public domain is no longer protected by copyright laws and can be used without permission. However, since different countries around the world have differing and changing copyright laws, it is not always possible to say with certainty a work is PD worldwide. In some of these cases, doing a risk assessment is in order. In order for a work to be in the public domain, it must exist in a public domain source. Works can be “generally considered to be in the public domain” if several examples of the work sharing the same elements can be found in well-respected and reliable sources. However, many popular versions or arrangements of public domain musical works are NOT in the public domain. Because a piece of music is labeled as "traditional" does not necessarily mean it can be used without any legal restrictions. This is a very thorny area and Musiodata can help clarify what versions are in the public domain and/or who has ownership of a particular work.\*

### **PRIOR ART RESEARCH**

Prior art research is often an extensive and exhaustive search for examples that *predate* the two works in question and share the same elements ( a specific melody, lyric, etc.) If the combination of similar elements can be found in prior art, the original elements cannot have originated in either of the works being compared. In a situation where someone is accused or could potentially be accused of infringement, the presentation of prior art is an essential component of a good defense.

### **COPYRIGHT VALUATION**

Musiodata can determine the value of a particular copyright by analyzing comparable copyrights and determining what those comparable works earned in similar circumstances to the one in question.

### **SONG RESEARCH & LICENSING**

Song research can determine the authors, publishers, name and status of a piece of music, as well as its availability. Musiodata can assemble lists of appropriate songs for a specific advertising campaign, film, or other use, and follow up with licensing inquiries. Musiodata has extensive licensing experience and can do confidential licensing inquiries and/or negotiate the terms of a license to be followed up by your attorney.

### **VERIFICATION OF ORIGINALITY**

A work is considered original if it does not point specifically to any other known copyrighted musical work, artist or group.\* Musiodata will attempt to find two or three additional musical works that share similar elements as those in the work in question in order to determine if there has been substantial borrowing that would point to another work, artist or group, or if the work employs permissible stylistic elements shared by many works.

### **TRIAL PREPARATION & EXPERT WITNESS**

If, after careful review and analysis of the musical facts, Sandy Wilbur agrees with the point of view of the inquiring parties, she can assist them in all phases of the litigation process such as analyzing other expert reports, helping outline deposition questions, researching prior art, providing expert testimony, and preparing graphic charts, audio comparisons and musical demonstrations that are suitable for presentation to a non-musical judge and jury. She has had considerable experience working with legal teams, helping them understand the musical theories and subtleties involved in a particular case.\*

\*Sandy Wilbur does not offer legal advice and recommends consulting an attorney in conjunction with expert music analysis and musicological opinions.

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