



Lady Gaga's "Judas" No "Juda"

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By: Daniel L. Moffett

Following 9th Circuit precedent, the court held that summary judgment, although not favored in determining the question of substantial similarity, "is appropriate where no reasonable trier of fact could find substantial similarity in the protected expression of the disputed works." However, the court rejected Lady Gaga's request that it apply the "inverse ration rule," which requires a higher standard of proof on the issue of "substantial similarity" when the Plaintiff's evidence of "access" is weak. Rather, the court favored an analysis that looks at "access" and "substantial similarity" independently of each other. The court noted that "substantial similarity" is "one of the most difficult questions in copyright law" because the party must demonstrate both copying and that the copying "extends to the [party's] protectable expression." Francescatti had to demonstrate that Lady Gaga copied the work and "that the two works shared enough unique features to give rise to a breach of duty [on the part of Lady Gaga] not to copy [Francescatti's] work."

On the issue of substantial similarity, Lady Gaga argued that the court should rely on the "ordinary observer test," i.e.; a sidebyside comparison of the two songs. Because of computer generated enhancing associated with the songs, Francescatti argued for application of the "extrinsicintrinsic test," which relies on expert testimony to identify the protectable elements that were copied. Given the complexity of the songs, the court allowed expert testimony, but it did not abandon the "ordinary observer test" in favor of the "more discerning observer test" (i.e.;

the difference between a lay person and a choral director for example). Applying the extrinsicintrinsic and ordinary observer tests, the court found three similarities between the two songs: 1) the titles; 2) the repetitive use of the titles in the songs; and 3) a similarity in the

use of four 16th notes in the breakdown sections. However, this was not enough to find copyright infringement because Francescatti did not establish a similarity between the songs as a whole and because the three elements – title, repetition and breakdown sections – were not protectable individually or as a unique combination.

Francescatti v. Germanotta, No. 11cv5270 (N.D. Ill. June 17, 2014) [Aspen, M.]

Categories

District Court

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