

Ed Sheeran victorious after copyright dispute fails to get it on

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Ed Sheeran's victories continue to multiply, after a New York jury recently ruled that his song, *Thinking Out Loud*, does not infringe the copyright of well-known American song, *Let's Get It On*, written by Marvin Gaye and Ed Townsend. This \$100m claim was first brought by Townsend's heirs in 2017 against Sheeran, his record label, Warner Music Group, and his music publisher, Sony Music Publishing, with the aim of protecting the musical "heart" of their late father's work. Understandably, the case has attracted the attention of the music industry, after the underlying music composition of the two songs came under scrutiny.



Image source: Suvan Chowdhury from [Pexels](#)

Setting the stage, both sides entered the dispute with the benefit of being able to point to previous favourable decisions in the record cabinet. As readers will recall, [Sheeran won a separate copyright trial in London in 2022](#) regarding hit song, *Shape of You*. Separately, Gaye's heirs were also awarded \$5.3m in 2015 after their claim that the song, *Blurred Lines*, written by Robin Thicke and Pharrell Williams, had [infringed the copyright of Gaye's song. Got to Give It Up](#), was upheld in court.

In this case, Townsend's heirs' "smoking gun" was an online fan video of Sheeran on stage, in which he merged the two songs to illustrate the similarity of the chord progressions of hit songs to his fans. The heirs argued that the seamless transition between the two songs, during a live show, was evidence that Sheeran had infringed the copyright in the earlier work. This did not subtract from Sheeran's defence, however, and during evidence, Sheeran and his co-writer, Amy Wadge, explained the inspiration behind the creation of their hit song in 2014. Guitar in hand, Sheeran also explained that he is able to perform similar medleys, as a result of the limited harmonic palette in today's mainstream pop music. This clearly struck a chord with the jury, which handed down a decision after three hours of deliberation.

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Sheeran's lyrical talents were also evident in his statement issued after the ruling was handed down, in which he shared that "these chords are common building blocks, which were used to create music long before *Let's Get It On* was written, and will be used to create music long after we are all gone".

What would SA do?

In assessing an allegation of copyright infringement, South African courts will rely on a qualitative test, examining the degree of objective similarity between two works, as well as whether a causal link exists between the original work and the alleged infringing work. This would mean that the claimant must prove that the artist actually regarded and had access to the prior work, and adapted or copied substantial elements of it when creating the new song.

While our courts do have a general discretion, our Copyright Act does make provision for the Court to grant specific relief to successful litigants in the form of damages, an interdict, ordering the delivery-up of infringing copies and, in lieu of damages, a reasonable royalty payable by the infringer which could have been payable by a licensee of the earlier work.

This case calls a well-known phrase in the music industry to mind, namely "where there is a hit, there is a writ", and we anticipate that artists will continue to lock horns to protect their valuable intellectual property rights which vest in our favourite songs.

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