

“Levitating” Lawsuit: Blatant Rip-off or Bogus Claim?

The music industry is watching Dua Lipa with bated breath – and for once, not because she’s a phenomenal performer. Instead, attention is on the UK singer because she was hit with two lawsuits on March 1st and 4th claiming copyright infringement in her hit song “Levitating”.¹ The March 1 lawsuit – which has perhaps gone more viral – claims that “Levitating” infringes on the 2017 Artikal Sound System reggae song “Live Your Life”.

These lawsuits come on the heels of several high-profile copyrights suits in recent years, including the recent “Blurred Lines” case, where Marvin Gaye’s estate successfully won \$5.3 million in damages and 50% of all future royalties due to “Blurred Lines” similarities to the Marvin Gaye song “Got to Give It Up”.² If Dua Lipa loses this case, the music industry is sure to face more litigation. So what is the likely outcome?

A music copyright claim has two elements: access and substantial similarity.³ Showing access requires showing that it is reasonable or likely that the defendant was exposed to the music. In the case of Marvin Gaye’s body of work, access is basically a given. Not so for Artikal Sound System – they are an obscure band, and the song was not available on any major streaming platforms or the band’s official YouTube as of March 10.⁴ However, given how much access we have in the 21st century, demonstrating access even to obscure material is entirely plausible.

The next element, substantial similarity, is the crux of these cases. Listening to “Levitating” next to “Live Your Life”, the songs absolutely sound similar to the layperson – which is why side-by-sides of the songs have gone viral. However, according to musicologist E. Michael Harrington, “Sounding alike is almost always unimportant”.⁵ This is because in Western music, there are only 12 notes, and the majority of popular music uses fewer.⁶ The musical structure of these songs is extremely similar, but so too are they similar to many songs that came before both of them. These songs utilize a popular rhythm called the “Charleston Rhythm”.⁷ As YouTube music theorist Adam Neely points out, if Artikal Sound System prevails, both parties will have to answer to OutKast, whose 1998 “Rosa Parks” sounds very similar to both songs.⁸

Artikal Sound System has a high burden to prove that their song established enough truly original elements to warrant copyright protection in this case. However, the virality of comparisons between these songs may spell trouble if this case goes to a jury, who are perhaps more persuadable than musicologists and copyright lawyers.

¹ <https://variety.com/2022/music/news/dua-lipa-levitating-copyright-infringement-lawsuits-1235198010/>

² <https://www.reuters.com/article/us-music-blurredlines/marvin-gaye-family-prevails-in-blurred-lines-plagiarism-case-idUSKBN1GX27P>

³ <https://www.14sb.com/blog/copyright-infringement-musical-compositions-musicians-need-to-know/#:~:text=To%20prove%20a%20copyright%20infringement,proven%3A%20access%20and%20substantial%20similarity.>

⁴ <https://www.vice.com/en/article/wxdbmq/the-dua-lipa-lawsuits-could-cost-her-millions-according-to-a-lawyer>

⁵ <https://variety.com/2022/music/news/dua-lipa-levitating-lawsuits-explained-1235204715/>

⁶ *Id.*

⁷ https://www.youtube.com/watch?v=HnA1QmZvSNs&ab_channel=AdamNeely

⁸ *Id.*