To: The Council of Plagiarism Arbiters

From: John Zhang, Jesse Bates, and Kevin Zhang

Date: 11 November 2014

RE: Glee! - Whose Song is it Really?

Case Study

In the January of last year, Glee, a popular musical comedy-drama television series, and Fox, the network on which Glee is aired came under fire for allegedly stealing the work of indie singer-songwriter Jonathan Coulton (Lowder). Jonathan Coulton, famous for his songs in video games such as Portal, Portal 2, and Left for Dead 2, had also created a cover of Sir-Mix-A-Lot’s 1992 hit single “Baby Got Back”, in which he added a melody to the song, which was originally a rap, as well as a few of his own original lyrics (Lowder). On January 18th, 2013, Coulton posted on Twitter: “Hey look, @GLEEonFOX ripped off my cover of Baby Got Back...Never even contacted me. Classy” (Hamilton). His fans, after seeing the post, quickly found that “the phrasing, the instrumentation, even the reharmonization at ‘Baby Got Back’ was all identical...even the key was identical” (Hamilton). Despite social media outcry towards Fox and a letter written from Jonathan to the station in protest, the episode containing the song was still aired on television. Furthermore, Fox responded to Coulton’s letter, telling him he “should be happy for the exposure” (Sottek). Although Coulton did not end up taking legal action, he gained a great deal of publicity from the skirmish and re-released his version of “Baby Got Back” on Itunes, promising to donate the proceeds made to charity (Catalano). His fans and followers also posted negative reviews on the Glee cover of Coulton’s cover of “Baby Got Back”, bringing the rating of the song down to one-and-a-half stars (Catalano). However, one question still
remains unanswered: Did Glee commit an act of plagiarism and/or break U.S. copyright law when they used Coulton’s adaptation of the song? To answer this question, the copyright laws of the music industry, and the intricacies of music copyright law when it comes to cover albums must be reviewed.

**Current Copyright Laws in the Music Community**

Academic Guillaume Laroche references the work of renowned legal scholar Alan Latman in his essay “Striking Similarities: Toward a Quantitative Measure of Melodious Copyright Infringement”, who provided a list of criteria which must be met for music to be considered plagiarized (Laroche 43). According to Alan Latman, for someone to be found guilty of plagiarism, three points must be proven true (43). First off, the plaintiff “must prove access by the defendant to his or her musical work” (43). A point to note here is that if the work of the defendant is a copy or near-copy of the accuser’s work, then that fact in itself is sufficient to prove that the defendant had access to the accuser’s musical work. Next, the “plaintiff’s materials must be protected by a valid copyright...one is not entitled to sue for infringement if one is not the owner of a copyright for the work involved in the dispute” (43). Finally, “The defendant must have copied a ‘substantial’ amount of material”, where the word “substantial” refers to any “prevalent feature of a musical work” (43). While these rules are often relatively clear-cut when it comes to original music, music copyright laws are more convoluted when it comes to covers. To release a recorded CD or digital cover version of a song, the musician in question must obtain a compulsory license, also known as a mechanical license, from the US Copyright Office (Garon), by sending in an application and paying a government set-rate fee to the owner of the song in question. This compulsory license gives the musician the right to release his derivative work to the public (Garon). However, it does not place the cover under the protection of copyright law. A cover which is
protected by copyright law is known as a “derivative work”. According to the U.S. Copyright Office, “To be copyrightable, a derivative work must incorporate some or all of a ‘preexisting’ work and add new original copyrightable authorship to that work” (“Copyright in Derivative Works and Compilations” 1). Furthermore, and most importantly, “the arranger of a cover cannot receive a copyright on the new version without the express permission of the original copyright owner” (Garon).

**Similar Cases**

In a past case relevant to this one, *Lyles vs. Capital - EMI Music, Inc.*, recounted by Judge Elizabeth Deavers, Lyles claims Katy Perry, Usher Raymond, Taio Cruz, Lukasz Gottwald, and David Guetta all copied his songs. In the case of *Someone* by Katy Perry and *Without You* by David Guetta and Taio Cruz, although Lyles did indeed create the songs and label his works, he failed to obtain copyright protection on the compact disks that contained his music (Deavers). Eventually, the court decided that, “Upon review of Plaintiff's Complaint, together with its attachments and the discs, the Court is unable to reasonably infer that Plaintiff registered the song *Someone* or *Without You*” (Deavers). His CD’s did have the songs that were similar to Katy’s and Usher’s music, but according to Deavers, one of the CD’s had a label saying “unfinished remixes”, which obviously means Lyles did not finish nor publish the CD (Deavers). Since he didn’t register the disks that contained those two songs, they were not copyrighted and were not officially owned by Lyles (Deavers). Therefore, Capitol - EMI Music, Inc. was legally allowed to use his music without having to ask him for permission (Deavers).

In another “case”, outlined by Kristy Turnquist in her article, “In tonight's finale, 'Glee' uses an arrangement from University of Oregon a cappella group Divisi”, *Glee* used the work of an a cappella
group called Divisi. Divisi did an a cappella cover of the song “Yeah!” by Usher (Turnquist). Glee did in fact copy the song note for note from Divisi and had even discussed a deal with Divisi before breaking off the deal and using the song anyways (Turnquist). Although Glee did steal the song from Divisi, no legal action was taken against Glee. According to Peter Hollens, who wrote and produced the cover of “Yeah!”, "Unless an a cappella group gets permission from the original artist, ...the arrangement isn't covered by any copyright or legal protection" (Turnquist).

**Analysis of Ethics/Discussion**

According to Porter, intertextuality is simply “the principle that all writing and speech...and signs...arise from a single network” (Porter 34). As music is a means of discourse, it also must be part of this web of intertextuality that connects human media. Music is simply intertextuality in sound in addition to words. In this case, Coulton’s musical work drew inspiration from Sir-Mix-A-Lot’s “original” work, and Glee’s cover of Coulton’s version of “Baby Got Back” drew heavily off of both Coulton and Sir-Mix-A-Lot’s music. It’s generally accepted that “nothing escapes intertext”, and that using other’s work for inspiration isn’t inherently wrong (Porter 34). Indeed, music is all about all about how well one can throw different rhythms and themes, which have surely been used before, together to create something revolutionary and unique for all to listen to. While it’s fine for musicians to present new ideas that build on old ideas, it’s frowned upon when they recycle old ideas without giving credit to the old or contributing anything new. It’s clear that Glee copied Coulton’s arrangement of “Baby Got Back”; the two arrangements share the same melody, harmonies, key, instrumentation, and lyrics (the Glee version even kept the reference to “Johnny C” in Coulton’s version) (Lowder). Furthermore, it’s clear that Glee didn’t give Coulton add anything new to the arrangement, or give Coulton any express credit.
Therefore, we believe that logically and morally, *Glee* and *Fox News* should be considered guilty of plagiarism.

Despite the fact that we strongly believe that *Glee* and *Fox News* are, in a sense, *morally* guilty of plagiarism, they cannot be punished by the United States legal system. As stated earlier, there is a list of criteria that must be met in order for a work to be considered punishable by copyright law. The first criterion is that the Coulton must prove that *Glee* accessed his work. This is simple to do; they mentioned Coulton’s name in their rendition of the song, which was not present in any cover except Coulton’s (*Hamilton*). Another aspect which must be proven is that *Glee* copied a substantial amount of Coulton’s arrangement. This is also simple; *Glee* copied Coulton’s melody, which definitely qualifies as substantial (*Hamilton*). Finally, Jonathan’s version of “Baby Got Back” must be protected by a copyright. Coulton did obtain a compulsory license (*Lowder*). However, he did not receive permission from Sir-Mix-A-Lot to create a derivative work, which would be copyrighted by law (*Lowder*). Therefore, his cover was not protected by a copyright, and *Glee* was legally allowed to use it in their show, without giving him credit. This verdict is also reinforced by our precedents. In both precedents, even though work was clearly used without reimbursement of the author, this plagiarism was technically legal because the work was not protected by law.

**Recommendations**

Because of the fact that *Glee* lawfully used Coulton’s cover in their episode, the Judgement Panel cannot exercise any legal punishment. However, whether or not *Glee* broke copyright law is completely different from whether or not *Glee* plagiarized. As stated before, we believe that this is a
clear instance of plagiarism. Therefore, we urge the panel to release a statement, visible to the public, condemning Fox’s, as well as *Glee*’s actions, for the irresponsible disregard of the work of others. Furthermore, we believe that the panel should try to convince Fox to release an apology to Jonathan Coulton, and to give him credit for making the cover.

In addition to the punitive actions which we believe should be taken, we also recommend the council take action to prevent such an occurrence from happening in the future. We hope that the council will talk to major compulsory license agencies, such as the Harry Fox Agency, and try to convince them to make it clear to their clients that a compulsory license does not place one’s work under the protection of copyright law. Furthermore, if possible, we would like the council to convince these agencies to add a service where clients can ask the agency to request permission from the artist who created the original song to create a “derivative work”. We believe that these actions can help to correct the wrongs which have been committed, and prevent such cases from happening in the future.

**Works Cited**


