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Does the stairway to heaven go through the Eastern District of Pennsylvania?

By [David Post](#)
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A lawsuit brought against the members of Led Zeppelin on behalf of the heirs of Randy Craig Wolfe (aka Randy California), alleging that the iconic opening riff of Stairway to Heaven – a song that routinely shows up at or near the top of the lists of “greatest rock and roll songs of all time” for reasons I find completely mystifying – was copied from a song released by the band Spirit (“Taurus”) several years earlier is back in the news, the [subject of a NPR story a few days ago](#) (“Did Led Zeppelin Plagiarize ‘Stairway’? A Pa. Judge Will Decide”). [In addition to a claim for copyright infringement, the plaintiff is also claiming for “falsification of rock n’ [sic] roll history,” a cause of action with which I’m not familiar.]

The NPR story was a little weak concerning the legal side of things. It spoke of the court deciding to “move forward” with the case, but all I can find in the docket recently is [a motion filed a couple of days ago by the defendants to dismiss the claim on the grounds of lack of personal jurisdiction](#). Worse, as it’s title (“A PA judge will decide”) suggests, it kept referring to decisions “the judge” is going to have to make, and how “the judge” will have to listen to the two songs and decide how similar they are; but [the Complaint has demanded a jury trial](#) and as far as I can tell that demand (to which plaintiffs are constitutionally entitled) has not been rejected for some reason, so “the judge” will have, actually, a much more limited decision-making role.

But beyond that, and putting aside the merits (or lack thereof) of the infringement claim (and the effect it might have on rock ‘n roll history), there is actually an interesting legal wrinkle here. You might be wondering – isn’t there some sort of statute of limitations in copyright cases? Can you really bring a lawsuit in 2014 arising out of an infringement of copyright alleged to have taken place in 1971? The answer is: Yes, under our oh-so-generous copyright law, you can!! There is indeed a statute of limitations for claims brought under the Copyright Act – 3 years. But the Supreme Court just this past term (in the case of *Petrella v. MGM*) endorsed what it called the “separate accrual theory” applied to copyright claims, under which

“ . . . when a defendant commits successive violations, the statute of limitations runs separately from each violation. Each time an infringing work is reproduced or distributed, the infringer commits a new wrong. Each wrong gives rise to a discrete ‘claim’ that ‘accrue[s]’ at the time the wrong occurs.”

In other words, if (as alleged) Stairway to Heaven was copied from Taurus – if, in copyright-speak, StH incorporates a substantial amount of the protected expression taken from Taurus – the wrongful, infringing act is actually not the copying itself; there is an infringement each time

“Stairway to Heaven” is publicly performed (on the radio, say, or in live performance), and each time a CD is pressed containing “Stairway to Heaven” on it, and each time one of those CDs is distributed to the public ... because each of those would be deemed to be a violation of the copyright holder’s rights. And each copyright infringement claim based on those infringements has a 3-year lifespan. It means that an aggrieved plaintiff can only recover damages for the infringements that occurred during the 3 years prior to the filing of the lawsuit, all other earlier claims having been extinguished. But – at least with a work as spectacularly popular as this one – that can amount to a significant recovery.

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