

Taylor Swift Must Face ‘Shake It Off’ Case After Remand

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Robert J. Burger

A Los Angeles federal court recently ruled that Taylor Swift must face claims that her hit “Shake It Off” infringed the copyright in a 2001 song, demonstrating how hard it can be to quickly resolve copyright complaints.

The lyrics in question are, “Cause the players gonna play, play, play, play, play / And the haters gonna hate, hate, hate, hate, hate” in the chorus of Swift’s 2014 hit. According to the suit, these lyrics rip off the 2001 song “Playas Gon’ Play,” performed by the group 3LW, which features the lyrics “Playas, they gonna play / And haters, they gonna hate.”

The Ninth Circuit ruled that the district court shouldn’t have found, at an earlier stage, that the lyrics weren’t original enough to merit copyright protection. The limited amount of work copied may result in “thin” protection, and the fact that Swift didn’t copy the list verbatim may prove decisive down the line, copyright attorney Robert J. Burger of McCarter & English LLP said. Burger also said the Ninth Circuit, and now the district court on remand, got it right by not subjectively deciding the case on the pleadings alone.

“I was surprised by the district court to begin with. It was judged as not original as a matter of law without really analyzing it, and I don’t think that’s right,” Burger said.