

Suing for a song

... OR WHY
LAWSUITS
TOP THE
HIT PARADE

IT seems that whenever you turn these days, a popular songwriter is being sued. Huey Lewis is suing Ray Parker, Jr. over Ghostbusters; someone is suing Boy George over Karma Chameleon.

It has become so prevalent that Musician magazine has an article in its May issue called Songstealing: Behind the Lawsuit Fever.

New York lawyer Jeffrey Graubart specializes in music-related subjects such as copyright infringement and non-payment of royalties. He gave a lively discussion on the former as a guest panelist at the Institute of Communication Arts's Artist Access seminar at the Institute's Burnaby campus Sunday afternoon.

He says the British music industry looks "in horror" at the proliferation of song-related lawsuits in the U.S. He says lawyers in his field refer to record companies as "deep pocket" parties because they can afford to battle litigation — and afford to pay up if they lose. At stake is millions of dollars in royalties.

Graubart says there are three things to consider when deciding whether or not a song has been nicked: the similarities could be purely coincidental, the two songs could have common source material in certain blues riffs that has become part of every blues musician's vocabulary, for example, or that, indeed, it has been copied, which is copyright infringement and is actionable.

The key is whether or not the artist being sued had access to the material. "If your song was locked up in a drawer and the Bee Gees played it on the radio," says Graubart, "the Bee Gees couldn't possibly have heard it" and the plaintiff would have no leg to stand on. But if the tunes are "strikingly" similar, access isn't quite as important.

He detailed two well-known cases, playing tapes of the recordings in question to let the audience make up their own minds about the validity of the lawsuits. One involved a Chicago man, Ronald Skelly, who sued the Bee Gees over How Deep is Your Love, and the other, George Harrison, who lost a case that claimed My Sweet Lord was a rewrite of He's So Fine, a 1963 hit by the Chiffons.

In both cases, tapes showed that there were striking similarities between the songs in dispute. The key in Skelly's case was access. He had sent dem-



JEFFREY GRAUBART: copy at your peril

Bill Nease

onstration copies of his song, a Wichita middle-of-the-road number, to 15 music publishers; 11 were returned, four weren't. His case hinged on the jury believing the Bee Gees had heard his song before they recorded How Deep is Your Love a year later.

A jury decided in favor of Skelly; the judge overturned the verdict a few weeks later, on the grounds that access wasn't proved. Graubart himself said that, had the judge a better knowledge of some of the shenanigans that go on in the music industry, he might have ruled in Skelly's favor.

In Harrison's case, access was obvious: the Chiffons were on the charts at the same time as the Beatles. The judge ruled that Harrison "subconsciously" lifted the melody, without consciously realizing it. He originally awarded the plaintiff, Bright Songs, \$1,399,987 — but amended it to \$500,000 because the Beatles's former manager, Allen Klein, had purchased Bright Songs during the trial for that amount.

The judge ruled that Klein had broken the fiduciary (where a lawyer, for example, must deal in utmost good faith) duty of a manager towards his client by providing Bright Songs with confidential information, interfering with a possible out of court settlement that would have ended the suit. Harrison eventually wound up buying Bright Songs himself, so he now holds the copyright on both songs.

The problem is where to draw the line, Graubart says. Composers say that there are a limited number of notes and melodies and that they should be left free to create songs; on the other hand, if somebody steals their work, they feel ripped off, and it is copyright infringement.

"I think there's a place for the law and logic to co-exist," says Graubart. "When it's pretty damn clear that it's been stolen, we can find liability. When it's questionable, maybe we shouldn't put it on the artist."

— JOHN MACKIE