

# COPYING ORIGINAL WORK VS INFRINGEMENT

NOTABLE COPYRIGHT INFRINGEMENT CASES

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## Whose song is it?

Let's Get It On was co-written by Marvin Gaye and Ed Townsend in 1973, whilst Thinking Out Loud was co-written by Ed Sheeran and Amy Wadge in 2015. The heir to Ed Townsend's estate sued Ed Sheeran on the basis that his song constituted a copyright infringement, because it was substantially similar to the 1973 song – the structural placement and harmonies were said to be similar.

An expert musicologist on behalf of Ed Sheeran provided a report that the two songs do not share any significant structural, harmonic, rhythmic, melodic or lyrical similarities. The jury found that Ed Sheeran's Thinking Out Loud had been created independently and therefore did not infringe the copyright of Let's Get It On.

## Public performance of a song

Bringing it home, the Copyright Society of Botswana ("COSBOTS") sued Cash Bazaar Holdings contending that Cash Bazaar Holdings which operates various retail enterprises such as CB Stores, Taku, Home Corp, Furnmart, Sole Shoes and Topline continuously played copyright protected musical works without paying royalties and had not been issued a license by COSBOTS.

The court found that the playing of music in a shop constituted a public performance and as such this required a license. The court ordered that Cash Bazaar Holdings disclose to COSBOTS all the information relating to its public performance of copyright protected musical works, at all its stores in Botswana as needed by COSBOTS to allow them to collect royalties on behalf of the owners.