

REF. CAS-037

'How Is It Gonna Be'

PRS Tunecode 289716AT

as composed and authored by

Patrice Adekalom, Mickael Zieben, Gizem Dinc

(hereinafter referred to as Work A)

and

'Slide'

PRS Tunecode 275485FT

as composed and authored by

Quavious Marshall, Adam Wiles, Christopher Breaux, Kiari Cephus, Kirsnick Ball

(hereinafter referred to as Work B)

Musicological Report

Introduction

We have been asked by Mickael Zieben to provide our opinion relating to the above listed compositions whereby the principal area of concern is whether Work B infringes the copyright in Work A.

Mickael Zieben has provided us with digital recordings of both Works in the form of .mp3 files entitled:

- 'HOW IS IT GONNA BE - instrumental version.mp3' ("Work A")
- 'Calvin Harris - Slide (Instrumental).mp3' ("Work B")

We note that both recordings contain the word "instrumental" in the file names, implying that versions exist of each composition that contain vocals and/or lyrics (i.e. a "Literary Work").

However, we have been asked to compare only the musical works of each composition. Accordingly, our comments shall refer to each Work as embodied in the respective recordings listed above.

We have been informed by Mickael Zieben that Work A was composed in 2016.

The Performing Right Society (PRS) database indicates a work creation date of 28th February, 2017 for Work B.

Basic Compositional Analysis – Work A

With a time signature of 4/4 (four crotchet beats to a bar) and a tempo of approximately 110 BPM (beats per minute) Work A is 4'06" in duration (file length 4'12") or one hundred and thirteen bars.

Predominantly, the instrumentation comprises: drums and percussion; electric rhythm guitar; electric bass guitar; synth keys and pads; synth horns; synth piano; synth strings; and additional melodic synth parts ('fills' and 'effects').

REF. CAS-037

Work A is centred on the key of C minor but without the sharpened leading note¹ (B \sharp) which would be required to confirm the key. Technically, therefore, Work A is written in C Aeolian mode, which mode is defined by a 'flat-seventh' i.e. the seventh degree/note in the scale is flattened (B \flat) as compared with C minor which is defined by a sharpened seventh (B \sharp).

The Work comprises a rich tonality through the use of chords such as seventh chords² in various parts, including the rhythm guitar, synth keys and synth piano parts. This type of harmony is typical of the Funk/House/Soul genre in which the Work is written.

The Work is characterised by use of mellow synth keys and piano, a laidback muted guitar and a repetitive rhythm guitar which also contributes to a funky dance 'groove', together with the drums, percussion and bass.

The primary melodic part ('instrument') in Work A is the synth keys part which occurs throughout almost the entirety of the Work (intermittently accompanied and/or substituted by the piano part) and which fulfils both a melodic and harmonic role.

We transcribe the synth keys and piano parts, as heard in bars 1-4, as follows:

Figure 1 ('the keys riff'):



Predominantly, Work A is based on an alternating two chord progression of A \flat major⁷ to G minor⁷ resolving at phrase endings to C minor⁷ (with an added 'D') or chords VI⁷ - v⁷ - i⁷ (add 9).

The rate of alternation of chords varies from one chord per bar, as can be heard in the 8-bar introduction section, to two chords per bar as can be heard in bars 9 to 16.

The differing rate at which the chords alternate, combined with the introduction of different instrumental parts, helps to define the majority of Work A by 8-bar sections for example, the drums and percussion entering at bar 9 marks the beginning of an 8-bar section.

In bars 17-24 the keys riff of the introduction returns in a more melodically developed form.

We transcribe the keys riff as heard in bars 17-24, as follows:

¹ Leading note is the seventh degree ('note') of a scale

² Seventh chords are chords which comprise a triad (a three note chord) with an additional note forming an interval of a seventh (a gap of seven notes) from the bottom note of the chord (the root) to the top note.

REF. CAS-037

Figure 2 (the keys riff, developed):



Overall Work A is largely repetitive in nature but maintains structure and development through such compositional techniques as a varying rate of the alternation of chords; substitution of chords³.

For example, in bars 25-32 the chord progression is developed through the movement of the bass line, which descends. This results in a 'substitute chord' with the creation of an F minor⁷ chord, or chord iv⁷ of C Aeolian through the combination of the bass and keyboard parts.

Work A also comprises additional compositional techniques which include variation of the texture of parts and the use of melodic 'interjections and fills' as well as a consistent melodic and harmonic keyboard part (be it synth keys or piano).

Basic Compositional Analysis – Work B

With a time signature of 4/4 (four crotchet beats to a bar) and a tempo of approximately 104 BPM (beats per minute) Work A is 3'50" in duration (file length also 3'50") or one hundred bars.

Predominantly, the instrumentation comprises: drums and percussion; synth piano; synth keys and pads; bass guitar; muted electric guitar; electric rhythm guitar; electric hand claps; and synth 'effects'.

The Work is centred on the key of C# minor but without the sharpened leading note (B#) that would be required to confirm the key. Technically, therefore, the Work is written in C# Aeolian i.e. the seventh note in the scale is flattened (Bb) as compared with C# minor which is defined by a sharpened seventh (B#). Use of the Aeolian mode is quite common in 'pop' music where the fifth chord (also known as the 'dominant' chord) in the scale of a particular key is substituted with a flat seventh chord.

Work B comprises use of chords such as seventh chords which provide a tonal 'colouring', as can be heard in the piano part. Use of such chords is commonplace in the Funk/Nu-Disco/House genre in with Work B is written.

The entirety of Work B is based upon an 8-bar piano 'riff' as can be heard in the 16-bar introduction section of the Work.

We transcribe the piano riff, as heard in bars 1-8, as follows:

³ In music theory, chord substitution is the technique of replacing one chord with another chord in a chord progression.

REF. CAS-037

Figure 3 (the piano riff):



The piano riff comprises a 4-bar antecedent phrase (itself divisible into a 2-bar antecedent / 2-bar consequent 'sub-phrases') followed by a 4-bar consequent phrase which is almost identical to the antecedent phrase, the most notable difference being the final two crotchet beats of the fourth bar.

We transcribe the consequent phrase of the piano riff as follows:

Figure 4 (consequent phrase of the piano riff):



The piano riff is based on a repeated chord progression of A major⁷ to G# minor⁷ to C# minor⁹ (sus 4) followed by F# minor⁹, G# minor⁷ and A major⁹ or chords VI⁷ - v⁷ - i⁹ (sus 4) - IV⁷ - v⁷ - VI⁷.

In the above chord progression, A major⁷ is substituted at the start of the second half of the phrase by F# minor⁹ or chords VI⁷ is substituted by IV⁷.

Predominantly, the piano riff performs a substantial role within Work B. In sections of the Work where the piano part is omitted from the texture of parts, a synth keys part or parts reinforces the chord progression with a simplified or 'reduced' version of the piano riff.

In this sense the chord progression, repeated throughout the Work as it is in various synth key parts, fulfils a melodic as well as harmonic role as well as providing the basis of the Work as a whole.

Other parts enter and exit the texture of parts, most of which comprising a riff derived from or based upon the piano riff, for example the rhythm guitar riff which enters at bar 77 after the break.

Comparison of Work A with Work B

We identify the following commonalities between Work A and Work B:

1. The Works comprise comparably similar instrumentation, predominantly: synth keyboard instruments; electric bass; electric rhythm guitar; muted electric guitar; piano; percussion; effects.
2. The Works are of comparably similar tempos:
 - a. Work A, 110 BPM;
 - b. Work B, 104 BPM
3. The Works are of comparably similar durations

REF. CAS-037

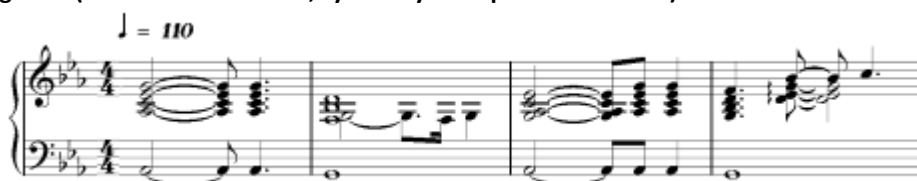
- a. Work A, 4'06"
 - b. Work B, 3'50"
4. Both Works are composed using Aeolian mode
 5. The Works are of comparably similar genres, style, mood and character
 6. The Works feature comparably similar tonality and harmonic language e.g. with use of seventh chords
 7. The Works comprise comparably similar chord progressions:
 - a. Work A, $V|I^7 - v^7 - i^7$ (add 9);
 - b. Work B, $V|I^7 - v^7 - i^9$ (sus 4)
 8. The Works comprise comparably similar compositional techniques, such as:
 - a. use of substitute chords
 - b. a thickening and thinning of the texture of parts
 - c. repetition of a central melodic and harmonic riff throughout various instrumental parts
 9. Both Works are based upon a central melodic and harmonic keyboard riff from which the Work arguably could be recognised/identified
 10. The Works comprise comparably similar melodic content

We focus now on points 9 and 10 of the above list and explore in more detail:

In the basic compositional analysis of Work A we transcribed the synth keys and piano as heard in the introduction of the Work (refer to Figure 1, page 2)

In order to visualise more what is heard in this section of Work A, we transcribe the combined synth keys and piano parts as follows:

Figure 5 (Work A introduction, synth keys and piano combined):



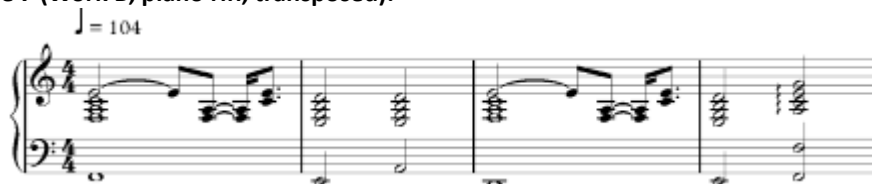
In order to compare the keys riff of Work A with the piano riff of Work B, we transpose Figure 5 to A minor as follows:

Figure 6 (Work A introduction, synth keys and piano combined, transposed):



We now transpose Figure 3 (page 4) and Figure 4 (page 4), the antecedent and consequent phrases of the piano riff as heard in the introduction of Work B, as follows:

Figure 7 (Work B, piano riff, transposed):



REF. CAS-037

(Figure 7 cont.)



We can now lay the above transposed riffs of each respective Work side by side, as follows:

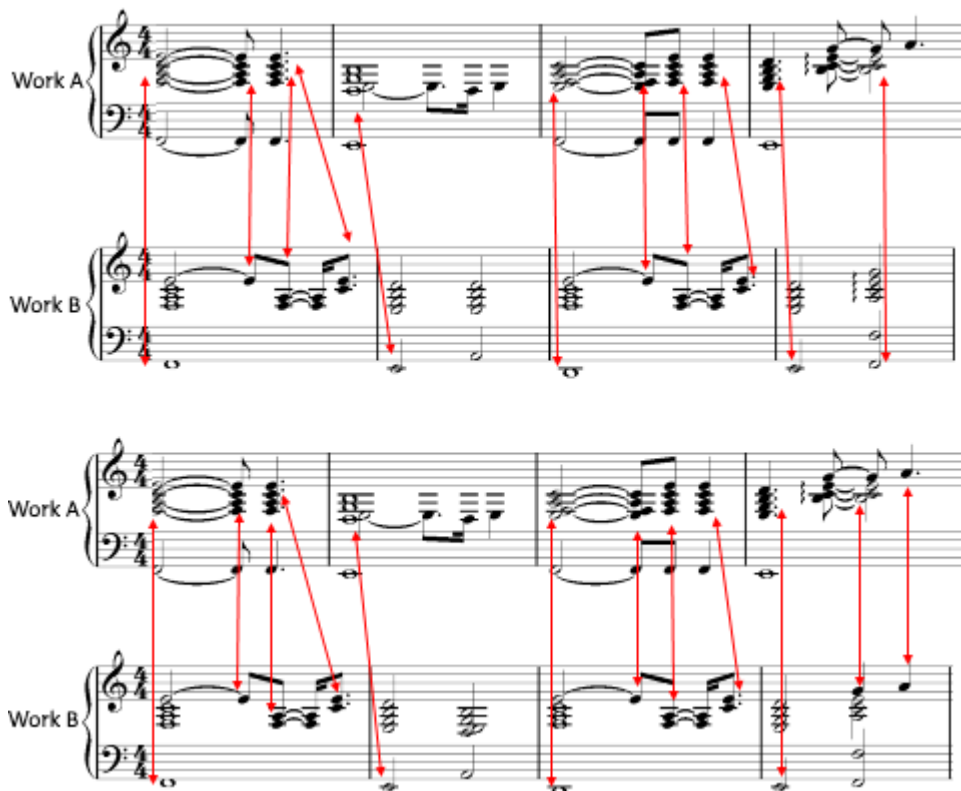
Figure 8 (transposed riffs, side by side):



We highlight in red, areas where we identify corresponding rhythms and/or pitches between the two riffs, as follows:

REF. CAS-037

Figure 9 (highlighted corresponding sections, the keys riff Work A and the piano riff Work B):



From the above Figure 9 one can visualise the extent of harmonic and melodic similarity between these aspects of the two Works, both in terms of pitch and of rhythm.

Where the rhythms are not identical they are yet still similar e.g. use of 'held' notes tied to syncopated rhythms (dotted crotchets and quavers etc.)

The final bar (bar 8) of Work B is almost identical to the bars 4 and 8 of Work A, and also features the same rising melody of pitches G to A to end the melodic phrase.

In Figure 2 (page 2) we transcribed the keys riff of Work A in its more developed form.

By applying the same process of transposing and laying alongside the transposed transcription of the piano riff of Work B (refer to Figure 7, pages 5-6) we can highlight in red where we identify corresponding rhythm and/or pitches between the two riffs, as follows:

REF. CAS-037

Figure 10 (highlighted corresponding sections, developed keys riff Work A and the piano riff Work B):



In the above Figure 10, as with Figure 9, it is possible for one to see the extend of similarity between this second aspect of Work A as compared with the same aspect of Work B as was compared in Figure 9.

Here one can again see long held values of notes tied to syncopated quaver / dotted quaver / semi-quaver rhythmic patterns (bars 1, 3, 5, and 7). One can also clearly see the coinciding use of minims in bars 2, 4 and 6.

When considering Figures 9 and 10 together it is evident that there is substantial similarity between the synth keys and piano part of Work A (which part fulfils a significant and substantial compositional role in that Work) and the piano part of Work B (which part fulfils a significant and substantial compositional role in that Work) and which riff is emulated and replicated in other instrumental parts, throughout Work B.

Conclusion

Based on the comparative analysis we have undertaken between Work A and Work B, we consider that there are striking similarities between the two Works.

We acknowledge that in the context of music copyright, such aspects as highlighted in points 1-8 (pages 4-5) would not typically on their own be considered protectable elements of a musical work; however, in this context we consider the amount of such commonalities between Work A and Work B to be significant.

Whilst we have not be instructed to carry out such research, we have also considered that whether it may be possible to identify other musical works which, on an individual basis, share one of some of the commonalities between the two Works as highlighted in points 1-8 (pages 4-5).

Whilst we expect that this may indeed be possible, in our view it would be far harder to identify a musical work that incorporates them all, in the way that Work B does.

We consider that the selection of these compositional features by the authors of Work A and their incorporation in the

REF. CAS-037

overall composition, adds weight to the originality of the Work.

Further, we consider that there to be substantial similarity between the respective synth/key/piano riffs of Work A and Work B, such that we are of the view that there is musical evidence that could support a potential claim of copyright infringement.

Such is the compositional importance of each respective Works' riff, melodically and harmonically (as we have described), and such is the extent of the similarities between the riff of Work B with the riff of Work A, we consider that Work B arguably could be described as a new arrangement of Work A.

Advisory

The opinion expressed herein is not legal advice and should not be interpreted as such.

Whilst we are providing our professional and expert opinion in regard to this matter and have used our reasonable endeavours to help ensure that the information we provide is informed and relevant, we cannot take responsibility for any omissions or inaccuracies or for any consequences arising therefrom.

Our views are expressed completely impartially and objectively based on our analyses of both Works. Our conclusions would be the same irrespective of the party that had consulted us.

For the purposes of this report, we have focussed on what we consider to be the most substantial areas of possible contention between Work A and Work B, namely the synth/key/piano riffs.

We reserve the right to add to and/or amend the contents of this report should we subsequently be required to do so.



Ivan Chandler and Christian Siddell BMus
Musicologists and Music Copyright Consultants
13th March, 2019