

EXHIBIT C:

“We Run  
Things”

Composition

Miley Cyrus – We Can't Stop – released 2013

Michael May (Flourgon) – We Run Things – released 1988

1. We Can't Stop contains an interpolation of We Run Things in the chorus in three instances from 1:16 to 1:24, 2:28 to 2:36 and 3:29 to 3:36.
2. We Can't Stop was written by Ricky Walters, Theron Thomas, Timothy Thomas, Douglas Davis, Pierre Ramon Slaughter and Mike Williams.
3. We Can't Stop provides a song writing credit for a similar interpolation – taken from the song La-di-da-di by Dougie Fresh and Slick Rick (Ricky Walters and Douglas Davis) – similar interpolations are provided writing credits – see e.g., Minnie Riperton for Turn Your Lights Down Low – Bob Marley feat. Lauryn Hill – which uses an even smaller sample.
4. See MCA Music v. Earl Wilson 425 F. Supp. 443 (S.D.N.Y. 1976)
5. See Jean et al. v. Bug Music No. 00 Civ. 4022, 2002 WL 287786, 2002 U.S. Dist. LEXIS 3176 (S.D.N.Y. Feb.25, 2002) – differentiate because this is not a common phrase – did not exist prior to Mr. May's song,
6. WB had access to We Run Things –
7. Theron Thomas and Timothy Thomas, professionally known as R. City or Rock City are natives of the US Virgin Islands and have written numerous songs with reggae influence and have collaborated with reggae artists. Their writing credits include the reggae song Man Down by Rihanna and Crazy Love (featuring reggae singer Tarrus Riley).
8. We Run Things was a number one song in Jamaica and is widely known throughout the reggae music world. Mr. May has toured and performed in the U.S. Virgin Islands. It has been included in several mixtapes that compile songs from that era.
9. There is substantial similarity between the two songs - We Can't Stop includes both lyrics and melody from We Run Things in the chorus of We Can't Stop
10. We Can't Stop has sold over 3.5 million copies in the US. (Wikipedia)
11. Bangerz – the album of which it is the lead single, has sold over 5 million copies. (Wikipedia)

[https://en.wikipedia.org/wiki/We\\_Can%27t\\_Stop](https://en.wikipedia.org/wiki/We_Can%27t_Stop)

<https://en.wikipedia.org/wiki/Bangerz>

But what that analysis fails to account for, we think, is the relative importance of these differences as compared to what the songs reasonably could be heard to have in common: their choruses. Even when quantitative majorities of two works bear little resemblance, courts routinely permit a finding of substantial similarity where the works share some especially significant sequence of notes or lyrics. See *Swirsky v. Carey*, 376 F.3d 841, 851 (9th Cir. 2004) (overlap in first measure of chorus—seven total notes—enough to make pop songs substantially



similar); *Fisher v. Dees*, 794 F.2d 432, 434 & n. 2 (9th Cir. 1986) (similarity in first six measures of songs, amounting to twenty-nine seconds on a forty-minute album, enough to constitute appropriation of album); *Elsmere Music, Inc. v. Nat'l Broad. Co.*, 482 F. Supp. 741, 744 (S.D.N.Y.), *aff'd*, 623 F.2d 252 (2d Cir. 1980) (four-note phrase accompanying lyrics "I love New York" protectable because it is "the heart of the composition"); \*494 *Santrayll v. Burrell*, No. 91 Civ. 3166, 1996 WL 134803, at \*1-2 (S.D.N.Y. Mar. 25, 1996) (repetition of the phrase "uh-oh" four times in a distinctive rhythm for one measure is protectable). And we think it is clear that when it comes to popular music, a song's chorus may be the kind of key sequence that can give rise to intrinsic similarity, even when works differ in other respects.

It is the chorus—often termed the "hook," in recognition of its power to keep a listener coming back for more—that many listeners will recognize immediately or hear in their minds when a song title is mentioned. As the part of a song that is most often repeated and remembered, a chorus hook is important not only aesthetically but also commercially, where it may be central to a song's economic success. See, e.g., Gary Burns, *A Typology of 'Hooks' in Popular Records*, 6 *Popular Music 1* (1987) (cataloging characteristics and definitions of term "hook," and noting that "the hook is 'what you're selling'" and that hooks are "the foundation of commercial songwriting, particularly hit-single writing"). From "Respect" by Aretha Franklin to "Seven Nation Army" by the White Stripes, the choruses or hooks of popular music songs are often disproportionately significant, relative to the amount of time or number of measures they occupy. See *id.* at 1 ("[V]irtually no hit record is without a bit of music or words so compelling that it worms its way into one's memory and won't go away."):

After listening to the Copeland song and the Bieber and Usher songs as wholes, we conclude that their choruses are similar enough and also significant enough that a reasonable jury could find the songs intrinsically similar. The most obvious similarity, of course, is the shared chorus lyric, mirrored in the songs' titles: "I[,] need somebody to love." As Bieber and Usher point out, this phrase is common in popular music, appearing most famously in songs also titled "Somebody to Love" by psychedelic-rock band Jefferson Airplane and arena-rock band Queen, and common lyrical phrases generally are not copyrightable, see *Peters*, 692 F.3d at 635-36 (discussing rap songs' use of the maxim "what does not kill me, makes me stronger"). That might preclude consideration of this similarity under the extrinsic prong, where analysis is preceded by analytic dissection to determine which portions of a work are protectable. But as Bieber and Usher concede, under the intrinsic prong, we do not engage in analytic dissection. Instead, we examine the chorus's lyrics together with the accompanying music, taking the works in their entirety, as an ordinary musical listener would.

And when we listen to the choruses that way, and in the context of the entire songs, we hear the kind of meaningful overlap on which a reasonable jury could rest a finding of substantial similarity. It is not simply that both choruses contain the lyric "somebody to love"; it is that the lyric is delivered in what seems to be an almost identical rhythm and a strikingly similar melody. To us, it sounds as though there are a couple of points in the respective chorus melodies where the Bieber and Usher songs go up a note and the Copeland song goes down a note, or vice versa. In our view, however, a reasonable jury could find that these small variations would not prevent a member of the general public from hearing substantial similarity.<sup>4</sup>



Excerpted from *Devin Copeland v. Justin Bieber, et al.*,

789 F. 3d 484 (4th Cir. 2015)

First, and most importantly, the substantial similarity test in all cases considers only “the qualitative and quantitative significance of the copied portion in relation to the *plaintiff's* work as a whole.”<sup>43</sup> Its significance to the defendants’ works is irrelevant.<sup>44</sup> Were it the other way around, a devious defendant could evade liability for copying substantial or qualitatively significant portions of another’s work merely by scattering those portions within his own, lengthy work.<sup>45</sup> Such a rule would fly in the face of Justice Story’s admonition more than 170 years ago that the focus of copyright law is on the *original* work, not the subsequent one: “If so much is taken, that the value of the original is sensibly diminished, or the labors of the original author are substantially to an injurious extent appropriated by another, that is sufficient, in point of law, to constitute a piracy.”<sup>46</sup> Ultimately, of course, the fact that defendants allegedly sampled “oh” 42 times in *Run This Town* says absolutely nothing about the recording’s qualitative significance to *Hook & Sling Part I* or to Eddie Bo’s performance thereof in the *Hook & Sling Master*.

~~We Can't Stop takes the chorus of We Run Things~~

Excerpted from *TufAmerica, Inc. v. Warner Bros. Music Corp., et al.*

67 F. Supp. 3d 590 (S.D.N.Y. 2014)