

Whose Game is On? Carrie Underwood and NBC Sued Over SNF Song

July 09, 2019 | Blog | By [Susan Neuberger Weller](#)

VIEWPOINT TOPICS

- Sports & Entertainment
 - Trademark & Copyright
-

RELATED PRACTICES

- Trademark & Copyright
-

RELATED INDUSTRIES

- Sports & Entertainment
- Athletes and Entertainers
- Leagues, Teams, Associations & Conferences
- Stadiums and Arenas
- Sports Related Businesses
- Intercollegiate Athletics

As any football fan knows, Carrie Underwood has performed the introductory song for *Sunday Night Football* since 2013. "Waitin' All Day For Sunday Night" was the introductory song for the 2013 and 2014 seasons, and "Oh Sunday Night" was the song performed in 2015, 2016, and 2017. On September 6, 2018, *Sunday Night Football* opened with Ms. Underwood singing a new introductory song entitled "Game On" <https://www.youtube.com/watch?v=LeJotdhLS5c>. Well, this "Game" is now the subject of a copyright infringement suit in Federal District Court in New York.

In a Complaint filed last month, *Merrill, et al. v. Underwood, et al.*, case number 1:19-cv-05722 (S.D.N.Y.), songwriter Heidi Merrill and three other plaintiffs claim that through the creation and public performance of the song "Game On" by Ms. Underwood, she, NBCUniversal Media, LLC, the National Football League, and five other defendants have infringed the plaintiffs' joint copyright in their song also called "Game On." No response to the Complaint has yet been filed.

Ms. Merrill claims that she and the other three plaintiffs wrote, recorded, and created a music video in 2016 for a song called "Game On." The video is alleged to have been uploaded on March 17, 2017 to YouTube, and currently can be found at <https://youtu.be/upceJcgD-QM>. The song was featured during the broadcast of *CBS Inside College Basketball* at about the same time, and the Complaint alleges that the plaintiffs were actively marketing the song for television broadcasts of sporting events.

As part of these marketing activities, Ms. Merrill claims to have attended a conference in August 2017 that was also attended by Mark Bright, whom Ms. Merrill believed to be the producer for Ms. Underwood. She claims to have approached Bright and told him she had a song that would be a good fit for Ms. Underwood to sing as the introductory song for the 2018 NFL season. She claims that he invited her to submit the song through his assistant, which Ms. Merrill asserts to have done on August 16, 2017 by email. On October 30, 2017, Ms. Merrill received an email thanking her for the submission and stating, "I'm sorry, we're going to have to pass."

This lawsuit is about allegations of copyright infringement. Copyright protects "original works of authorship fixed in a tangible medium of expression." Copyright does not protect ideas or concepts. Among the types of works protected by copyright are musical compositions and lyrics. Copyright protection exists automatically by law from the moment a work is created in tangible form without the need for the use of a copyright notice and without obtaining a copyright registration.

A copyright owner has the exclusive right to do or to authorize a number of different activities with regard to its copyrighted work. These include reproducing the work in whole or in part, preparing derivative works based upon the original copyrighted work, and, in the case of musical works and other audiovisual works, performing the copyrighted work publicly. Copyright infringement occurs when an unauthorized third party who has had access to the original copyrighted work creates a new work that is "substantially similar" to the original copyrighted work or otherwise violates any of the other exclusive rights belonging to the copyright owner.

In their Complaint, the Plaintiffs allege that Ms. Underwood and the other defendants had access to their "Game On" song and created a substantially similar derivative work that was publicly performed without authorization. They claim that the song "Game On" performed by Ms. Underwood and featured in all seventeen weeks of the 2018 NFL season on *Sunday Night Football* is "substantially - even strikingly - similar, if not identical, to" their "Game On" song "not only in title but in many other ways, including in tempo, meter, time signature, rhythmic contours and patterns, melodic contours and patterns, hooks (including the shared key phrase of the course, "Game On"), note progression and use, and chord progression." The Plaintiffs claim their copyright has been willfully infringed and are seeking injunctive and financial relief through a jury trial.

This "game" is, indeed, "on." Stay tuned for updates as this case progresses.

Authors



Susan Neuberger Weller, Member

Susan Neuberger Weller manages the Trademark & Copyright Practice at Mintz. Susan assists clients with securing and protecting IP assets across the globe. She's worked with clients in a variety of industries, including pharmaceuticals, medical devices, software, electronics, and entertainment.