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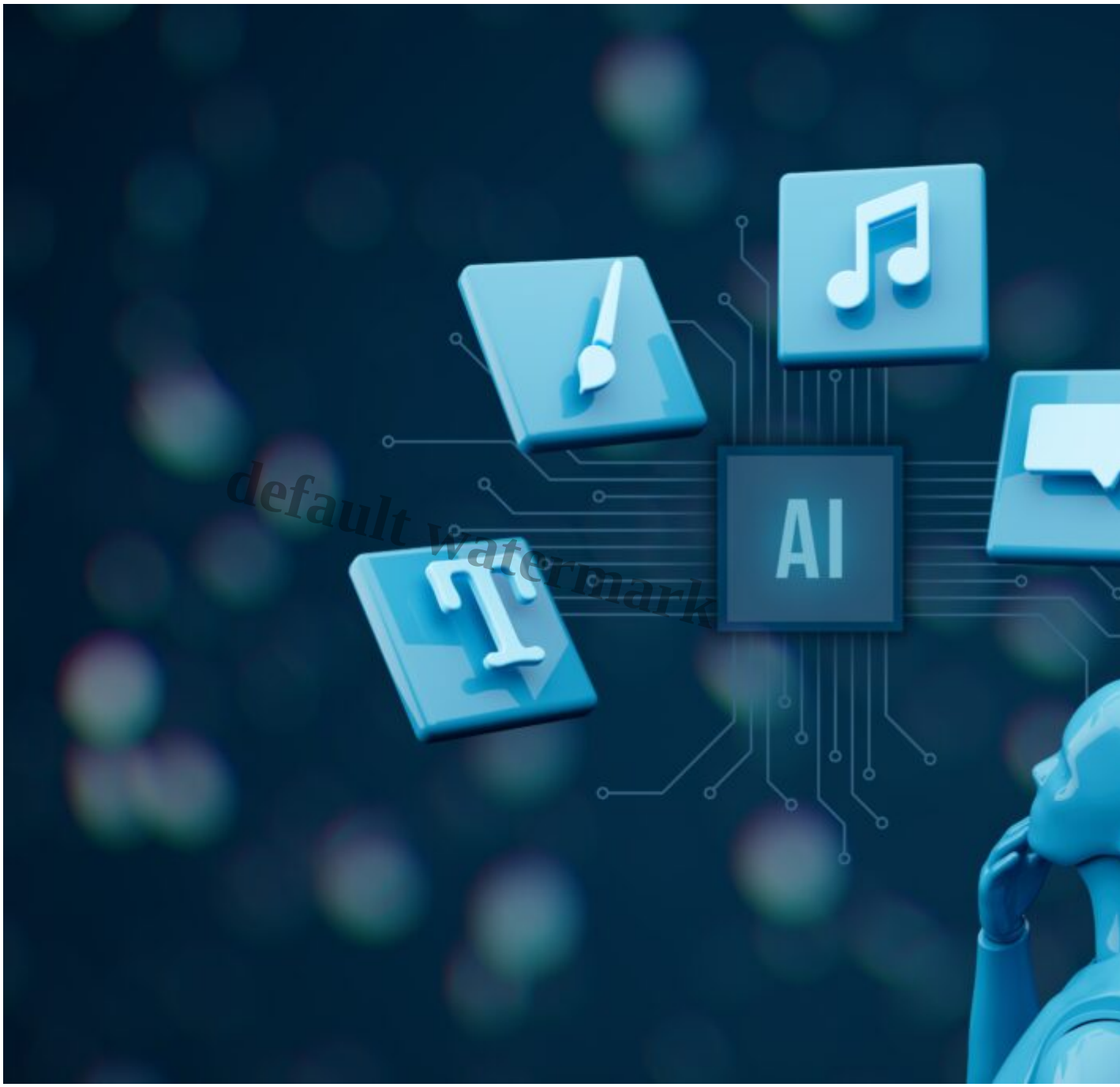
Description

Fifth Edition

Coming Next: AI Generative Music Issues

By Judith Finell

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Since the invention of the printing press in 1440, technology and music have had a symbiotic relationship. Technology has both enabled widespread growth and access to musical expression, while also fighting to loosen the controls over its financial and artistic expression. This conflict escalated with the Industrial Revolution through the 21st century with the invention of radio, television, and mechanical music storage and conveyance mediums, namely piano rolls, recordings, digitization, and the internet. At each step of the way, the industry inventing and profiting from the new devices and platforms attempted to eliminate financially the content creators upon which the technology depended for a marketplace.

This imbalance was addressed in the Copyright Act of 1909 in which a compulsory license for the mechanical embodiment of musical works was required. With the digital revolution of the 1980s, control over master recordings and the compositions that they contained were threatened, as virtually anybody possessing a CD could sample recorded material from it without permission of its creators. This resulted in litigation and a newly devised licensing system.

It took Congress nearly two decades to catch up with the new world of the digitization of music with the enactment of the Music Modernization Act of 2018, and this legislation principally addressed only payments due to songwriters and publishers on streaming services, leaving other major issues, such as payments to performing artists, still unresolved.

Every new technology terrorized the music industry of its time with predictions that all creativity would stop. Still, the march forward continued, and today with AI we are facing a new technological earthquake that will likely bring the opposing sides to the legislative halls and courtrooms once again.

Of all the art forms, why is music so often on the front lines? Partly, because the battle lines are so clearly defined. The music industry has enforcers with the Recording Industry Association, the National Music Publishers Associations, and the Performing Rights Organizations (ASCAP, BMI) ready to fight the battle, and well armed to do so. Music is the art form that has carved out 6 specific rights to be licensed exclusively from the rights holders and creators: reproduction, distribution, public performance, synchronization (music combined with visual and moving images), creation of derivative works, and public display (lyrics) of the works. Music creators and their representatives at record labels and publishers staunchly guard these rights.

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The US Copyright Office, itself, has grappled with these issues as a constitutional right since the beginning of the USA. The tech industry is on both sides of the issue. They are both creators and users of original content, with much to gain and lose from the legal outcomes of this battle.

Music is a perfect candidate for machine learning, namely AI generated music. Most musical features of a given work are highly codifiable and quantifiable, making it fertile ground from which AI can recognize patterns, create variations, and build new compositions from the traits of previous examples. Often this is done using copyright-protected music without permission, credit, or payment to the original creators of the content. A showdown is inevitable.

In our next issue, we will discuss the technical elements of music that are protected by copyright and used by AI as the learning mechanism, as well as the robust music protection system controlling its use. The primary musical elements involved include the very essence of musical works, namely pitch sequences, rhythms, lyrics, chord progressions, along with performance features, such as timbre (the character of a particular artistâ??s singing voice or instrumental performance style), recording studio and arrangement features, and more.

We will also discuss the existing legal criteria for determining substantial similarity and copyright infringement, and its applicability to the musical creation process with AI. The roles of expert testimony, jurors, lay listeners and more will be examined as it applies to AI generated music.

Stay tuned, as the battle lines are drawn.

[Click here to continue to Part I of Manaswi Mishraâ??s Interview.]



Judith Finell is a musicologist and the president of Judith Finell MusicServices Inc., a music consulting firm in New York and Los Angeles, founded 25 years ago in New York. Since then, she has served as consultant and expert witness involving music copyright infringement, advised on artist career and project development, and a wide variety of music industry topics. Recently, Ms. Finell was honored to be the 2018 commencement speaker at UCLAâ??s Herb Albert School of Music. She was also interviewed by NBC/Universal for a 2018 documentary entitled â??The Universality of Music,â?• in which she discussed the ways in which she sees music as being an international language that can bridge cultural barriers that spoken language does not. Judith Finell was the testifying expert for the Marvin Gaye family in the milestone â??Blurred Linesâ?• case in Federal Court. She has testified in many other notable copyright infringement trials over the past 20 years. She and her team of musicologists regularly advise HBO, Lionsgate, Grey Advertising, CBS, Warner, Disney, and Sony Pictures on musical works for their commercials, films, and television series. Ms. Finell also frequently advises attorneys, advertising agencies, entertainment and recording companies, publishing firms, and musicians, addressing copyright issues, including those arising from digital sampling, electronic technology and Internet musical usage. Ms. Finell was invited to teach forensic musicology at UCLA in 2018, where she continues to teach the only such course in the country. She holds an M.A. degree in musicology from the University of California at Berkeley and a B.A. from UCLA in piano performance. She has written numerous articles and a book in the area of contemporary music and copyright infringement and has appeared in trials on Court TV and before the American Intellectual Property Law Association. She is a trustee of the Copyright Society of the U.S.A., and has appeared as a guest lecturer at the law schools of Harvard University, UCLA, Stanford, Columbia, Vanderbilt, George Washington, NYU, and Fordham, as well as the Beverly Hills Bar Assn., LA Copyright Society, and the

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