

JONATHAN YASUDA
21 BEACON ST.
BOSTON, MA 02108

AFFIDAVIT

I am writing this affidavit as a professional musician and law student dedicated to artists' legal rights. This case only sheds more light on how today's technology, when combined with one's intent to extract protected, original, tangible expressions of another artist's registered work, present significant challenges to preserving copyright law. The purpose of my attached report is to elucidate and hopefully illuminate how two compositional elements -- *music and lyrics* -- contained in Bart Steele's composition, are substantially similar to Bon Jovi's song.

Although I cannot speak as a certified musicologist, I can speak as an award-winning, conservatory-trained musician with a penchant for copyright law. As my resume evinces, I have studied music theory extensively and I have had the privilege to work with internationally acclaimed musicians as a classical concert pianist.

As a Boston Bar Association student member and Steering Committee Representative of the Massachusetts Artists Leaders Coalition, I have petitioned Congress against adopting the Orphan Works Act as it is in violation of the Berne Convention. I have volunteered my time with intellectual property law attorneys to help indigent artists at the Volunteer Lawyers for the Arts. I have also successfully petitioned the Massachusetts legislature for artists to serve on the newly established Creative Economy Council. My law school recently featured me in Massachusetts Lawyers Weekly as "Virtuoso in Copyright Law" and published an article about my pro bono work for artists of all disciplines.

I wrote my attached report without extensively availing myself to the musicological lexicon. Too often musicologists present convoluted diagrams and transcriptions that only bewilder the ordinary fact-finder. My report is written so that a law student clerk, attorney, or jury can easily distill and understand the material facts.

Again, my primary goal is to show how the two works at hand are substantially similar. My ancillary goal, but a goal nonetheless, is to show this Court that case law must begin to address a steadily growing black-market practice of "temp-tracking" that is subverting our constitutionally protected rights.

I declare under the penalty of perjury that my attached musical report and the foregoing statements are true and correct and based on my personal knowledge.


Jonathan T. Yasuda

6/30/09
Date

Substantial Similarity:

Steele v. Bon Jovi

“Where Music and Lyrics Follow the Same Score”

**Report by Jonathan T. Yasuda
Student of New England School of Law
Professional Musician**

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I. INTRODUCTION

When Ludwig Van Beethoven composed his Symphony No. 5 in the early 19th century, who would have thought that a benign group of consecutive eighth-notes followed by a half-note would be the trademark of classical music centuries later. It is arguably one of the most powerful and enduring melodic rhythms of western music. Try shouting “DA DA DA DAAAAA!” in the middle of a crowded park – even intentionally sing it out of tune – and see if anyone can submit that some old, famous, dead dude, donning a white wig, wildly waving a baton, might have written it long ago. So you might get arrested, but if you’re lucky, maybe the police officer will ask on your way to the station, “Was that Beethoven?”

That timeless melodic rhythm continues to live and breathe in cartoons, movies, advertisements, sampled rap music, high school orchestras, radios, and the list goes on. *Now, see how many people can hum the entire symphony.* Good luck. You see, that is the beauty of music. A single note, or a single rest – silence – or perhaps a handful of notes can be the very essence or heart of a composition. For example, since it’s technically impossible to lift all of Tchaikovsky’s *Romeo and Juliet* score for a 30 second television ad, why not just use a snippet of the most memorable love theme? Sure, it cuts to the chase, omits perfectly good sections of music, but it effectively delivers and encapsulates the message of love. That’s just one very simple way to extract the “heart” of the composition. You just copy a musical sentence and paste. Done.

It is no mystery to professional songwriters, musicologists, or common listeners, that good pieces of music often have something “catchy”, whether it be a lyric, rhythm, harmony, melody, or maybe some combination of those elements. In other words, there

could be one or more elements in a piece of music that work together to deliver a message to an audience.

Now here's where technology and copyright infringement intersect. Tech-savvy musicians inside a recording studio can easily reduce a song to its most memorable or marketable elements and then create a "new" composition. To put it another way, this so-called "new" or "derivative" composition is really one of those "Based On A True Story" types of movies where the producers stick to the basic, original storyline, but add a few lovemaking scenes and Hollywood explosions to lure mainstream moviegoers to the theatres.

So when the heart of the original composer's composition – again, whether it be a particular lyric, rhythm, harmony, melody, or maybe a combination of these elements – saturates some "new" work, you have to ask yourself two questions: (1) did someone have access to the original composition in order to commit the infringement; and (2) how substantially similar are these two compositions?

II. TEMP-TRACK DEFINED

Here, in order to show that Bon Jovi's "I Love This Town" songwriters had access to Bart Steele's "Man I Really Love This Team" sound recording, Steele claims that he sent his lyrics and recordings to the Defendants. Determining whether the Defendants actually used Steele's song to create a derivative work may seem like an impossible task. How can one go back in time and step inside the studio where the Defendants allegedly tampered and manipulated Steele's song to create the derivative

work? Just as a murder weapon may have fingerprints, so does a fraudulently fabricated television commercial.

To explain, it is necessary to understand how a composer can extract the musical groundwork for a commercial. One way is called “temp-tracking” whereby the producer uses an existing composition to set the mood for the images of the commercial; then the television composer writes a seemingly new score for the commercial. As one can imagine, this is the perfect breeding ground for derivative work copyright infringement. Television composers and advertisers can get sloppy, deliberately trying to change a few musical and lyric elements to mask the true author’s work. As the New Grove Dictionary of Music states, this process is often rife with plagiarism:

Temp-tracks and classical styles are convenient means by which a director can suggest appropriate musical idioms to the composer; models have included Strauss's Salome for Waxman's Sunset Boulevard (1950), Holst's The Planets for Williams's Star Wars (1977) and Reich's Music for 18 Musicians for Tangerine Dream's Risky Business (1983). Egregiously, the practice of directly modeling scores on already successful original soundtracks is widespread, with plagiarism often disguised only by token alterations.

There is clear and convincing evidence that Steele’s “Man I Really Love This Team” was used as a template, or temp-tracked, to produce Bon Jovi’s “I Love This Town” TBS commercial. An easy way to reveal the fingerprints of a fraudulent temp-tracker is to conduct a simple experiment – no ultraviolet light required.

Instead of watching the commercial with the Bon Jovi soundtrack, try watching the commercial with Steele’s music as the soundtrack. You will then see how Defendants’ access to Steele’s composition is undeniable and how they based the entire commercial off of Steele’s song. Here are the four blatant temp-tracking examples:

- 19 seconds into the commercial, when Steele sings, “Yawkey Way,” the Yawkey Way street sign appears right on cue in the commercial.
- At 42 seconds, when Steele sings about the Detroit “Tigers,” the footage clearly shows a ballplayer running the bases; and yes, the ballplayer is in fact wearing a Detroit Tigers uniform.
- At 56 seconds, when Steele sings, “Get up off your seats,” the crowd in the commercial is cheering off their seats.
- From 1:07 – 1:09, three consecutive clips show ballplayers chest butting, displaying their toughness, while Steele sings, “You gotta stay tough.”

Given these four isolated temp-tracking examples within the commercial, it is more than just uncanny that Steele’s baseball anthem matches the exact content of the MLB video clips. It is highly suspicious. And since Steele did send lyrics and sound recordings to Defendants, even showing how his lyrics could be adapted for different cities, the temp-tracking evidence shows further proof of Defendants’ access to Steele’s registered composition.

III. SUBSTANTIAL SIMILARITY: INTERSECTION OF MUSIC AND LYRICS

A. Word Placement

Knowing that the Defendants based their commercial on Steele's song answers the question of access, but to claim that Bon Jovi's "I Love This Town" is substantially similar to Steele's "Man I Really Love This Team" requires us to compare and contrast the two songs. What elements, if any, were taken from Steele's composition? Was the heart and soul of Steele's composition ultimately stolen?

Rhyme scheme is a good place to start. Both songs begin with identical rhyme structures: **A-A-B-B-C-C-C**. This rhyme scheme is the backbone of the two compositions. Both songs also begin with a nine-syllable line.

Rhyme Scheme, Verse 1 and Chorus

A A B B C C C

Steele: **Round** / Bound / **Way** / Stay / Seats / Scream / **Team**

Bon Jovi: Place / Face / **Street** / Feet / **Round** / Down / **Town**

Verse 1, Line 1: 9 syllables

Steele: Have / you / heard / the / news / that's / go / in' / round

Bon Jovi: I / al / ways / knew / that / I'd / like / this / place

It is not the identical rhyme scheme that would lead one to conclude the two works are substantially similar. *Rather, it is the specific placement of the lyrics within*

this particular rhyme scheme that leads one to dismiss sheer coincidence. When Steele sings about Boston's historic street, Yawkey "Way", Bon Jovi sings about feeling alive "walkin' down the street". Though "Way" and "street" do not rhyme by any stretch of the imagination, their lyrical import and meaning are the same. Further, those two words share the same placement within the rhyme structure (opening "B" rhyme). Also, notice how Steele's "Round" appears in Bon Jovi's "C" rhyme. As the song progresses, "Round" becomes a repeated chorus line in Bon Jovi's song. Moreover, Steele's love for his "Team" and Bon Jovi's love for the "Town" appear in the seventh line of both rhyme schemes.

B. The Bridge Sections

Steele's bridge section employs the use of *anaphora*, the rhetorical device of repetition. He emphasizes that the crowd ("you") has to believe, stay tough, keep the faith, and cowboy up. Just as Steele repeats "you" to excite the crowd, so does Bon Jovi. Bon Jovi's bridge also utilizes *antiphony*, or "call and response". The familiar chant of "here we go," sung in the last line of Steele's bridge, also surfaces in the last line of Bon Jovi's bridge. Moreover, notice how Steele's "come on" phrase is also used in Bon Jovi's song to raise the level of excitement. The similarities in syllabic structure are also remarkable. (See the following page bridge diagram.)

Steele's Bridge

You got to keep believin' (7 SYLLABLES)
You got to stay tough (5 SYLLABLES)
You got to keep the faith (6 SYLLABLES)
You got to cowboy up
Stand up proud and say it loud, come on and let'm know
Say here we go, Red Sox, here we go ... (crowd repeats)

Bon Jovi's Bridge

There's shoutin' from the rooftops (7 SYLLABLES)
Dancin' on the bars (5 SYLLABLES)
Hangin' out the windows (6 SYLLABLES)
Drivin' in their famous cars
You want it? You got it. You ready? I'm on it.
Come on now, here we go again ...

Note: Attachment Tab "1" colorfully shows how both songs share Syllabic Structure with regards to (1) the opening line of Verse 1; (2) the opening three lines of the Bridge; and (3) the opening two lines of the final Chorus.

C. Structural Composition of Two Melodic Rhythms

Steele's 1/8 note, 1/4 note, 1/8 note melodic rhythm motif recurs throughout Steele's composition. It is the heart of his composition. Bon Jovi also uses the same rhythmic motif throughout his composition.

The opening **A-A-B-B-C-C-C** rhyme scheme is reproduced in full on the following page. The green highlights represent the recurring 1/8 note, 1/4 note, 1/8 note rhythmic figure. Also, note how the rhyme scheme closes with two 1/2 notes ("Love this") followed by a whole note ("Team / Town"), shown in red. *It is important to note the specific placement or location of these two types of melodic rhythms.* Interestingly, both types of melodic rhythms appear the same number of times in similar, if not identical, locations in this opening verse.

Steele

Have you heard the news that's goin' round?
Our hometown team is series bound.
And the word is out on Yawkey Way,
Our team in red has come to play.
So get up off your seats,
Everybody sing,
Man I really love this team.

"1/8, 1/4, 1/8" melodic rhythm (GREEN) = 7 appearances
"1/2, 1/2, whole" melodic rhythm (RED) = 1 appearance

Bon Jovi

I always knew that I love this place.
You don't have to look to far to find a friendly face
I feel alive when I'm walkin' on the street
I feel the heart of the city poundin' underneath my feet
Yeah let the world keep spinnin round 'n' round
This is where it's goin' down, down, down
That's why I, love this town.

"1/8, 1/4, 1/8" melodic rhythm (GREEN) = 7 appearances
"1/2, 1/2, whole" melodic rhythm (RED) = 1 appearance

(See Attachment Tab "2" for the complete Melodic Rhythm and Lyric Analysis. Also, see Attachment Tab "3" for the Musical Phrase Structure Analysis which shows how Verse 1 and Chorus of both songs follow nearly identical measure / bar structure.)

D. Scansion

Simply reading the lyrics of both songs reveals similarities in scansion, or textual rhythm, at the same places within the musical structure. (An example is provided on the following page.) A stressed syllable is represented by a hyphen ("–"). An unstressed syllable is represented by a capital U ("U"). The green highlights show where the stressed and unstressed syllables align in the text. The red highlights show how similar lyrics and textual rhythms often coincide.

Verse 1, Line 3

Jovi: I feel a - live when I'm walk-in / on the / STREET

U U / - U U / - U / - U / -

Steele: And the word is out on / YAW-KEY / WAY

U / - U / - U / - U / -

Note: See Attachment Tab “4” for more comparative examples of similar scansion.

IV. CONCLUSION

Given all the aforementioned evidence, combined with the attached analyses, I believe Bon Jovi’s “I Love This Town” and Steele’s “Man I Really Love This Team” are substantially similar. Finding two songs that share similar music and lyrics is not uncommon. What is uncommon, however, and highly indicative of plagiarism, is finding two songs that utilize the *same recurring compositional elements at the same locations within their respective musical structures*, as discussed in this report. Thus, it is my hope that this report not only reveals the non-coincidental substantial similarities between the two songs at issue, but also casts a spotlight on the unethical practice of temp-tracking unlicensed songs.

TAB 1

SYLLABLE ANALYSIS OF BART STEELE'S SONG

Have you heard the news thats goin' ROUND?

(Verse 1)

Our hometown team is series bound
And the word is out on YAWKEY WAY
Our boys in red have come to play

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

(Chorus)

The Yankees, Royals and the Rays,
The Tigers, Rangers and The Jays
Just ask Rem-Dawg in the box
Anyone will tell you Boston Rocks!
Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

(Verse 2)

YOU gotta keep believin
YOU gotta stay tough
YOU gotta keep the faith

(Bridge)

YOU gotta cowboy up
Stand up proud Say it loud COME ON and let'm know
Say HERE WE GO Red Sox HERE WE GO

HERE WE GO Red Sox HERE WE GO

From Landsdown Street to Pesky's Pole
From Cooperstown in days of old
Feel that spirit far and near
Those Fenway fans begin to cheer

(Verse 3)

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

(Chorus)

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

SYLLABLE ANALYSIS OF BON JOVI'S SONG (MLB PROMO)

I always knew, that I'd like this place

(Verse 1)

You don't have to look too far, to find a friendly face

I feel alive when I'm walkin' on the STREET

I feel the heart of the city poundin' underneath my feet

Yeahhhhh let the world keep spinnin ROUND 'n' ROUND

This is where it's goin' down, down, down

That's why I, LOVE THIS TOWN

(Chorus)

That's why I, keep co-min' ROUND

Say hey (say hey) say yeah (say yeah)

You make me feel at home some how, right, now

That's why I, LOVE THIS TOWN

(MLB PROMO OMITTS 2nd VERSE)

There's shoutin' from the rooftops

(Bridge)

Dancin' on the bars

Hangin' out the window

Drivin' in their famous cars

YOU want it? YOU got it

YOU ready? I'm on it

COME ON now, HERE WE GO again ...

That's why I, LOVE THIS TOWN

(Chorus)

That's why I, LOVE THIS TOWN

No matter where you're from, tonight you're from right here

This is where it all goes down, down, down

That's why I, LOVE THIS TOWN

Say hey (say hey) say yeah (say yeah)

(Chorus)

You make me feel at home some how, right, now

That's why I, LOVE THIS TOWN

Say hey (say hey) say yeah (say yeah)

You make me feel at home some how, right, now

That's why I, LOVE THIS TOWN

Say hey (say hey) say yeah (say yeah)

You make me feel at home some how, right, now

That's why I, LOVE THIS TOWN

KEY

Blue:	Opening line of Verse 1 contains 9 syllables
Yellow:	Opening 3 lines of Bridge: 7 syllables, 5 syllables, 6 syllables
Magenta:	Exciting the crowd, 8 syllables
Green:	Opening 2 lines of final Chorus refrain total 18 syllables

Conclusion:	Bon Jovi's lyrical, syllabic structure mirrors Bart Steele's lyrical, syllabic structure with respect to the overall, defined musical structure.
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TAB 2

MELODIC-RHYTHM AND LYRIC ANALYSIS OF BART STEELE'S SONG

Have you heard the news that's goin' ROUND? (Verse 1)
Our hometown team is series bound
And the word is out on YAWKEY WAY
Our boys in red have come to play

Now get up off your seats, Everybody scream (Chorus)
Man, I really LOVE THIS TEAM!

The Yankees, Royals and the Rays, (Verse 2)
The Tigers, Rangers and The Jays
Just ask Rem-Dawg in the box
Anyone will tell you Boston Rocks!
Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

YOU gotta keep believin (Bridge)
YOU gotta stay tough
YOU gotta keep the faith
YOU gotta cowboy up
Stand up proud Say it loud COME ON and let'm know
Say HERE WE GO Red Sox HERE WE GO
HERE WE GO Red Sox HERE WE GO

From Landsdown Street to Pesky's Pole (Verse 3)
From Cooperstown in days of old
Feel that spirit far and near
Those Fenway fans begin to cheer

Now get up off your seats, Everybody scream (Chorus)
Man, I really LOVE THIS TEAM!

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

Now get up off your seats, Everybody scream
Man, I really LOVE THIS TEAM!

MELODIC-RHYTHM AND LYRIC ANALYSIS OF BON JOVI'S SONG (MLB PROMO)

I always knew, that I'd like this place (Verse 1)
You don't have to look too far, to find a friendly face
I feel alive when I'm walkin' on the STREET
I feel the heart of the city poundin' underneath my feet
Yeahhhhh let the world keep spinnin ROUND 'n' ROUND
This is where it's goin' down, down, down

That's why I, **LOVE THIS TOWN** (Chorus)
That's why I, keep co-min' **ROUND**

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

(MLB PROMO OMITTS 2nd VERSE)

There's shoutin' from the rooftops (Bridge)
Dancin' on the bars
Hangin' out the window
Drivin' in their famous cars
YOU want it? YOU got it
YOU ready? I'm on it
COME ON now, HERE WE GO again ...

That's why I, **LOVE THIS TOWN** (Chorus)
That's why I, **LOVE THIS TOWN**

No matter where you're from, tonight you're from right here
This is where it all goes down, down, down
That's why I, **LOVE THIS TOWN**

Say hey (say hey) say yeah (say yeah) (Chorus)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, right, now
That's why I, **LOVE THIS TOWN**

KEY

Underline: Represents the (1/8, 1/4, 1/8) melodic-rhythm, musical pattern that (1) rhythmically aligns with the sung lyrics in both songs; and (2) appears in identical places within the musical structure of both songs

RED BOLD: Represents the (1/2, 1/2, whole) melodic-rhythm, musical pattern that (1) rhythmically aligns with the sung lyrics in both songs; and (2) appears in identical places within the musical structure of both songs

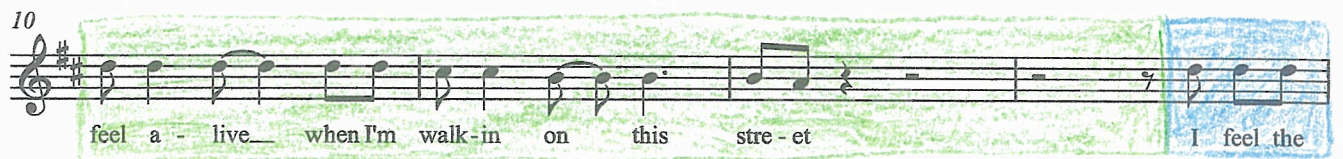
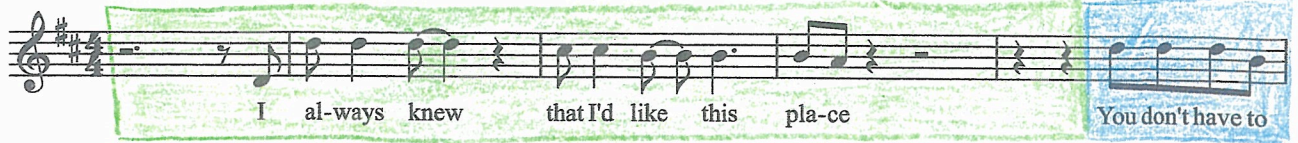
Green: Represents the lyrical similarity between both songs within Verse 1 of the musical structure

Blue: Represents the lyrical similarity between both songs within the Bridge of the musical structure

NOTE: Overlapping elements occur

TAB 3

Musical Phrase Structure: Bon Jovi, Verse 1 and Chorus



Musical Phrase Structure: Bart Steele, Verse 1 and Chorus

Have you heard the news that's go - in' round - Our

6 home - town team is ser - ies bound - And the

10 word is out on Yaw-key Way - Our

14 boys in red have come to play - Now

18 get up off your seats Ev - ery - bod - y scream

22 Man I rea - lly l - ove this team


KEY

Green:	Similar lengths of musical phrases appearing in identical locations within the musical structure corresponding to lines of verse
Blue:	Similar lengths of musical phrases appearing in identical locations within the musical structure that begin new lines of verse
Red:	Similar musical phrases of "love this team" and "love this town" appearing in the two closing bars of the chorus

TAB 4

SCANSION ANALYSIS

KEY:  represents a “stressed” syllable

 represents an “unstressed” syllable

Verse 1, Line 3

Steele: I feel a - live when I’m walk-in / on the / **STREET**

 U U /   U /  U /  U /  -

Jovi: And the word is out on / **YAW-KEY / WAY**

 U /   /  U /  U /  -

Bridge, Opening Line

Steele: You gott - a keep be - liev - in

 - /  - /  - / 

Jovi: There’s shout - in from the roof - tops

 - /  - /  - / 

Chorus Refrain, Opening 6 syllables

Steele: Now get up off your seats ...

 - /  - /  -

Jovi: Say hey say hey say yeah ...

 - /  - /  -

Chorus Refrain, Second Line:

Compare with Steele's Opening 6 syllable Chorus Refrain

Jovi: You make me feel at home some-how right now

U - / U - / U - / U - / U -

Chorus Refrain, Final Line, Bart Steele and Bon Jovi

Steele: Man I reall - y love this team

- U / - U / - U / -

Jovi: That's why I love this town

- U / - U / U / -