

YOUR NAME *Tia Patrice Griffin*  
ADDRESS *1428 E. Coloss Avenue Spokane, Wa. 99207*  
TELEPHONE NUMBER *(509) 483-5005*

(START ON LINE 6  
OR BELOW. 3" TO 4"  
FROM TOP OF PAGE.)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

YOUR NAME )  
*Tia Griffin* Plaintiff, )  
v. )

**CV-04-0226-LRS**

(Case Number will be assigned  
at time of filing)

NAME OF PARTY YOU ARE )  
SUING )  
*J-Records* )  
*Luther Vardross* Defendant. )  
*Richard Marx* )

COMPLAINT

*Copyright Infringement*  
*SRU 339882*

Plaintiff alleges: *That the Party I am suing infringed upon my Gospel here called "Heart of Gold".*

1. The District Court has jurisdiction under 28 U.S.C. \_\_\_\_\_

\_\_\_\_\_.  
2. This District Court has venue because Defendant is a resident  
of \_\_\_\_\_ County, Washington.

3. (See Rule 10, Local Rules of Practice, for further format  
information).

**RECEIVED**  
JUN 28 2004  
CLERK, US DISTRICT COURT  
SPOKANE, WASHINGTON

YOUR SIGNATURE  
IN INK: *Tia Griffin*

**ORDER TO AMEND COMPLAINT "FIRST AMENDED COMPLAINT**

I am seeking a demand for judgement against;  
J Records, A Unit of BMG  
1540 Broadway, 43rd Floor  
New York, NY 10036

Luther Vandross  
J Records, A Unit of BMG  
1540 Broadway, 43rd Floor  
New York, NY 10036

Richard Marx  
J Records, A Unit of BMG  
1540 Broadway, 43rd Floor  
New York, NY 10036

***Re: Music Copyright Infringement, Dance With My Father***

**(1)Pertinent Facts-**In 1995, I resided in Los Angeles, CA. It was at this time in my life that I wrote the song "Heart of Gold", an inspirational and uplifting musical number in the gospel genre. In the process of arranging and recording this song, I employed the services of a musician and member of the Musicians Union Local 47 in Hollywood, the same union to which Richard Marx belongs. The song was recorded at the Effortless Flight Recording Studio in Long Beach, California. I then applied for and received copyright protection for the sound recording to Heart of Gold on March 22, 1996; U.S. Copyright Registration No. SR u 339-822. Copies of the Certificate of Copyright Registration and the sound recording for Heart of Gold are attached. Soon after I received copyright protection for my song, I distributed copies of my sound recording to numerous record companies, artists, and agents. In particular, I provided copies of my work to Arista Records, one of BMG's "core assets." Additionally, I performed Heart of Gold in public on several occasions and my song was also played on local Los Angeles radio stations in conjunction with promoting the Restoration 99 gospel concert/ productions in the area. The song was featured at the Restoration '99 Gospel Concert in Fullerton, and was performed at a huge outdoor Concert in Los Angeles at the Inglewood Community Church. Dance with My Father has an undeniable aural resemblance to my song Heart of Gold. Heart of Gold contains a distinctive seven-notes rising and cascading lyrical melody that literally forms the heart of my musical work as this line is the recapitulating sequence upon which my original work is based. Additionally, this same musical line is played at an *Andante* tempo and arranged with an

upper register string orchestration and piano-type instrument accompaniment. The opening motif of Dance With My Father contains these exact same eight notes (transposed up a minor third), employing the exact same pulse and rhythmic pattern, in the exact same register, with the exact same orchestration arrangement. Moreover, this Heart of Gold motif reoccurs in Dance With My Father several times, specifically, at 1 minute 25 seconds, 2 minutes and 14 seconds, 3 minutes and 7 seconds, and again at 3 minutes and 54 seconds. These congruencies are of the type to support a finding of infringement under the striking similarity doctrine, even in the absence of access. The offending work has enjoyed significant sales, and garnered a Grammy® nomination, attributable at least in significant part to the serene and distinctive musical sounds taken from Heart of Gold. We have also noticed that Dance With My Father is the signature song played on <http://www.luthervandross.com>.

**(2) Law Governing Copyright Infringement**—I believe that the creation, reproduction, and distribution of Dance With My Father violates my exclusive rights under the U.S. Copyright Act, 17 U.S.C. § 106. Copyright infringement occurs when a claimant demonstrates (1) ownership of the copyright; and (2) infringement—that the defendant copied protected elements of the plaintiff's work. *See Smith v. Jackson*, 84 F.3d 1213, 1218 (9th Cir.1996). A defendant will be liable for copyright infringement when it is shown that the defendant had "access" to the plaintiff's work and that the two works are "substantially similar." *Id.* Proof of access simply requires "an opportunity to view or to copy plaintiff's work." *Sid and Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1172 (9th Cir.1977). There need only be a "reasonable opportunity" or "reasonable possibility" of viewing the plaintiff's work in order for access to be established. 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 13.02[A], at 13-19 (1999). A reasonable possibility of access can be established under the "corporate receipt doctrine." This doctrine provides that:

[I]f the defendant is a corporation, the fact that one employee of the corporation has possession of plaintiff's work should warrant a finding that another employee (who composed defendant's work) had access to plaintiff's work, where by reason of the physical propinquity between the employees the latter has the opportunity to view the work in the possession of the former.

*Moore v. Columbia Pictures Industries, Inc.*, 972 F.2d 939, 942 (8th Cir. 1992)

The corporate receipt doctrine applies where there is a "relationship linking the intermediary and the alleged copier," even though the purported copier is not an employee of the intermediary. *Meta-Film Assoc., Inc. v. MCA, Inc.*, 586 F.Supp. 1346, 1357 (C.D.Cal.1984) (emphasis supplied); *Intersong-USA v. CBS, Inc.*, 757 F.Supp. 274, 281 (S.D.N.Y.1991).

Furthermore, even in the absence of any proof of access, a copyright plaintiff can still make out a case of infringement by showing that the songs were "strikingly similar." See *Smith*, 84 F.3d at 1220; *Baxter v. MCA, Inc.*, 812 F.2d 421, 423, 424 n. 2 (9th Cir.1987). Here, there can be little doubt that Mr. Vandross and Mr. Marx gained access to my song Heart of Gold. Additionally, there is no question that these works are at least substantially similar, if not strikingly so. In the music copyright context, it has been determined on several occasions that taking even a few notes from a musical composition can constitute illicit appropriation if the "heart of the song" has been taken. For example, in *Baxter*, the court noted that the misappropriation of a six-note phrase can lead to liability for infringement if the purloined material is "qualitatively important" to the Plaintiff's work. *Baxter*, 812 F.2d at 425; see also *Bright Tunes Music Corp. v. Harrisongs Music, LTD*, 420 F.Supp. 177, 178 (S.D.N.Y. 1976); *Fisher v. Dillingham*, 298 F. 145 (S.D.N.Y. 1924). Further, the taking of even a relatively small portion of the Plaintiff's song is actionable so long as the appropriation would be recognizable to the "average listener." *Baxter* at 424. Here, there is no question that the lay listener would immediately discern the abundant similarities between the two works. As noted above, the actual notes, rhythms, pulse, tempo, and orchestrations of the two works are nearly exact. Additionally, the portion taken by Messers. Vandross and Marx is the distinctive melodic theme upon which the entire Heart of Gold song is based. The Heart of Gold theme reappears several times in Dance With My Father. I have played the two recordings several times for average observers and have received almost unanimous responses that the underlying musical works are substantially similar. In sum, access and substantial similarity are present and the works are strikingly similar -- therefore, copyright infringement has occurred.

**(3)Demand-**My copyright in Heart of Gold has been registered since 1996. Thus, I am entitled to extensive remuneration under the Copyright Act, including J Records' profits, impoundment, statutory damages, and attorneys fees. See 17 U.S.C. §§ 412, 503-505.

To this end, I believe the following presents a reasonable solution to this situation:

1) That I be paid a \$30,000 fee for the initial act of infringement upon my original work. In addition, I would like to receive \$1.00 for every "Dance With My Father" album or single that has been or will be sold in the future and that J Records, or its proper agency affiliate, sign a license agreement to this effect;

(2) That I be provided attribution as an additional arranger in the CD Jacket liner notes of "Dance With My Father" for my contribution and licensing of underlying musical material;

(3) That, outside of sales for the Mr. Vandross' Dance With My Father recording as addressed in Item 1 above, I receive a 50% split of gross royalties or compulsory license fees for commercial use, commercial licensing, public performance, ASCAP, BMI, Harry Fox or other agency royalties or for any third-party recordings or re-

makes of Dance With My Father and that the songwriters, or their proper agency affiliate, sign a license agreement to this effect;

(4) That I am allowed to perform and complete my production of my original work "Heart of Gold" now and in the future without any repercussions from any of the above parties.

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

1 - M SR

For a Sound Recording

UNITED

REGISTI

SRu 339-822



Marybeth Peters

REGISTER OF COPYRIGHTS United States of America

EFFECTIVE DATE OF REGISTRATION

3-22-96

Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK

Heart of Gold

PREVIOUS OR ALTERNATIVE TITLES

NATURE OF MATERIAL RECORDED

Musical Musical-Dramatic

Dramatic Literary

Other

(13) Songs (words + melody) (rough draft arrangement) by Tia

NAME OF AUTHOR

Tia Patrice Griffin

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE

United States

Citizen of

Domiciled in

DATES OF BIRTH AND DEATH

Year Born 3-7-67

Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

Pseudonymous?

Yes

No

Yes

No

If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

13 songs created, written, sang, words & music by Tia Griffin

NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE

Citizen of

Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

Pseudonymous?

Yes

No

Yes

No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE

Citizen of

Domiciled in

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous?

Pseudonymous?

Yes

No

Yes

No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1995

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Month Day Year

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

Tia Patrice Griffin 2439 Daphne Place #D Fullerton, CA 92633

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2 give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED

MAR 22 1996

ONE DEPOSIT RECEIVED

MAR 22 1996

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK Complete all applicable spaces (numbers 5-8) on the reverse side of this page. See detailed instructions. Sign the form at the 8.

DO NOT WRITE HERE

EXAMINED BY *[Signature]*

FORM SR

CHECKED BY

CORRESPONDENCE

Yes

FOR  
COPYRIGHT  
OFFICE  
USE  
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes  No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

a.  This is the first published edition of a work previously registered in unpublished form.

b.  This is the first application submitted by this author as copyright claimant.

c.  This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

(1) America - This is a new arrangement of "America" which is public domain. "He's Shining On You" is incorporated in the song along with my additional words.

See instructions before completing this space.

6

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

"He's Shining on You" and my additional words added.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP ▼

Tia Patrice Griffin  
2439 Daphne Place #D  
Fullerton, CA 92633

Area Code and Telephone Number ▶ (714) 992-4467

Be sure to give your daytime phone number

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▼

author

other copyright claimant

owner of exclusive right(s)

authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

8

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Tia Patrice Griffin

Date ▶ 1-20-1996

Handwritten signature (X) ▼

*Tia Patrice Griffin*

Mail certificate to:

Name ▼

Tia Patrice Griffin

Name or Street/Apartment Number ▼

2439 Daphne Place #D

City/State/ZIP ▼

Fullerton, CA 92633

Certificate will be mailed in window envelope

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 8

SEND ALL ELEMENTS IN THE SAME PACKAGE

1. Application form
2. Non-refundable \$20 filing fee by check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:  
Register of Copyrights  
Library of Congress  
Washington, D.C. 20540-4000

\*17 U.S.C. § 506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.



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\* you must have immediate access to a printer to receive this product

**DANCE WITH MY FATHER**

Slowly  $\text{♩} = 80$   
 B $\flat$  F/A

Words and Music by  
 LUTHER VANDROSS  
 and RICHARD MARX

(with pedal)

Thank you for trying the Musicnotes Viewer

This product is not available for purchase in the United States and Canada. (Explain Availability To Me)

### Dance With My Father

#### Product Information:

**Performed by:** Luther Vandross

\* this arrangement contains complete lyrics

#### Selection Details:

pages: 6

6

product #:

mn0044869