Podcast: *No Infringement Intended*
Episode: When Does Musical Inspiration Become Copyright Infringement?
Hosts: Rusty Close and Austin Padgett
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Austin Padgett (00:12):
Come one and come all, it's that time again. It's time for gavels and gravy. Welcome to No Infringement Intended, an intellectual property podcast of our law firm, Troutman Pepper Locke, hosted by the true blue bad boys of intellectual property, Rusty Close and me, Austin Padgett. Well, in today's episode, we've got southpaws, we've got a chorus written while waiting on a date, and we've got a question: when does inspiration turn into borrowing? Stick around. All that right after these messages.

Welcome back, listeners. So glad you're here for today's episode. Yes, yes, indeed. And as we get started, make sure that you're subscribed and smash those five stars for your boys over here while you're at it. As we like to say, vote early and vote often. More and more and more, we need them. Let's get in the mailbag real quick. Rusty, you weren't expecting this. Tom writes in and says, "I finally decided to learn guitar. What guitar would you two recommend for someone just starting out?"

Rusty Close (01:11):
Oh, man. I mean, we've established that I can't play anything, but if I was just going to maybe buy something. You've told me before, like, do you prefer someone start on an electric or start on an acoustic?

Austin Padgett (01:24):
Man, I've kind of gone all sorts of ways. I think you want to start on acoustic because electric's easier on the hands.

Rusty Close (01:27):
Okay.

Austin Padgett (01:29):
Acoustic, just you're going to build those calluses, build that muscle, and you're just going to have an easier transition.

Rusty Close (01:35):
It's easier to go from that to that than the other way.

Austin Padgett (01:36):
I think so.

Rusty Close (01:38):
Yeah.

Austin Padgett (01:39):
My big tip, though, to people, particularly in our age bracket, who are deciding they're going to learn guitar is to buy yourself... You don't have to spend a lot of money, just buy yourself something that's quality and that you like looking at and touching.

Rusty Close (01:52):
Yeah.

Austin Padgett (01:53):
Because that is the key. You don't have the kid sponge brain that's malleable. You've just got to do things by repetition and the pure joy of it. One of my buddies asked me this. He was like, "Hey, man, I'm looking at getting..." he has an acoustic, "I'm getting electric. What should I get?" I started about to go on my riff about my favorite guitars, basically. But basically I came around to, "You should just buy whatever makes you happy and that you would play a bunch," because that's the joy of doing things, is not necessarily just holding these things to look at. Some people enjoy that in the museum pieces.

Rusty Close (02:10):
Yeah.

Austin Padgett (02:26):
But if you're going to play, get something you love to play. Go to a guitar store, try it out, get your hands on it, and the thing that feels at home, get that thing, take it home, and just wear it out.

Rusty Close (02:38):
You got to make the time. That's the key.

Austin Padgett (02:40):
That is the key. More than product, it's the time.

Rusty Close (02:42):
The other answer is a '59 Les Paul.

Austin Padgett (02:45):
Exactly. Yeah, exactly. If you just have 100 grand sitting around.

Rusty Close (02:48):
If you're just starting out, you want to start with a '59 Les Paul.

Austin Padgett (02:50):
Exactly. Yeah. Why make it difficult on yourself? Oh, man, that's great. Let's cut into what you got on the docket today, Rusty.

Rusty Close (02:58):
We've established many times that you grew up on the beautiful panhandle of Florida, Gulf of Mexico.

Austin Padgett (03:05):
I'm their favorite son, so to speak.

Rusty Close (03:07):
That's right. That's right. I don't know that we've ever talked about what sports you played growing up. When you weren't playing piano, you weren't working on guitar solos, what sports were in the mix?

Austin Padgett (03:16):
Yeah, probably for a lot of reasons.

[laughter]

I think we mentioned that the town I grew up in was Milton, Florida, right outside Pensacola.

Rusty Close (03:20):
Right.

Austin Padgett (03:22):
Home of T-ball. It's where T-ball was invented.

Rusty Close (03:25):
Oh, interesting. Okay.

Austin Padgett (03:28):
Yeah. Virtually everybody there... It may not be that way anymore, but when I was growing up, I think everybody in my class played T-ball. It was all at the same place. It was great. A huge complex, tons of baseball fields all over the place. I have a pretty legendary story from my very first T-ball game where I come home, my mom wasn't able to make that game, but I come home and she asked how it went, and I said I did so great that when I got to first base, I got to go sit down.

[laughter]

Kind of equating if you don't have to do anything, you've won, basically.

Rusty Close (03:59):
Sure. Yeah.

Austin Padgett (04:00):
Which is not sports. So.

Rusty Close (04:02):
Oh, that's good.

Austin Padgett (04:04):
But I did continue to play at that. They went up through middle school age. They always had pitching machines. There were never... I say that, we did, I guess, in eighth grade, maybe ninth grade, had pitchers.

Rusty Close (04:10):
Okay.

Austin Padgett (04:16):
Yeah. We would have other peers pitch to us, but we never had a coach pitch. We always had pitching machines.

Rusty Close (04:20):
It would transition from pitching machine to kid pitch.

Austin Padgett (04:22):
Yeah.

Rusty Close (04:24):
When did the baseball career end for you?

Austin Padgett (04:26):
I want to say it was either eighth or ninth grade.

Rusty Close (04:28):
Okay.

Austin Padgett (04:29):
I think I just kind of aged out of it. Wasn't going to play in high school. I love basketball. That same sports complex had a basketball court there and a basketball program that I played at and eventually scorekept at. I worked there. But I love basketball. That was probably one of my first loves. I love just shooting hoops, going to basketball camp in the summer. That type of stuff, it was a blast. But I know that I'm starting to step on your territory now, and I'm going to flip it back on you because I know when we talk about legends on the court...

Rusty Close (04:42):
Sure.

Austin Padgett (04:58):
That's Rusty Close. I mean, I...

Rusty Close (04:59):
Yeah.

Austin Padgett (05:00):
I heard you owned the state of Georgia at one point.

Rusty Close (05:02):
It's really shocking to me. I was over for the first time in a lot of years at the high school where I went. My daughter had volleyball over there. Really surprising not to see my name more prominently displayed in the gymnasium based on my sporting exploits over the years.

Austin Padgett (05:19):
Oh, that's tough. Did you play baseball?

Rusty Close (05:22):
That's the thing. I never played baseball. I played soccer and basketball.

Austin Padgett (05:24):
Oh, interesting.

Rusty Close (05:26):
I think there was a story at some point that my mom felt like the pressure of being at the plate, it's just you and the pitcher at that point, she felt like that might be too much pressure. Soccer, you're out among the other 21 players on the field. So, maybe that was a better route. But I've certainly watched my fair share of baseball and am a big baseball fan. I'm a big Braves fan. I'm not just firing up whatever game is on ESPN. But I was wondering, who do you root for in Pensacola in the early '90s when we're growing up?

Austin Padgett (06:01):
One of the beautiful things is you can root for just about anybody because you have nobody. It's a city of transients because of the naval bases there. Certainly the Braves, when they were on their run, were exciting, and TBS was available.

Rusty Close (06:13):
Sure.

Austin Padgett (06:14):
I would tell you that I didn't love that they called themselves America's Team.

Rusty Close (06:18):
Okay. Yeah, you took some umbrage with that.

Austin Padgett (06:20):
Yeah, I did. We took a family vacation at one point out to Colorado after the expansion, and we went to Coors Field and saw the Rockies play. This is during the steroid era.

Rusty Close (06:25):
Sure.

Austin Padgett (06:31):
I'm going to tell you, that was probably my favorite era of baseball.

Rusty Close (06:33):
Yeah, I mean, a lot of ours.

Austin Padgett (06:36):
Yeah, it was great. Dante Bichette, Larry Walker, Galarraga. I mean, these guys were enormous and legends. It was such a cool experience being in a large city, a different city, that I fell in love with the Rockies. I love their logo. I like the purple. It was different. It was cool, and it wasn't America's Team.

Rusty Close (06:46):
Yeah.

Austin Padgett (06:56):
I would tell you, weirdly, that was the team I rooted for. To some degree still do.

Rusty Close (07:01):
I mean, I would like to say I was a day one Braves fan, but in my elementary school days in the mid to late '80s, the Braves were terrible. If you, I think you did, and I collected baseball cards during that time, Don Mattingly was a huge deal.

Austin Padgett (07:15):
Oh, yeah.

Rusty Close (07:16):
I thought I was a Yankees fan.

Austin Padgett (07:18):
You dodged a bullet there, right?

Rusty Close (07:20):
Yeah. Yeah, yeah. But starting in seventh grade, the end of my seventh grade year, the beginning of my eighth grade year was the Braves' legendary worst-to-first run, which tragically ended in a seven-game loss to the Minnesota Twins in the World Series. But some consider that Game 7 one of the best games ever played. From then on, been a die-hard Braves fan. That was the beginning of a really long run of the Braves dominating, unfortunately only winning one World Series after countless trips to the World Series, which is a little disheartening. But all those teams were really built on these legendary pitching staffs. That '91 team, any names come to mind off of that first worst-to-first team?

Austin Padgett (08:07):
Oh, yeah. I mean, you've got the big ones. You got Glavine, Smoltz.

Rusty Close (08:09):
Yep, yep.

Austin Padgett (08:11):
Yeah.

Rusty Close (08:11):
Then one that has kind of been lost to history a little bit was Steve Avery, who was also on that team-

Austin Padgett (08:15):
For sure.

Rusty Close (08:18):
-and was just kind of a wunderkind. He was a really young guy on that team. That first team, Glavine, Smoltz, Avery, and Charlie Leibrandt, who had a great season but doesn't leave the lasting legacy like those other guys do.

Austin Padgett (08:32):
Yeah. Was that his last season with the team?

Rusty Close (08:34):
I want to say it was, but somebody'd have to fact-check me on that.

Austin Padgett (08:37):
Okay. Gotcha.

Rusty Close (08:38):
But certainly by like '93, he was not part of the staff.

Austin Padgett (08:38):
Yeah.

Rusty Close (08:41):
But Avery from '91 to '93, he's 21, 22, 23. He goes 18 and 8 in '91, and he wins the MVP of the National League Championship Series. In '93, he was 18 and 6, made the All-Star team. He kind of tapered off a little bit after that. There were some injuries, but he was still on the '95 staff, kind of the legendary staff that won the World Series. Can you tell us, from '91 to '95, there's a big name that enters the mix. On the '95 staff, we still got Glavine, Smoltz, Avery. We've also got Kent Mercker, but there's one more that probably everybody knows.

Austin Padgett (09:21):
Absolutely. I pulled an autograph card of this guy's when I bought a pack at the Tom Thumb convenience store. I don't know if you have Tom Thumbs where you grew up, but...

Rusty Close (09:32):
I don't think we did.

Austin Padgett (09:33):
It was the one convenience store that was close by the place we lived. I remember opening the pack and there's this just bright white... and I'll cut to the chase; there's Greg Maddux right there. It says one of 15.

Rusty Close (09:47):
Oof.

Austin Padgett (09:48):
His autograph is right across it, sloppy as can be. It was great.

Rusty Close (09:52):
Maddux in '95, he won his fourth straight Cy Young. He goes 19 and 2 with a 1.63 ERA. I mean, he is absolutely dominant. His '94, '95 two-season run is arguably the greatest two-year stretch that any pitcher has ever had. On single season alone, a lot of people will point to Pedro Martinez and his 2000 season, but give me Maddux any day. The funny thing is you mentioned the steroid era and it being your favorite era of baseball – Maddux could not look less like someone who was dominating the steroid era.

Austin Padgett (10:13):
Oh, absolutely. That's right.

Rusty Close (10:33):
He looks maybe like an accountant, charitably, like he might be able to maybe play adult softball league or something like that.

Austin Padgett (10:41):
That's what's funny is you always think about, I mean, just the pitchers kind of look like nerds in that, I mean, they are technicians.

Rusty Close (10:44):
Sure.

Austin Padgett (10:47):
Almost because they have to be, because there's so much muscle mass sitting at the other end right before you get to the catcher. There's just this enormous muscle mass that's about to pop the ball like crazy.

Rusty Close (10:58):
His control, just precision and movement. He was impossible to hit, but he was damn near impossible to hit. Just an absolute legend. But we're a little bit off track because I wanted to focus on Glavine and Avery, the lefties that anchored those legendary Braves staffs. Are there any, you know, you're watching baseball, any kind of lefties that left an impression on you?

Austin Padgett (11:19):
Big Unit was always one of my favorites just because...

Rusty Close (11:21):
Yep.

Austin Padgett (11:23):
An enormous man throwing a ball that's so small compared to him. It's really... a fascinating guy. I mean, that's probably who I think of. Babe Ruth was a lefty.

Rusty Close (11:29):
Sure.

Austin Padgett (11:35):
But Big Unit is probably one of the ones where... Well, hold on. Ken Griffey Jr.

Rusty Close (11:38):
Sure. Yeah, yeah.

Austin Padgett (11:40):
Before I get ahead of myself.

Rusty Close (11:41):
That gorgeous left-handed swing.

Austin Padgett (11:43):
The most beautiful swing in baseball. Yeah.

Rusty Close (11:45):
Yeah, yeah. It's hard to not think of that. Koufax, Steve Carlton, I think those are some of the big-time left-handed pitchers. If we think about football, it's hard to think of anything but quarterbacks, but I always think of like Steve Young, Michael Vick. It always looks odd when you get a left-handed quarterback.

Austin Padgett (12:03):
Yeah, for sure. I was trying to think as you were talking, like, how do I tie in pro wrestling? But I don't know that handedness has ever mattered in pro wrestling.

Rusty Close (12:11):
We got to dig into that one a little bit.

Austin Padgett (12:12):
Yeah, yeah. Next episode we'll bring it back.

Rusty Close (12:14):
Yeah. Another lefty that I know is probably near and dear to your heart, quarterback Tim Tebow.

Austin Padgett (12:20):
Man, yeah, that's... That was during my lost decade, so he couldn't hurt me.

Rusty Close (12:24):
That's right. That's right.

Austin Padgett (12:25):
Incredible player, to be sure.

Rusty Close (12:27):
Sure. Incredible college player, let's say.

Austin Padgett (12:28):
Yeah.

Rusty Close (12:29):
We always talk about guitarists. What about left-handed guitarists?

Austin Padgett (12:32):
You know who is the left-handed guitarist. That's going to be Jimi.

Rusty Close (12:36):
Yep, yep. Is it correct that he just turned over a right-hand guitar and played it upside down?

Austin Padgett (12:41):
That's right, yeah. Production of left-handed guitars was more limited, as it still is.

Rusty Close (12:44):
Yeah.

Austin Padgett (12:45):
Then you have the same thing with Paul McCartney.

Rusty Close (12:45):
McCartney, yeah.

Austin Padgett (12:48):
A lot of people don't know Ringo's left-handed.

Rusty Close (12:50):
Oh, yeah. Okay. Yeah, you don't think of your drummer's handedness necessarily either. They're like wrestlers in that way.

Austin Padgett (12:54):
He drums right, actually. He has it set up right, but a lot of people will tell you, and I say a lot of people, like a buddy of mine who's really into drums, will say that his handedness matters because he has these weird tom fills that are kind of unique to him, very kind of Ringo-isms. The theory is that it must be handedness.

Rusty Close (13:15):
It results from his left-handedness.

Austin Padgett (13:17):
Yeah. Maybe we'll do a whole another episode on this, but Tony Iommi from Black Sabbath.

Rusty Close (13:19):
Oh, yeah, right.

Austin Padgett (13:22):
Do you know his story?

Rusty Close (13:23):
No. I did know he was left-handed, but yeah.

Austin Padgett (13:25):
He lost fingertips on his... I guess it would be his right hand.

Rusty Close (13:29):
His what you would think of as your shredding hand.

Austin Padgett (13:32):
Shredding hand.

Rusty Close (13:33):
Yeah, yeah.

Austin Padgett (13:33):
He lost his fingertips and that led him ultimately, I'll go into more detail later because I think it's more of a theory, I don't know how much of it actually plays out, but the idea is that, okay, well, he changed the way he played and basically invented metal, like early metal.

Rusty Close (13:41):
Oh, interesting. Okay.

Austin Padgett (13:49):
Because he's slinging lower gauge strings, he's using basic power chords because his fingers can't accomplish more complex chord shapes.

Rusty Close (13:54):
Sure.

Austin Padgett (13:58):
He's finding ways of adjusting to create his own playing style, and it becomes kind of the forerunner of what we now think of as metal.

Rusty Close (14:06):
Interesting. Okay. Yeah, we got into that early metal, where it came from, with our Neil Young episode as well.

Austin Padgett (14:13):
That's right.

Rusty Close (14:14):
Maybe we'll just have to trace the full history one day.

Austin Padgett (14:15):
Absolutely.

Rusty Close (14:16):
I've got another lefty for us. Can you tell me, are you familiar with Stella Lefty?

Austin Padgett (14:23):
Not at all, Rusty.

Rusty Close (14:25):
Okay.

Austin Padgett (14:26):
This is going to be a tough episode.

Rusty Close (14:27):
Unbelievable. I can't believe it hasn't even crossed your ears at some point.

Austin Padgett (14:31):
Maybe on Sirius or something like that.

Rusty Close (14:35):
Yeah. Stella Lefty is, let's just say, a 2026 up-and-coming, or maybe a little above up-and-coming, country music performer, singer-songwriter. She's in that space. She's in that universe, which I know is maybe not directly in your wheelhouse.

Austin Padgett (14:52):
Yeah, yeah. I mean, I celebrate all music, but I'm just not very familiar with her.

Rusty Close (14:57):
Sure. Stella Lefty, her given name is Stella Lefkofsky, and she grew up in the northern Chicago suburbs. Again, she's in her early 20s right now. Her father, I'm not sure if you know of him, but his name is Eric Lefkofsky.

Austin Padgett (15:07):
Okay.

Rusty Close (15:17):
He is the billionaire co-founder of Groupon.

Austin Padgett (15:21):
Gotcha. So she... Yeah, middle-class upbringing.

Rusty Close (15:24):
Middle-class upbringing. Very solidly middle-class. That's right. You ever use any Groupons over the years?

Austin Padgett (15:30):
Yeah, we did some here and there. I forget what they were for. It's like event, like cooking class or something like that.

Rusty Close (15:36):
Cooking class, yeah, exercise classes.

Austin Padgett (15:38):
That's right.

Rusty Close (15:39):
Things like that. It always seemed like if there was a Groupon available, the whatever business it was was kind of on the verge of going out of business. This was kind of like a last-ditch effort.

Austin Padgett (15:42):
Absolutely.

Rusty Close (15:48):
He had some other companies that he founded that also contributed to his overwhelming wealth. As you might imagine, if you're an up-and-coming artist and your father is a billionaire several times over, there might be claims that you're a nepo baby. That's a common term these days.

Austin Padgett (15:57):
A hack.

Rusty Close (16:06):
Yeah, right.

Austin Padgett (16:07):
All right.

Rusty Close (16:08):
An industry plant. You'll see her described that way in certain articles and people that may not be super kind to her. Apparently, even though she's grown up in Chicago, she grew up on country radio. So there's...

Austin Padgett (16:13):
Nice. Okay.

Rusty Close (16:21):
Yeah, Tim McGraw, Brad Paisley, the one and only T-Swift, the subject of our very first episode.

Austin Padgett (16:24):
That's right.

Rusty Close (16:27):
Her bona fides, maybe you might say, she also mentions Randy Travis and Keith Whitley, which those are two pretty solid choices there. You're not just listening to pop country if you listen to Keith Whitley.

Austin Padgett (16:39):
That's great. Yeah. I take back everything I said. I was just postulating. Like I said, I don't know this person. I don't know her music.

Rusty Close (16:45):
That's right. I was not familiar with your game. The story is that she started writing songs when she was really young and playing guitar when she was really young, at five or six, something like that. She has said that for her early songwriting, she would write new lyrics over Taylor Swift songs. So if you're familiar with the Taylor Swift song "Tim McGraw" or "Back to December", she has said she kind of used that melody and wrote her lyrics over those existing melodies. That was kind of what she did when she was younger. She went to Tulane from the northern suburbs of Chicago. I think she was obsessed with music, but her parents were kind of like, "Well, you're going to college, so figure out a place you want to go."

Austin Padgett (17:27):
Okay. I'm starting to like her even more. Yeah.

Rusty Close (17:29):
Yeah. She was studying public health, and it also seemed like she didn't really view music as a viable career path for herself because, one, she didn't know anybody who had done it, and two, she apparently had pretty bad stage fright.

Austin Padgett (17:36):
Oh, interesting.

Rusty Close (17:44):
But she realized somewhere along the line that especially in country music, a lot of the performers don't necessarily write their own songs. So, maybe she could be a songwriter and get into the music industry that way. During this time, she also starts posting videos of herself covering other people's songs. Right? Maybe you get over that stage fright element because you're performing, but you're not in front of an audience,

but you're making it available to the audience. This is maybe building up some confidence and she starts thinking, "Well, maybe I can be a performer," right? There's Tyler Childers, if you're familiar with him.

Austin Padgett (18:21):
I do.

Rusty Close (18:22):
He might show up on your Americana station on Sirius.

Austin Padgett (18:25):
Yeah, yeah.

Rusty Close (18:26):
Also posted covers of herself performing Noah Kahan songs, which... That's going to come up later, so just tuck that away for now.

Austin Padgett (18:34):
Consider it tucked. Yeah.

Rusty Close (18:35):
Yeah, we'll come back to it. She is also posting videos of herself doing her own songs.

Austin Padgett (18:42):
Okay.

Rusty Close (18:43):
It wasn't just covers. She was doing both. Between the covers and her originals, she starts building up an audience on TikTok, whatever that means these days. We talked about TikTok and how it's sort of beyond our grasp in our "Savage Love" episode, if people want to go back and listen to that.

Austin Padgett (18:59):
That's right.

Rusty Close (18:59):
The timeline is she first starts posting songs around 2021. She has a demo in 2022, she's got a single in 2023, there's an EP that she records in 2025. She starts opening for other artists, none of whom I'm familiar with, but Jessie Murph, Wyatt Flores, if you're familiar with those, I doubt that you are.

Austin Padgett (19:22):
Yeah, I know Wyatt Flores. Yeah.

Rusty Close (19:23):
Oh, you do? Okay, so there you go.

Austin Padgett (19:24):
Yeah, yeah, very good.

Rusty Close (19:26):
She's making a name for herself and she's getting to be somewhat well known, at least in that sphere of music. Then there's a song called "Boston", and that's what kind of brings us to where we are today. Things kind of blow up for her. Like I mentioned, TikTok's beyond our grasp, and this is not necessarily the classic tale that we've heard a thousand times, but it doesn't seem that unconventional in 2026 that a girl starts writing songs, she builds a TikTok following, and that sort of leads to her becoming an actual practicing, touring, professional musician, right? TikTok is really going to factor into this. Early 2026, she has a song called "Thinkin' Bout You", and it goes, let's just say, semi-viral. It's getting attention, right? I don't know to what extent. I think going viral can mean a lot of things, but it's getting attention. Another up-and-coming country artist named Vincent Mason slides into her DMs, as the kids like to say, and compliments the song, compliments this original song of hers, "Thinkin' Bout You". Who's Vincent Mason? He's another up-and-coming artist and he's actually from Roswell. So, you know, up in your old neck of the woods.

Austin Padgett (20:41):
Yeah.

Rusty Close (20:43):
At some point he moves to Nashville. He has a breakout song called "Hell is a Dance Floor." Also, I'm not familiar and I doubt you are either.

[laughter]

Austin Padgett (20:49):
That's correct.

Rusty Close (20:54):
He has slid into her DMs. They have connected in some way. It's a little murky. I don't know the total details about have they been on dates, have they just been talking, but at some point they have met in person.

Austin Padgett (21:01):
Okay. Spill the tea, Rusty.

Rusty Close (21:10):
Yeah. No, I wish I had it all. I don't want to get any of this wrong. I don't know if she's got super fans that are going to come after us for this.

Austin Padgett (21:16):
Right.

Rusty Close (21:17):
But she's in Nashville for a week-long songwriting kind of intensive session. I don't know if they're dating yet, but the story is that she's got some time to kill, waiting on him to come and pick her up for a date. She's killing time. She sits down at the piano and she writes the chorus to the song that becomes "Boston". Records herself, because, of course, why wouldn't you record yourself if you're working on a song or whatever it is.

Austin Padgett (21:46):
For sure.

Rusty Close (21:46):
Later, sometime shortly thereafter, maybe after the date, a little bit unclear, she then posts that clip of that chorus to TikTok and sort of wakes up the next morning and people have glommed onto this thing. It's gaining some traction.

Austin Padgett (22:01):
Oh, wow.

Rusty Close (22:02):
Okay?

Austin Padgett (22:02):
Gotcha.

Rusty Close (22:02):
Sort of overnight, it is gaining traction. Now, you said you haven't heard this song, you're not familiar with "Boston"?

Austin Padgett (22:09):
Correct. I have not.

Rusty Close (22:10):
All right, well, for everyone else, including yourself, let's listen to a little clip of that chorus.

Austin Padgett (22:13):
Here we go.

[music]

Stella Lefty (22:17):
On a train back to Boston and we're jumping the gun and I'm telling you, baby, this the part I'd run, but I like it when you're nice, like it when you're nice to me. Well, there I was, swearing I would never fall in love. All my inhibitions parked out the second you said, "What's up?" So here we go.

[end music]

Rusty Close (22:50):
All right, so we've heard the chorus. Commenters on TikTok almost immediately start pointing out that this chorus sounds a hell of a lot like the Noah Kahan song "Stick Season".

Austin Padgett (23:03):
Oh, the commenters always love to find similarities, don't they?

Rusty Close (23:06):
They're just always nitpicking everybody, man. Just let people live.

Austin Padgett (23:08):
Absolutely.

Rusty Close (23:10):
Now, do you know "Stick Season"?

Austin Padgett (23:11):
I do know "Stick Season". Yeah.

Rusty Close (23:13):
It's hard to escape, I would say.

Austin Padgett (23:14):
That's true.

Rusty Close (23:15):
Well, for everyone else, let's let them have a little listen to "Stick Season".

Austin Padgett (23:20):
Perfect.

[music]

Noah Kahan (23:20):
Doc told me to travel, but there's COVID on the planes and I love Vermont but it's season of the sticks and I saw your mom, she forgot that I existed and it's half my fault, but I just like to play the victim. I'll drink alcohol 'til my friends come home for Christmas and I'll dream each night of some version of you that I might not have, but I did not lose. Now you're tire tracks and one pair of shoes and I'm split in half, but that'll have to do. So I thought that if I piled something good on all my...

[end music]

Rusty Close (24:02):
Okay, so now we've got the chorus that she has written. It's been posted to TikTok. People are pointing out that it sounds suspiciously like "Stick Season". She then collaborates with a couple of other co-writers and they finish the song. They're working on the song, they get it finished. And in this same time period, Noah Kahan's camp reaches out and says, "Hey, we just want to flag some resemblances for you here." Okay. Ultimately, the song gets finished and the final version is credited to Lefty, the three collaborators, I'm going to hopefully get the names right, but Grace Enger, Jacob Kasher, and Joe Reeves, and Noah Kahan. So, he's listed as a songwriter on the final version of the song.

Austin Padgett (24:52):
Gotcha.

Rusty Close (24:55):
We're good now. We know where we're at.

Austin Padgett (24:58):
I should mention that's a classic kind of fix for these types of issues.

Rusty Close (25:00):
Sure. Yeah.

Austin Padgett (25:03):
If you look up "Ice Ice Baby".

Rusty Close (25:05):
I don't have to look it up.

Austin Padgett (25:07):
Well, if you look up the songwriting credits, you're going to see a number of folks, and it's not just the Iceman himself.

Rusty Close (25:11):
Rob Van Winkle.

Austin Padgett (25:16):
Yeah. You're going to see all the members of Queen and David Bowie listed as well.

Rusty Close (25:20):
We'll get into that later in terms of how quickly or slowly that sort of thing gets resolved, when the songwriting credit gets apportioned as maybe it should be.

Austin Padgett (25:27):
Sure.

Rusty Close (25:34):
But for now, song comes out and we've got the proper songwriting credit here. Now, on previous episodes, we've talked about sampling, we've talked about just pure covers of songs, and we've even talked about co-writing. But this is a little bit different than what we've looked at before. This isn't sampling, right? She wasn't making use of any pre-recorded work, right? There's nothing along those lines. We talked about the Beastie Boys and Paul's Boutique, we talked about Biz Markie using "Alone Again". There's nothing pre-recorded that she's repurposing. We don't have a sampling situation. When we talked about co-writing, we talked about Old Crow Medicine Show and their song "Wagon Wheel", but they had used a line or maybe a few lines from an unfinished Bob Dylan song. They credited Bob Dylan as a songwriter on that song. But in this case, nothing that Noah Kahan wrote was in Stella Lefty's song.

Austin Padgett (26:35):
Right.

Rusty Close (26:36):
So, are you familiar with a concept called interpolation?

Austin Padgett (26:41):
Yeah, I mean, roughly. I mean, before we get there, what we're looking at is copyright infringement. It's usually the hammer that would get swung if there was too much similarity. But that generally requires access, which she clearly had because she was covering his songs on this YouTube channel. She knows "Stick Season." She had access, and there are some similarities. Do we know if she ever kind of conceded other than providing the songwriting credit? Because I could see someone just saying, "You know what? Fair's fair. I don't want to have a fight here. I was just writing a song. If you're cool with it, we'll add you as one of the writers." You can take a writer's share.

Rusty Close (26:59):
Yeah, yeah, yeah.

Austin Padgett (27:17):
An apportioned share.

Rusty Close (27:19):
That seems to be the way that this worked out.

Austin Padgett (27:20):
Okay.

Rusty Close (27:22):
Her position is when she wrote that chorus, she's waiting on this guy to come pick her up. She wasn't thinking about Noah Kahan. She said, "I was literally thinking about nothing at all." I mean, hey, man, this is a girl who is head over heels in love, man. She's waiting to go out on this date. She's not thinking about... She's just expressing these feelings of love that are coming to her in the moment, not thinking about, "Am I making this similar to someone else's song?"

Austin Padgett (27:48):
Right. To get to your question, you have copyrights in two things in music. We covered this in our very first episode of Taylor Swift. You've got the underlying composition, and then you have the actual recording of it. Those two things might be embodied in the same thing, but they're two different concepts in intellectual property. Sampling takes both of those things. You take the composition and the recording, and you take whatever bit you're using and sample it into your piece. On interpolation, you're only using the composition aspect. You're not using anybody's recording. Let's say she did have it in mind and it was an intentional... Are you saying interpolation?

Rusty Close (28:28):
I've been saying interpolation.

Austin Padgett (28:29):
Okay.

Rusty Close (28:30):
I don't know if that's right. I've only ever seen it written. I've never heard it spoken.

Austin Padgett (28:33):
It's not one of those words I use, and I'm notorious for mispronouncing words, particularly... Like you, I only see it in writing and I'm kind of like, I'm out of context here. I'm not really sure. Whatever that word is, let's say it was a conscious attempt at that. You're re-recording it basically so that you're not borrowing the recording, you're just taking some ideas from the composition and are throwing it in... interpolate.

Rusty Close (28:56):
You're interpolating it. Yeah.

Austin Padgett (28:58):
Yeah, I like interpolate. Let's go with that.

Rusty Close (29:00):
Yeah. I think of it as interpolation implicates the original work. It brings it to mind, but it's an independently recorded sound-alike, essentially.

Austin Padgett (29:06):
Right.

Rusty Close (29:12):
I have a reputation to uphold here when it comes to music, and so I don't want anybody to be thinking that I'm really spending my time listening to Stella Lefty or Noah Kahan. But the first time I heard that song, I immediately thought of “Stick Season.”

Austin Padgett (29:21):
Did you really?

Rusty Close (29:29):
Immediately. The chorus made me immediately think of it.

Austin Padgett (29:33):
Is it the rhythm? The notes kind of float in the same range-ish.

Rusty Close (29:37):
And just the sort of vocal pattern...

Austin Padgett (29:39):
Pattern.

Rusty Close (29:40):
That it goes down.

Austin Padgett (29:40):
Yeah.

Rusty Close (29:41):
Let's listen to it again just so we kind of have it top of mind. Here's “Boston.”

[music]

Stella Lefty (29:45):
On a train back to Boston and we're jumping the gun and I'm telling you, baby, this the part I'd run but I like it when you're nice, like it when you're nice to me.

[end music]

Rusty Close (29:59):
Okay. Now here's Stick Season just one more time.

[music]

Noah Kahan (30:10):
And I love Vermont, but it's the season of the sticks and I saw your mom, she forgot that I existed and it's half my fault but I just like to play the victim. I'll drink alcohol till my friends come home for Christmas and I'll dream each night...

[end music]

Rusty Close (30:21):
When I hear that, to me it's just an uncanny resemblance, and it's just hard to imagine that it wasn't intentional.

Austin Padgett (30:24):
Yeah.

Rusty Close (30:28):
We're not here to cast aspersions. That's not who we are. We celebrate all of people's creative endeavors. We're not doing that. But keeping in mind that she posted multiple videos of herself covering that song.

Austin Padgett (30:41):
Oh, she has a cover of that exact song.

Rusty Close (30:43):
That song.

Austin Padgett (30:44):
Okay.

Rusty Close (30:44):
Not just Noah Kahan songs, but that song on multiple occasions.

Austin Padgett (30:48):
Yeah.

Rusty Close (30:49):
Again, not us, but people might ask how it's possible at some point she didn't pick up on the similarity between the two because it doesn't seem like she did, or if she did, she didn't bring attention to it. It was his camp that called, and again, they got it worked out. But it is hard to imagine that it wasn't an intentional interpolation. But it does seem like intentional or unintentional, the remedy, if you can solve it soon enough, is a songwriting credit. Is that correct?

Austin Padgett (31:24):
I think on a going-forward basis, that probably is right. I mean, as a copyright holder, if there's true copyright infringement, you have injunctive remedies. But why wouldn't you? If this is a popular song, why wouldn't you take the license, basically, or a songwriter share and make some more money off of it?

Rusty Close (31:42):
Well, in this case, it does seem like it got worked out before it was ever released. Now, maybe, I don't know how TikTok works, maybe the chorus itself gets several million views and there's some sort of monetization there. But at least before the actual song itself was released in a more traditional sense, it did get sorted out. The money aspect, like you said, you get the songwriter's share and you go, "Okay, well, no harm done," or whatever it is. Going forward, I'm going to make my money off of this.

Austin Padgett (32:09):
It seems to be a no-brainer, right?

Rusty Close (32:11):
It seems to be, yeah.

Austin Padgett (32:12):
If she hits gold, you hit gold too.

Rusty Close (32:14):
Exactly.

Austin Padgett (32:16):
You're getting at least probably 20% off of that songwriter share.

Rusty Close (32:19):
You tell me. There were five songwriters. Is it usually credited by, well, there's five of us, so we each get 20%? Or do they get to say, "Well, mine was 40%, yours was 10"?

Austin Padgett (32:23):
They can say.

Rusty Close (32:27):
Okay.

Austin Padgett (32:30):
But unless there's an agreement, it's even-stevens.

Rusty Close (32:33):
Yeah. Okay. We have another example where, like I said, I would have thought this was an intentional, made-to-sound-like-this-other-song interpolation, but we have an example of where that was the case. They set out from the beginning to evoke this earlier song, to interpolate this earlier song. Just because we like to kind of weave these episodes together and bring all the elements together, we're going to talk about another country music singer, but is also a well-known Braves super fan. We've kind of brought our topics, our passions together.

Austin Padgett (33:05):
Let's go.

Rusty Close (33:09):
A guy named Cole Swindell.

Austin Padgett (33:10):
Okay.

Rusty Close (33:12):
Have you heard of Cole?

Austin Padgett (33:13):
I have heard the name. I don't know him well. Yeah.

Rusty Close (33:16):
Sure. Well, he was raised in Bronwood, Georgia.

Austin Padgett (33:22):
Sure.

Rusty Close (33:23):
Have you been through Bronwood?

Austin Padgett (33:24):
It's near Albany.

Rusty Close (33:24):
Yes, exactly right. Yes.

Austin Padgett (33:27):
Yeah. That is where I stay in my halfway points between here and Tallahassee, basically.

Rusty Close (33:30):
Okay. All right.

Austin Padgett (33:33):
It's the birthplace of Ray Charles.

Rusty Close (33:35):
Oh, okay. There's a claim to fame there.

Austin Padgett (33:37):
Not Bronwood, but Albany.

Rusty Close (33:38):
But Albany. Yeah. He also has a penchant for wearing a Georgia Southern hat. If you're ever on the lookout for that, you might find him wearing a ball cap.

Austin Padgett (33:45):
That must be a cool hat. Yeah.

Rusty Close (33:47):
As I understand this story, Cole is on tour with another artist named Thomas Rhett, and they had an idea for a song. Initially, it was going to be a duet between the two of them, but that kind of evolved over time. But the gist of the song is a guy is at a bar and he sees a girl doing karaoke or performing on stage covering the song Heads Carolina, Tails California. Do you know that song? It's a '90s country song.

Austin Padgett (34:15):
Yeah, I think I've heard it. Yeah.

Rusty Close (34:17):
Girl's on stage, she's singing this song. The guy, the protagonist of the song, kind of falls in love with her on the spot. "Oh my God, we both love '90s country." Maybe she'll fall in love with a boy from South Georgia. Here's the whole song, right? Now, the idea is it's going to be built around this girl on stage singing this well-known song, right? I think, to me, to the extent there is a classic type of interpolation, this is a perfect example of that. The first thing, according to Cole Swindell, that they do is they reach out to the original songwriters of Heads Carolina, Tails California. Okay?

Austin Padgett (35:01):
Okay.

Rusty Close (35:01):
That's not Jo Dee Messina. She's the one who sang it, performed it, but she didn't write it.

Austin Padgett (35:06):
Okay, so Jo Dee Messina's song. Okay. Yes, yes, yes. I remember now.

Rusty Close (35:09):
Yeah, yeah. Sorry, I should have said that.

Austin Padgett (35:10):
Gotcha.

Rusty Close (35:11):
So reaches out to these two songwriters, Tim Nichols, Mark D. Sanders, and didn't know what they were going to say. But according to Cole, if they hadn't been cool with it, we wouldn't have done it. That's where we are. He reaches out, they say, "Hey, go ahead. Go forward with it." Before we move on, let's listen to a clip of the Jo Dee Messina song.

[music]

Jo Dee Messina (35:33):
We can pack up tomorrow. Tonight, let's flip a coin. Heads Carolina, Tails California. Somewhere greener, somewhere warmer. Up in the mountains, down by the ocean. Where it don't matter, long as we're going somewhere together. I've got a quarter. Heads Carolina, Tails California.

[end music]

Rusty Close (36:06):
Now I'm sure you recognize it from your many years of listening to '90s country music.

Austin Padgett (36:10):
A classic. That's right.

Rusty Close (36:12):
Then let's hear what Cole did with the song for his new song.

[music]

Cole Swindell (36:37):
She was laughing, they were daring her to get on the mic. One of them walked up and turned in her name. Next thing I knew, man, she was up on the stage singing Heads

Carolina, Tails California. Maybe she'd fall for a boy from South Georgia. She's got the bar in the palm of her hand, and she's a '90s country fan like I am. Hey, I got a Chevy, she can flip a quarter. I'd drive her anywhere from here to California. When this song is over, I got to find her because she had me at Heads Carolina.

[end music]

Rusty Close (37:02):
Okay. Now we've got both versions. You see how he went about using that original song in the chorus of his new song. He's got the idea for the song. He completes it. Two other songwriters, Ashley Gorley, Jesse Frasure, and ultimately, there are six songwriters credited. There's Cole Swindell, there's his two co-writers, Ashley Gorley and Jesse Frasure. There's the writers of the original Jo Dee Messina song, Nichols and Sanders, and also Thomas Rhett is listed as a songwriter because, remember, they were on tour together and kind of came up with the structure for the song themselves.

Austin Padgett (37:38):
Sure, yeah.

Rusty Close (37:40):
Now, again, we haven't mentioned Jo Dee Messina here. She wasn't a writer on the song, so you tell me, but there would be no need to seek her permission to use the lyrics in that way.

Austin Padgett (37:51):
That's correct.

Rusty Close (37:52):
But from what we know, Swindell does reach out to her to gauge her interest, to see if she'd be interested in participating in some way, what it might be. I think he respected her and her version of the song and wants her to be a part of it if she wants to be. They send her a copy of the recording. Apparently, she really likes it. She's totally on board. She meets Swindell for the first time on the set for the video shoot for the song. That's the first time they meet. Do you know why she's on set for the video?

Austin Padgett (38:09):
Not particularly, no.

Rusty Close (38:26):
As I said, this is a guy, he's in a bar, he's seeing the girl on stage. Right? This is kind of playing out in the video. Jo Dee Messina is the bartender in the video.

Austin Padgett (38:35):
Oh, okay.

Rusty Close (38:36):
She makes a cameo as the bartender. It's a really cool kind of thing. It all kind of ties together. Later on, there's a remix of Swindell's song where Jo Dee Messina joins, sings the chorus. They also performed it live together. They performed it at the CMAs in 2022. This is kind of a cool story of how bringing these two eras together, bringing this song into this new song, just kind of a cool outcome.

Austin Padgett (38:45):
I like those where it's we're going to throw back, but we're going to build a story around. Yeah, that's cool.

Rusty Close (39:05):
It all worked out. I know you're wondering, we've talked about Jim Messina on some of our episodes. Loggins and Messina, Poco.

Austin Padgett (39:13):
Yeah. Explain – what's the relationship? Nothing?

Rusty Close (39:15):
Unfortunately, there's not one.

Austin Padgett (39:17):
What a downer. Yeah.

[laughter]

Rusty Close (39:17):
Hate to be the bearer of bad news, but I couldn't quite tie it together.

Austin Padgett (39:22):
End the podcast, we're done.

Rusty Close (39:24):
We've got this idea of all art, in some way, is borrowing from something older. I think the question becomes how much borrowing can you do? How intentional does it have to be or unintentional? Where are those lines? Do you have kind of any thoughts just generally on that?

Austin Padgett (39:41):
I mean, this is the tale as old as time. I mean, it goes back to the George Harrison case, trying to figure out. We'll cover that case probably in a few episodes in the future. He had access via his record collection, and the Beatles were on the radio at the same time as a bunch of other artists. You have a lot of ideas popping and something that feels comfortable, you roll with it, and yet it sounds familiar to other people.

Rusty Close (40:07):
You tell me, and we don't have to get down into the nitty-gritty, but I think that's a situation kind of like with Ice Ice Baby, where this gets worked out later and with much litigation involved, a lot of time and resources and money trying to get to an answer of should credit have been given or not.

Austin Padgett (40:24):
That's right. Yeah. I mean, they're ultimately copyright infringement cases, and the credit is just a tool for resolution.

Rusty Close (40:28):
Yeah, or money.

Austin Padgett (40:32):
Yes, exactly. So, like I was saying, the measure is copyright isn't about things sounding similar by itself. It's about copying. That's the only thing that copyright protects you from. You and I could have the same exact thought independently, and we would each have our own copyright in it and not have actions against one another. But it's rare that the case is I can document inside Lefty's head and show that she was thinking “Stick Season.” I need a song that sounds just like “Stick Season.” I'm listening to it right now, and I'm writing these words to make it sound like this. Ultimately, the question comes down to usually instead of proving exact copying, we substitute this other test, and that's access plus substantial similarity. The more similarity, the less access you need, basically, it's a scale. There are things called striking similarity where, man, if we can't prove access, there's no other way, given the way the world works and the circumstances that we're in, that there could have been anything but copying here. If it's a large work or very complex, there's no way somebody independently can... That is a possibility. But otherwise you're usually looking at, okay, they had access, they knew your music, or they had access to it, and then they copied it in a substantially and meaningful similar way.

Rusty Close (41:37):
Yeah.

Austin Padgett (41:55):
It's not just that they sound similar. It's that like, because there are a lot of tropes and a lot of common themes and items throughout music. Same chord progressions, same lyrical types of content.

Rusty Close (42:07):
The building blocks.

Austin Padgett (42:08):
Yes, exactly. Those things we generally call scènes à faire. The common things, the

building blocks. Nobody gets to own those things. You kind of have to remove those from the picture while you're still looking at everything in the totality. You look at what's the actual copyrightable expression and then, okay, like at what layer, coming down from the forest to the trees, is there infringement? Is it a country song about drinking? That's 50% of country music. Is it a song that, if we're talking lyrics, talks about drinking in a bar, trying to get over an ex? Again, way too high level. You kind of have to keep narrowing it down in the context of what you're talking about.

Rusty Close (42:30):
Right.

Austin Padgett (42:51):
You have to do the same thing with the music. Okay, is it a 1-4-5 progression? That's a huge percentage. You have the basic chords that work together and they have voice-leading tendencies, and so that's the reason they're popular is they work. Now we're going to get closer. Is there melodic content that's very similar? Are there rhythmic elements? Those sorts of things, and you start getting down into those specific building blocks and noticing the similarities and are you there yet? That's the copyright case. That's the question in the copyright cases. But do we want to spend a lot of money litigating that when we hear what we hear?

Rusty Close (43:09):
Right.

Austin Padgett (43:27):
Probably not, and we can find a business resolution to it, like here, or at least in the first case we talked about, there's a songwriting credit that got exchanged and that's a fix because, in a sense, everybody wins.

Rusty Close (43:38):
Everybody wins. I mean, it's not apples to apples, but it goes back to our episode about can we write a TV show that's set in a hospital emergency room?

Austin Padgett (43:42):
Exactly.

Rusty Close (43:46):
Right. At what point can we not do that?

Austin Padgett (43:47):
That's right.

Rusty Close (43:49):
Because it's the same sort of thing. How similar are the characters? Getting into the

nitty-gritty of the characters. All of those things have to factor into it. Just to put a bow on this, we've got these situations where you've got influence. These are the building blocks, but no actual credit is due to anyone else. Then you can kind of move into this unconscious borrowing where it's unintentional, but it's a little too close and credit is owed to someone. You either get it resolved at the beginning, like they did with Stella Lefty, and you get the songwriting credit, or it gets resolved in the courts and they determine that you went too far. I think that goes to the George Harrison case. Then in the last situation, you've got where it was intentional. This was intentional, and we are going to get the approval from the outset. I just thought this was an interesting way to look at some of these situations, and they kind of always touch on things that we've talked about, but in different ways. Is there anything else you want to add other than let's go Braves?

Austin Padgett (44:45):
Yeah, go Braves. I mean, the local team, as we're recording, they're still in it.

Rusty Close (44:50):
Still in it. Hopefully still in it after this next week. So we'll see.

Austin Padgett (44:53):
Yep. By the time the episode comes out, they may have taken the whole thing.

Rusty Close (44:55):
That's right.

Austin Padgett (44:57):
Congrats in advance if so.

Rusty Close (44:58):
Thank you. Yes, thank you.

Austin Padgett (45:01):
Well, let me wrap us up. Thanks to everyone for listening. If you enjoyed today's episode, hit like, hit subscribe. Come on, give us that five-star rating. We're so worth it. Whatever happens, remember, whether you're a lefty, whether you're a righty, there's *No Infringement Intended*.

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