

## What 'Jersey Boys' Case Tells Us About Copyright Law

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In February of this year, the Ninth Circuit decided *Corbello v. DeVito*, a case involving the musical group the Four Seasons and the enormously successful Broadway musical about their life, "Jersey Boys." The *Corbello* case illustrates a number of important principles of copyright law arising out of joint ownership of a copyright, that is, when two or more persons author a copyrighted work. These principles are often misunderstood by those in the entertainment industry, which often leads to unintended and unwelcome consequences.

The plaintiff was Donna Corbello, wife of Rex Woodward. Woodward was the ghostwriter of an unpublished autobiography of Thomas DeVito, one of the members of the Four Seasons. Woodward and DeVito entered into a written agreement to split any proceeds from the autobiography. But the manuscript they wrote never got published and Woodward died a few years later.



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Some years after Woodward's death, DeVito and another Four Seasons member, Nicholas Macioci, signed an agreement granting the other two members, Frankie Valli and Bob Gaudio, the "exclusive right to use" aspects of their lives, as well as any "biographies," to develop a musical stage performance about the Four Seasons. Pursuant to that agreement, Valli and Gaudio were to pay, and did pay, DeVito and Macioci a percentage of profits from that stage performance, which ultimately was called "Jersey Boys."

DeVito shared none of the profits he received with Corbello (nor did he tell her anything about it). Corbello became suspicious when, after the success of "Jersey Boys," she tried to register the copyright for Woodward's unpublished manuscript and discovered that DeVito had already registered the manuscript under his own name as sole author. She later learned that writers, actors, and others involved in the play attributed inspiration in part to Woodward's unpublished autobiography, a copy of which had been provided to them.

Corbello sued DeVito, Valli, Gaudio and everybody else involved in the play for copyright infringement and an accounting. In its decision, the Ninth Circuit addressed several different copyright law principles that apply to jointly owned works.

First, the Ninth Circuit addressed whether Corbello could sue DeVito, co-owner of the copyright, for copyright infringement based on DeVito's use of the copyrighted work without her permission. The answer is no. The Ninth Circuit concluded Corbello could not sue DeVito for copyright infringement because a co-owner of a copyright can never be liable to another co-owner for infringement of the copyright.[1]

Second, the Ninth Circuit examined whether Corbello could sue for copyright infringement Valli and Gaudio, who exploited the copyrighted work based on permission obtained only from one co-owner (and not both). The answer, in general, is no because each co-owner has an independent right to use or license the copyright.[2] What that means is that unless co-owners have a contract between them requiring approval of all co-owners before a license is issued, any joint owner can issue a license to exploit a jointly owned copyright work — with or without permission of the other co-owners. In other words, to the extent DeVito validly licensed the autobiography to Valli and Gaudio, Corbello could not sue Valli and Gaudio for copyright infringement.

This is a fascinating concept that many creators don't understand. Imagine that two songwriters, a composer and a lyricist, have composed a hit song. The composer is dead set against using her music for commercial purposes, but the lyricist has no such compunctions and licenses the song (without telling, let alone obtaining permission from, the composer) for a Snicker's ad. Unless they have an agreement between them restricting licensing, there is nothing the composer can do to stop the lyricist from licensing out the song.

In this case, the issue was sent back to the district court to determine whether the license issued by DeVito and Maccio was valid. The Ninth Circuit found that there was a dispute of fact as to whether the license was enforceable because the agreement by which DeVito transferred his interest in the biography to Valli and Gaudio had a reversionary clause and it was unclear whether Valli and Gaudio had entered into an agreement with a third party to produce the play before the rights to the autobiography reverted back to DeVito.

Third, the Ninth Circuit recognized that, while Corbello could not sue DeVito for copyright infringement, she did have a valid claim against him for an accounting. While any co-owner can license out a work without permission of the other co-owner, any profits must be shared equally. A co-owner of a copyright must account to other co-owners for any profits earned from licensing or use of the copyright.[3]

Fourth, the Ninth Circuit addressed the important principle that one co-owner, acting independently, cannot limit any other co-owner's independent right to exploit the copyright. This conclusion stems from the principle that a joint owner cannot transfer more than he owns. A co-owner can, however, transfer his or her own interest in a copyright. In other words, DeVito in this case could transfer any of his own rights to the autobiography. DeVito could not, however, transfer or otherwise limit any of Corbello's rights and Corbello retained the right to exploit the autobiography on her own (subject to her obligation to account to DeVito for profits).

Bottom line, if a co-owner of a copyright wants to control how that copyright is exploited, the co-owner should enter into a written agreement with the other co-owners specifying exactly how the copyright may be exploited, whether permission of all co-owners is required, and whether there are other limitations on the right to license. That is the best approach to protect co-owners and avoid the kind of surprises the Four Seasons had in this case.

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[1] *Oddo v. Ries*, 743 F.2d 630, 632-33 (9th Cir. 1984)

[2] *Oddo*, 743 F.2d at 633.

[3] *Oddo*, 743 F.2d at 633.

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