

Music to our ears: some clarity on joint authorship of copyright

Article By:

Serena Totino

Georgina Rigg

In the recent [decision](#) of the case *Kogan v Martin*, the UK Court of Appeal overturned an Intellectual Property Enterprise Court (IPEC) decision and identified a new test for determining when contribution is sufficient to be recognised as a joint author of a copyright work.

The case has now been remitted for a retrial before a different judge, due to the judge of first instance adopting an erroneous approach to the evidence and applying incorrect legal standards.

Background

This case involves a dispute over the screenplay authorship for the film “*Florence Foster Jenkins*”, which depicts the musical career of Florence Foster Jenkins, an American socialite dubbed the world’s worst opera singer.

Mr Martin, a professional screen writer, brought proceedings against his former partner, Ms Kogan, in order to obtain a declaration that he was the sole author of the Florence Foster Jenkins screenplay. Ms Kogan, an opera singer, sought a declaration of joint authorship and claimed she was due the related royalties.

Ms Kogan claimed that she contributed to the main character development and to the work as a whole through editing, criticism and support. Whereas, Mr Martin claimed that Ms Kogan did not assist in defining the film’s structure and he wrote every word and made every decision giving form to the screenplay.

Back in 2017, the IPEC held that Ms Kogan’s contribution was not decisive to the screenplay, whereas Mr Martin acted as the “*ultimate arbiter*” and sole author of the work.

The case

The case rested on whether Ms Kogan’s work on the screenplay could be sufficient to fulfil all the joint ownership elements, namely collaboration, authorship contribution and non-distinctness of

contribution.

Collaboration – in order to meet this requirement, the work must be created by a collaboration of all the people who created it. Collaboration is only possible for work with a common design as to its general outline, where collaborators share the labour of working it out. However, collaboration must be more than editorial corrections, critique or ad hoc suggestions of phrases or ideas.

Authorship – joint authors must have contributed a significant amount of the skill and contributions must be “authorial”, which depends on the nature of the copyright work in question.

Contribution – The *Infopaq* test is used to determine what enough of a contribution is and it answers to the following question: has the joint author contributed elements which expressed that person’s own intellectual creation while exercising free and expressive choices? The more restrictive the choices available the less likely it will be that they satisfy the test. A test that does not coincide with the IPEC distinction between primary and secondary skills, which, according to the Court of Appeal, has no basis either in the law or in the jurisprudence and implies that less weight is to be given to conceptual contribution than to written words, when both are essential components of a work.

Non-distinctness contribution – The contribution must not be capable of been separated. In overturning the IPEC decision, the Court of Appeal held that the fact that one contributor has the final say does not prevent joint authorship although it will affect the proportion of ownership. As a result, the respective shares of joint authors do not need to be equal.

Takeaways

This case represents a significant development for joint authors, whose contributions may have been unfairly considered minor and ignored. It is a reminder that all authors of a work should be given their respective dues, despite there being a single, decision-making ‘lead’ author.

To view the Decision, [click here](#).

Copyright 2025 K & L Gates

National Law Review, Volume IX, Number 303

Source URL: <https://natlawreview.com/article/music-to-our-ears-some-clarity-joint-authorship-copyright>