

Express Repudiation Needed to Start Statute of Limitations Running on Coauthor's Copyright Claim

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In a recent precedential ruling a Third Circuit Appellate Court clarified the rights of a coauthor to defend his or her copyright in a joint work. A "joint work" is created when a work is prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. 17 U.S.C. 101. The copyright in the joint work is vested independently in each coauthor at the time the work is created. The ruling in *Brownstein v. Lindsay*, will impact any coauthor's ability to defend that copyright going forward so it is a ruling that every coauthor should be aware of.

In *Brownstein*, the plaintiff and defendant co-created a program that allowed for the identification of the ethnicity of a random list of people. Lindsay created a set of rules and Brownstein created computer code; put together their rules and code allowed the program to function. After the program was created Lindsay and Brownstein worked together to profit from the program; Lindsay was responsible for running the business end of their operation including registering the copyright on their program. Shortly after the program was created, in copyright registrations Lindsay began identifying herself as the sole creator of the program. It took 14 years for Brownstein to eventually file suit seeking a declaratory judgment that he was in fact a coauthor of the program.

At the trial level the District Court found in favor of Lindsay and dismissed Brownstein's claim on the basis of it being filed beyond the three year statute of limitations allowed for any claim regarding a copyright. On appeal, the Appellate Court reversed the District Court's decision and remanded for a new trial. In its decision, the Appellate Court held that even though it had been 14 years since Lindsay had begun to encroach on Brownstein's copyright the three year statute had not necessarily begun to run because there had not been an "express repudiation" of Brownstein's copyright.[1]

Leaning on the decisions of other Federal Circuits, the Appellate Court established that, in the Third Circuit, only an express repudiation can trigger the running of the statute of limitations. An express repudiation requires that one coauthor do something that communicates not merely that he/she is the author, but that he/she is the sole author or that the other party is not a coauthor. (Emphasis supplied by the court). More specifically, the Appellate Court stated that identifying oneself as a sole owner in a copyright registration is not enough to establish an express repudiation.

Going forward, the *Brownstein* decision will provide coauthors a greater chance to defend a copyright they have in a joint work because the determination will not hinge on a strict counting of years, but rather fact questions regarding what steps were taken by the infringing party and when the party being infringed upon knew about the alleged infringement. These changes should present a boon to those who participate in the creation of joint works.