A SHAKESPEAREAN TRAVESTY: DRAMATURGY AND THE PROBLEM OF JOINT AUTHORSHIP

By Oliver Gerland III

In his 1991 book Recycling Shakespeare, Charles Marowitz declares an epochal shift in the production of Shakespeare’s plays. Daring and imaginative Shakespeare productions by Max Reinhardt, Benno Besson, Peter Stein and Peter Brook began “to produce resonances in established works which surprised audiences that never imagined the plays dealt with the themes they now seemed to be about.” “In short,” Marowitz continues, “another ‘author’ has appeared and he is saying things different from—sometimes at conflict with—the meanings of the first author, and this interloper is, of course, the modern director” (Recycling 3).

Decades before Marowitz doubled the number of authors in theatre productions from one to two, Roland Barthes zeroed out that number in his famous 1968 essay “The Death of the Author.” For Barthes, the Author places a limit on the infinite play of a reader with a text. As he states, “we now know that a text is not a line of words releasing a single ‘theological’ meaning (the ‘message’ of the Author-God) but a multidimensional space in which a variety of writings, none of them original, blend and clash” (146). It is the reader’s task to enter that multidimensional space in the manner of an Author, prepared to collect and arrange signifiers and perhaps to find his or her own meaning there. Seen in this light, Barthes’ “death of the Author” (with a capital “A”) ends up multiplying authors (with a small “a”) since the readers of a text become in effect its authors. “The birth of the reader,” Barthes intones in conclusion, “must be at the cost of the death of the Author” (148).

The poststructuralist theory of Barthes and the theatrical practice of Marowitz—who created collage versions of Shakespeare’s plays—invite a heady and abstract conception of
authorship that can be extended to one, two, or many. Under U.S. copyright law, however, authorship is a well-established and exclusive category. Performance license agreements clearly identify the “author” of a play and grant him or her a great deal of power over production choices. For examples, for plays under copyright, Dramatists Play Service disallows “altering, updating or amending the time, locales or settings of the play(s) in any way” and specifies that “The gender of the characters shall also not be changed or altered in any way, e.g., by costume or physical change” (Dramatists). In November 1984, Arthur Miller used the authorial clout granted by this kind of language to close a production of the Wooster Group’s L.S.D. . . . Just the High Points which used substantial portions of The Crucible. One month later, Samuel Beckett threatened to do the same to Joanne Akalaitis’s production of Endgame at the American Repertory Theatre. Rejecting the playwright’s deliberately non-localized interior setting, Akalaitis placed the action amongst the remains of a bombed-out subway car. In the end, Beckett allowed the production to proceed but required that his statement disavowing it be published in the program (Rabkin).

Dramaturgs engaged in script development projects should understand U.S. copyright law’s definition of authorship. Dramaturg Lynn Thomson likely would agree: her dispute with the estate of Jonathan Larson over authorship of the musical Rent concluded in 1998 with an out-of-court settlement, but only after painful litigation. In this essay, I consider “authorship” as a legal category in relation to production dramaturgy. Consider the following hypothetical scenario. The producer of a summer Shakespeare festival commissions a playwright/director “to create an original Shakespearean spoof titled A Shakespearean Travesty” in the hopes of attracting a more youthful audience. To assist the playwright/director, the producer hires a dramaturg “to provide research and dramaturgical assistance,” including “assistance in preparing
the script.” Four months before rehearsals begin the playwright/director instructs the dramaturg to abstract the action of *Richard III*, *Midsummer Night’s Dream*, and *Macbeth* in 40-50 lines. The playwright/director then develops a series of “top ten” lists for Shakespeare’s canon such as the “top ten” most passionate lovers, the “top ten” dysfunctional relationships, the “top ten” best fights, etc. and asks the dramaturg to find a couple of salient lines from Shakespeare’s works for each entry in each list. She does all of this, expecting that these passages will form the core of the script that the playwright/director is developing. However, once rehearsals arrive, he has no script, only a series of exercises and improvisations intended to ignite the improvisational juices of the four actors. The rehearsal process turns into a six weeks script development process featuring intense collaboration between the actors and the director. The actors memorize the lines pulled by the dramaturg and are then instructed by the director to play them according to a specific concept, such as “Play the ‘morning-after’ scene from *Romeo and Juliet* in a shower!” or “Play Shylock and Jessica from *The Merchant of Venice* as if they were Ozzie Osbourne and his family!” (Stiehl). The dramaturg is asked to copy down the most comically effective lines, gags, and stage business. Each night, she takes her notes from the day’s rehearsal, incorporates them into the evolving script, and sends it to the director for review. Thus *A Shakespearean Travesty* grows daily by a process of accretion and adjustment. On the opening night of the show, patrons can purchase a pamphlet version of *A Shakespearean Travesty* with the director’s name on the title page as sole author. The question: Under U.S. copyright law, is the director the sole author of this work or can the dramaturg and even the four actors lay some claim to that title?

**What Is an Author?**
According to Article 1, section 8 of the U.S. Constitution, “The Congress shall have the power to promote the progress of Science and useful arts, by securing for limited times to Authors and Inventors the exclusive right to their respective writings and Discoveries.”

Copyright law and patent law grow from this passage which identifies two kinds of creators (Author and Inventors) and two kinds of things created (writings and discoveries). Inventors make discoveries that are protected by patent law. Authors make writings that are protected by copyright law. Three conditions must be met for a person to qualify as an author, and one more for a work to qualify for copyright protection. First, an author must be a creator or maker. In the 1884 case of Burrow-Giles Lithographic Co. v. Sarony, the Supreme Court held that an author is one “to whom anything owes its origin; originator; maker” (111 U.S. at 58). Second, the author must create an expression. One cannot author facts or general ideas or themes. One cannot author the fact that the sun rises in the East. That the sun rises in the East is out there in the world, a happening that all may observe and remark upon. It is in the act of remarking upon it that one becomes an author. An author might begin with the fact that the sun rises in the East but then she mixes in her own insight, creativity, and imagination, and produces something that the world has never before quite heard: an original expression about the dawn. The same holds true for general ideas or themes. Judge Learned Hand in a 1930 case wrote that if Shakespeare had copyrighted Sir Toby Belch and Malvolio from Twelfth Night, other authors could still have created, without fear of infringement, “a riotous knight who kept wassail to the discomfort of the household or a vain and foppish steward who became amorous of his mistress. “These,” Judge Hand continued, “would be no more than Shakespeare’s ‘ideas’ in the play, as little capable of monopoly as Einstein’s Theory of Relativity or Darwin’s Theory of the Origin of Species” (45 F. 2d at 121). Third, an author must create original expression. “Originality” may sound like a
high bar to clear but not so in copyright law. The Supreme Court held in the 1980 case of *Feist v. Rural* that “original, as the term is used in copyright, means that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. . . To be sure, the requisite level is extremely low: even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, ‘no matter how crude, humble or obvious’ it may be” (499 U.S. at 345).

As so far construed, an author is a person that creates original expression. One more condition must be met to ensure copyright protection: the original expression must be fixed in a tangible medium. The Constitution protects an author’s “writings” but “writings” in the ordinary sense of the word is too narrow to capture the many works of authorship that contribute to what the Constitution calls “the progress of Science and the useful arts”—things like maps, charts, paintings, models, designs, photographs, musical scores, etc. As a result, courts have broadened understanding of the term. Indeed, current copyright law foregoes the word “writing” stating instead that original works of authorship must be fixed in a “tangible medium of expression” to be assured copyright protection. Such “tangible media” include sculpture, photographs, paintings, writings, videotapes, computer programs, and so on.

**Authorship of A Shakespearean Travesty**

Let us now return to the example above and begin parsing the case of authorship in the Shakespearean spoof.

First, we need to ask if the play is a work of authorship, that is, a work of original expression fixed in a tangible medium. Does the script contain original expression? Yes it does, though it also contains copied expression, the words originally penned by the Bard. The director
and cast began improvising with Shakespearean lines, scenes, and characters but they went far beyond those lines to create something new, e.g. a scene in which an Ozzy Osbourne-like Shylock wonders “Does not a star have *** hands, does not a star have *** eyes?” (Stiehl). The spoof that I outlined has contemporary expression but what would have happened had the cast not uttered a single word not in a Shakespeare text, that is, would the script be original expression if it was just a compilation of Shakespeare lines? Most likely it would, though the originality would lie in the selection and arrangement of Shakespeare’s words, not in the words themselves. Thus Marowitz’s collage versions of Shakespeare’s plays are copyrighted; indeed, “all performance rights are strictly reserved” (Marowitz, copyright page). Given that A Shakespearean Travesty is a work of original expression, the next question is whether it is fixed in a tangible medium. It is. The dramaturg wrote down the play’s comically effective bits over the course of weeks of rehearsal and so developed a tangible, physical script that could be printed and sold to spectators.

Having established that the play is a work of authorship, the question becomes, Who is its author? No doubt Shakespeare has some claim but, because his work is in the public domain, we can set him aside. Let us review the roles the principals played in developing the script. The director instructed the dramaturg to pull lines from various Shakespeare texts. Actually, all he did was name names as in the “top ten” dysfunctional relationships—Hamlet/Ophelia; Othello/Desdemona; Demetrius/Hermia, etc—or the “top ten” fights—Tybalt/Mercurio/Romeo, Edgar/Edmund, Macbeth/Macduff, etc.—and it was the dramaturg who researched the plays and characters, and selected the most salient lines (Stiehl). The four actors, in collaboration with the director, then treated those lines as springboards for improvisation and generated original expression of their own. It appears that all three parties might have some claim to authorship.
Let us examine the claims separately, beginning with the playwright/director. He would certainly be considered an author of the play under U.S. copyright law. He was hired by the producer “to create an original Shakespearean spoof.” The fact that the playwright/director is identified as the creator by contract is dispositive, meaning that it inclines one to think that he had authorial responsibilities, especially since the contract was fulfilled to the satisfaction of the producer, i.e. the play was completed and opened on time, and the producer authorized the printing of the script with the playwright/director’s name on the cover as sole author. Also, the playwright/director supervised the script development process from start to finish. It was his idea to build the play around “top ten” lists of specific Shakespearean characters. He directed the dramaturg to conduct research and make selection of lines by these characters but these selections were always subject to his approval and revision. Over the course of rehearsals, he reviewed the script as it was coming together and adjusted bits of comic business to facilitate transitions. In the oft-quoted words of M.R. Brett in Nottage v. Jackson (quoted approvingly by the U.S. Supreme Court in Burrow-Giles): “The nearest I can come to [a definition of the author] is that it is the person who effectively is as near as he can be the cause of the picture which is produced--that is, the person who has superintended the arrangement, who has actually formed the picture by putting the persons in position, and arranging the place where the people are to be--the man who is the effective cause of that” (111 U.S. at 61). The director/playwright certainly exercised control in the scenario I outlined, from the pre-rehearsal research phase with the dramaturg to the onstage, collaborative work with the actors where he gave them specific improvisational instruction, i.e. “Play the Capulets from Romeo and Juliet as if they were Archie and Edith Bunker” (Stiehl). By giving instructions with this sort of detail, he meets the standard of one who has actually “formed the picture” of what people should be doing on the stage.
What about the quartet of actors? Let us imagine that the director built the play not just out of the Shakespeare lines but also out of their unique talents. That is, during auditions and throughout the early phases of rehearsal, he asked them to demonstrate their talents as musicians, singers, acrobats and mimics with the understanding that those skills would help to flesh out the Shakespearean lines. He asked for Archie and Edith Bunker because he knew that the actors could do a decent imitation of the famous TV couple. Moreover, by acknowledging the actors’ individual talents in this way, the director empowered them to go beyond the Shakespeare lines to create “original expression” of their own which was then “fixed in a tangible medium” by the dramaturg: does this qualify the actors as authors or, rather, (since we have already validated the playwright/director’s authorship claim) as joint authors with the playwright/director?” At this point, U.S. copyright law begins to sour on the collaborative processes of theatre. It is one thing to create an original expression fixed in a tangible medium; it is quite another to be considered a joint author of a work composed of copyrightable expressions generated by more than one person. Put another way, it is possible to contribute valuable copyrightable expression and yet not be considered a joint author.

U.S. copyright law sets a high bar for joint or co-authorship in order to simplify the property claims attached to a work. As attorney Seth Gorman explains, “the implications of co-authorship are profound. A co-author cannot be held liable for infringement of the copyright, and each author has the right to use or license the copyright subject [with] only a duty to account for any profits for use of the copyright” (2). That is, if you are co-author of a work, then you can license it as you see fit, without consulting the other author. The only obligation is to appropriately share the royalties. Imagine that A Shakespearean Travesty becomes a hit as huge as The Reduced Shakespeare Company’s The Complete Works of William Shakespeare.
(Abridged), and that two professional theatre companies located in the same city wish to produce it. One theatre arranges with the playwright/director for the performance rights, the other theatre contracts similarly with the actors, and the result is two productions of the same show running simultaneously to half empty houses. Avoiding such conflicts is a major reason why courts have evolved a stringent two-part test. Joint authorship can arise only when the supposed co-authors: 1) each make an independently copyrightable contribution to the work, and 2) all intend to be regarded as joint authors. The controlling precedent here is the 1991 case of Childress v. Taylor decided by the Second Circuit Court of Appeals. Gorman provides the background, Clarice Taylor, an actress for over 40 years researched comedienne ‘Moms’ Mabley and became interested in developing a play based on Mabley’s life. Taylor began to assemble material about “Moms” Mabley, interviewing her friends and family, collecting her jokes, and reviewing library resources. Taylor contacted [“Obie”-award winning] playwright Alice Childress about writing the play. . . . Taylor turned over all her research material and sifted through facts, selecting pivotal and key elements to include in the play. Taylor also discussed with Childress the inclusion of certain general scenes and characters [like including a piano player named “Luther,” a Harlem street scene, a minstrel scene, a card game scene, etc.]. Childress wrote the play and designed the structure of the play and its dialogue.

After the first production of the play, Taylor planned a second production. Childress rejected the deal proposed by Taylor. Accordingly, Taylor decided to create a second production without Childress, hiring another playwright, . . .
make changes. Childress then sued Taylor for copyright infringement which Taylor countered by claiming that she was co-author. (9)

The court decided against the actress Taylor, finding that she was not a co-author. On its view, Taylor made three basic contributions to the play. First, she contributed the idea of a play on Moms Mabley—but ideas are not copyrightable. Second, she contributed facts about Moms Mabley’s life which she had discovered through original research but facts are not copyrightable. Finally, while she did make some creative suggestions concerning characters, scenes and even specific lines, these were simply not substantial and significant enough to be copyrightable. Moreover, in keeping with the second prong of the joint author test, Childress never conceived of Taylor as a joint author. Judge Newman writes, “whatever thought of co-authorship might have existed in Taylor's mind [it] ‘was emphatically not shared by the purported co-author.’ There is no evidence that Childress ever contemplated, much less would have accepted, crediting the play as ‘written by Alice Childress and Clarice Taylor’” (945 F. 2d at 509). He then summarizes the basis for the court’s decision:

Childress was asked to write a play about Moms Mabley and did so. To facilitate her writing task, she accepted the assistance that Taylor provided which consisted largely of furnishing the results of research concerning the life of “Moms” Mabley. As the actress expected to play the leading role, Taylor also made some incidental suggestions, contributing ideas about the presentation of the play’s subject and possibly some minor bits of expression. But there is no evidence that these aspects of Taylor’s role ever evolved into more than the helpful advice that might come from the cast, the directors or the producers of any play. A playwright does not so easily acquire a co-author. (945 F. 2d at 509)
Judge Newman’s statement that “a playwright does not so easily acquire a co-author” encapsulates the problem of copyright and collaboration in the theatre. Current law considers authorship an “all or nothing” proposition: there is no partial credit towards authorship; there is no such thing as an authorial fraction.

Returning to the four actors who performed and helped to create A Shakespearean Travesty, the questions are: 1) did they make independently copyrightable contributions to the show?, and 2) did the playwright/director regard them as joint authors? Regardless of the answer to question 1), the answer to question 2) appears to be: no, the playwright/director did not regard the actors as joint authors. This is evident given both his agreement with the producer and the printed version of the script that identifies him as sole author. Now, it is possible that the playwright/director’s actions implied an intent that was not recognized in or even belied formal recognition. According to law professor Russ VanSteeg, intent can be inferred from an “implied in fact” contract: “A contract, implied in fact, is an actual contract which arises where the parties agree upon the obligations to be incurred, but their intention, instead of being expressed in words, is inferred from their acts in light of the surrounding circumstances” (qtd. 159). He continues,

Joint authorship is probably best understood as an implied in fact contract. The Copyright Act provides that joint authors must intend to combine their contributions into inseparable or interdependent parts of a unitary whole. In many cases where the contributions of each putative joint author are equal or nearly equal (e.g., 50%-50% in the case of two contributors), there is no problem. Problems tend to arise (for example in the instance of two putative joint authors) as one contributor's contribution rises well above 50% and the other’s drops to
well below 50%. The further away from a 50%-50% split that the contributions go, the more unjust it strikes us (as reasonable persons) to allow the less significant contributor (the nondominant contributor) to share equally as a copyright co-author (sharing an undivided half interest in the entire copyright along with the dominant author). So, the difficult cases often arise when the contributions of the contributors (i.e., the putative joint authors) are disparate or disproportionate. (160-61)

On this analysis—not yet confirmed by the courts—the actors could posit the playwright/director’s intent to regard them as joint authors only if, collectively, they contributed near 50% of the copyrightable content of the show. That seems a stretch given our hypothetical scenario, much more so considering that I have been treating them as a unit when, in fact, they are four individuals: the contribution of each would be far below the 50% threshold that VerSteeg sets for an implied in fact contract expressing the playwright/director’s intent to make them joint authors.

In a situation like *A Shakespearean Travesty* about the best that the actors can hope for is a contractual arrangement like the one that governed the development of *A Chorus Line*. In the 1970s and 1980s, Actor’s Equity worked out special agreements called “Equity Workshop” contracts designed to protect Equity members involved in new play development. These plays—musicals, mostly, such as *A Chorus Line* (1974-75), *Ballroom* (1978-79), and *Dreamgirls* (1981)—made their way through the workshop process toward Broadway. The actors involved in the workshop phase of development were paid a modest fee in exchange for future roles in future developments of the script (or a generous buy-out) plus a small share of royalties on the show (Keller 142). Michael Bennett pioneered this concept with *A Chorus Line* which grew out of the taped oral histories of one group of chorus dancers and was further elaborated and
expanded upon by another group of dancers (Keller 122). Bennett paid the sixteen to eighteen
performers who helped to develop the show 1/2 of 1% of the gross weekly box office receipts
out of his author’s share, a deal that amounted to some $8,000-$10,000 per year for each of the
performers during the show’s very long initial run (Keller 144, note 187). It seems clear that
Bennett and the “Equity Workshop” arrangement recognizes that actors make copyrightable
contributions to the script in its workshop phase: why else would the royalties come from the
author’s share? And yet these deals had to be established through contract because, as we have
seen, authorship is an “all or nothing” proposition under U.S. copyright law: no court would have
granted each actor co-authorship—that would have meant 19 owners of A Chorus Line—making
the Equity Workshop contract the best way to honor the actors’ valuable and copyrightable
contributions to the script. As many summer Shakespeare festivals hire non-Equity actors, it is
possible that this option was never available to, let alone contemplated by, the four actors who
helped to create A Shakespearean Travesty.

Can a stronger case be made for the dramaturg as joint author with the director? Does it
matter that the dramaturg was the person who actually wrote down the words and composed the
script? According to Peter Brightbill, a Legal Assistant to the Dramatist’s Guild, “The
Dramatist’s Guild, in attempting to formulate a standard definition, generally has advised that
‘authorship’ requires a person to write down words, to go through the physical process of being
an author” (qtd. in Keller 131). One might argue that the playwright/director’s actions expressed
his intent to make the dramaturg a joint author when he assigned her the task of recording
comically effective bits of stage business. On this view, he made an implied in fact contract with
her for, without the dramaturg’s conscientious note-taking and nightly script-making, there
would never have been a copyrightable work. Unfortunately for the dramaturg in this instance,
the Dramatist’s Guild position is not borne out by established case law. “[I]t is not the tangible embodiment of the author’s work but the creation of the work itself which is protected under copyright law” (Keller 131). It is entirely possible for authors to create original expression that they then authorize others to fix in a tangible medium. Addressing this question in Andrien v. Southern Ocean County Chamber of Commerce (1991), Judge Weis of the Third Circuit Court of Appeals wrote:

The Copyright Act defines a work as “fixed” in a tangible medium of expression when “its embodiment in a copy . . . by or under the authority of the author, is sufficiently permanent . . . to permit it to be . . . reproduced.” The critical phrase is “by or under the authority of the author.” That statutory language and the Supreme Court’s guidance produce a definition of an author as the party who actually creates the work, that is, the person who translates an idea into an expression that is embodied in a copy by himself or herself, or who authorizes another to embody the expression in a copy. The definition, however, has limits. . . . Poets, essayists, novelists, and the like may have copyrights even if they do not run the printing presses or process the photographic plates necessary to fix the writings into book form. These writers are entitled to copyright protection even if they do not perform with their own hands the mechanical tasks of putting the material into the form distributed to the public. (927 F. 2d at 134-5)

According to the producer’s contract with the dramaturg, one of her duties was “assistance in preparing the script.” In practice, this meant that the dramaturg was supposed to record the comic lines and bits of business that the playwright/director authorized her to set down, a reasonable interpretation of the contractual language under the circumstances.
But let us tweak the hypothetical scenario. Imagine that the playwright/director is a person in his 60s, and the dramaturg is a person in her 20s. The playwright/director says, “The point of the show is to attract a younger audience, people more your age than mine. Honestly, I don’t understand teenagers these days, I don’t know what makes a college kid laugh. So I want you to watch the improvisations and write down the bits that are most funny to you, the scenes that you think will appeal most to folks of your generation.” Offering this instruction, the playwright/director is essentially inviting the dramaturg to make creative decisions. No longer does she function as a human tape recorder, scribe, or amanuensis but as an independent agent, a partner, arguably, as a joint author. Now imagine that the director takes ill, and misses half of the rehearsals. “Carry on,” he tells the panicked dramaturg from his sick bed, “I don’t need to see the script. I trust you to know what’s funny.” Under these circumstances, authorship of *A Shakespearean Travesty* would be a far more open question; joint authorship might well be within the dramaturg’s reach.

**Conclusion**

Production dramaturgs should understand that U.S. copyright law sets a very high bar for joint authorship. Besides making an independently copyrightable contribution to a work, a co-author must also be regarded as such by the other author(s) of the work. The model joint authorship situation is that of a lyricist and composer who create a song together by combining the former’s words with the latter’s melody. Dramaturgs and playwright/directors do not have such separate skill sets and equal status, at least not in a typical North American theatre context.
The production dramaturg is generally understood to play an assistant’s role; this makes it difficult to argue that the playwright/director saw the dramaturg as an equal, a co-author.

Dramaturg Lynn Thomson squarely faced this problem in her legal dispute concerning authorship of the hit musical Rent. In 1995, the show’s producer, The New York Theatre Workshop, hired her to provide Larson “dramaturgical assistance” (147 F. 3d at 197). Carrying out these duties in the summer and fall of that year, “she developed the plot and theme, contributed extensively to the story, created many character elements, wrote a significant portion of the dialogue and song lyrics, and made other copyrightable contributions to the Work” (147 F. 3d at 198). Larson died in January 1996, on the eve of the show’s opening. Given her extensive contributions, Thomson applied to Larson’s heirs for a percentage of the author’s royalties. The parties could not reach agreement, so Thomson sued claiming joint authorship. The District Court used the two-pronged Childress joint authorship test and, because there was no conclusive evidence that Larson had intended Thomson to be a joint author, denied her claim. Thomson appealed to the Second Circuit Court of Appeals. The Appeals Court affirmed the District Court decision but also acknowledged that there might be another way to conceive the authorship of Rent. Thomson had advanced a new line of argument on appeal. If she passed the first part of the Childress test (copyrightable contribution) but failed the second (mutual intent of joint authorship), then she had the right to prohibit the production of Rent due to its unlicensed use of her copyrightable contribution, e.g. the dialogue and lyrics of which she was sole author. In other words, if Rent was not joint-authored solely because of lack of mutual intent, then it must be dual-authored with discrete bits of Larson’s original expression connected to discrete bits of Thomson’s original expression. This approach challenges the collaborative work ideology that dominates theatre production in North America, and Thomson introduced it only with reluctance:
“If it were to be affirmed that *Rent* is not a statutory joint work, [she] then would be awarded rights which she never imagined, much less sought, and which she would be loathe to enforce” (147 F. 3d at 206). Because Thomson had not claimed copyright infringement as part of the appeal, the Court of Appeals did not have to address her dual-author theory. The fact that the ruling broached it without dismissing it, however, seems to have sent a message to the Larson heirs. They reached an out-of-court settlement with Thomson in August 1998, less than three months after the decision was issued.

Because courts have not validated a dual-author approach to the joint authorship problem, dramaturgs ought not rely on it. The Literary Managers and Dramaturgs of the Americas (LMDA) offers sensible and practical advice when it recommends that dramaturgs specify their job responsibilities, rights, and compensation by contract rather than by copyright law. To this end, LMDA has compiled a set of “Employment Guidelines” to help dramaturgs negotiate with potential employers. Under these guidelines, in the case of a script development process, “The production dramaturg should agree that all rights of ownership regarding the text would be retained by the dramatist” (LMDA 8). Thus the dramaturg of *A Shakespearean Travesty* would be encouraged to accept the playwright/director’s claim of sole authorship. However, she might argue that she deserves higher-than-standard compensation because she provided what LMDA terms “exceptional services”:

“Exceptional services” include, but are not limited to, the following conditions: the production dramaturg begins work with a playwright at least two months before rehearsal . . . and continues near-daily throughout rehearsal; . . . the play is substantially unwritten at the start of the process; the production dramaturg not only does research and conceptual discussion with director, as well as text work
with playwright, but also meets extensively with both and attends/participates in all or nearly all rehearsals...; the text does not exist before the workshop or rehearsal process and the dramaturgical research not only informs, but also becomes incorporated into the final text. (LMDA 5)

In my experience, dramaturgs frequently find themselves providing the exceptional services that LMDA lists. Rather than look to copyright law for relief, they should try to contract with employers in advance. Ideally, as LMDA suggests, that contract should define and specify the compensation for providing dramaturgical services over and above the accepted standard. Given that dramaturgs, especially those beginning in the profession, occupy a low rung on the production hierarchy ladder, individuals may balk at attempting to secure an upfront agreement of this kind. Without such efforts, however, misunderstandings and disagreements between dramaturgs and producers, directors, and playwrights are likely to persist.

WORKS CITED

45 F. 2d 119-123: *Nichols v. Universal Pictures Corporation* (2d Circuit Court of Appeals 1930).


NOTES

This hypothetical scenario is loosely based on the script development process that led to Shakespeare in Briefs!, an original Shakespearean revue produced by the Colorado Shakespeare Festival in 2002. The show was created and directed by John Dennis with the assistance of dramaturg Pamyla Stiehl and actors James Easly, Adam Hose, Tony Marble, and Tony Molina. I thank Ms. Stiehl for her assistance in preparing this essay, and for her detailed dramaturg’s notebook which records details of the show and the development process. There were no disputes concerning ownership of Shakespeare in Briefs!: Ms. Stiehl identifies John Dennis both as “playwright” and as “director” on the front cover of her notebook.

I use basic legal citation to identify judicial decisions.
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