



A2P2 ISSUE BRIEF: *CORBELLO V. VALLI*

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ABOUT *CORBELLO V. VALLI*

The Supreme Court has established through decades of case law that facts are not entitled to copyright protection, beginning with *Harper & Row Publishers, Inc. v. Nation Enterprises* in 1985, where it established that the Copyright Act precludes the protection of facts under copyright. A few years later, in *Feist Publications v. Rural Telephone Service Company*, the Court described the lack of copyright in facts and ideas as “[t]he most fundamental axiom of copyright law[.]”

A recent Ninth Circuit copyright infringement suit, *Corbello v. Valli*, emerged within this context. The case concerned several alleged similarities between the hit Broadway musical, *Jersey Boys*, which tells the story of musical group, Four Seasons, and an unpublished autobiography written by Four Seasons member Tommy DeVito and a ghostwriter, Rex Woodward. The autobiography purported to be a “straightforward historical account,” and describes itself at the outset as the “complete and truthful chronicle of the Four Seasons,” narrated by DeVito.

After learning that the *Jersey Boys*’ authors had access to the unpublished autobiography while writing the play, Corbello—Woodward’s widow and the plaintiff in the case—sued DeVito for copyright infringement, breach of contract, and other causes of action. In September 2020, the Ninth Circuit found for the defendants, stating that Corbello’s claim was based on the musical’s use of uncopyrightable facts and unverifiable information held out as facts. The court stated conclusively that these cannot form the basis of a valid infringement claim.

Read More: [Corbello v. Valli](#), No. 17-16337 (9th Cir. 2020)

WHAT WAS THE COURT’S REASONING?

The Ninth Circuit began with the principle that facts cannot be copyrighted, and examined each of the alleged similarities between the autobiography and the play to determine whether any copyrighted elements were infringed. It determined that each of the alleged similarities between the autobiography and the play—including certain dialogue, origins of Four Seasons songs, and the occurrence of a particularly raucous party—and concluded they were attributable to the use of the same historical facts in both works. The court concluded that each similarity between the two works was based on historical facts as well as shared common phrases and what are known *scènes-à-faire*—

ideas and scenes that are standard in the treatment of a certain topic, such as a shoot-out in a western film.

The court rejected Corbello’s argument that because some of the facts *Jersey Boys* took from the autobiography were apparently fabricated by DeVito, those facts should be entitled to copyright protection as non-factual creative expression. In what it called the “asserted truths doctrine” (known as “copyright estoppel” in other jurisdictions), the court stated that where a text represents itself as historically accurate—and therefore factual in nature—the copyright holder cannot later claim that the work was fictionalized in order to obtain copyright protection.

The court also considered the manner in which the autobiography was submitted to publishers and found it was represented as fact: the text of the work attested to its factual nature, and pitch letters emphasized that the autobiography would disclose “the truth” about several events and reveal “the secret past that the performers successfully hid for almost three decades.” The fact that Corbello now claimed that some elements of the autobiography were fictionalized or inaccurate and that these same elements were present in the play did not change the court’s analysis: what matters is how the text is presented, not how it is later characterized by the copyright holder.

Finally, the court rejected the argument that the asserted truth doctrine did not apply to unpublished works such as the autobiography in question, finding that regardless of whether the audience for the work is “a few actual readers” (in the case of unpublished works) or “the general public” (in the case of published works), the *representations* of truthfulness determine the factual nature of the work for purposes of copyright protection.

Read More: [Appeals Court Affirms That Facts and Asserted Truths Are Not Protected by Copyright](#), Authors Alliance
[Why Are You Paying for Factual Works?](#), Schuyler Moore, Forbes
[Ninth Circuit Holds that Jersey Boys Did Not Infringe ‘Protected Expressive Elements’ of Autobiographical Book](#), Rebecca Tapscott, IPWatchdog

WHAT DOES THIS CASE MEAN FOR AUTHORS?

This ruling provides clarity for authors who seek to use factual information from existing works under copyright in their own works. It serves as an obstacle for those who seek to bring copyright infringement suits based solely on factual information, strengthening protections for authors who seek to use facts present in copyrighted works to contribute knowledge and scholarship to their communities. The decision also works to ease the threat of liability for these uses, establishing that an author of a nonfiction work cannot later claim that the factual information used was fabricated in order to bring a copyright infringement claim against those who rely on it as accurate.