



Hey Ya! District Court Dismisses Copyright Lawsuit Against André 3000's "Class of 3000"

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In 1997, Timothy McGee pitched an animated TV series, "The Music Factory of the 90's," to The Cartoon Network. McGee's show, set in Atlanta, centered on Tony "The Play Maker" Rich, a wealthy corporate attorney who leaves his law firm to become a music producer. The show would feature animated versions of well-known guest musicians. Each episode would include a musical performance, and at the end of the episode the guests would appear in their live-action state. The show would deal with serious issues such as racism and violence, and it aimed to teach viewers lessons about the music industry and life. The Cartoon Network rejected "The Music Factory of the 90's" because it did not meet the network's programming needs at the time.

Nearly ten years later, The Cartoon Network debuted "Class of 3000," an animated series co-created and co-produced by Andre "Andre 3000" Benjamin, best known as one-half of the hip-hop duo Outkast. This show was also set in Atlanta. It focused on Sunny Bridges, a musical superstar who returned to Atlanta to teach, and his students at a performing arts school. Sunny displayed supernatural abilities and lived in a magical house in the woods. Benjamin provided the voice of Sunny, and each episode included his original music. According to the complaint, "Class of 3000" taught viewers lessons, and the plan was for animated versions of real artists to appear on the show.

In May 2008, "Class of 3000" concluded its second and final season. Shortly following, McGee brought suit against Benjamin, The Cartoon Network, and its parent company, Turner Broadcasting Systems, Inc., alleging copyright infringement and other claims.

The court granted the motion to dismiss of The Cartoon Network and TBS, the only defendants that McGee served, because McGee was unable to show probative similarity between "The Music Factory of the 90's" and "Class of 3000." *McGee v. Benjamin 3000*, 102 U.S.P.Q.2d 1299 (D. Mass. March 20, 2012).



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To demonstrate copyright infringement a plaintiff must establish (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. There was no dispute McGee satisfied the first element. He owned a copyright registration for a treatment of "The Music Factory of the 90's" and related materials. However, McGee could not demonstrate actionable copying.

In the First Circuit, establishing copying involves two steps. First, the plaintiff must show that the defendant "actually copied the work as a factual matter," either through direct evidence or through indirect evidence of access and probative similarity. In comparing the works to determine similarity, only protectible elements are relevant; the court must ignore "unprotected ideas or unoriginal expressions." Second, if court finds probative similarity, then it considers substantial similarity. "Two works are substantially similar if a reasonable, ordinary observer, upon examination of the two works would conclude that the defendant unlawfully appropriate the plaintiff's protectable expression."

The court found McGee's claims insufficient with respect to probative similarity. McGee's vague references to similarities in "location, characters, content, format, and *dramatis personnae*" were not enough. The only specific similarities, the court explained, were that both shows take place in Atlanta; both shows involve the music industry; and both shows involve a character who left his job to try something new. But McGee does not have the exclusive right to any of these elements.

McGee's argument regarding probative similarity runs up against several hurdles often encountered by those who seek to enforce a copyright in a treatment for a television show, movie, or theatrical performance. Most notably, there are very few elements of the Music Factory treatment that are original; most of the alleged similarities are noncopyrightable "basic concepts and ideas" or "stock scenes and characters."

Because ideas are not protected by copyright, whether or not the defendants copied McGee's ideas was irrelevant. Further, under the scenes a faire doctrine, copyright generally does not protect "plots, subplots or themes" insofar as they are "for all practical purposes indispensable, or at least customary, in the treatment of a given subject matter." For example, "the plot device of a protagonist leaving one profession to embark on an unrelated profession with little experience but considerable passion is a familiar one."

Likewise, copyright does not protect stock characters. The court found that several characters in the parties' shows, such as young musicians and a tough executive, were largely stock characters. Meanwhile, the shows' main characters – Sunny and The Play Maker – were "in certain fundamental senses ... almost polar opposites."

Therefore, McGee's copyright claim failed based on the absence of probative similarity. The court added that McGee also could not establish substantial similarity. In that regard, it pointed to additional differences in "format and tone," and added that the themes of the two shows were in conflict. While "The Music Factory of the 90's" celebrated the pursuit of money and fame, "Class of 3000" emphasized the love of music and creativity.

McGee reflects the difficulty in establishing copying infringement in this context. Copyright owners must beware that basic concepts and ideas are not protectable, nor are routine storylines or stock characters. Superficial similarities between creative works are often not actionable.

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