

David Halberstadter Analyzes Ninth Circuit Copyright Decision with *Law360*

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Los Angeles Litigation partner David Halberstadter comments on a copyright decision recently issued by the United States Court of Appeals for the Ninth Circuit, ruling that the Tony Award-winning show, "Jersey Boys," (about the 1960s rock 'n' roll band, The Four Seasons) had not infringed on a biography of one of the band members.

David explained that the Ninth Circuit ruling will provide guidance for many filmmakers and other creative individuals looking to tell true-life stories.

"The Ninth Circuit's decision is one of the clearest explanations of what story elements in a 'based on true events' work are protected by copyright, and what elements are not," David said.

The case involved a widow of an author, who ghostwrote an autobiography about Four Seasons singer Tommy DeVito in the 1980s and claimed that the creators of "Jersey Boys" infringed the book by using it as a historical source. The Ninth Circuit ruled that similarities between the book and "Jersey Boys" were based on real life events that the author did not have the right to control through copyright.

In its ruling, the Ninth Circuit set a new precedent by adopting and renaming a doctrine called "copyright estoppel" to the "asserted truth" doctrine, which says if an author presents something as factual, they can't change their minds in order to claim copyright protection.

"Simply put, an author who holds his or her work out as nonfiction cannot later claim in litigation that aspects of the work were really fictional and entitled to copyright protection," David said. "The decision makes clear that a creator of a work based on true events is entitled to draw from any and all factual accounts, or even just a single account, for material with which to tell his or her own version of events."

Read, "[Fact or Fiction: 9th Circ. Cleans Up Copyright For Real Stories](#)," in its entirety.

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