

©COLLABORATIVE CONSENSUS

Credit, Copyright and Compensation

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*This column does not contain legal advice, but rather merely legal information.
Always consult with a lawyer to discuss your situation and to review a contract for you.*

Collaborative writing can be thrilling. Riffing on shared ideas, feeding off shared energy, and basking in good company during what is often a solitary endeavour can be blissful. Collaboration often yields legendary works of art larger than each contributor could alone have produced. Yet beneath the flurries of creativity, and once the imaginative dust settles, practical and legal questions await. How do the collaborators share the workload? How do they share the credit and the proceeds generated by their joint creative work?

A recent U.K. case based upon the film *Florence Foster Jenkins*, and an older Canadian case, *Neudorf v. Nettwerk Productions Ltd.*, illustrates what happens when co-writers cannot agree in advance what each party will gain from successful commercialization of the work their collaborative effort produces. What happens is a lawsuit, with the concomitant anxiety borne of uncertainty and the certainty of unforeseen expenses of time and money. Courts are asked to determine whether minor collaborators are joint authors and what rights flow from that status.

In the *Florence Foster Jenkins* case, writer Julia Kogan sued co-writer Nicholas Martin and the two film production companies respecting a dispute over crediting her as a co-author and partial copyright owner of the popular movie's screenplay. Kogan lost at trial in 2017 and appealed the decision

in 2019. In 2020, the United Kingdom Intellectual Property Enterprise Court ruled her contribution met the threshold test as a joint author and ordered the film companies to credit her as co-author of the screenplay.

In the Canadian case, writer Darryl Neudorf sued famous songstress Sarah McLachlan and her record label for song writing credit, copyright infringement and a share of the royalties from four songs on her 1988 debut album *Touch*. He lost after an eight-month trial. The key issue was framed this way: "What kind of contribution attracts copyright protection? What makes [this] question hard to answer is that there were no contracts signed by anyone involved in the recording session."

Rather than letting a court decide how your contribution corresponds in value in terms of credit, copyright ownership and compensation, it makes sense for collaborators to resolve those matters for themselves—ahead of commercialization and, ideally, well before the last word is written. In the pauses between riffs, frenzies and flurries, discuss the terms listed. When you come to a consensus on a point, add it to a written term sheet. Turn the sheet into a memorandum of understanding (MOU) that all collaborators sign. Then hire a lawyer to flesh out a complete and binding agreement based on the skeletal terms of the MOU.



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TERMS FOR COLLABORATORS TO DISCUSS

1. What is the goal of the collaboration—what do you intend to create? Describe and define the work by giving it a working title.
2. What are the authors' respective roles and responsibilities—who contributes what and when? All authors should promise the others that their contributions are original, do not breach anyone's privacy rights and are not defamatory.
3. Will the authors share equally in copyright allocation? If not, what percentages are allocated to each?
4. How will revenues be shared? Often revenue sharing mirrors copyright allocation, but not always. Spell that out.

5. Who will register the copyright? (You always register your copyright ... right?)
6. Who gets what credit? And what words are used to describe that credit? A related point: the creators should give each other permission to use each other's names and likenesses for promotional purposes.
7. How will expenses be authorized and how will they be reimbursed?
8. How are disputes and conflicts handled? What happens if someone is unable or unwilling to complete their contribution? What happens if someone does not deliver on time?
9. What happens if your wildest dreams come true and the work of art becomes a sensation? Who licenses and reaps the benefit of royalties derived from derivative works like plays, movies, songs and merchandise? Or from spin-offs, prequels and sequels? And who gets what proportion?

Instead of viewing sober contemplation on such matters as interruptions to the creative flow, think of consensus-building as akin to signing a pre-nuptial with people whose future you may well share. The short hours required to come to terms on the points listed can spare you a relative eternity disentangling disagreements and misunderstandings, or worse, dealing with irreconcilable differences through lawsuits. Time devoted to attempting consensus might even show you and your fellow creators that as brilliant as you may be as collaborators, you will never agree on the nitty-gritty of completing your work or on how to commercialize it.

Enjoy your collaborations and make sure you also enjoy the credit, copyright and compensation that come with them! ■

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