

Julie Taymor: Famed Director Sues as an Author

No director has ever prevailed at trial on a copyright claim, but Julie Taymor's is probably the strongest yet brought. When the producers of Broadway's "Spider-Man: Turn Off the Dark," set out to make the most elaborate and expensive musical in history, Taymor was among the most striking additions to the spectacle. For almost fifteen years, her iconic version of Disney's "The Lion King" has played to packed houses on Broadway, spreading her acclaim around the globe. Taymor is perhaps the only Broadway director to have such widespread recognition.

Unfortunately, her high regard was not enough to compensate for an unwieldy production that was plagued with problems from the start. Not least amongst them were the purported "artistic differences" Taymor had with the producers. Earlier this year, the legendary director left the production on bad terms. Now, Taymor is suing over the modified version of "Spider-Man" that has been playing under new direction. She argues that, although she was removed from "Spider-Man," many of her original contributions to the script and the staging were not.

Directors have rarely sued for copyright infringement on the basis of their contributions and it's unclear whether directors can claim any such rights. Although directors' manifest considerable skill and judgment in deciding how a particular cast, stage, and set are best applied to a script, the law and tradition of copyright demand more than a would-be author's effort and innovation. Before what is essentially a monopoly on the expression of an idea will be granted, there must be some "fixation" of the creator's work that represents something discrete to which protection will be limited, some lasting contribution that will be left to the public's use once that monopoly expires, and simply some proof that the originator produced the work first. Directors' work, which often amounts to little more than extemporaneous instruction or the coordination of others' creative endeavors, has rarely left anything as tangible as a descriptive series of pictures or written set of instructions.

Nevertheless, there is nothing so far that precludes a copyright on directorial work. In 1996 a District Court in Florida ruling on a motion for summary judgment in *Mantello v. Hall* entertained the possibility that a director's contribution to a play could be copyrightable, although the case promptly settled before the import of that statement could be explored. A decade later, in *Einhorn v. Mergatroyd Productions*, a director took that decision a step further and succeeded in registering a copyright on his "blocking script" of stage directions, describing them in part as "choreography," which is explicitly protected under the current Copyright Act. Again the court declined to rule against the director without first determining the scope of the copyright conferred by that registration, but settlement precluded further inquiry. Taymor's claim might appear to be in the vein of these cases, but it departs insofar as Taymor's role extends far beyond that of a director.

Taymor did more than just direct the original production of "Spider-Man;" She was involved almost from the musical's inception. She wrote the original "treatment," which described the underlying themes, overall storyline, and many proposed scenes for the ultimate work. She also took over as one of three "book writers" more than five years before "Spider-Man" premiered. In this capacity, Taymor contributed to the written document that describes the essential elements of the musical. She alleges that she negotiated for rights to approve changes to the book

thereafter. She holds registered copyrights in both the original treatment and the original draft of the musical's book. Ultimately, Taymor was as much a co-author of the work as a director.

Taymor avoids the issues that dog most directors seeking copyright protection. Her work was fixed in the original book and treatment. She has all of the rights of a co-author. Viewed in that light, this case becomes much more mundane. She wrote the book and the producers subsequently, without her permission, used a new version which copied at least a quarter of the original verbatim, not to mention far more elements that were only modified slightly. Scrutiny will center on whether the various "deal memoranda" that the complaint cites amount to a genuine agreement between Taymor and the various producers of "Spider-Man." Depending on how that is ultimately interpreted, questions will also arise as to whether Taymor's contribution is a work-for-hire to which she has no rights. Ultimately, depending on the extent of her contribution, an analysis will have to be made regarding whether the similarity between her creations and the current staging is sufficiently "substantial similar" to justify a finding of copyright infringement.

That's not the end of the story, though; the larger community of directors seems interested in this case. The Stage Directors and Choreographers Society, as part of its mission to protect its members' rights, has participated in every major directorial copyright action since the first notable such action brought in 1994. This group has also been an active participant in Taymor's dispute with "Spider-Man's" producers, representing her interest in the protracted arbitration proceedings to claim the royalties owed to Taymor for her work before her termination and the musical's rewrite. This further action might, in part, be an effort to establish a more decisive precedent upholding director's rights in their work.

It's doubtful, however, that this suit bears anything but a superficial relationship to the interests of directors in general. Taymor is simply exceptional. She had the opportunity to command a controlling role in the writing, pre-production, and actual production of "Spider-Man" only because of her notoriety. Other directors, even notable ones, do not normally enjoy such a powerful bargaining position. It seems unlikely that the issues with which directors are most concerned will receive substantial treatment in any resulting decision, so long as there are other, better established grounds on which this case can be decided.