



# Publications

## CASES OF INTEREST

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### IP/Entertainment Law Weekly Case Update For Motion Picture Studios And Television Networks

December 21, 2011

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- Radin v. Hunt

**Radin v. Hunt**, USDC C.D. California, December 15, 2011

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- District court grants summary judgment in favor of defendants Showtime Networks Inc. and Darlene Hunt, holding that plaintiff could not establish any genuine issue of fact on the issue of whether defendants had access to her screenplay prior to the creation of the television series, *The Big C*.

Plaintiff Nancy Radin, the author of a screenplay entitled *Quality of Life*, brought suit against Darlene Hunt, the writer and creator of the cable television series *The Big C*, and against the Showtime Networks, which airs the show, alleging that the defendants, without authorization, created derivative works based on her screenplay and broadcast those works in violation of the Copyright Act. Defendants moved for summary judgment, arguing that they had no access to her work prior to the completion of the development of their work and therefore plaintiff could not establish that they copied her work. Defendants also moved for summary judgment on the ground that the works were not substantially similar. The district court granted summary judgment in favor of defendants, finding that plaintiff could not establish any genuine issue of material fact as to defendants' access to her copyrighted work during the relevant time, and that the two works were "far from strikingly similar," and therefore did not support any inference that defendants' work could only have come about through copying of plaintiff's screenplay.

Plaintiff developed the screenplay as part of her part-time screenwriting studies at the UCLA Extension School and completed the work in the fall of 2008, or the beginning of 2009. As part of her studies, plaintiff submitted various scenes separately – but not the entire screenplay – to certain professors at UCLA. She submitted the screenplay to the UCLA Extension School screenwriting contest in March 2009. Prior to the screenwriting contest and other than the submissions to professors, she had never published the work anywhere. Defendant Hunt, an actress and screenwriter, began working on her screenplay in March 2008 and submitted the final version of what would become the *Big C* to Showtime in January 2009. The show began airing in August 2010.

To establish a claim for copyright infringement, plaintiff must demonstrate ownership of a valid copyright – which was not in dispute in this case – and copying of constituent elements of the copyrighted work that are original. Absent evidence of direct copying, plaintiff must make fact-based showings that the defendants had access to her work and that the two works are substantially similar. Proof of access requires more than just a bare possibility. It requires a showing that defendants had a reasonable opportunity or reasonable possibility of viewing plaintiff's work. Plaintiff may show circumstantial evidence of



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reasonable access in one of two ways: (1) establishing a particular chain of events between the plaintiff's work and the defendants' access to that work (through dealings with a publisher or record company, for example), or (2) showing that plaintiff's work has been widely disseminated. To establish a particular chain of events, plaintiff must provide some direct evidence, beyond the mere possibility that defendants may have seen or accessed plaintiff's copyrighted work, to show more than a bare possibility of access. Without evidence of access, a striking similarity between the works may give rise to a permissible inference of copying. Striking similarity means that it is virtually impossible that the two works could have been independently created. Where plaintiff shows a high degree of access, the court requires a lower standard of proof establishing a striking similarity between the works, and where plaintiff can only show a low degree of access, she must show a greater degree of similarity.

The district court found that plaintiff could not establish a genuine issue of material fact as to whether defendants copied her work. In response to defendants' evidence in support of their motion that Hunt had no knowledge of or access to plaintiff's screenplay prior to completing her development of the pilot script for *The Big C*, plaintiff provided no evidence of access sufficient to create a genuine issue of fact. Plaintiff did not – and could not – argue that her screenplay was widely disseminated. She produced no evidence establishing that anyone other than the judges of the screenwriting competition read her work, which evidence could not support her theory of access, since she submitted the script to the competition in March 2009, and Hunt finished her pilot script for *The Big C* in January 2009.

The court also rejected as “entirely speculative” plaintiff's chain of events theory of access – that her individual instructors compiled plaintiff's scenes, which had been submitted to them individually and which did not constitute the *Quality of Life* screenplay in its entirety, and then passed these compilations, through unknown intermediaries, ultimately to defendant Hunt before she completed her pilot script. The court concluded: “There is no evidence of any of the possible steps that might theoretically have provided [d]efendants with access to [p]laintiff's work. Mere speculation and argument are not a sufficient basis to defeat a properly supported motion for summary judgment. In short, these are arguments, and not evidence. And, even if they meet the bare possibility of access standard, they do not rise above it.”

The court also rejected plaintiff's argument that a genuine issue of fact existed as to striking similarity sufficient to support some inference of defendants access to her screenplay. While similarities existed between plaintiff's screenplay and *The Big C* – both are dark comedies about middle-aged women facing terminal cancer and trying to enjoy life; both women are separated from their husbands and have difficult families; both are attracted to their physicians and lean on other cancer patients for support; both are teachers who form special relationships with particular students; and both hide some aspect of their cancer diagnosis from their friends and family – none of these similar elements, alone, constituted a protectable, expressive element. Acknowledging that the combination of these elements might rise to the level of protectable expression, the court concluded, however, that the works were too far from sufficiently similar to be considered strikingly so, and the similarities could not, by themselves, establish a factual issue dispute as to whether Hunt could have created *The Big C* only by copying *Quality of Life*. “It is not at all striking that a screenplay about middle aged female teachers with terminal cancer would share certain elements, including tension with a husband and children, a close relationship with a student, a support group, and a desire to enjoy one's life.” The court also rejected as insufficient plaintiff's argument that the appearances of certain minor visual or scenic elements – a swimming pool, a motor scooter, a beach, a sports car – and commonplace words that appear in both her work and that of defendants – including “love,” “laughter” and “wine” – established a striking



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similarity between the works sufficient to support an inference of copying.

The court also found substantial differences between the two works, undercutting plaintiff's argument of striking similarity, including differences in the way in which the protagonists separated from their husbands (plaintiff's character was abandoned by her husband, and he is largely absent from the work, whereas defendant's character forced her husband to leave and he is shown trying to win her back), as well as how the protagonists came to deal with their respective support groups (plaintiff's is an informal group of friends from which her character seek support, whereas defendant's is a formal group, which the character initially rejects). Defendant's work also includes the character of the protagonist's homeless and eccentric brother, a character that has no counterpart in plaintiff's work.

Finally, the court rejected plaintiff's request to defer a ruling on the motion for summary judgment and to afford her the opportunity to take more discovery, concluding that she had not provided any reasonable basis for the request, that it would be prejudicial to defendant, by returning the matter essentially to the "starting gate," and nothing in the materials or arguments advanced by plaintiff established the reasonable likelihood that she would develop evidence to support her theory of access.

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