Joint Authorship and Collaborative Dramatic Work: Who has Claims to Authorship?

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Introduction

In January of 2019, the American Actor's Equity Association launched their #NotALabRat campaign, advocating for actors working in developmental labs of new theatrical works to be entitled to a share of the future royalties from said works as compensation for their contribution of intellectual property during the developmental process.[1] This highlights an important issue related to copyright: who is entitled to "authorship" in reference to a collaboratively developed dramatic work?

While the #NotALabRat campaign took place in the United States, Canada's copyright law has similar gaps in clarity, making this a relevant debate for Canadian artists as well. The Canadian Copyright Act does include a clause surrounding "joint authorship," where two or more individuals share the authorship of a single work,[2] however neither Canadian, nor American copyright laws currently consider collaborators to be included under this clause, with Canadian law setting a precedent that "joint authors" must specify intent to collaboratively author a piece prior to beginning work.[3]

Some scholars argue that all collaborators involved with the creation of a dramatic work ought to be considered authors, while others assert that the playwrights are the only true authors of the piece, and all other collaborators rights are sufficiently protected under contract law, with their contributions being considered work-for-hire. In this paper, we intend to present both sides of this argument, and consider what questions are relevant to ask with concerns related to joint authorship in the collaborative creation of dramatic work.

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[1] Jones, Chris. "When a Show's a Broadway Hit, Says Actors' Equity, Pay the Tryout Folks - but #NotALabRat Is Complicated." Chicagotribune.com. January 10, 2019.
[2] *Copyright Act, R.S.C., 1985, c. C-42, https://laws-lois.justice.gc.ca/eng/acts/C-42/page-1.html*
[3] *Neudorf v. Nettwerk Productions Ltd. et al. (1999)* 26 B.C.T.C. 161 (SC), https://ca.vlex.com/vid/neudorf-v-nettwerk-productions-681202441

Context and Precedent with Other Industries

Jeremy Zheng

While questions of work for hire and joint authorship in relation to Canadian copyright law are fairly recent in regards to dramatic works, they are long standing conversations in other Canadian creative industries, in particular issues of work-for-hire in the photography industry, and issues surrounding joint and co-authorship in the music sector.

The November 7, 2012 amendment to the Copyright Act, changed the ownership of photographs from client purchasing the photograph, to the photographer themselves,[4] seemingly moving the industry away from the work for hire model. Prior to this point photographers were not considered artists, but rather technicians, meaning photographers did not receive the ownership to the copyright of the photos produced. The only way for a photographer to obtain the copyright to their works was by asking their clients to sign a release to transfer the intellectual property rights to the photographer.[5] In response, the Canadian Association of Professional Image Creators (CAPIC) and Professional Photographers of Canada (PPOC), came together to form the Canadian Photographer Coalition (CPC) and lobbied for a change in the Copyright Act.[6] The "Copyright Act was amended in the Spring of 2012 […], rectifying the injustice that prevailed hitherto, while the copyright of photographs that were ordered belonged to the client by default"[7] and brought forth the Copyright Modernization Act.

While the Copyright Modernization Act states that "the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the

[4] *Copyright Act*
[5] CAPIC Prairie Chapter. "Copyright Modernization Act, 1of 4: How Does This Affect Photographers?" *Vimeo*, 17 June 2014, vimeo.com/98453107.
[6] "About CAPIC." *CAPICNational*, capic.org/about-capic/.
[7] "Copyright Law." *PPOC Copyright*, www.ppoc.ca/about/copyright.php.

copyright",[8] the photographers now retain the copyright to works they produced, despite having being hired to produce them, so long as the client is not an organization, a corporation, or reproducing the work for commercial use.[9] What results is a model that employs work for hire solely with respect to corporations and non-profit organizations, but not in respects to individuals. This amendment also brought along with it changes to the way the law applied to other industries, including performers and the creators of sound recordings[10], giving artists ownership over their work, as well as agency surrounding the digital distribution of their creations.[11]

While work-for-hire is a common discussion in photography and sound recording, joint authorship is frequently contested in the commercial music industry. Much like theatre, commercial music creation is a collaborative art form, involving many artists in the creation of a singular work, calling into questions authorship claims in relation to copyright. Similar to the theatre industry, the discussion of joint authorship is one that has taken place primarily in the United States, however, Canada's joint authorship laws[12] are similar to American laws,[13] making it a relevant comparison.

American co-authorship of a song dictates that co-authors also share the ownership of the copyright and the proportion of ownership is split evenly among the co-authors. Unless it is clearly stated in a written agreement, even if the majority of the work is done by one individual, the ownership to the copyright will still be split evenly among the parties. It is also frequent practice that the musical composition and recording rights will be split between

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[8] *Copyright Act*

[9] Legislative Services Branch. "Copyright Modernization Act (S.C. 2012, C.20)." *Justice Laws Website*, laws-lois.justice.gc.ca/eng/annualstatutes/2012_20/FullText.html.

[10] *Copyright Act*

[11] "Bill C-11: The Copyright Modernization Act." *Copyright at UBC*, copyright.ubc.ca/bill-c-11-the-copyright-modernization-act/.

[12] *Copyright Act*

[13] Ryan J. Richardson, "The Art of Making Art: A Narrative of Collaboration in American Theatre and a Response to Calls for Change to the Copyright Act of 1976," Cumberland Law Review 42, no. 3 (2011-2012): 489-548

the co-authors. The musical composition involves the arrangement and lyrics (if any) and copyrights would fall under the lyricist and composer, whereas the sound recording falls under the artist that is actually being recorded or the recording company.[14]

Questions of joint authorship and work-for-hire are decided on an industry by industry basis in Canada, although it seems as though the protection of the contributions of all those involved is a key question. The 2012 Copyright Modernization Act took steps to move away from the work-for-hire model, particularly when dealing with employment between individuals and artists, rather than between artists and corporations. In addition, the music industry's regulations surrounding joint authorship favour all collaborators being equally compensated for the final product, regardless of the significance of their contribution to the finished product.

While there have yet to be significant changes to Canadian Copyright Law in respect to the creation of dramatic works, precedent set by other industries dictates a favouring of the author's right to own the intellectual property of their own work over a work-for-hire model, and preference towards equal distribution of rights between collaborators regardless of the significance of each individual's collaboration to the final work.

[14] Mopas, Michael, and Amelia Curran. "Translating the Sound of Music: Forensic Musicology and Visual Evidence in Music Copyright Infringement Cases." *Canadian Journal of Law and Society / Revue Canadienne Droit Et Société*, vol. 31, no. 1, 2016, pp. 25–46., doi:10.1017/cls.2016.4.

Opposing Current Definitions of Joint Authorship

Joanna de Villa

Due to the continuously shifting climate that influences Canada's arts sector, it is imperative that the Copyright Act is updated in order to protect artists involved in contributing to works of theatre in ways that are consist with other creative industries.

> The Copyright Act of Canada is a federal law that exists in order to protect the rights of Canadian artists and encourage the authors of creative works to create Canadian content in order to expand the country's creative sector.[15] The language within the Copyright Act already implies that the system was intended, at its creation, to primarily support literary works.[16] In literature it is relatively easy to identify the author: the name(s) appear on the front cover. However, as the creative industry grows and new mediums rise in popularity, copyright grows more complex because at the time of its creation, many current forms of media and artistic content did not exist.[17]

The lack of protection offered by Canada's copyright law is preventing the growth of Canadian industries — more specifically, its theatre sector. Within the theatre industry, it is a growing trend for artists to collaborate on collective creations,[18] meaning that more people are working on a piece from its early ages of creation. However, due to the fact that copyright law does not have space to acknowledge collaboration – there is no way of compensating and protecting the contributions of people who are not credited as the author, significant though

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[15] Sherri Helwig, *"Making Sense of Copyright Part 1,"* VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, September 24th, 2020).
[16] Richardson, *The Art of Making Art: A Narrative of Collaboration in American Theatre and a Response to Calls for Change to the Copyright Act of 1976*
[17] Sherri Helwig, *"Introduction to Copyright"* VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, September 17th, 2020).
[18] Melo, Carla and Beatriz Pizano. *"Week Three: Building Vocabulary / Immersion Continued"* THRB31H3 Intermediate Performance: Devising Theatre (class lecture, University of Toronto, Scarborough Ontario, September 24th, 2020).

they may be. As a result, only a few of the people who contribute are afforded the benefits, which results in the industry ignoring the collaborative nature that is so integral to its success. If Canada wants to promote growth in its arts sector and honour the creators who make this growth possible, the country needs to expand the Copyright Act in order to incentivize these collaborative theatre efforts.

Within Canada, there is a growing trend in creating original, collaborative works.[19] Devised theatre — or collective creation — is a genre of theatre in which a group of performers come together before a piece exists in order to collaborate and create the piece together.[20] As many Canadian theatre companies like Soulpepper[21] and Nightwood Theatre[22] follow the approach of collective creation and move towards creating more devised theatre,[23] the Canadian government should adapt laws to support and recognize forms of creation that have many collaborators. While collective creation relies heavily on actor participation and creativity, actors are not immediately labelled as co-authors under the Copyright Act of Canada. Due to this fact, there is no way for actors to automatically receive compensation or credit for any contribution they make to the production — substantial or not.

It means that actors who contribute to the creation of a theatre piece are work-made-for-hire. Work-made-for-hire is an American term that is used within the country's Copyright Act in which individuals enter a contract and the ownership of whatever is created is held by the employer.[24] This precedent applies to the Copyright Act of Canada as well, though it is not labelled "work-made-for-hire". Within Section 13 of the Copyright Act, in every case

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19 *"Week Three: Building Vocabulary / Immersion Continued"*

20 Ratsoy, Ginny. *"Interculturalism and Theatrefront: shifting meanings in Canadian collective creation."* Theatre Research in Canada, vol. 34, no. 1, 2013, p. 37+. Gale OneFile: CPI.Q, https://link.gale.com/apps/doc/A339428272/CPI?u=utoronto_main&sid=CPI&xid=1cf45aa6.

21 "*Soulpepper Theatre to relaunch training residency | CBC News."* (2019, September 24). https://www.cbc.ca/news/entertainment/soulpepper-academy-relaunch-plans-1.5295060

22 *Production History.* (2020, October 15).https://www.nightwoodtheatre.net/production-history/

23 *Interculturalism and Theatrefront: shifting meanings in Canadian collective creation.*

24 17. U.S.C.A. § 201(b). https://www.copyright.gov/title17/92chap2.html

except for journalism, "the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright."[25] Any contribution that the actors make are no longer theirs and immediately belong to whomever commissioned the piece. For example, if the director of a devised theatre piece asked his actors to sit in a circle and share their worst audition stories, then went and created the entire show based on the stories they told during that rehearsal, none of the actors would be able to claim any stake in that production even if the story that inspired the show was wholly and entirely their experience. While theatres often label these actors who help lay the foundation of their shows as "co-creators,"[26] that gives them credit in name only and does not offer any legal authorship rights.

According to the Copyright Act, joint authorship only exists if the contribution is eligible for copyright.[27] As proven during the case of *Gould Estate v. Stoddart Publishing Co. (1996)*, oral statements in a speech, interview, or conversation are not recognized as literary creations, and are not under the jurisdiction of copyright protection.[28] Therefore, the actors who substantially contributed to the plot of the show by providing their own experiences are not eligible to receive royalties from future productions of the piece they assisted in making.

The 2009 Ontario case *Neugebauer v. Labieniec* further complicated the definition of joint authorship in Canada by opposing the idea of intent set out in British Columbia. The Court applied the conventional test for joint authorship in compliance with the existing copyright laws.[29] Within the conventional test, it requires that:

(a) Joint authorship is established by facts and law not on the parties' intentions;

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[25] *Copyright Act*

[26] Melo, Carla. *"Week Six: Brainstorming & Research"* THRB31H3 Intermediate Performance: Devising Theatre (class lecture, University of Toronto, Scarborough Ontario, October 20th, 2020).

[27] *Copyright Act.*

[28] *Gould Estate v. Stoddart Publishing Co. (1996)* 14 O.T.C. 136 (GD) https://ca.vlex.com/vid/gould-estate-v-stoddart-680572053?_ga=2.150766070.1362135182.1603280203-366034006.1603280203

[29] *Neugebauer v. Labieniec (2009)* FC 666;(2009), 349 F.T.R. 53 (FC) https://ca.vlex.com/vid/neugebauer-v-labieniec-680810461?_ga=2.219490393.1362135182.1603280203-366034006.1603280203

(b) The contribution of each of the parties need not be equal, although they must be substantial;

(c) There must be a joint labour in carrying out a common design even if one contribution may be qualitatively and quantitatively inferior to the other.[30]

Note that it stipulates that an individuals' contributions are based on facts, rather than the intent of both parties, and do not need to be equal to the "sole author" in order to be a co-contributor. While handling the case of *Neudorf v. Nettwerk Productions Ltd. (1999),* The Supreme Court of British Columbia previously offered its own three-pronged approach that requires the author's intent to have a co-author.[31] However, *Neugebauer v. Labieniec (2009)* is an Ontario case that is more recent than *Neudorf v. Nettwerk Productions Ltd. (1999).*[32] This indicates that in Ontario, the artists who collaborate with other artists and offer concrete contributions to the script deserve proper credit for their contributions. Moving forward with that notion, if one of the actors is recorded saying a particular line and that particular line makes it to the final piece and becomes the title of the show, that actor deserves compensation for their contribution.

While credit is appropriate at minimum, rules around compensation are a critical component and must also be revised in the Copyright Act. When sharing copyright, the percentage of shares split between co-contributors is discussed in Section 19. In the case of a sound recording, it is stated that the performer and maker are both entitled to equitable remuneration for the performance or recording of the song.[33] If the performer, producer, and other parties involved in the creation of the song are eligible for equal compensation,[34] why is

[30] *Neugebauer v. Labieniec.*
[31] *Neudorf v. Nettwerk Productions Ltd. et al. (1999)* 26 B.C.T.C. 161 (SC), https://ca.vlex.com/vid/neudorf-v-nettwerk-productions-681202441
[32] *Neudorf v. Nettwerk Productions Ltd. et al. (1999)*
[33] *Copyright Act.*
[34] *Copyright Act.*

it that theatre authorship is ineligible to receive that same treatment? With the number of people that work on a single theatre production, it is evident that theatre is an inherently collaborative effort that should be able to credit all of its contributors fairly and equally.[35] At the very least, Canadian copyright law needs to expand in order to adapt to the growing popularity of collective collaboration in which all personnel involved have a hand in the creation process of the show.

As new mediums are created and artistry continues to cross-sectionally develop, the Copyright Act requires revision. Amendments are need in order for performers working in collective creations to receive proper compensation for their contributions. In 2012, copyright laws were changed in order to give photographers agency over their work.[36] By that logic, actors should also be able to own the right to their art and receive compensation for it as Canadian theatre collectively takes steps into the devised theatre realm. As the future draws closer, it only makes sense that these rules that were created to protect artists, adapt to protect *all* artists — especially those who strive to bring Canadian stories to our forefront.

Seeing as copyright law does not acknowledge the creation model of devised theatre, there is no way of compensating and protecting the contributions of people who are not credited as the author. As our law currently stands, only the producers and playwrights stand to benefit from future productions of these devised pieces. This results in the industry ignoring the inherent collaborative nature of theatre and the steady rise of collective creation. Canada should look at expanding the Copyright Act in order to properly honour co-contributors and encourage their creative population to create more Canadian art.

[35] Wright, Kevin. *"Lighting design: Rough Plot, Clean Plot"* THRB50 Stagecraft. (class lecture, University of Toronto, Scarborough Ontario, October 19th, 2020).
[36] CAPIC Prairie Chapter *"Copyright Modernization Act, 1of 4: How does this affect photographers?"* Vimeo, June 17, 2014.

In Defense of the Current Definition of Joint Authorship

Colette Richardson

In spite of the current debate, it is critical that the definition of joint authorship under Canadian Copyright Law is not expanded, as doing so would not only undermine existing rights of authors, but would also disincentivize the creation of new theatre works.

The Canadian Copyright Act defines a work of joint authorship as "a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors"[37]. When dealing with collaboratively created dramatic works, questions arise surrounding the validity of joint authorship claims to collaborators who are not credited with penning the script. However, many of those collaborators' work is independently protected under the Copyright Act, and the work that is not independently protected, is not protected due to its inability to meet the eligibility criteria.[38] In addition, if we are framing the intent of copyright as the creation of an incentive to continue to create as set in the Statute of Anne broadening the definition of joint authorship to include collaborators will not only disincentivize playwrights by stripping them of the full possession of the copyrights of their work, but will also complicate the legal requirements of creation and licensing to a point where artists are disincentivized from creating new works[39], or legally reproducing existing ones.[40] As a result, it is far more efficient to protect these collaborators through contract law[41], considering them work-for-hire.

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[37] *Copyright Act*
[38] *Copyright Act*
[39] Richardson, *The Art of Making Art: A Narrative of Collaboration in American Theatre and a Response to Calls for Change to the Copyright Act of 1976*
[40] Beth Freemal, "Theatre, Stage Directions & (and) Copyright Law," Chicago-Kent Law Review 71, no. 3 (1996): 1017-1042
[41] Freemal, *Theatre, Stage Directions & (and) Copyright Law*

The current eligibility requirements for a work to be copyrightable under Canadian law are: (1) that it is an original work, (2) that the work exhibits at least a minimal degree of creativity, and (3) that the work exists in a fixed, material form.[42] These protections extend to numerous potential collaborators working on a dramatic work, including designers (scenic, lighting, costume, etc.), and more recently, choreographers and performers.[43] Designers are perhaps the most clear distinction – their work is certainly original and most definitely creative, and their designs can easily be fixed and material through design sketches and photographs, as well as the physical property (in the case of scenic and costume designers) that is used in the final performance. Recently, the Canadian Copyright Act has been extended to include choreography, defined as "any work of choreography, whether or not it has any story line"[44] and performance, defined as "any acoustic or visual representation of a work, performer's performance, sound recording or communication signal, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set"[45]. The notable collaborators missing from protection are the director and the dramaturg[46]. However neither the director, nor the dramaturg can successfully meet the eligibility requirements needed in order for their work to be considered copyrightable under Canadian law. While a Director is certainly exhibiting creativity in their vision, their work is neither entirely original, nor does it exist in a fixed form.

As Freemal argues, a Director's work is intrinsically linked to the text on which it is based, and is, in essence a derivative work of the play's text rather than an original work in its own right.[47] If you were to remove the Director's blocking choices from the context of the rest of

[42] *Copyright Act*
[43] *Copyright Act*
[44] *Copyright Act*
[45] *Copyright Act*
[46] Douglas M. Nevin, "No Business Like Show Business: Copyright Law, the Theatre Industry, and the Dilemma of Rewarding Collaboration," Emory Law Journal 53, no. 3 (Summer 2004): 1533-1570
[47] Freemal, *Theatre, Stage Directions & (and) Copyright Law*

the piece, removing the text of the play, removing the work of the scenic, lighting and costume designers, removing the architecture of the building, removing the nuances of the actors performances, you would be left with a set of random movements in an empty space.[48] It is the context of the text of the play, the actor's performances and the work of the designers that give the Director's blocking choices meaning. Unlike a costume designer, who has created an original creation that can stand alone outside of the context of the piece for which it was written, the Director's artistic contributions are only meaningful in the context of the works of which they have no ownership, making their work not entirely original, but rather derivative.

Secondly, a Director's work cannot exist in a fixed form.[49] While one can certainly submit a stage manager's prompt book listing the specific blocking movements or a filmed representation of a production as a 'fixed form' of the Director's blocking choices, these only can fix the physical movements on the stage, not the context within they existed, nor the audience's reaction to them. Both the context and the audience's reaction are critical pieces of the Director's artistic contribution[50], making them crucially missing pieces of the "fixed" creation that results.

Additionally, as there are a limited number of possible ways to move actors on a stage, copyrighting these movements runs the risk of limiting future directors from having options with which to set their blocking without having to obtain proper permissions[51], further disincentivizing theatre artists from creating.

[48] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[49] Nevin, *No Business Like Show Business*
[50] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[51] Freemal, *Theatre, Stage Directions & (and) Copyright Law*

In the case of the Dramaturg, given the way in which Dramaturgs operate in the creative process, it is incredibly difficult to discern what portions of the final piece were the Dramaturg's responsibility and which were the creation of the playwright, making it difficult to fix the Dramaturg's contribution distinctly from the work of the playwright.[52] While at first glance this may seem like a case for joint authorship, it must be noted that in most cases, the Dramaturg's contributions are not specific writings, but rather ideas.[53] In fact, in both the case of the Dramaturg and the Director – the work being done is primarily that of ideas rather than fixed creation, something that is not protected under Copyright law.[54]

Additionally, NEUDORF V. NETTWERK PRODUCTIONS LTTD set a precedent that in order for work to be considered of joint authorship, both parties must have set the intent to create together at the beginning of the creation process.[55] Given that Directors and Dramaturgs both enter the process after the completion of a play's first draft, meeting this criteria becomes difficult.

This is not to say that Directors and Dramaturgs deserve no recognition or financial stake in their creations, but rather that contract law is more suited to protecting the interests of Directors and Dramaturgs than copyright law.[56] According to the Canadian Copyright Act, while the original creator of a work is generally considered to be the copyright owner of that work ,"where the author of a work was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright."[57] In other words, if an artist is

[52] Nevin, *No Business Like Show Business*
[53] Nevin, *No Business Like Show Business*
[54] *Copyright Act*
[55] *Neudorf v. Nettwerk Productions Ltd. et al*., (1999)
[56] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[57] *Copyright Act*

under an employment agreement, their works created under that employment ultimately belong to their employers.[58] This would apply to Directors and Dramaturgs, who are generally under contract with a producer, playwright or arts organization while they are creating for a collaborative process.[59] As a result, employment contracts drawn up for these type of projects can include negotiations surrounding billing, credit, and in the case of the Director, permissions for the work to be re-used, re-performed or used in other productions down the line, as well as the royalties associated with the usage of the contributions to the work in future performances.[60] This is a far more effective way of ensuring fair compensation for the work of Directors and Dramaturgs, and therefore incentivizing them to continue to create than copyright law, as it does not require any form of fixation, and therefore can account for the contributions of ideas rather than representations of ideas in a way that copyright law cannot.[61]

In fact, broadening the definition of joint authorship may actually disincentivize the creation of new theatrical works. As Richardson notes, in order for joint authorship to be established between all collaborators, lengthy legal agreements would need to be made prior to collaboration beginning, something that is not only prohibitively expensive for artists who struggle to secure adequate funding to create work, but becomes increasingly complicated given the number of collaborators involved, the frequency with which collaborators involved in a project change throughout the project's development and the large egos present in these agreements, making a simple and straightforward agreement an unlikely possibility.[62] Requiring this kind of agreement be made in order for collaboration to begin will become so

[58] *Copyright Act*
[59] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[60] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[61] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[62] Richardson, *The Art of Making Art*

difficult that it will disincentivize the artists from collaborating[63], something that is absolutely crucial to the formation and success of the artform.[64]

In addition, such an agreement would then require that all parties involved with the initial collaboration be compensated every time the dramatic work is licensed to an amateur company.[65] As a result, licensing fees for amateur productions of dramatic properties would rise, making an already prohibitively expensive cost for smaller educational, regional and community arts organizations even more difficult to obtain.[66] This poses a problem not only because it reduces the amount of educational, community and regional theatre being performed as organizations find it prohibitively expensive to purchase licensing rights[67], and may or may not have the resources or desire to produce an original work in all cases, but also because a decline in the number of licensing requests would result in the playwrights receiving less income from royalties overall. If we understand the intent of copyright to be the incentivization of the creation of work, as discussed in the Statute of Anne[68], broadening the definition of joint authorship to include all collaborators involved in the creation process of a dramatic work and thereby disincentivizing the creation and re-interpretation of new works would work against the intents set out by copyright law, not in favour of them.

The other question worth considering is the protection of the moral rights of the playwright. Moral rights exist with the understanding that an artistic work is an extension of the creator's self and personality, and therefore must be protected.[69] While we've established that other collaborators may contribute ideas that inspire or guide the playwright towards the eventual

[63] Richardson, *The Art of Making Art*
[64] Nevin, *No Business Like Show Business*
[65] *Copyright Act*
[66] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[67] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[68] *Copyright Act 1710*, 8 Anne, c. 19 (1710)
[69] *Théberge v. Galerie d'Art du Petit Champlain inc.*, [2002] 2 S.C.R. 336, 2002 SCC 34, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do

final form of the piece, those ideas would not exist if the original creation of the text of the first draft of the play did not exist first. As a result, the playwright or playwrights, ought to possess the moral rights over the work, as the work is ultimately a piece of their personality, something that moral rights are striving to protect.[70] In broadening authorship to all collaborators, you are ostensibly giving away the copyrights of the playwright in order to protect the derivative contributions of other collaborators, whose contributions exist primarily in the form of ideas and inspiration rather than fixed artistic creation.[71] This fails to protect both the economic and the moral rights of the playwright, who is the sole author of the original creation on which the eventual derivative works were conceived.[72] Broadening authorship is ultimately failing to fulfill the promise set out by copyright law to the playwright, who is the most, if not fully responsible for the fixed form of the dramatic text that is being interpreted and licensed.

While collaboration is an integral part of the creation of dramatic works[73], copyright law is specific in its' intent and requirements towards protecting the creators of original, creative, and fixed works.[74] The few collaborators in a dramatic work who are not currently protected under the law are better protected under contract law than copyright law, not only as they are considered work-for-hire[75], but as their inclusion in the definition of joint authorship does more to disincentivize the creation of new works than to incentivize it, something that Canadian copyright law is ultimately trying to promote.[76] The current iteration of the Canadian Copyright Code is entirely sufficient in its protection of artists involved in the

[70] Sherri Helwig, "Making Sense(?!) of Copyright (Part 2)," VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, October 1, 2020).
[71] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[72] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[73] Nevin, *No Business Like Show Business*
[74] *Copyright Act*
[75] Freemal, *Theatre, Stage Directions & (and) Copyright Law*
[76] Sherri Helwig, "Making Sense of Copyright Part 1," VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, September 24th, 2020).

creation of dramatic works, and the definition of joint authorship ought not to be broadened to include additional collaborators involved in the creation of a dramatic work as authors of said work. The result would negatively impact playwrights, and the ability to promote the creation and reinterpretation of dramatic works in Canada.

Conclusion

The issues of work for hire and joint authorship continue to be of relevance in the Canadian creative industries, and the theatre industry in particular. While to date, Canadian Copyright Law only protects the playwrights responsible for a dramatic work, questions can be raised towards the validity of claims from other collaborators towards joint authorship.

Ultimately, however, compensation of collaborators in a dramatic process currently rests within the purview of contract law. It is up to the individual organizations, producing bodies and artists to negotiate royalties in exchange for their contributions to the development of creative works. Arts organizations involved in such creations ought to consider how they intend to set royalties, if the work they are creating is considered work for hire or joint authorship, and to what degree they intend on compensating artists and collaborators whose work is not fixed, material and easily copyrightable for their valuable contributions to the work.

Works Cited

"About CAPIC." CAPICNational, capic.org/about-capic/.

"Bill C-11: The Copyright Modernization Act." Copyright at UBC, copyright.ubc.ca/bill-c-11-the-copyright-modernization-act/.

"Copyright Law." CAPICNational, capic.org/copyright-laws/.

"Copyright Law." PPOC Copyright, www.ppoc.ca/about/copyright.php.

Beth Freemal, "Theatre, Stage Directions & (and) Copyright Law," Chicago-Kent Law Review 71, no. 3 (1996): 1017-1042

Branch, Legislative Services. "Copyright Modernization Act (S.C. 2012, C.20)." Justice Laws Website, laws-lois.justice.gc.ca/eng/annualstatutes/2012_20/FullText.html.

CAPIC Prairie Chapter "Copyright Modernization Act, 1of 4: How does this affect photographers?" Vimeo, June 17, 2014.

CAPIC Prairie Chapter. "Copyright Modernization Act, 1of 4: How Does This Affect Photographers?" Vimeo, 17 June 2014, vimeo.com/98453107.

Copyright Act 1710, 8 Anne, c. 19 (1710)

Copyright Act, R.S.C., 1985, c. C-42, https://laws-lois.justice.gc.ca/eng/acts/C-42/page-1.html

Douglas M. Nevin, "No Business Like Show Business: Copyright Law, the Theatre Industry, and the Dilemma of Rewarding Collaboration," Emory Law Journal 53, no. 3 (Summer 2004): 1533-1570

Gould Estate v. Stoddart Publishing Co. (1996) 14 O.T.C. 136 (GD) https://ca.vlex.com/vid/gould-estate-v-stoddart-680572053?_ga=2.150766070.1362135182.1603280203-366034006.1603280203

Helwig, Sherri. "Introduction to Copyright" VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, September 17th, 2020).

Helwig, Sherri. "Making Sense of Copyright Part 1," VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, September 24th, 2020).

Ingham, Tim. "Global Recorded Music Industry Revenues Topped $20bn Last Year – but Streaming Growth Slowed." Music Business Worldwide, 4 May 2020, www.musicbusinessworldwide.com/the-global-recorded-music-industry-generated-over-20bn-last-year-but-streaming-growth-slowed/.

Melo, Carla and Beatriz Pizano. "Week Three: Building Vocabulary / Immersion Continued" THRB31H3 Intermediate Performance: Devising Theatre (class lecture, University of Toronto, Scarborough Ontario, September 24th, 2020).

Melo, Carla. "Week Six: Brainstorming & Research" THRB31H3 Intermediate Performance: Devising Theatre (class lecture, University of Toronto, Scarborough Ontario, October 20th, 2020).

nettwerk-productions-681202441

Neudorf v. Nettwerk Productions Ltd. et al. (1999) 26 B.C.T.C. 161 (SC), https://ca.vlex.com/vid/neudorf-v-

Neugebauer v. Labieniec (2009) FC 666;(2009), 349 F.T.R. 53 (FC) https://ca.vlex.com/vid/neugebauer-v-labieniec-680810461?_ga=2.219490393.1362135182.1603280203-366034006.1603280203

Production History. (2020, October 15). Retrieved October 18, 2020, from https://www.nightwoodtheatre.net/production-history/

Ratsoy, Ginny. "Interculturalism and Theatrefront: shifting meanings in Canadian collective creation." Theatre Research in Canada, vol. 34, no. 1, 2013, p. 37+. Gale OneFile: CPI.Q, https://link.gale.com/apps/doc/A339428272/CPI?u=utoronto_main&sid=CPI&xid=1cf45aa6.

Richardson, *The Art of Making Art: A Narrative of Collaboration in American Theatre and a Response to Calls for Change to the Copyright Act of 1976*

Sherri Helwig, "Making Sense of Copyright Part 1," VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, September 24th, 2020).

Sherri Helwig, “Making Sense(?!) of Copyright (Part 2),”; VPAC16H3 Legal and Human Resources Issues in Arts Management (class lecture, University of Toronto Scarborough, Scarborough Ontario, October 1, 2020).

Soulpepper Theatre to relaunch training residency | CBC News. (2019, September 24). Retrieved October 18, 2020, from https://www.cbc.ca/news/entertainment/soulpepper-academy-relaunch-plans-1.5295060

Théberge v. Galerie d’Art du Petit Champlain inc., [2002] 2 S.C.R. 336, 2002 SCC 34, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1973/index.do

17. U.S.C.A. § 201(b). https://www.copyright.gov/title17/92chap2.html

Wright, Kevin. “Lighting design: Rough Plot, Clean Plot” THRB50 Stagecraft. (class lecture, University of Toronto, Scarborough Ontario, October 19th, 2020).