

Sharing the Stage: How Tempo Music Investments LLC v. Miley Cyrus et al Reinforces Copyright Co-owner Rights

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A [recent ruling](#) from the United States District Court for the District of Central California in the lawsuit against Miley Cyrus and others for the song “Flowers” highlighted the power that a single copyright co-owner holds in protecting their interest. The Court denied a [motion to dismiss](#) brought by Cyrus and her co-defendant song writers (the “Songwriter Defendants”), rejecting their argument that the plaintiff lacked standing to bring suit as the successor-in-interest of a copyright co-owner. The Songwriter Defendants’ motion turned on a key principle of copyright law: a single co-owner, even without the consent of other co-owners, can sue for infringement. The Court’s decision reinforced that copyright co-ownership includes not only the benefit of royalties—but also remedies.

In February 2024, Cyrus left the Crypto.com Arena with not one but two Grammy Awards for her 2023 smash hit “Flowers,” triumphing Record of the Year and Best Pop Solo Performance. However, “Flowers” proved not to be all sunshine and roses for Cyrus, as it also brought her a federal lawsuit alleging unlawful copying of the 2013 Hot 100-Charting song “When I Was Your Man” performed by Bruno Mars. Mars, Ari Levine, Andrew Wyatt, and Philip Lawrence are the co-writers of “When I Was Your Man,” with Tempo Music Investments LLC (“Tempo”) acquiring Lawrence’s interests in the song in 2020.

On September 16, 2024, Tempo sued Cyrus and others for copyright infringement in *Tempo Music Investments LLC v. Miley Cyrus et al.*, 2:24-cv-07910, with Central California District Court Judge Dean D. Pregerson presiding. In its Complaint, Tempo claimed that any Mars fan would recognize that “‘Flowers’ duplicates numerous melodic, harmonic, and lyrical elements of ‘When I Was Your Man,’ including the melodic pitch design and sequence of the verse, the connecting bass-line, certain bars of the chorus, certain theatrical music elements, lyric elements, and specific chord progressions.” Tempo also included side-by-side comparisons of the songs’ respective melody, harmony, and lyrics to allege intentional similarities and meaningful connections. An example is the following lyrical comparison:

“When I Was Your Man”	“Flowers”
That I should have bought you flowers	I can buy myself flowers
And held your hand	And I can hold my own hand

Should have gave you all my hours	Talk to myself for hours
Take you to every party cause all you wanted to do was dance	I can take myself dancing

Fans on social media noticed that while “When I Was Your Man” features a man lamenting his failure to treat his lover better, “Flowers” appears to celebrate a woman’s embrace of independence.

The Songwriter Defendants moved to dismiss the case, arguing Tempo lacked standing because it does not own the exclusive copyright to “When I Was Your Man.” The Songwriter Defendants contended that Tempo’s Complaint suffered a “fatal flaw” because Tempo “br[ought] this copyright infringement action alone — without any of that musical composition’s co-authors or other owners[.]” The Songwriter Defendants interpreted Section 501(b) of the Copyright Act to mandate dismissal under these facts, because only an exclusive legal or beneficial owner of a copyright right may sue for infringement, with Tempo being neither.

The Songwriter Defendants asserted that, in the Ninth Circuit, the law is that the assignee or licensee of one co-author’s interest in a joint work’s copyright lacks the requisite standing to bring a copyright suit. In so doing, the Songwriter Defendants primarily relied on *Tresóna Multimedia, LLC v. Burbank High Sch. Vocal Music Ass’n*, 953 F.3d 638 (9th Cir. 2020) and *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137 (9th Cir. 2008). The Songwriter Defendants interpreted these authorities for the proposition that a single co-author of a copyright interest, acting alone, cannot assign or license exclusive rights, because those rights are also owned by the assignor’s or licensor’s co-authors. The Songwriter Defendants further reasoned that a co-author can only grant non-exclusive rights because such co-owners are akin to tenants in common, each of which owns shares of an undivided whole.

Tempo opposed, arguing that Section 201 of the Copyright Act makes clear that “copyright interests are divisible and can be sold just like any property interest” such that co-owners can unilaterally transfer their copyright interests without permission from the other co-owners. Likewise, Tempo asserted it is black letter law that a co-owner of a copyrighted work can sue a third-party for infringement without joining the other co-owners in the action or otherwise obtaining their permission to proceed with litigation. Thus, upon acquiring Lawrence’s interest to “When I Was Your Man,” Tempo maintains it stepped into Lawrence’s shoes as his successor-in-interest with the right to bring any claim for copyright that Lawrence (or any other owner of “When I was Your Man”) could bring.

Judge Pregerson agreed with Tempo, and denied the motion to dismiss, ruling that, under the Copyright Act’s provisions for divisibility and alienability of copyright ownership, a co-owner may sue a third party for infringement without joining the other co-owners. The decision reasoned that the Songwriter Defendants misunderstood case law from the Ninth Circuit that stems from the word “exclusive,” because “[o]wnership of ‘exclusive rights’ is not to be conflated with ‘exclusive ownership’ of rights.” Indeed, each co-owner

of a copyright owns an interest in the exclusive rights that make up the copyright, and these exclusive rights are exclusive to the co-owners collectively as against the rest of the world.

Judge Pregerson emphasized that neither *Tresóna* nor *Sybersound* limited a co-owner's ability to transfer his/her ownership interest in a copyright. He underscored that in *Corbello v. DeVito*, 777 F.3d 1058 (9th Cir. 2015), the Ninth Circuit made clear the distinction between exclusive rights and exclusive ownership, reasoning that "[t]ransferability of a copyright is no different for a co-owner than it is for a sole owner." If a co-owner's right to sue for infringement was otherwise lost upon transfer, that would diminish the value of jointly-owned copyrights, which in turn would undermine Congress' intent in allowing copyrights to be divided and its acknowledgment of co-ownership of joint works.

In rejecting the Songwriter Defendants' lack of standing argument, Judge Pregerson clarified several other fundamental rights that copyright co-owners hold:

- A co-owner may transfer his/her ownership interest without obtaining permission from the other co-owners;
- A co-owner cannot grant an exclusive license to a third party without the consent of all co-owners, because a co-owner cannot transfer more than he/she owns;
- A co-owner cannot limit the independent right of the other co-owners to use and exploit the copyright without their consent;
- A co-owner, when acting alone, may only grant a non-exclusive license to a third party; and
- Each co-owner of a copyright owns an interest in the exclusive rights that make up a copyright, and these exclusive rights are exclusive to the co-owners collectively as against the rest of the world.

This reiteration of rights serves as an important reminder that copyright co-owners should be mindful of the parties with whom they share their rights and when they do (or do not) need permission to act independently of the other co-owners.