

Scott Szabo v. Errisson, et al.
68 F.3d 940, (5th Cir. 1995)
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Plaintiff Scott Szabo composed an original music composition titled "Man v. Man." Szabo then filed a single copyright registration with the United States Copyright Office for a collection of his songs titled "Scott Szabo's Songs of 1991," which included the song "Man v. Man." A year later, King Errisson recorded his version of "Man v. Man," which he titled "Man." Szabo filed suit against Errisson asserting copyright infringement. Szabo moved for partial summary judgment on the issue of liability, asserting that there was no genuine issue of material fact because Errisson admitted he had met Szabo, thus establishing that he had the opportunity to copy Szabo's song. The district court denied this motion. Errisson then filed a motion for summary judgment, contending that Szabo could not maintain a copyright infringement suit because he had never copyrighted the specific song, "Man v. Man." Errisson claimed that Szabo had only copyrighted "Szabo's songs of 1991," and that the copyright did not extend to "Man v. Man" because it was not specifically listed on the copyright registration. The district court granted Errisson's motion for summary judgment and dismissed the case with prejudice. Szabo appealed the decision and contended that Errisson's motion for summary judgment should have been denied because "Man v. Man" was copyrighted as part of a compilation and that he was entitled to partial summary judgment because Errisson had access to "Man v. Man." Szabo also asserted that "Man" is a derivative of "Man v. Man," and that the two works are substantially similar. The court reversed in part, affirmed in part and remanded for further proceedings.

To establish a claim for copyright infringement, a plaintiff must prove that he owns a valid copyright and the alleged infringer copied his copyrighted material. The court held that a copyright of a collection of individual songs extends copyright protection to individual songs in the collection, citing §202 of Title 37, which states that multiple unpublished works may be registered as a collection if the works meet certain requirements. The court also looked at section 103 of the Copyright Act which provides that the copyright in a compilation or derivative work extends only to the material contributed by the author of such work. Since "Man v. Man" was included in the compilation of works that were copyrighted, it had copyright protection by itself.

In order to prove whether any actual copying occurred, the plaintiff first must establish that the alleged infringer actually used the copyrighted material to create his own work. This can usually be inferred from proof that the infringer had access to the copyrighted material and that the two works are substantially similar. Errisson admitted he had met Szabo and created his own version of "Man. v. Man." However, Szabo also stated he would not have recognized Errisson's song titled "Man" as being derivative of his song had he not known that it was. Therefore Szabo's motion for partial summary judgment was denied as the court needed to determine whether the two works were substantially similar works.

The court also held that Szabo had a valid copyright in his individual work that was not individually copyrighted, but was part of a compilation that was copyrighted. In addition the court rejected Szabo's motion for partial summary judgment and remanded the case in order to determine whether Szabo and Errisson's works were similar.