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the store nor the store's ability to pay for the use of the music is relevant. Additionally, the homestyle exception looks at each individual store, regardless of how many stores are collectively owned or operated. <sup>Ω</sup>

*Brent Von Horn*

1. Copyright Act, 17 U.S.C.A. sec. 110(5) (1988).
2. *Id.*
3. *Edison Brothers Stores, Inc. v. Broadcast Music, Inc.*, 954 F.2d 1419, 1422 (8th Cir. 1992).
4. *Id.*
5. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151 (1975).
6. *Edison Brothers Stores, Inc. v. Broadcast Music, Inc.*, 954 F.2d 1419, 1424 (8th Cir. 1992).
7. *Id.* at 1425.
8. *Id.* at 1426.

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## Childress v. Taylor, 945 F.2d 500 (2nd Cir. 1991).

### Introduction

Actress Clarice Taylor appealed to the United States Court of Appeals for the Second Circuit claiming that she was the joint author of a play about the life of legendary comedienne Jackie "Moms" Mabley entitled, *Moms: A Praise Play for a Black Comedienne*. Playwright Alice Childress claimed that she was the sole author of the play. The court affirmed the district court's decision, holding that in order for joint authorship to exist, both parties must have intended this result at the time the work was being created and that the separate contribution of each author must be copy-rightable. The court also affirmed the decision of the district court which entered summary judgment for Childress, concluding that she was the sole author of the play.

### Facts

At the request of Taylor in 1986, Childress agreed to write a script for a play based upon Mabley's life. Childress completed the script for the play and obtained a copyright in her name. The play was produced during the summer of 1986 and Taylor played the leading role. In May of 1986, Taylor's agent sent a proposed contract to Childress's agent which contained several terms. One of the terms stated that the finished play would be owned equally by both Taylor and Childress. In response to Taylor's proposal, Childress's agent wrote back responding that two terms should be added to the

proposed agreement. One of the terms stated that Childress was claiming originality for the script.

In March of 1987, Childress rejected the draft agreement proposed by Taylor and the parties' relationship deteriorated. As a result of these events, Taylor hired another playwright and developed a new production based upon the life of Jackie "Moms" Mabley. The play was produced in 1987 and no reference was made to Childress; however, a casting notice in the trade paper *Back Stage* reported the production of the play and noted that it had been presented earlier at the Hudson Guild Theatre. Additionally, an advertisement for the new play quoted reviews which referred to Childress's play.

As a result, Childress brought suit in the United States District Court for the Southern District of New York alleging violations of the Copyright Act,<sup>1</sup> the Lanham Act,<sup>2</sup> and New York's anti-dilution statute.<sup>3</sup> Taylor contended that she and Childress were joint authors and that, as such, they shared rights to the play. The district court granted Childress's motion for summary judgment, holding that Childress was the sole author of the play.

### Legal Analysis

The issue addressed by the court was whether the play, *Moms: A Praise Play for a Black Comedienne*, qualified as a "joint work" under the Copyright Act. The Copyright Act defines "joint work" as:

"a work prepared by two or more authors with the intention that their contributions be merged into inseparable parts or interdependent parts of a unitary whole."<sup>4</sup>

First, the court analyzed the statutory definition of "joint work" as well as its legislative history. In its discussion on legislative history, the court noted an excerpt from a committee report which stated:

"[A] work is 'joint' if the authors collaborated with each other, or if each of the authors prepared his or her contribution with the knowledge and intention that it would be merged with the contributions of other authors as inseparable or interdependent parts of a unitary whole. The touchstone here is the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit . . ."<sup>5</sup>

The court explained that the committee report appeared to state two alternative criteria consisting of collaboration or intent. However, the court reasoned that activity which would constitute collabo-