

DAVIS V. BLIGE: THE SECOND CIRCUIT'S REJECTION OF RETROACTIVE COPYRIGHT LICENSES

By Michael Todd Mobley

On August 28, 2001, MCA Records released Mary J. Blige's album "No More Drama."¹ This critically acclaimed album—the "Queen of Hip-Hop Soul's" fifth studio release—moved over five million units worldwide and earned Blige a Grammy.² However, with the success of "No More Drama" came setbacks. Soon after the album was released, a legal dispute began regarding the copyrights in the musical compositions for two of the album's tracks.

In *Davis v. Blige*, the Second Circuit announced that both transfers of ownership interest in a copyright and the conveyance of nonexclusive licenses to exploit a copyright are prospective—neither may be applied retroactively to cure past infringement.³ Although various district courts have addressed this issue, the Second Circuit was the first of the courts of appeals to do so.⁴ The court stated that its new rule was based on traditional principles of copyright liability and that it was intended to further the policy goals of facilitating predictability and discouraging infringement of joint works.⁵

Some commentators have argued that this rule is inconsistent with the 1976 Copyright Act (1976 Act) and that the court erroneously relied upon tort law to reach its decision.⁶ However, others have asserted that reliance on tort law to define the boundaries of copyright liability is deeply rooted

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1. Mary J. Blige, *Discography*, Mary J. Blige: Official Site, <http://www.mjblige.com/discography/> (last visited Feb. 13, 2009).

2. Grammy Award Winners, Grammy.com, http://www.grammy.com/GRAMMY_Awards/Winners/Results.aspx (last visited Feb. 13, 2009).

3. *Davis v. Blige*, 505 F.3d 90, 104 (2d Cir. 2007), *cert. denied*, 129 S. Ct. 117 (2008).

4. *Id.* at 97.

5. *Id.* at 103-05.

6. See Posting of William Patry to The Patry Copyright Blog, The Second Circuit Goes to the Dark Side, <http://williampatry.blogspot.com/2007/10/second-circuit-goes-to-dark-side.html> (Oct. 8, 2007, 09:00 EST).