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The Real-Life Consequences of Copyright Termination

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Back in July, my colleague David Siegel and I reported on the importance for owners of creative works to terminate their copyright grants correctly in our blog post, "Terminate Copyright Grants Correctly or Risk Losing Your Rights." Now several consequential cases relating to the issue are in the news.

The first group involves copyright in comic strip characters, a field that has produced more than its share of law on copyright terminations because so often the employment status of a comic book artist is unclear. Is the artist an employee of the publisher, thereby rendering the work a "work made for hire" in which the employer owns all rights? Or is the artist an independent contractor who has entered into a terminable grant or assignment, allowing the artist to reclaim the copyright?

Copyright Termination

The Estate of Steve Ditko is claiming the latter. The estate's administrator filed a notice of termination of his grant of the rights (to Marvel) in and to the character Spider Man, which he created, and which first appeared in comic book form in 1962. The termination notice would result in the reversion of copyright in the famous comic book character to the Estate in June 2023. Marvel is also facing a termination notice filed by Larry Lieber (both an artist and a writer at Marvel).

These litigations, like others involving the famous comic book publisher, focus on the "Marvel Method," a process of collaboration between the publisher and the writers/artists by involving ideation and creative development. Marvel claims it had the right to exercise creative control over the work. Interestingly, this might make Marvel (and by extension Disney, which now owns Marvel) a "joint author" and copyright owner even if it cannot establish the work of the artist falls within "work made for hire." This would leave Marvel free to exploit the rights, even if its co-author (the artist/writer) walks away with identical rights that he is also free to exploit.

Copyrights as Part of a Divorce Settlement

Finally, a blast from the past arrives in the form of a copyright lawsuit between none other than Sonny and Cher, with Cher suing an heir to Sonny Bono (namely his fourth wife Mary Bono) to contest a termination notice served by Mary Bono. Bono's widow argues the notice cuts off Cher's right to 50 percent of all rights in music composition and record royalties she received as part of a settlement

when she and Sonny divorced.

The case turns on the interesting question of whether the Copyright Act’s termination provisions apply to a split of community property negotiated as part of a divorce settlement that includes a split of the right to revenues arising from copyright ownership and grants. Mary Bono claims that Publishing Agreements under which the royalties are being paid are subject to termination provisions governing both pre-1978 and post-1978 grants. Look for updates on these cases when you visit our blog again.

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