

COMICS AND COPYRIGHTS AND A SUPER LEGAL BATTLE

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Superman Is Created

It was a hot summer night in 1934 in Glenville, Ohio when the teenaged Jerry Siegel conceived of Superman as an alien with super powers hiding in plain sight as Clark Kent. The next morning he rushed over to Joe Shuster, his high school friend and the artistic half of the pair. Together, they developed the characters. Shuster drew Superman and Clark, in their now familiar garb, and Lois Lane from a real life teenager named Laura, who aspired to be a model. Ultimately, Jerry married his “Lois Lane” for life.

Jerry and Joe tried for years to interest publishers in a Superman comic strip, since in the 1930s there was more money for artists in syndicating a comic strip than in the nascent comic book industry. In late 1937 they signed a contract with Detective Comics (D.C. to comic fans) for some non-Superman work, with a sixty day option to publish new features. Shortly thereafter, D.C. decided to launch a new comic book titled Action Comics. D.C. put out a request for new material, leading the McClure Newspaper Syndicate to submit the Superman comic strips it had earlier rejected. D.C. decided that their first issue, Action Comics No. 1, would be Superman. (An original copy of Action Comics No. 1 recently sold at auction for \$1.2 million.) In comic industry parlance, No. 1 was the “origin story” of Superman.

The author wants to thank John Barrett, a long-term comic fan, for inspiring this article by arranging a meeting with Neal Adams and for providing background about comic artists.

Jerry and Joe changed the Superman strips into comic book format. Before it was printed, D.C. sent Siegel a check for \$130 (the going rate for the thirteen page Action Comics No. 1. In today's dollars, \$130 equals about \$2000.) Also enclosed was the fateful assignment to D.C. of "all [the] good will attached . . . and exclusive right[s]" to Superman "to have and to hold forever." Siegel and Shuster cashed the check and signed and returned the assignment. A few months later, in September of 1938, D.C.'s worldwide ownership rights to Superman were confirmed in an employment agreement. Other agreements followed.

A quick primer on copyrights: in relevant part, under 17 U.S.C. § 106 the owner of the copyright in a cartoon has the exclusive right to:

- Reproduce;
- Prepare derivative works;
- Distribute copies by sale, rental, lease or lending; and
- Display the work publicly.

Derivative works for cartoons include movies, television shows, action figures, clothing and other accessories with the copyrighted image. While a derivative work can have its own copyright on new material, it will still need rights to the original copyright to avoid infringement. Further, the rights in a copyright may be assigned or licensed in whole or in part.

The simple clauses in the agreements between D.C. and Superman's creators would lead to a legal struggle over these various rights that has lasted over 60 years. Today a case is still pending on appeal in the Ninth Circuit. For most of that period,

Siegel and Shuster repeatedly lost in court until finally in 2008 Siegel's heirs won a partial victory relating to the copyright renewal term for Superman. This legal saga illustrates many legal issues concerning copyright protection for cartoons. We will get to all of that, but first, as they say, back to the story.

Action Comics No. 1 Creates An Industry

Action Comics No. 1 published on April 18, 1938. 1938 was otherwise not a good year. The Depression was still going on and Hitler annexed Austria and part of Czechoslovakia. The response to Superman was, to use a popular word from the 1930s, "astounding." The first run sold out immediately. In three months, D.C.'s monthly sales went from 30,000 comic books to 1.3 million, all due to Superman. It is not an exaggeration to say Superman created the superhero comic industry. The timing of a Superman who used his powers for good, in stark contrast to the Nazi concept that Übermen are entitled to dominate others, may also have played a part.

Siegel and Shuster continued to work out of their studio in Cleveland under contract. Other aspects of and related to Superman evolved, including his ability to fly, X-ray vision, super hearing, heat vision, his weakness to kryptonite and the characters of Jimmy Olsen and Lex Luthor. When each of those aspects and supporting characters were developed and whether they were created as a work for hire ultimately became issues for both liability and damages apportionment. But I digress.

D.C. cashed in on Superman through radio, novels, movies, TV and merchandising. D.C. trademarked key Superman symbols, notably the "S in a Shield," and "Look up in the sky!... It's a bird!...It's a plane!...It's Superman." Of course we

lawyers love “Truth, Justice and the American Way.” Maybe some firm should license the trademark.

Siegel and Shuster began to feel they deserved a portion of all this cash flow. World War II put a hiatus on seeking a money resolution for the duration. Joe was rejected from service because of his poor eyesight. He continued to work for D.C., eventually managing a stable of artists for cartoons including Superman. Siegel enlisted in the Army in Cleveland on June 28, 1943, listing his profession as “Category 006 – Authors, Editors and Reporters.” He was discharged in 1946. Unfortunately, all other Army records regarding Siegel and millions of others were lost in a 1973 fire. Through contacts with Siegel’s daughter the author has learned that Siegel was stationed mostly in Hawaii, working on the Mid-Pacific section of Stars and Stripes, the newspaper funded now by Congress to give independent news to those serving.¹

During the war, Superman comics continued, but Superman only appeared a few times in stories fighting the Axis powers. It appears that it was difficult to reconcile his super powers with the war effort – why not just fly to Berlin and nab Hitler? Besides, if Superman really did that, what would they put in the next issue? Nonetheless, Superman’s appearances were enough for Hitler’s propaganda machine to denounce Superman.

The First Lawsuit

After the war, Siegel and Shuster acted on their unhappiness by filing suit in 1947 against D.C., seeking *inter alia*, to annul and rescind their assignment for lack of mutuality and consideration. After a trial in Westchester County, New York, the “official

referee” found the 1938 assignment valid and affirmed D.C. as the exclusive owner of all rights to Superman. Eventually the case was settled with D.C. paying \$94,000 to Siegel and Shuster (“S&S” for short) and S&S affirming D.C.’s full ownership of Superman.

The Second Lawsuit

The settlement would seem to have ended the legal battle, but this was not to be a one act play. In 1969, S&S filed a declaratory judgment action in United States District Court for the Southern District of New York seeking the copyright renewal rights to Superman under the then extant 1909 Copyright Act. Under the Act, there were two 28-year terms, the initial and the renewal. The concept of renewal terms in part was that an author might reap some reward later in life if his work became successful. S&S lost on summary judgment, so a jury never heard their story.² Unfortunately for S&S, the Supreme Court had held that an assignment of “all rights” applied to the renewal term, even though it had not yet vested.³

The summary judgment also applied *res judicata* to the 1947 State Court judgment of assignment of copyright. While a defeat, the Federal Court decision did have one aspect that would later prove useful. Specifically, the Second Circuit found that “Superman had been spawned by the plaintiffs four years before the relationship between his authors and the defendants existed. . . . We do not consider this sufficient to create the presumption that the strip was a work for hire.”⁴ More on work for hire later.

By 1975 Siegel and Shuster were 61 years old and nearly destitute. Their legal challenges to D.C. had led to them being essentially blackballed by the industry; they

found it hard to get work in their field. Shuster at one point worked as a messenger and as an illustrator of underground comics. Siegel was reduced to working as a clerk. Lucky for them, a fellow cartoonist, Neal Adams, took up their cause. Neal explained his tactics, which any litigator should admire, to the author.

Neal Adams has had a long and illustrious career as an artist, including commercial art. But his first love has always been cartoons, approached as art. Neal was one of the first to “break the frame” of the traditional comic book format of six equal size panels per page. During the time he was involved with drawing Batman for D.C. during the later 1960s to early 1970s, he returned the character to his original Dark Knight roots/persona. In so doing, he steered Batman away from the campy, costumed comic character that mirrored the then popular 1960s live action “Batman” TV series.

Neal’s artistic portrayal of Batman still provides inspiration for the artists who draw Batman to this day. Neal’s Batman has even inspired the recent version of the Dark Knight, (as played by Oscar winner Christian Bale), which has been the focus of filmmaker Christopher Nolan’s Batman films.

Neal also admired the early comic artists, especially the creators of Superman. Neal saw that Siegel and Shuster were foundering in their legal battle and contacted them. Siegel and Shuster agreed to have Neal represent them as an attorney in fact. Neal approached Jay Liebowitz, son of Jack Liebowitz (of D.C.) who had signed the original contracts relating to Superman. Jay had been given D.C.’s ancillary and licensing rights, including the movie rights to Superman. Jay refused to give anything to S&S, on the ground that comics lost money.

Neal responded, "That's B.S. You have made millions on all the licensing spinoffs."

Jay backed off, but still refused to make an offer. Not being a lawyer, Neal knew he could not go to the courts, which in any event had not been hospitable. But he could, and did, take the issue to the Court of Public Opinion. Neal first went to newspapers and talk shows, but this did not move the money needle. Neal made a plea at a National Cartoonists Society ("NCS") meeting, giving an impassioned speech laced with many gerunds beginning with the letter between e and g. The NCS agreed they would consider the issue and maybe send a letter.

After the NCS meeting, outside the coat room, a man said to Neal, "Quite a speech. Do you know what building you are in?"

"Allied Chemical?"

"No. The National Press Club. Do you know who I am?"

"No. Should I?"

"I am the President of the Press Club. [Likely William Broom, President for 1975.] If you want, I can call a press conference for tomorrow morning for you to tell your story."

Neal eagerly agreed, then went back upstairs to tell the NCS that they could either come to the press conference tomorrow or prove they were irrelevant to cartoonists' rights.

The next morning the NCS and many reporters came to the press conference. An uproar followed; Jay was now willing to talk. This led to an offer of a pension of \$20,000. Shuster, desperate for financial help, authorized the deal. Neal pushed some more and got the number to \$25,000.

A lawyer for the NCS then became involved and negotiated medical benefits for life for S&S and Siegel's wife. Then Neal asked for S&S to be given credit as the creators of Superman. Jay refused, likely concerned that any admission about attribution might affect title to the Superman copyrights.

By now the newspapers had begun following the story. Neal told reporters that everything was good, "just about." That was an irresistible hook for reporters to ask follow up questions as to what was missing. Neal told them about the credit issue. Shortly after this, Neal had to leave town for a comics convention in Florida. He asked Jerry Robinson, then President of the NCS (Robinson was a revered and respected comic artist who created the most famous superhero sidekick of all-time: Robin, the Boy Wonder, and the most iconic/popular comic villain of all time – The Joker) to handle the negotiations. Neal told Jerry he was confident that Jay would call in the morning.

Jay, predictably, was harried by many reporters. Jay could not reach Neal (who was deliberately incommunicado), so Jay called Jerry, asking for help on the credit issue. Jerry responded he was the "worst person in the world to talk with about that. In comics, having your name on the work is very important."

Ultimately, the public pressure proved too much and Jay folded. Warner Communications, which had bought D.C. largely for the movie rights to the cartoon

superheroes in D.C.'s stable, owned up to a "moral obligation" and settled. The 1975 settlement stated that the pensions would end if either Siegel or Shuster sued for any rights to the copyright in Superman. But their moral victory in the settlement of being given credit as the creators of Superman was also very important. Artists, indeed all creators, want credit for their work.

Neal's victory on the attribution issue presaged a change to the Copyright Law. On December 1, 1990, Congress passed § 106A of the Copyright Act, "Rights of certain authors to attribution and integrity."⁵ Section 106A(a)(1)(A) gives the author of a work of visual art the right to claim authorship of that work. Section 106A(a)(2) gives the author the right to prevent the use of his or her name as the author of a work he or she did not create. Only the author has these rights, whether or not the author is the copyright owner.

Thus today, Neal's fight to get S&S attribution would have been far easier. Corporations should also not fear giving attribution today because the statute draws a clear distinction between an author and a copyright owner. On a more practical note, while under the statute artists may waive their attribution rights to a specific work, it is usually in a corporation's interest to give attribution to an artist to help cement their working relationship with artists.

Well, by now in this story you might think that S&S's legal saga is over, after all of the settlements and affirmations of copyright ownership. But then from stage right entered Congress, barely after the curtain fell on the 1975 settlement. The Copyright Act of 1976 in § 304(c) allows an author to terminate an assignment of "all rights" with

respect to the renewal term of a copyright. But (doesn't there always seem to be a "but"?), not if the copyright was in a "work made for hire."

A simple example of work for hire is an artist employed by Disney to draw cells for an animated film. Since he is an employee and his specific job is to create the work, the work for hire doctrine makes an express assignment unnecessary. This is important to employers, as it eliminates the need for an assignment of each new work. The 1976 Act specifically defined "work prepared by an employee within the range of his or her employment" as a work for hire.⁶

In contrast, when authors were independent contractors, the presumption in early law was that the author retained the copyright to her work. Until the 1960s, the work for hire doctrine was generally applied to only the employer-employee relationship. About then, courts began applying the work for hire doctrine to independent contractors depending on this degree of control or supervision of the artist's work.⁷ This was codified in the 1976 Act, which stated that if an author (in copyright parlance, an artist is an author) is "specially ordered or commissioned" to create a contribution to a "collective work" and "expressly agree[s] in a written instrument signed by them that the work shall be considered a work made for hire," then legally it is.⁸ This created a potential trap for artists unaware of the legal meaning of the phrase.

While the work for hire doctrine generally is still alive today, the renewal termination provisions of § 304(c) of the 1976 Act only applied to copyrights in existence as of January 1, 1978 and only to assignments executed before that same date. The Copyright Act later changed things by moving to a single term of life of an author plus

50 years, for a minimum of 75 years, which eliminated the renewal termination issue for new copyrights.⁹ (The 1998 Sonny Bono Copyright Extension Act¹⁰ increased the term for copyrights in their renewal term to 95 years from the date the copyright was initially secured.¹¹ For copyrights in their initial term, the renewal term was lengthened to 67 years.) Thus, disputes over “work for hire” relating to renewal term rights will eventually end since there are no “renewals” of copyrighted work created after 1978. But, since so many superhero characters were created before 1978, there was the potential for many suits.

For Superman, it was this termination right that Siegel’s widow, Joanne (his Lois Lane), and Siegel’s daughter, Laura Siegel Larson, sought in a new case in 2004 against D.C. and Warner Brothers (which had purchased D.C.) in the United States District Court for the Central District of California. The Siegels had to navigate the tricky statutory requirements of giving notice within the statutory window for each Superman copyrighted work to terminate the 1938 assignment, the 1948 stipulation and the 1975 agreement outlined above. Shuster’s estate gave similar termination notices.

Eventually, the Siegel claim was teed up for trial on *inter alia*, the issues of: (1) whether the termination notices were effective; and (2) if so, what aspects of the copyright in Superman were subject to termination and which were subject to the work for hire exception. In other words, the key issue was what work belonged to Warner Brothers and D.C. because it was done under the employment work for hire agreement and what belonged to the Siegels because it predated the work for hire agreement.

Remember that in 1937 S&S signed a two-year employment agreement with D.C. stating that all work done by them “during said period of employment, shall be and become the sole and exclusive property of the Employer and the Employer shall be deemed the sole and exclusive property of the Employer, and the Employer shall be deemed the sole creator thereof. . . .”¹² This language illustrates a work for hire, although that term is not used.

The 1938 agreement between D.C. and S&S illustrates an assignment of copyright:

This release sold and transferred to Detective such work and strip [Superman], all good will attached thereto and exclusive rights to the use of the characters and the story, continuity and title of strip contained therein, to you [Detective] and your assigns to have and to hold forever and to be your exclusive property... . The intent hereof is to give you exclusive right to use and acknowledge that you own said characters or story and the use thereof exclusively. . . .”¹³

The decision from which much of this history was taken came down on March 26, 2008.¹⁴ While the lengthy and entertaining opinion addresses many subsidiary issues, the key holding was that:

After seventy years, Jerome Siegel’s heirs regain what he granted so long ago – the copyright in the Superman material that was published in *Action Comics*, Vol. 1.¹⁵

To oversimplify, the holding is based on Siegel and Shuster creating much of the content of Action Comics No. 1 before there was an employment agreement for a work for hire. For this content, there was only an assignment, and the assignment of the renewal term was null and void under the statute because of the termination notices.

Various post-trial motions failed, leaving this holding intact. The damages phase was stayed while Warner Brothers appealed to the 9th Circuit, where the case was still pending as of the final manuscript date. If the decision is affirmed, there will be a trial to apportion profits between what was in No. 1 and what was created as a work for hire. There will also be a trial over “whether to include the profits generated by D.C. Comics’ corporate sibling’s exploitation [think Superman movies] of the Superman copyright.”¹⁶

In movie terms, we might call this “The Never Ending Story.” In literary/legal terms, it conjures images of Dickens’ literary tale of the multi-generation lawsuit *Jarndyce v. Jarndyce*. Or maybe just that Truth, Justice and the American Way seem finally poised to prevail, provided there is no work for hire.

Art v. Copyright

Besides assignment and work for hire, cartoonists have also struggled with another issue: the ownership of their original art as its value has soared. It is important to distinguish between legal ownership of the physical work of art (e.g., a painting or a drawing) and the intangible copyright protecting it. Mere sale of the physical work does not convey copyright any more than the sale of a copyrighted book or DVD. For cartoonists, their original art was kept by the publishing house or simply destroyed. But who owned the original art? Into this fray once more rode the bold Neal Adams.

Neal saw his own work being shredded after plates were made for a press run. Neal told the worker not to destroy his art, getting a desultory response, “Yeah.”

Neal said, "Let me put it this way. If you don't save them, I will come back and punch you hard in the face." That worked.

Starting in 1981 Neal fought for six years to resolve ownership while the art languished in storage. Some artists did not wait and just took their work. During the fight, D.C. tried a test auction of an original piece of comic art for \$200. Two hundred dollars was bid but D.C. withdrew the piece, likely for fear of a suit for selling art it might not own. Eventually, in 1987 D.C. decided to return the original art to the artists. Marvel followed. This single step doubled the income of artists that year.

But issues surrounding the ownership of original art are not dead. Jack Kirby¹⁷ got much of his art back from Marvel, after Neal Adams' successful fight. Later, Kirby's heirs sued Marvel to enforce an agreement to return the rest of his original art. Kirby's heirs lost because the statute of limitations had expired.¹⁸ They also lost on their efforts to terminate assignment of the renewal term because the comics were created under a work for hire agreement.

The messages to cartoonists from the Kirby case are to (1) act quickly and aggressively to retrieve their original art and (2) avoid a work for hire clause and only license their work, if possible.

EPILOG

Comics have changed with the digital age – 80% of comics are now created digitally and most lettering is done by machine rather than by hand. The line between cartoons, video games and CGI (Computer Generated Images) movies continues to blur while movies based on cartoon characters continue to be made. The economics are still not good for most comic artists, yet some companies, on occasion, have agreed to continuing royalties rather than just a fixed amount. But, many of the same legal issues still apply. Because of the Superman legal battle, more artists are aware of the pitfall of “work for hire” language as well as words of assignment in their contracts.¹⁹ They should also be aware that in 1989 the Supreme Court established a list of factors to determine whether a work is for hire, even if the author/artist does not sign an express agreement stating that it is:

- The hiring party's right to control the manner and means by which the product is accomplished;
- The skill required;
- The source of the instrumentalities and tools;
- The location of the work;
- The duration of the relationship between the parties;
- Whether the hiring party has the right to assign additional projects to the hired party;

- The extent of the hired party's discretion over when and how long to work;
- The method of payment;
- The hired party's role in hiring and paying assistants;
- Whether the work is part of the regular business of the hiring party;
- Whether the hiring party is in business; the provision of employee benefits; and
- The tax treatment of the hired party.²⁰

Cartoon artists should consider these factors in deciding such things as who provides the supplies and studio space.

They should also remember that their physical art is distinct from copyright in that art. But, even with all this, young comic book artists, like struggling artists everywhere, are often more concerned about getting their work out there than the related legalities.

One might also think that more creators of older comics would have sought to terminate the copyright renewal term, but it seems few have done so.²¹

The world of cartoon artists is also in blog overdrive over a recent decision in a case brought by a cartoonist, Gary Friedrich, against Marvel Comics over the rights to Ghost Rider. The December 8, 2011 decision from the United States District Court for the Southern District of New York²² illustrates the difficulty of an artist challenging

assignment, even if an agreement was just a short statement of endorsement on the back of free-lancer checks²³ and even if the consideration for another agreement was a promise of future work which never materialized, because an exchange of promises was deemed consideration. But (again the but), the Southern District of New York also noted that, “following execution of the 1978 Agreement, [Kirby] essentially disappeared for a year – he was an alcoholic and was riding in a truck with a friend for a period of time.”²⁴ Thus, the artist’s own actions may have prevented Marvel from giving him any work.

The decision is somewhat confusing for stating that if the Ghost Rider character was not created as a work for hire, Friedrich would get the renewal rights, yet also holding that the contracts of assignment conveyed renewal rights. If there was no work for hire, and if the artist in fact had given termination notice for the renewal term, then according to *Siegel v. Warner Brothers*, as explained above, the contracts of assignment could have been terminated for the renewal term. However, the decision has no discussion of this issue.

The same decision has also spawned a blogging frenzy over whether this decision means Marvel will now go after artists who make sketches of their own creations at comic conventions and sell them on the spot. Marvel has publicly tried to allay this fear; the author agrees with this stance that artists should be free to sketch their creations at comic conventions.

First, the decision indicated that Friedrich “conceived and wrote the text” of the first comic issue of Ghost Rider.²⁵ While text is important, Friedrich did not draw any

art. Thus, Friedrich was selling prints and books of art he did not create, a different situation from artists reprising their own work at conventions.

Second, a judgment on February 6, 2012 only enjoined Friedrich from “using or appropriating the work.”²⁶ Although artists recreating sketches of their own prior work may technically be copyright infringement, it seems to the author that an agreement affirming the corporate ownership of copyright with a limited license for cartoonists to make and sell original sketches would protect both parties. It would be a wise step to avoid the ire of both artists and fans.

Another reason such an agreement would be wise for corporations is that there may arguably be an underlying issue as to whether such sketches by the artists fall under the Fair Use Exception of 17 U.S.C. §107. The statutory factors to be considered in a fair use dispute include, in relevant part:

1. Whether it is for commercial use (yes – the sketches are sold);
2. The nature of the copyrighted work (a comic strip, a comic book, a movie, etc.);
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole (a sketch of one character vs. a full comic book or movie); and
4. The effect of the use upon the potential market for or value of the copyrighted work (such sketches should enhance the value of the

copyrighted comic books by increasing fan reader loyalty, as can be seen by visiting a comic book convention).

This defense does not appear to have been raised in the *Marvel* case, but it might profitably be raised in a future case.

The blogs also seem fearful that the Court's decisions will block Friedrich from representing himself as the creator of Ghost Rider. In fact, the decisions contain no such express language. If it had, that might present a conflict with the attribution rights under 17 U.S.C. § 106(a)(1)(A), as explained above. Despite all of these decisions and statutory changes, it seems likely that copyright in cartoons will continue to be a fertile field for litigation.

And D.C. Comics? After Warner Brothers bought it, they moved D.C.'s headquarters from New York to Los Angeles. Warner Brothers brought in a CEO with no publishing or comic book experience, but who had done spinoff licensing for Harry Potter. Superman is on track to be on much more than T-shirts, boys' pajamas and Halloween costumes. Ultimately, Superman may be as ubiquitous as Hello Kitty. But, expect a spirited legal fight over apportioning profits if the 9th Circuit affirms the reversion of the renewal term, as explained above.

Comics *per se*? They are not dead, just being redefined as graphic novels and underground and digital comics. A new generation of artists will start a new cycle in the evolution of superheroes, usually with each character having a dramatic weakness or flaw. But, whatever new superheroes are born, whatever the legal fights, it is safe to say that Superman will survive through it all.

Endnotes

¹ Recent cuts to the military budget have led to a proposal to move Stars and Stripes from D.C. to Fort Meade, a military base in Maryland. This has led to protests and possible Congressional action, citing concerns over reportorial independence. See, e.g., April 25, 2012 article by Ernie Gates at www.stripes.com/blogs/ombudsman.

² See *Siegel v. Nat'l Periodical Publ'ns, Inc.*, 364 F. Supp. 1032 (S.D.N.Y. 1973), aff'd 508 F.2d 909 (2nd Cir. 1974).

³ See *Fred Fisher Music Co. v. M. Witmark & Sons*, 318 U.S. 643, 656-59 (1943). *Fred Fisher* also gives a concise history of the origin of America's two-term copyright beginning in 1709 with the English Statute of 8 Anne, c. 19. *Id.* at 647-53.

⁴ *Siegel*, 508 F.2d at 914.

⁵ Codified at 17 U.S.C. § 106A.

⁶ 17 U.S.C. § 101.

⁷ *Twentieth Century Fox Film Corp. v. Entm't Distributing*, 429 F.3d 869, 877 (9th Cir. 2005) ("in the last decade that the [1909] Act was effective, courts expanded the concept to include less traditional relationships, as long as the hiring party had the right to control or supervise the artist's work.") (citations omitted).

⁸ 17 U.S.C. § 101.

⁹ Interestingly, this change parallels a change in English Copyright Law. See *Fred Fisher*, 318 U.S. at 648.

¹⁰ The Sonny Bono Act is sometimes referred to as the Mickey Mouse Extension Act, as Disney's concern about the expiration of Mickey's copyright was one of the main drivers of the act.

¹¹ 17 U.S.C. § 304(b).

¹² *Siegel*, 508 F.2d at 911.

¹³ *Id.*

¹⁴ *Siegel v. Warner Bros. Entm't Inc.*, 542 F. Supp. 2d 1098 (C.D. Cal. 2008).

¹⁵ *Id.* at 1145.

¹⁶ *Id.*

¹⁷ Jack Kirby is the author or co-author of The Incredible Hulk, Iron Man, X-Men, The Fantastic Four and Spiderman. There has been a long simmering dispute as to the relative contributions of Kirby and Stan Lee to these characters.

¹⁸ *Marvel Worldwide, Inc. v. Kirby*, 756 F. Supp. 2d 461 (S.D.N.Y. 2010).

¹⁹ The work for hire issue is also alive in other areas like music. The children of Ray Charles are seeking to rescind their waivers of any claim to copyright on Ray's songs, using the §304 recapture described above. The Ray Charles Foundation recently sued to enforce the waivers with a backstop argument of work for hire.

²⁰ The factors were laid out by the Supreme Court in *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 751-52 (1989).

²¹ See, e.g., *Siegel v. Warner Bros. Entm't, Inc.*, 690 F. Supp. 2d 1048 (C.D. Calif. 2009).

²² *Gary Friedrich Enters., LLC v. Marvel Enters., Inc.*, No. 08 Civ. 1533(KBF)(JCF), 2011 WL 6817709 (S.D.N.Y. Dec. 28, 2011).

²³ *Id.* at *5 (citing *Archie Comic Pubs., Inc. v. DeCarlo*, 258 F. Supp. 2d 315, 331 (S.D.N.Y. 2003)).

²⁴ *Gary Friedrich Enters.*, 2011 WL 6817709, at *4.

²⁵ *Id.* at *2.

²⁶ *Gary Friedrich Enters., LLC v. Marvel Enters., Inc.*, No. 08 Civ. 1533(KBF)(JCF), (S.D.N.Y. Feb. 6, 2012).