2014

Cases of Note: Copyright -- Revisiting 1909

Bruce Strauch
The Citadel, strauhb@citadel.edu

Bryan M. Carson
Western Kentucky University, bryan.m.carson@gmail.com

Jack Montgomery
Western Kentucky University, jack.montgomery@wku.edu

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Recommended Citation
Strauch, Bruce; Carson, Bryan M.; and Montgomery, Jack (2014) "Cases of Note: Copyright -- Revisiting 1909," Against the Grain: Vol. 26: Iss. 4, Article 26.
DOI: https://doi.org/10.7771/2380-176X.6813

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Cases of Note — Copyright — Revisiting 1909

Column Editor: Bruce Strauch (The Citadel) <strauchb@citadel.edu>

**1909 Act**

The 1909 Act, 17 U.S.C. §§ 1, et seq. (superseded in 1976) gave an unpublished work state common law copyright protection from time of creation to publication or registration under the federal scheme. After publication, you could acquire federal protection. Failing in this, it was thrown irrevocably into the public domain.

**Act** gave the author 28 years of protection, with renewal right of another 28 years.

**1923 Pub**

The German publication failed to meet the Act’s requirements by not giving notice that U.S. protection was sought. It did, however, prevent it from falling into the public domain in Germany. But Disney contends it was fair game in the U.S.

The 1909 Act required a valid copyright notice. Nimmer on Copyright § 7.02(C)(1). See, e.g., LaCienega Music Co. v. ZZ Top, 53 F.3d 950 (9th Cir.) (1995).

But there’s still hope for the Salten assignees.

Nimmer tells us that a published work by a foreign author published in a foreign language in a foreign country may give us a different result in the U.S. It has never been settled by judicial determination. Nimmer at § 7.12(D)(2)(a).

Early cases held it would be public domain. Universal Film Mfg. Co. v. Copperman, 212 F. 301 (S.D.N.Y.) (1914).

But in United Dictionary Co. v. G. & C. Merriam Co., 208 U.S. 260 (1908) the Supreme Court held that Congress did not intend copyright law to have extraterritorial effect.

This was followed by EEOC v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991) which held it’s a “longstanding principle of American law” that our laws only apply within the U.S. unless Congress shows a contrary intent.

**Heim v. Universal Pictures Co.**, 154 F.2d 480 (2d Cir. 1946) held a song published in Hungary without a U.S. notice but with a subsequent U.S. filing was okay.

**Twin Books** argues that since the 1909 Act had no extraterritorial effect, the 1923 German publication did not throw Bambi into U.S. public domain. And the Ninth Circuit found this to be right on point with Heim.

U.S. protection was not secured until 1926 when it was published with a U.S. copyright notice. During 1923, ’24, ’25, anyone could have published it in the U.S. or made a derivative movie.

Disney then argued that copyright was up and running from 1923, and the failure to renew in 1951 (within 28 years) dropped the book into U.S. public domain. But since protection didn’t begin until 1926, the 1954 renewal was timely.

So Twin Books walks away with it.

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Questions & Answers — Copyright Column

Column Editor: Laura N. Gasaway (Associate Dean for Academic Affairs, University of North Carolina-Chapel Hill School of Law, Chapel Hill, NC 27599; Phone: 919-962-2295; Fax: 919-962-1193) <laura_gasaway@unc.edu> www.unc.edu/~unclng/gasaway.htm

**QUESTION:** Why are more books not available electronically? Are publishers concerned about copyright infringement for eBooks?

**ANSWER:** There are many reasons that not all books are available digitally. More and more works are digitized everyday and publishers are seeing the value of making their backlists available for print-on-demand.

Many works are being published originally as eBooks, either with or without a printed version introduced simultaneously. Authors are self-publishing, and some authors are quite successful without the services that publishers have traditionally provided.

Traditional publishers (sometimes called legacy publishers) have many reasons for not offering digital works. It was only seven years ago that Amazon introduced the Kindle (2007), and the development of good digital reading devices was essential before eBooks could be widely distributed. Today, electronic publishing is growing by leaps and bounds while printed book publishing is on the decline. There are many reasons that some traditional publishers have been hesitant to make their...