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# Cases of Note--Copyright--The Dreadful Jumble of Acts

Bruce Strauch

*The Citadel*, [strauchb@citadel.edu](mailto:strauchb@citadel.edu)

Bryan M. Carson

*Western Kentucky University*, [bryan.m.carson@gmail.com](mailto:bryan.m.carson@gmail.com)

Jack Montgomery

*Western Kentucky University Libraries*, [jack.montgomery@wku.edu](mailto:jack.montgomery@wku.edu)

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# LEGAL ISSUES



Section Editors: **Bruce Strauch** (The Citadel) <strauchb@citadel.edu>  
**Bryan M. Carson, J.D., M.I.L.S.** (Western Kentucky University) <bryan.carson@wku.edu>  
**Jack Montgomery** (Western Kentucky University) <jack.montgomery@wku.edu>

## Cases of Note — Copyright — The Dreadful Jumble of Acts

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

**SOCIETE CIVILE SUCCESSION RICHARD GUINO V. JEAN-EMMANUEL RENOIR AND (a whole slew of) OTHERS. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. 549 F.3d 1182; 2008 U.S. App. LEXIS 24755.**

**Pierre-Auguste Renoir** did not work alone. He had help named **Richard Guino**. Or rather **Guino** did the work and **Renoir** put his name on it. They did some sculptures between 1913 and 1917 which were “published” in France in 1917 under **Renoir’s** name. There was no copyright notice.

**Renoir** only did sculpture late in life. He died in 1919 at age 78. These are his sculpture years. He had a stroke and was crippled by arthritis. He badly needed assistance.

When I hear **Renoir** sculpture I tend to think of the ballet dancers. Whups, that’s **Degas**. I think of ... well, I don’t think of anything.

If you google **Renoir Guino** what you find seems to be nude doing laundry in running water — *La Grande Laveuse* — and nude emerging from something or other — the “*Venus Victrix*” which quite looks like a **Maillol**.

The Spanish sculptor **Aristide Maillol** had a skilled assistant **Richard Guino**, a Catalan. He was more than an assistant. **Maillol** pronounced him the most talented sculptor of his generation.

**Maillol** told **Renoir** “I have found your hands.”

And so the collaboration began. The crippled **Renoir** sat in his studio with a paintbrush tied to his claw-like hands. **Guino** worked in the garden. When he had finished a sculpture, **Renoir** would sign his name to a piece of clay which he would attach to the sculpture.

The art dealer said this would bring a better price. Which was true. But something more sinister was at work. **Guino** learned the truth when he was told to take a day off and returned to find **Rodin** had visited and been told **Renoir** did all the work.

**Guino** was hidden from view and at last forgotten in art history. He lived poor and suffering from depression.

**Renoir’s** sons and grandsons sold new editions of the bronzes and pocketed the profits.

In 1965, **Richard Guino** sued the **Renoir** estate. After eight years of squabbling, nine months after **Richard’s** death, a Paris court recognized him as co-creator and awarded his estate fifty percent of royalties.

A trust was formed, which you see in the title, for the benefit of the **Renoir** and **Guino**

descendants. The **Guinos** would control production and reproduction.

In 1984, **Société** got U.S. copyright office registrations for the sculptures.

In 2003, a **Renoir** grandson **Paul**, living in America, sold molds and castings of some sculptures to **Beseder**, a gallery in Scottsdale, Arizona. They sold them to eager buyers.

In 2003, **Société** sued **Renoir** and **Beseder** alleging federal copyright infringement under 17 U.S.C. § 501 *et seq.*, false designation and false description of sponsorship under the **Lanham Act**.

**Beseder/Renoir** answered that the sculptures were in the public domain.

The district court held, relying on **Twin Books v. Walt Disney Co.**, 83 F.3d 1162 (9th Cir. 1996), that the sculptures were not in the public domain. They were published in a foreign country without copyright notice and were protected for seventy years after the death of the last author.

And then blah-blah-blah and we get to the appeal to the 9th Circuit.

### The Appeal

Under the **1909 Act**, a work was protected by state common law copyright from the time of creation until it was published or got protection under the federal scheme. At that time, copyright protection moved there. **La Cienega Music Co. v. ZZ Top**, 53 F.3d 950, 952 (9th Cir. 1995).

Published without protection — public domain. With protection, an author got 28 years plus a 28-year renewal term.

The **1976 Act** shifted the basis of protection from publication to creation. (That’s the put in a “fixed medium” thing you know about.)



Yes, let’s reiterate. Pre-1978, you lost common law protection when published. It either went under the federal scheme or entered the public domain.

But wait. It wasn’t published in the U.S., you’re saying. Exactly. It was published in France.

**Twin Books** (See: My – haff-kaff – Case of Note in **ATG v.26#3**. It was about *Bambi*.) held that “publication without a copyright notice in a foreign country did not put the work in the public domain in the United States.” 83 F.3d at 1167. “U.S. copyright law should not be given extraterritorial effect.” *Id.* At 1166.

Which it would be if being published abroad without U.S. copyright threw it into the U.S. public domain.

### So Public Domain or Protected?

The sculptures were “published” in France in 1917 and again in 1974, both times without U.S. copyright notice. They weren’t published in the U.S. without protection. So they were not put in the U.S. public domain nor were they protected by copyright under the **1909 Act**.

But that didn’t matter because **Beseder** didn’t sell the casts until 2003, and U.S. copyright protection began in 1984.

Then we have to move to the **1976 Act** to determine their status between 1978 and 2003. Section 303(a) applies to worked “created before Jan. 1, 1978, but not theretofore in the public domain or copyright.”

The sculptures were finally copyrighted in 1984. Section 302 gives them a 70-year term of protection from the death of **Guino**, the last surviving author. He died in 1973. If we can do math on this level that gives protection until ... um (counting on fingers) ... 2043. 🌿

## 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>

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