November 2013

Questions & Answers -- Copyright Column

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Recommended Citation

DOI: https://doi.org/10.7771/2380-176X.5205

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of the grant may be effected notwithstanding any agreement to the contrary.” 17 U.S.C. § 304(c)(5).

This is the inalienable right idea.

The Second Circuit said don’t read this too broadly.

Steinbeck heirs cited Marvel Characters, Inc. v. Simon. 310 F.3d 280 (2d Cir. 2002) in which the author was “coerced” into recharacterizing an existing work as one “made for hire.” The after-the-fact relabeling eliminated an author’s termination right, and this was an example of the “agreement to the contrary” the Act proscribed.

True, but the 1994 contract terminated and superseded the 1938 one and also eliminated the termination rights under the 1938 one. See Milne v. Stephen Slesinger, Inc., 430 F.3d 1036, 1046 (9th Cir. 2005) (post-1978 agreement superseding pre-1978 agreement was of “the type expressly contemplated and endorsed by Congress” because heirs could renegotiate with full knowledge of market value of the works), cert. denied, 548 U.S. 904 (2006).

The Act does not suggest the author of heirs should have more than one shot at renegotiation. Elaine used and exhausted the single opportunity. See Milne, 430 F.3d at 1046.

This is not too terribly hard to follow. What presents a difficulty is the Marvel case. A dispute between Simon and Marvel erupted over who created Captain America. This resulted in litigation and Simon agreeing to a settlement in which he acknowledged it as a work for hire.

No one had greater bargaining power. They were each represented by counsel. Simon could have gone to trial, but he chose to settle. There was no “coercion” in it.

I could see the result of “agreement to the contrary” if he had been clinging to a wretched job as cartoonist and agreed to give up his copyright in previously published work to keep his paycheck coming.

The case turns on equitable estoppel which is too weighty a topic for us to tackle at this point.

something to Think About

but a way to convince people they were working for a team in the factories with a focused goal and a greater team, the USA with a far bigger picture of the world. Articles on inter-factory sports, new designs, plane part improvements, families, awards, deaths, imprisonments, testing successes and much more were the heart and soul of the papers and a remembrance now of tougher times. When I read the material, I do not believe there is much difference in today’s misery, but I can also see some of the equality and diversity changes that have occurred and wonder if we need to be more proactive in saving this material. I’m dreaming and working toward an eventual grant project to preserve this material on film and digitally. Do you have some resources of your project to preserve this material on film and digitally? What is it worth thinking about a way to save it? I believe that gives us all something to think about!