

Copyright & Comics



LAWYER & ARTIST

DISCLAIMER: Law & Artist discusses general principles of law in response to issues of concern to the illustration community. Nothing in this video or in the Law & Artist's comments should be construed to be a substitute for advice of counsel regarding the specific facts and circumstances of an individual case. Laws and their interpretation differ from jurisdiction to jurisdiction. Legal advice addressing a specific situation should be sought from an attorney duly licensed in the appropriate jurisdiction.

Two Types of Contracts

- Yours
- Theirs

Your Contract

- When a plumber or electrician come to your house do they bring their own contract or look to you to provide one?
- There will be no surprises in your contract because you're the one who wrote it.
- A client will look for guarantees on work level, schedules, originality, and fulfillment.

Their Contract

- They will want to pay you only the barest.
- They will want everything.
- They will want protect themselves—not you— with warranty and indemnity clauses.
- They will want to you to ‘give’ them as much sweat and energy you can provide them. And they know that most artists are willing to do this blindly and willingly.

Negotiate

- It's only written on paper—not stone.
- Ask for more of everything: time, money, credit, expenses.
- Strike out complete clauses with which you don't agree. Better yet, add language.
- Add your own language that benefits you.
- **Don't sign away your work!**

Circular 44

You can also apply using paper forms. To access fill-in versions of

Form VA (visual arts),

Form TX (literary works), and

Form CON (continuation sheet for paper applications), go to the Copyright Office website and click on Publications, then Forms.

Registration of Collections and Contributions

A single registration can be made for cartoons published as a unit (for example, a comic book), provided that the copyright claimant is the same for all elements in the unit.

Two or more unpublished cartoons or comic strips can be considered for registration as a unit on a single application when submitted with a nonrefundable filing fee and a nonreturnable deposit of the work if the following four conditions are met:

#1, #2, #3

- the selections are assembled in an orderly form;
- the combined selections bear a single title identifying the collection as a whole;
- the copyright claimant in all the selections and in the collection as a whole is the same; and

#4

- all the selections are by the same author, or, if they are by different authors, at least one of the authors has contributed copyrightable authorship to each of the selections.

Works registered as a collection will be recorded in the records of the Copyright Office only under the collection title. Copyright registration of cartoons and comic strips extends only to copyrightable selections deposited at the time of registration. There is no blanket registration that will cover works to be produced in the future.

“Collection” vs. “Collective Work”

- If works are registered as a “collection,” each work is protected individually.
- If works are registered as a “collective work,” only the entire aggregate of work is registered---NOT the individual component works.

Early Registration

- You MUST register your work to be able to enforce the copyright.
- To claim statutory damages and attorney's fees, the registration must have been made prior to the infringement.

Form GR/CP

- “GR/CP” stands for “group registration of contributions to periodicals.”
- It provides a way to register PUBLISHED works less expensively.
- One can register up to ONE YEAR’S worth of published works.
- But the smart artist will register quarterly.

A Grace Period— and an Exception

- Works registered within 3 months of their first legitimate publication will be regarded as having been registered pre-infringement.
- Usually, published works must be registered individually, which is expensive.
- But contributions to periodicals can be group-registered even after publication.

Form GR/CP

- “GR/CP” stands for “group registration of contributions to periodicals.”
- It provides a way to register PUBLISHED works less expensively.
- One can register up to ONE YEAR’S worth of published works.
- But the smart artist will register quarterly.

Yellow Kid

First appeared as a character in the comic strip Hogan's Alley which ran in Joseph Pulitzer's New York World. Drawn by Richard F. Outcault in a time when working on staff at a newspaper was seen as work-for-hire. Outcault left New York World and went to work at William Randolph Hearst's New York Journal, where he continued to draw the Yellow Kid. Meanwhile Pulitzer hired George Luks to continue drawing the Yellow Kid for New York World.

So the Yellow Kid was being shown by both newspapers.



Buster Brown

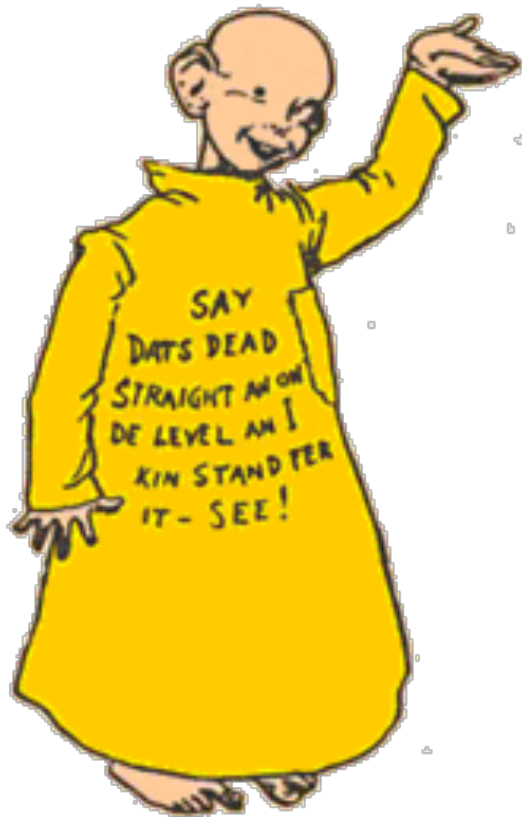
Outcault failed three times to establish copyright on the Yellow Kid. So he stopped drawing the Yellow Kid and began a new strip called Buster Brown.

Buster Brown turned out to be a very popular strip, even more so than Yellow Kid. This time Outcault was very successful in licensing the name.



Go for the Money

Yellow Kid



Buster Brown



Copyright & Comics



LAW & ARTIST

Fan Art and Mash-Ups

When fans wish to create art on based on copyrighted artwork they need to understand:

- Fair Use
- Parody [not Satire]
- Derivative

Fan Art vs Anti-Fan Art



Parody

Universal City Studios vs. T-Shirt Gallery, Ltd. The court decided that the shirt design's mice did not clearly look like the actors of the Miami Vice show. The shirt didn't show the drugs and violence on which the show was based, and did not accurately emulate the design of the show. The shirt is a parody as it lightly mocks the show.



Derivative

Well known graffiti artist Shepard Fairey created a derivative work when he used an Associated Press photograph to create his famous HOPE poster.

Fairey was sued for copyright violation. The case had three aspects: AP claimed they owned the photo W4H: the photographer claimed that AP did not own it, and, IIRC, sued AP over that. Meanwhile, Fairey claimed fair use as political commentary, but since he was also selling posters and, I believe, T-shirts with the image, that COMMERCIAL activity took the image out of mere fair-use commentary. He also lied to the judge about WHICH photo he'd used---apparently there were several similar ones. With all of this going on, he ended up settling.



© 2006 Marnie Garcia / The Associated Press

Copyright & Comics



LAW & ARTIST

Establish Clear Ownership

Working as a freelancer writer Gary Friedrich introduced Ghost Rider into the Marvel universe. He was seeks a rest.

Friedrich was selling Ghost Rider merchandise at comic conventions. A suite was brought over this and Disney/Marvel said they would drop the suit if Friedrich paid them \$17,000.

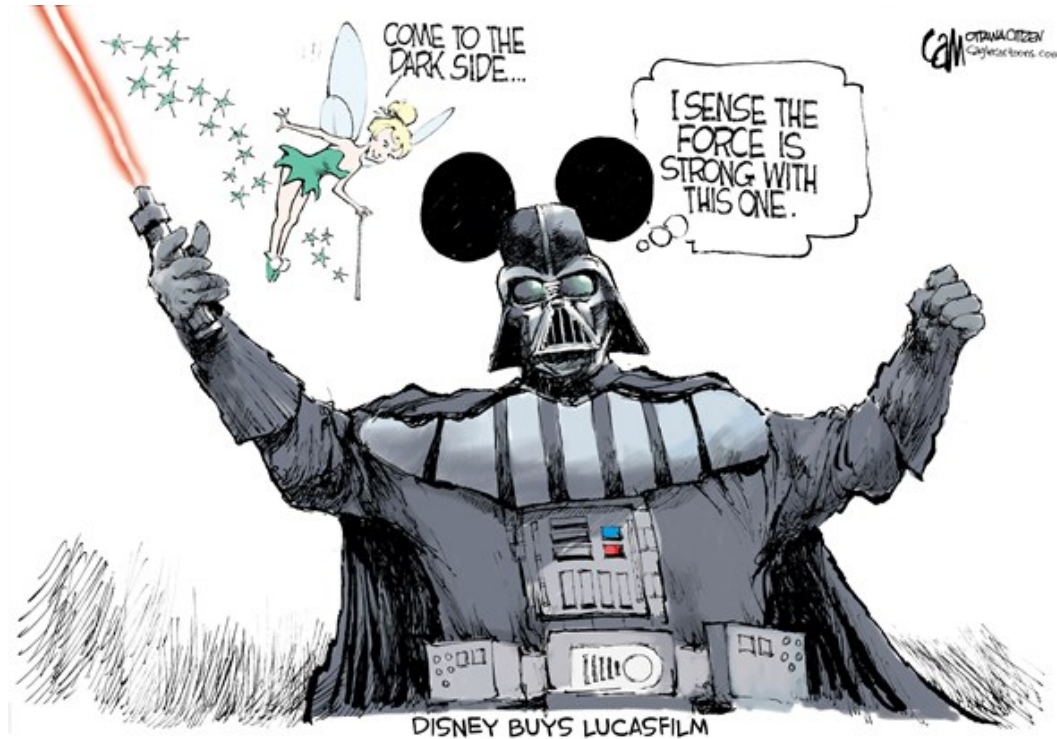
A undisclosed settlement was reach between involved parties. But Disney/Marvel made it clear that it would continue to fight harshly over any disputed intellectual property.



Political Cartoons

Parody Politics generally get wide latitude for parody because they are

- 1) Commentary on the political scene, and
- 2) Therefore, protected as “free speech” by the First Amendment.



Copyright & Comics



LAW & ARTIST

Then came the Internet

Disney still continues to sue artists for infringement and to defend its highly profitable trademarks.

However Disney has their work cut out for them as the internet is a portal by which thousands of artists provide a never-ending onslaught of cultural icon mash-ups.



Fair Use

is a provision in the U.S. Copyright Act that creates exceptions to a copyright holder's exclusive rights. The fair use doctrine states that copyrighted works may be used for purposes such as criticism, comment, parody, news reporting, teaching, scholarship or research. To determine whether use of an underlying work is "fair use" or not, courts consider:

- (1) the purpose and character of the use, including whether the use is of a commercial nature (to make money) or for non-profit purposes and whether it is transformative in nature;
- (2) the nature of the underlying work;
- (3) the amount and substantiality of the portion used in relation to the underlying work as a whole; and
- (4) the effect of the use upon the potential market for or value of the underlying work.



Air Pirates

A collective of cartoonists created an underground comic called Air Pirate Funnies. As counter-culture artists these cartoonists saw Mickey Mouse as a symbol of hypocrisy.

Disney sued.

Which was fine by the artists. It was their plan to be sued, appeal, be sued and appeal again. During the court case the artists raised funds by disregarding restraining orders and continued to publish and sell art featuring Disney characters at comic conventions to fund their legal fees.

Was it Parody or Satire?

Mouse Liberation Front

A group of cartoonist who actively created comics to push the barriers of parody and infringement.



Censorship

Comics have a long history of censorship. Comics were the scapegoats of pseudoscientists and politicians looking to make a name for themselves.

The industry imposed self-censorship in the fear that not doing so would further harm their industry.

However, independent artists producing their own work disregarded the code and were seen as “underground.”

Authorities used a new tactic to impose censorship. They went after the stores not the publisher. The complaint was displaying obscene material.



Comic Book Legal Defense Fund

The Comic Book Legal Defense Fund was established as an organization to fight against censorship injustices.

Their website has wealth of information on the history of the comic industry and its fight against censorship

Check out:

www.cbldf.org



Mike Diana

The only person to receive a criminal convention in the United States for obscenity.

As a counter-culturalist cartoonist Diana's art is seen by many as offensive, pornographic, vile, grotesque, with no sense of moral.

During his sentence Diana was not allowed to draw for his personal use and was subjected to surprise warrants by the police to inspect his home for sketches.

Diana was able to get his probation moved from Florida to New York where he spent is doing community service with the Comic Book Legal Defense Fund.



Air Pirates

A collective of cartoonists created an underground comic called Air Pirate Funnies. As counter-culture artists these cartoonists saw Mickey Mouse as a symbol of hypocrisy.

Disney sued.

Which was fine by the artists. It was their plan to be sued, appeal, be sued and appeal again. During the court case the artists raised funds by disregarding restraining orders and continued to publish and sell art featuring Disney characters at comic conventions to fund their legal fees.

Was it Parody or Satire?

Mouse Liberation Front

A group of cartoonist who actively created comics to push the barriers of parody and infringement.



Fair Use

is a provision in the U.S. Copyright Act that creates exceptions to a copyright holder's exclusive rights. The fair use doctrine states that copyrighted works may be used for purposes such as criticism, comment, parody, news reporting, teaching, scholarship or research. To determine whether use of an underlying work is "fair use" or not, courts consider:

- (1) the purpose and character of the use, including whether the use is of a commercial nature (to make money) or for non-profit purposes and whether it is transformative in nature;
- (2) the nature of the underlying work;
- (3) the amount and substantiality of the portion used in relation to the underlying work as a whole; and
- (4) the effect of the use upon the potential market for or value of the underlying work.



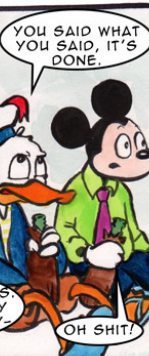
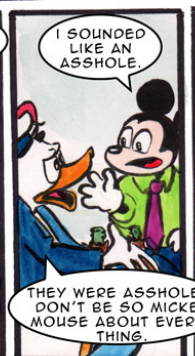
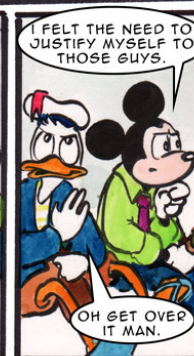
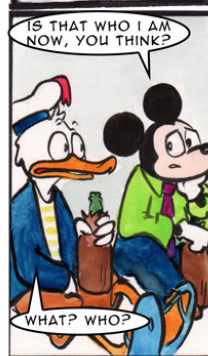
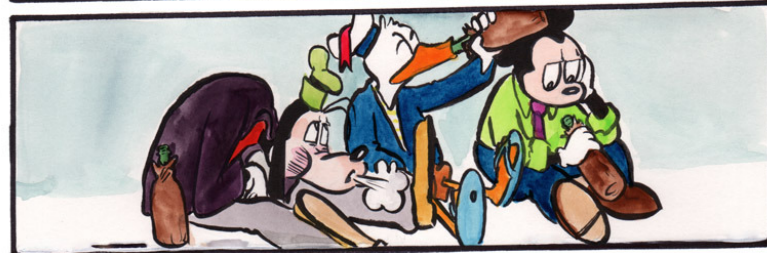
Boys Night Out

A story in which classic Disney characters are shown if they had real lives outside of the movies.

Is this parody? No.

This a straight infringement of Disney characters. Why is this unsanctioned comic still posted on the internet?

Frankly, it shouldn't be.



Copyright & Comics



LAW & ARTIST

Contact Information

Daniel Abraham

d.abraham@legaleasel.com

Mark Monlux

markmonlux@comcast.net

@markmonlux

Episodes of **Law & Artist** can be found on Mark Monlux's YouTube channel. Subscribe to be alerted of new episodes.

Start binge watching now with Episode #1 Get It In Writing

<http://bit.ly/2jzWBu7>

