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Superman: The man of steel cuts down DC Comics

By Michael M. Ratoza

Last week, a federal judge in Los Angeles, using a pen containing a bit of kryptonite, terminated the ownership rights in Superman held by Warner Bros. and DC Comics. Why? Read on.

Who owns Superman? Back in the 1930s, the original artists who created Superman, Jerry Siegel and Joseph Shuster, sold their rights to Detective Comics for \$130. The Superman rights eventually ended up with Warner Bros. and DC Comics. The original creators received nothing more for Superman. Indeed, the N.Y. Times reported in a 1975 article that Siegel and Shuster were nearly destitute at that time. Each has since passed on.

Background. Siegel's heirs sought to terminate the transfer of Superman rights by employing a little known section of the Copyright Act. This section permits a copyright owner, or the statutory heirs, to terminate a long-ago transfer of the copyright and reacquire all rights. It has been thirty years since the Copyright Act took effect on Jan. 1, 1978. Given the timelines established in the Copyright Act for termination of past transfers, there should be a lot more of these copyright termination proceedings in the months and years to come. There already have been a few other copyright termination cases of note; one dealing with the termination of the A.A. Milne copyright transfers of the Winnie the Pooh work, and another dealing with the termination of copyright transfers of the John Steinbeck works.

Copyright transfers. While these cases are interesting for historical and cultural reasons, they are also important for legal reasons. Cutting off a previous copyright transfer can be a big deal. Think of the situation in this way. Suppose you sell your run-down, fixer-upper beach house for a low, but fair, sum of money. Suppose the new buyer spends a lot of weekends and money upgrading the beach house into a very valuable property. Suppose the new buyer and family thoroughly enjoy their new, fixed-up beach house for years. Then suppose you decide to terminate the transfer by sending a notice terminating the prior deed and demanding return of possession of the beach house. You would have that right under copyright law. And, by the way, you get the upgraded house free and clear.

What this means for your business. This sounds unfair, but if the beach house were a copyright rather than real property, the Copyright Act permits the termination. Why is this important in our day to day experience? Because many businesses contract with independent contractors for work that may be covered by copyright. This can include the design of a building, the writing of computer software, the design of wine labels, the design of aesthetic components to a consumer product, the creation of a database, plus the more usual type of copyright works involving music, text material, graphic design, etc. Since copyright vests initially in these third party contractors upon the creation of the work, the transfer of the work to the purchaser is subject to the copyright law termination rules. In other words, some businesses that have been making a profit based upon ownership of copyrighted material (computer software, consumer goods with aesthetic design components, databases, you name it, etc.) may discover that the copyright they thought they bought years ago is subject to termination.