

Judge Posner Solves Sherlock Holmes Copyright Case

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Klinger v. Conan Doyle Estate, Ltd.

The original character of the famous detective **Sherlock Holmes**, along with his sidekick, **Dr. John H. Watson**, are no longer subject to copyright protection. In an opinion by Judge Richard A. Posner, the U.S. Court of Appeals for the Seventh Circuit held that copyright protection in these century-old literary characters cannot be extended simply by changing their features in later stories. When the original story expires, the characters covered by the expired copyright are “fair game” for follow-on authors. *Klinger v. Conan Doyle Estate, Ltd.*, Case No. 14-1128 (7th Cir., Jun. 16, 2014) (Posner, J.).

More than a century ago, Sir Arthur Conan Doyle created the fictional characters of Sherlock Holmes and Dr. Watson. **From 1887 to 1927**, Doyle authored more than 60 detective stories and novels featuring these characters. Under U.S. copyright law, works published before January 1, 1923 no longer have copyright protection. Thus, most of Doyle’s copyrights on the Sherlock Holmes stories have since expired. For the 10 Sherlock Holmes stories published after 1923, the U.S. copyrights on these works will expire 95 years after the date of their original publication. The copyrights in these works have since passed to Doyle’s estate.

In 2013, author Leslie Klinger compiled an anthology of original and new Sherlock

Holmes stories, entitled *In the Company of Sherlock Holmes*. Doyle's estate, however, demanded a license from Klinger's publisher, Pegasus Books. The estate also suggested that if Klinger's anthology was published without a license, the estate would prevent retailers, like Amazon, from selling the book. As a result, Pegasus Books refused to publish Klinger's anthology.

Klinger then sued Doyle's estate seeking declaratory judgment of non-infringement of Doyle's copyrights. The district court granted Klinger summary judgment of non-infringement; Doyle's estate appealed on two grounds. First, Doyle's estate argued that the district court lacked subject-matter jurisdiction because there was no actual case or controversy between the parties. Second, Doyle's estate argued that the characters of Holmes and Dr. Watson, among others, were still copyrighted because they were complex characters that evolved over the course of the Sherlock Holmes series of stories, including those stories still protected by U.S. copyright.

The 7th Circuit rejected both arguments. The court found that the threat to block distribution of the book by retailers and the implicit threat to sue for copyright infringement created an actual controversy. The court also affirmed the judgment of non-infringement because "[w]hen a story falls into the public domain, story elements, including characters covered by the expired copyright, become fair game for follow-on authors."

While it is common to use the same character in successive works, the copyrights on the original Holmes and Watson characters from 1887 had expired. The existing copyrights in the 10 Sherlock Holmes stories only covered the features Doyle added to the original Holmes and Watson characters. In other words, "[t]he alterations do not revive the expired copyrights on the original characters."

Ultimately, the court found that the Doyle estate was not seeking to protect the additional features developed in the later Sherlock Holmes stories, but rather any story about Holmes and Dr. Watson that was published without payment of a licensing fee. To find infringement under such circumstances would be to improperly extend Doyle's copyright protection in the original Holmes and Watson characters by 135 years.

Practice Note: If seeking to enforce copyright protection on derivative works based on expired copyrights, it is important to parse the new, additional elements in the derivative works still protected by copyright from the expired elements.

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