

Evolving Standards in Copyright Protection for Dynamic Fictional Characters

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[A]udiences do not watch Tarzan, Superman, Sherlock Holmes, or James Bond for the story, they watch these films to see their heroes at work. A James Bond film without James Bond is *not* a James Bond film.¹

Appreciating that characters often are as valuable to content creators as plots and stories, courts since the early 20th century have recognized the copyrightability of fictional characters in certain circumstances. Because the lives of fictional characters may span multiple copyrighted works, over years or even decades, characters can be far more dynamic than the stories that feature them. Like their real-world counterparts, fictional characters change over time—evolving and developing as the audience sees them in new situations and learns more about their life stories.

This article explores how courts have grappled with the copyrightability of fictional characters that change over time. The issue may arise when (1) analyzing whether an evolving character has a sufficiently developed immutable core of traits to be copyrightable; (2) determining whether, and to what extent, a character that was created in a work in the public domain but that evolved in works that are still protected enjoys copyright protection; and (3) evaluating, in termination rights situations, how much of a character a grantor can reclaim when the grantee added traits to the character after the assignment of rights. Before examining those issues, however, it will be useful to discuss the judicial tests for copyrightability of fictional characters

that have developed in the U.S. Court of Appeals for the Second and Ninth Circuits.

Judicial Tests for Copyrightability of Fictional Characters

The Character-Delineation Test

The Second Circuit initially addressed copyright protection of fictional characters in *Nichols v. Universal Pictures Corp.*² *Nichols* involved a claim by the author of the play *Abie's Irish Rose* that the film *The Cohens and the Kellys* infringed her copyright by, *inter alia*, misappropriating the play's characters.³ Both stories featured Catholic-Jewish interfaith couples and fathers that opposed the relationship on religious grounds.⁴

Before discussing the copyrightability of the characters in question, the lovers and the fathers, Judge Learned Hand formulated his famous "abstractions" test, which was less a test than a description of the problem of determining when the commonality between two works becomes so abstract that it ceases to be a protectable expression of an idea and turns into the unprotectable idea itself.⁵ The court observed that no one had yet been able to satisfactorily "fix that boundary," an observation no less true today.⁶

Judge Hand then turned to the copyrightability of the characters and explained what became the Second Circuit's "character-delineation" test:

If *Twelfth Night* were copyrighted, it is quite possible that a second comer might so closely imitate Sir Toby Belch or Malvolio as to infringe, but it would not be enough that for one of his characters he cast a riotous knight who kept wassail to the discomfort of the household, or a vain and foppish steward who

became amorous of his mistress. These would be no more than Shakespeare's "ideas" in the play, as little capable of monopoly as Einstein's Doctrine of Relativity, or Darwin's theory of the Origin of Species. It follows that the less developed the characters, the less they can be copyrighted; that is the penalty an author must bear for marking them too indistinctly.⁷

The court determined that the plaintiff had not done enough to adequately develop or delineate her characters. They appeared as two-dimensional stereotypes: the fathers were merely "the low comedy Jew and Irishman," which the court described as common features in many works that predated the plaintiff's play, and the lovers were "so faintly indicated as to be no more than stage properties."⁸

The character-delineation test is a logical extension of the idea-expression dichotomy described by Judge Hand: if a character is too indistinct, it represents a mere idea and not the expression of an idea. Like all attempts to parse ideas and expression, the test is informed by the purpose of copyright law described in the Constitution's Intellectual Property Clause: "[t]o promote the Progress of Science and useful Arts."⁹ Providing copyright protection for abstract ideas would inhibit this progress by removing the building blocks of creative expression from the public domain and preventing content creators from "standing on the shoulders of giants."¹⁰ The Second Circuit's rejection of copyright protection for stock characters echoed this rationale. The court explained that the defendant "has not taken from [the plaintiff] more than [the

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two fathers'] prototypes have contained for many decades"¹¹ and noted the inherent unfairness of allowing the plaintiff to copyright stock characters that she did not originate; in other words, she was seeking to prevent others from borrowing what she herself had borrowed.¹² On the other hand, the intellectual property clause itself states that a limited monopoly is sometimes necessary to promote progress; recognizing this, the *Nichols* court held that characters, if well-enough delineated to constitute the expression of an idea rather than the idea itself, can enjoy copyright protection.

Character dynamism is almost always a factor that supports a claim for protectability under the story-being-told test.

Although the character-delineation test rings true in the abstract, its application can be problematic in the particulars. Character traits—whether bravery, cowardice, greed, generosity, dexterity, or clumsiness—are on some level general ideas and not expressions. Without additional guidance from the courts, authors and other content creators could not predict what they must do to sufficiently delineate and thus protect their characters. A number of ensuing decisions within the Second Circuit provided at least partial guidance.

A decade after the character-delineation test was announced in *Nichols*, Judge Augustus Hand, in *Detective Comics v. Bruns Publications*,¹³ applied the test developed by his brother. The case dealt with the nascent character of Superman and whether that character was infringed by Wonderman. Each hero had strength and speed and defended the downtrodden against evil.¹⁴ The only real difference between the characters was the color of their costumes.¹⁵ The court rejected the defendant's argument that Superman was merely a stock character whose traits have "prototypes or analogues among the heroes of literature and

mythology [such as Hercules]."¹⁶ The court explained that the specific feats of Superman, i.e., stopping bullets, flying, and jumping over tall buildings, combined with his costume and visual depiction made him a unique expression of the author that was more than "a mere delineation of a benevolent Hercules."¹⁷

Returning four decades later to the protectability of Superman, the Second Circuit provided further guidance in *Warner Bros. Inc. v. American Broadcasting Cos.*,¹⁸ a lawsuit over the short-lived television series *The Greatest American Hero*. In this case, the court had to decide whether Ralph Hinkley, a clumsy, awkward, and reluctant hero with a skintight suit and superhuman speed, strength, and the power to fly,¹⁹ infringed the copyright in Superman. The Second Circuit held there was no infringement because the two characters were not substantially similar,²⁰ but it nevertheless was concerned about the defendant's argument that all of the traits that the two characters shared were general ideas as opposed to protectable expressions.²¹ The court worried that the defendant's proffered analysis, if accepted, would vitiate copyright protection for characters in many circumstances.²² It explained that although each character trait itself might be an unprotectable idea, that "does not diminish the expressive aspect of the combination" of the various unprotectable traits²³—signaling that under the character-delineation test, authors may achieve copyright protection for their characters by combining otherwise unprotectable traits in a unique and expressive manner.

The Story-Being-Told Test

In *Warner Bros. Pictures, Inc. v. Columbia Broadcasting Systems*,²⁴ the Ninth Circuit articulated a different test—the "story-being-told" test—for when fictional characters can enjoy copyright protection. This test, at least in its initial formulation, was substantially more restrictive than the character-delineation test.

The case involved a dispute over characters from *The Maltese Falcon*, in particular the detective Sam Spade. The author of the book, Dashiell

Hammett, claimed that he retained the copyright in the characters from the story and the right to reuse them in new works, despite the fact that he had assigned certain rights to Warner Bros.²⁵ After construing the contract between the author and Warner Bros. to contain no assignment by the author of his Sam Spade character to Warner Bros.,²⁶ the court opined on whether the character itself was subject to copyright protection. The Ninth Circuit reasoned that, given the common practice of authors reusing their characters in subsequent stories, if Congress had intended the assignment of a copyright to divest an author of the ability to reuse the characters he created, Congress would have explicitly said so in the statute.²⁷ The court also reasoned that it would undermine the purpose of the copyright scheme, i.e., encouraging progress, to prevent authors who sold their stories from reusing their characters in creating additional works.²⁸ Consequently, only the story in its entirety, and not subelements such as characters, was subject to copyright protection.

The Ninth Circuit did note, however, that "[i]t is conceivable that the character really constitutes the story being told, but if the character is only the chessman in the game of telling the story he is not within the area of the protection afforded by the copyright."²⁹ This story-being-told test on its face allows only for the protection of characters that appear in works that are little more than character sketches. As formulated, it is far less protective of characters than the character-delineation test.

Commentators have questioned whether the story-being-told test is dicta or an alternative holding, because the Ninth Circuit's interpretation of the contract that purportedly assigned the rights in question appeared to fully resolve the issue.³⁰ Others have suggested that the court in *Warner Bros. Pictures* was motivated by a desire to protect the ability of the original author to reuse his characters even after he had assigned the copyrights in his works to the studio. Somewhat ironically, motivated by this evident desire to protect an individual author, the court formulated a test that afforded only quite

narrow copyright protection for literary characters. If a third party that had nothing to do with the creation or development of the Sam Spade character had used the detective without authorization in a subsequent work, the court might well have had a different view of the copyrightability of literary characters.³¹

The Ninth Circuit's restrictive formulation of the story-being-told test was relaxed somewhat in *Walt Disney Productions v. Air Pirates*.³² That case involved the defendants' use of classic Disney characters, including Mickey and Minnie Mouse, in counterculture cartoons that featured drug use, promiscuity, and other themes that were inconsistent with Disney's family-friendly image.³³ Holding that the characters in question were copyrightable,³⁴ the court distinguished *Warner Bros. Pictures* on the grounds that the Disney characters were visually depicted in the works under copyright, while Sam Spade was created as a purely literary character.³⁵ Consequently, the problem of "delineat[ing] distinctively a literary character," one of the difficulties that motivated the *Warner Bros. Pictures* court to announce the story-being-told test, was substantially mitigated by the ease of creating a uniquely expressive character through visual elements.³⁶

The effect of *Air Pirates* on the story-being-told test is somewhat uncertain. One reading is that the decision limits the story-being-told test to "word portraits," or characters that are not visually depicted.³⁷ The logic of *Air Pirates*, however, casts doubt more generally on the reasoning behind the story-being-told-test: a visually depicted character may be more likely to be sufficiently delineated than a purely literary character, but that does not explain why different rules should govern the protectability of the different types of characters.³⁸ Recognizing this uncertainty in the law, courts within the Ninth Circuit sometimes employ both the character-delineation and the story-being-told tests.³⁹ For example, in *Anderson v. Stallone*, the court held both that the characters from the various *Rocky* movies, such as Rocky Balboa, Adrian, and Apollo Creed, were sufficiently delineated and that they constituted the story being

told.⁴⁰ The *Rocky* movies, according to the court, focused on character development and interactions and did not involve "intricate plots or story lines."⁴¹

The Problem of Dynamic Characters

One of the challenges facing courts adjudicating the copyrightability of fictional characters is how to handle characters that appear in multiple works and change over time. Particularly difficult questions arise where (1) characters were first introduced in works that are now in the public domain but evolved in works that still enjoy copyright protection, and (2) the creator of a character seeks to reclaim it under the Copyright Act's termination rules when the character has been further delineated in works owned by the party to whom the creator originally granted rights in the character.

Protection of Evolving Characters

Litigants arguing that a character should not enjoy copyright protection frequently point to the fact that the character changes over time. In *MGM v. American Honda Motor Co.*,⁴² the owner of the copyrights to the first 16 James Bond films alleged that a commercial for the Honda del Sol featured a hero/spy character that infringed its copyright in the James Bond character.⁴³ The court, in light of the Ninth Circuit's ambiguous law surrounding the copyrightability of fictional characters,⁴⁴ chose to apply both the story-being-told and the character-delineation tests.⁴⁵ The defendant argued that the Bond character was not protectable under either test because he "has changed enormously from film to film, from actor to actor, and from year to year."⁴⁶

The court countered that the fact that "many actors can play Bond is a testament to the fact that Bond is a unique character whose specific qualities remain constant despite the change in actors."⁴⁷ Because Bond had a sufficient core of stable traits, he was adequately delineated under the Second Circuit's test.⁴⁸ The court also held that James Bond was the story being told because "audiences do not watch Tarzan, Superman, Sherlock Holmes, or James Bond for

the story, they watch these films to see their heroes at work. A James Bond film without James Bond is *not* a James Bond film."⁴⁹

Other courts also have looked to whether there was a sufficient core of immutable qualities in determining whether an evolving character could enjoy copyright protection. In *Toho Co. v. William Morrow & Co.*,⁵⁰ the defendant argued that the character Godzilla was not sufficiently delineated to enjoy copyright protection because it "has assumed many shapes and personalities over the course of the films, [and] it has no constant traits."⁵¹

In rejecting this argument, the court held that Godzilla, like James Bond, "developed a constant set of traits that distinguish him/her/it from other fictional characters."⁵² Notwithstanding the fact that Godzilla may have transformed from malevolent to benevolent in the various works that featured him, "Godzilla is always a pre-historic, fire-breathing, gigantic dinosaur alive and well in the modern world."⁵³

A New York court gave similar deference to Batman in a 2002 decision, holding that, "[i]n sum, while Batman's costume and character have evolved over the years, he has retained unique, protectable characteristics, such as the iconographic costume elements and his unique life story."⁵⁴

Although character dynamism can work against copyright protection under the character-delineation test unless the character retains a stable core of traits,⁵⁵ it is almost always a factor that supports a claim for protectability under the story-being-told test. Courts have held that the story-being-told test is satisfied if the plot or story in a particular work is subordinate to the characters in that work⁵⁶ and if front-and-center characters who dominate the work are more likely to accumulate a growing body of character traits and backstory elements across a series of works.

For example, in *Bach v. Forever Living Products U.S., Inc.*,⁵⁷ the plaintiff alleged that the defendant infringed his copyright in the character Jonathan Livingston Seagull—an ordinary gull that transforms into a bird that can fly faster and higher than any other gull and thereby motivates other

birds—in its sales and training materials.⁵⁸ The court held that the Seagull character was adequately developed under the character-delineation test.⁵⁹ It also explained that the fact that the story focused on Jonathan Livingston Seagull's transformation as a character made him protectable under the story-being-told test: "He is the title character in a book that is entirely about his development from an ordinary seagull to an extraordinary one."⁶⁰

Characters That Originated in Works Now in the Public Domain

The issue of characters that originated in public domain works but that evolved in works that are still under copyright is another complication resulting from character dynamism. In *Silverman v. CBS Inc.*,⁶¹ a playwright sought to use the characters from the television and radio show *Amos 'n' Andy* for his musical.⁶² The playwright argued that the pre-1948 radio scripts were in the public domain and, consequently, CBS did not have any rights over the scripts or the characters delineated in them.⁶³ The court held that CBS possessed valid copyrights in post-1948 radio scripts and (possibly) the television programs that constituted derivative works of the public domain radio scripts.⁶⁴ Consequently, the copyrights only provided protection for the elements of expression that were unique to the derivative works, which meant, in the context of characters, the "further delineation of characters already sufficiently delineated to warrant copyright protection."⁶⁵ The playwright could use the *Amos 'n' Andy* characters as they existed in the pre-1948 radio scripts in his musical, but he would infringe by using traits that developed in later works that still enjoyed copyright protection.⁶⁶

This principle—that copyright protects only the incremental delineation in copyrighted works of characters that were originally developed in works now in the public domain—has been generally accepted. In *Pannonia Farms, Inc. v. USA Cable*,⁶⁷ the purported owner of the copyrights in nine of Sir Arthur Conan Doyle's Sherlock Holmes stories claimed that the defendant's television program

infringed its copyright in the characters Holmes and Watson.⁶⁸ The court reasoned that even if the plaintiff owned the copyrights in the nine stories that it claimed to own, the characters of Sherlock Holmes and Dr. Watson had been delineated in more than 50 prior works that had entered the public domain and that the plaintiff therefore could only claim ownership over the incremental character development (if any) contained in the handful of works that still enjoyed copyright protection.⁶⁹

The U.S. Court of Appeals for the Eighth Circuit recently confronted an atypical complication regarding the copyrightability of characters that exist both in the public domain and in protected works. In *Warner Bros. Entertainment, Inc. v. X One X Productions*,⁷⁰ AVELA, a film memorabilia company, licensed merchandise based on images found in movie posters and lobby cards for *The Wizard of Oz*, *Gone with the Wind*, and multiple *Tom and Jerry* cartoons.⁷¹ The posters and lobby cards had entered the public domain,⁷² but the films were still under copyright. The owners of the film's copyrights argued that the products infringed, inter alia, the characters featured in those films.⁷³

The court began its analysis by explaining that the public is generally free to make derivative works by altering materials in the public domain, but that the derivative work so made cannot infringe a valid copyright.⁷⁴ The court further observed that the films added original delineation to the characters in question that was not to be found in either the promotional materials or the books on which some of the films were based.⁷⁵ The fact that certain still images from the promotional materials entered the public domain may have caused certain visual elements of the characters to enter the public domain.⁷⁶ But the failure to adequately copyright the promotional materials did not thrust those entire characters, as delineated in the films, into the public domain because "isolated still images included in the publicity materials cannot anticipate the full range of distinctive speech, movement, demeanor, and other personality traits that combine to establish a copyrightable

character."⁷⁷

The Eighth Circuit went on to explain that the visual elements of the characters that entered the public domain were not sufficiently delineated or depicted in a consistent manner in the promotional materials to be copyrightable.⁷⁸ For example, the court noted that the *Tom and Jerry* movie poster featured only a generic cartoon image of a cat and a mouse.⁷⁹ Therefore, no elements of the characters entered the public domain except for exact replicas of the images from the publicity materials.⁸⁰ Because there was not enough delineation of the characters in the public domain materials to be copyrightable, the characters remained under copyright protection in their entirety.⁸¹

In determining whether the copyrights in the characters were infringed, the Eighth Circuit adopted an analytical approach that had no antecedent in the case law of the Second or Ninth Circuits. It found that any products combining the publicity material images with any other phrase or image from the films, and thus evoking any additional aspect of character delineation from the films, were infringing. For example, where an image of Judy Garland as Dorothy, taken from public domain publicity materials from *The Wizard of Oz*, was juxtaposed on a T-shirt with the phrase *There's no place like home*, the court found the shirt to be infringing because it added an increment of expression that was in the film but not in the public domain materials.⁸²

Additionally, three-dimensional replicas of the two-dimensional promotional materials were deemed to be infringing because the details necessary for creating a three-dimensional figure, such as depth, were incremental elements of character delineation provided by the film's shots from multiple angles.⁸³ This infringement test, which appears to find infringement when a single increment of character delineation is borrowed from a work under copyright and combined with a public domain image, seems to depart rather sharply from the traditional substantial similarity analysis, which requires more than the mere evocation of a copyrighted character.⁸⁴

Termination Rights and the Superman Saga

Another complication caused by character dynamism arises in the termination rights context. If the grantee of rights in a character further develops the traits and backstory of that character, how much of the character in question can the original grantor reclaim under the termination provisions of the Copyright Act?

Under the 1909 act, an author's work could be protected for two copyright terms: the first began when a work was published, and the second began 28 years later, provided the author renewed the registration.⁸⁵ Congress created the renewal term to give authors a "second bite at the apple," i.e., to afford an author who assigned his copyright during the first term an opportunity to negotiate a better deal at the renewal stage if the work had achieved commercial success.⁸⁶ The Supreme Court, however, ruled in 1943 in *Fred Fisher Music Co. v. M. Witmark & Sons*⁸⁷ that creators could assign both terms to a grantee during the first term, undermining the protection that the paternalistic dual-period structure was designed to provide to the author.⁸⁸

Congress sought to address this problem by including in the Copyright Act of 1976 a termination provision.⁸⁹ Although the statute eliminated the two-term structure for new works, it provided that works that were already in their renewal term would have those renewal terms extended by an additional 19 years.⁹⁰ The statute, with a plethora of exceptions, also provided that grantors who executed transfers of rights prior to 1978 could terminate those grants "notwithstanding any agreement to the contrary" during a limited window that began 56 years from the date the copyright was originally secured.⁹¹ The purpose of this provision was to "safeguard authors . . . because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's prior value until it has been exploited."⁹² The act provided, however, that derivative works created under the authority of the grant could continue to be exploited, but that no new derivative works could be created after termination rights were exercised.⁹³

The protracted litigation between the heirs and devisees of the creators of Superman and Warner Bros., the successor-in-interest to the original grantees of the Superman copyright, illustrates the problems that must be resolved in termination rights cases involving copyrighted characters. The district court in *Siegel v. Warner Bros. Entertainment Inc.* found that the original creators of Superman, Jerome Siegel and Joseph Shuster, first delineated the character in a series of frames in a newspaper comic strip format.⁹⁴ On December 4, 1937, after creating those comic strips, Siegel and Shuster entered into an employment relationship with D.C. Comics.⁹⁵ In February 1938, D.C. Comics had Siegel and Shuster reformat their comic strips for the 13-page comic book *Action Comics No. 1*.⁹⁶ On March 1, 1938, prior to the publication of *Action Comics*, D.C. Comics and Siegel and Shuster executed an agreement that purported to assign the rights in the Superman character to D.C. Comics in perpetuity.⁹⁷

In 1997, Siegel's survivors sought to exercise their termination rights with respect to the Superman character.⁹⁸ The successors of the original grantee

challenged the termination on numerous grounds, including the fact that many of Superman's traits were developed by the various grantees after Siegel and Shuster had assigned their rights in the character to D.C. Comics (or were developed subsequently by Siegel and Shuster as works for hire). The district court held that the Siegel heirs had potential termination rights with respect to the Superman character as it was delineated in *Action Comics No. 1* because that comic book was not a work for hire and the initial assignment in March 1938 was a transfer subject to termination.⁹⁹

In a subsequent decision in 2009, based on additional evidence suggesting that Superman was more fully delineated before the transfer than previously thought, the court explained that all work done before the March 1, 1938, grant was not a work for hire and was consequently reclaimable by Siegel's heirs.¹⁰⁰ As a result of this newly uncovered evidence, more of the character, including Superman's delineation in *Action Comics No. 4*; *Superman No. 1*, pages three through six; and the initial two weeks of the daily newspaper strips could be reclaimed.¹⁰¹

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The rest of the Superman materials, and the character delineation contained in those materials, belonged to the successor-in-interest to the grantees.¹⁰² The result was that certain characteristics of Superman that appeared in the materials created before March 1, 1938, were subject to reclamation by the Siegel heirs. These attributes included Superman's blue leotard, red cape, and boots, and his ability to leap tall buildings. On the other hand, attributes of the Man of Steel that appeared later in the comic book series, such as his X-ray vision and ability to fly, remained the property of Warner Bros. as successor to the grantees.¹⁰³

In early 2013, the Ninth Circuit reversed the district court's summary judgment ruling because it determined that the Siegel heirs in fact had reached a binding settlement agreement with

Warner Bros. in 2001, which extinguished the heirs' termination rights under the Copyright Act.¹⁰⁴

The Superman litigation nonetheless provides an instructive lesson in how the development of dynamic characters can affect the operation of the Copyright Act's termination provisions. The grantor can reclaim a copyright in a character by exercising termination rights if the character was sufficiently delineated to be copy-rightable in the works that were the subject of the grant. However, if the grantee further develops the character, the grantee will continue to have the right to exploit those later-delineated traits.

It is unclear precisely how this will play out in practice for other properties. But it will surely affect the negotiating leverage that each side possesses in allocating the proceeds

from further exploitation of the character, because it seems likely that the party possessing the most well-known and beloved character traits will be able to demand greater compensation for the use of those traits in future works. **G**

Endnotes

1. Metro-Goldwyn-Mayer, Inc. v. Am. Honda Motor Co., 900 F. Supp. 1287, 1296 (C.D. Cal. 1995) (emphasis in original).
2. 45 F.2d 119 (2d Cir. 1930).
3. *Id.* at 120.
4. *Id.* at 120–21.
5. *Id.* at 121 (“But when the plagiarist does not take out a block in situ, but an abstract of the whole, decision is more troublesome. Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his ‘ideas,’ to which, apart from their expression, his property is never extended.”).
6. *Id.*
7. *Id.*
8. *Id.* at 122. The court also engaged in a comparison of the characters in question and held that even if they were copyrightable, the defendant did not infringe on the plaintiff's work because the characters were not substantially similar.
9. U.S. CONST. art. 1, § 8, cl. 8.
10. *See, e.g.,* Michael Mattioli, *Communities of Innovation*, 106 Nw. U. L. REV. 103, 105 (Winter 2012); Z. Chafee, *Reflections on the Law of Copyright: I*, 45 COLUM. L. REV. 503, 511 (1945).
11. *See* Nichols v. Universal Pictures Corp., 45 F.2d 119, 122 (2d Cir. 1930).
12. *See id.*
13. 111 F.2d 432 (2d Cir. 1940).
14. *Id.* at 433.
15. *Id.*
16. *Id.*
17. *Id.*
18. 720 F.2d 231 (2d Cir. 1983).
19. *Id.* at 236–37.
20. *Id.* at 243.
21. *Id.*
22. *Id.*
23. *Id.*

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