[US] Jack Ryan: The hunt for copyright ownership

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In February 2021, a U.S. federal court in the state of Maryland handed down a decision regarding Jack Ryan, one of Hollywood's most prolific spies. However, after nearly 90 pages of legal analysis and a review of events reaching back to the 1980s, the Judge was unable to determine who owns rights to Jack Ryan as a fictional creation. In declining to dismiss the plaintiff's claim regarding ownership of the iconic character, the door is left wide open for a jury trial in due course.

In the United States, a fictional character described in a larger work, such as a novel or a movie, may in some circumstances enjoy copyright protection which stands independent of the work in which he or she appears. In practice, this means that no-one may capitalise upon a protected character's persona or development without permission, for example by publishing a sequel to the original. Of course, not all characters are automatically protected, and it is important to note that the protection is not set out in statute, but instead has evolved through case law.

Essentially, one of two tests may be applied in order to determine if a character is protected. Under the first test, a character may be copyright protected if they possess physical and conceptual attributes that are sufficiently delineated, and contain some unique elements of expression . The second test requires the character to "constitute the story being told", or otherwise be central to the plot. If a character described in written form or depicted visually can satisfy at least one of these two tests, it will likely receive copyright protection.

Since Tom Clancy's novel *The Hunt for Red October* was first published in 1984, millions have read about Ryan's adventures as a CIA analyst, and millions more have seen famous actors including Alec Baldwin, Harrison Ford, and John Krasinski portray Ryan in both film and television productions. Unfortunately for the litigants, the contractual framework underpinning the copyright ownership of Jack Ryan himself appears more convoluted than even the most dramatic spy thriller.

In the original agreement for the publication of *The Hunt for Red October*, Clancy granted the publisher "exclusive worldwide rights" and any "subsisting copyright" in the work. Subsequently, the publisher then licenced certain intellectual property rights to Paramount Pictures, whilst Clancy set to work on writing more material. Clancy then set up Jack Ryan Enterprises, Ltd. (JREL) and entered into

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new arrangements with Viacom for a television series, before establishing the Jack Ryan Limited Partnership (JRLP) with his then-wife Wanda King.

When King and Clancy divorced some years later after 30 years of marriage, the separation agreement divided and transferred certain intellectual property assets between the former spouses, with King to receive 40% of profits. To complicate matters further, Clancy formed yet another company called Rubicon in the mid 1990s. After Clancy passed away in 2013, his estate granted permission to various authors to continue with the franchise in the same style of Clancy. It is his second wife and widow Alexandra Clancy who now seeks a share of the royalties earned by JREL and JRLP. Amongst other things, she argues that certain intellectual property rights were never properly transferred in the first instance. Elsewhere, she seeks to terminate earlier agreements so as to recapture rights to *The Hunt for Red October*.

In light of the above, it is no wonder that the commercial and legal position covering the scope of the fictional Ryan universe remains unclear as a matter of law. As noted in the judgment, “the cardinal rule of contract interpretation [in the United States] is to give effect to the parties' **intentions**” (emphasis added). For example, the judgment considered at length whether Tom Clancy was in effect an employee of his companies. This matters because under the U.S. doctrine of "work for hire", it is the employer or other person for whom the work for hire was actually prepared who is considered the “author” for copyright purposes, and not the individual creator.

Although this may appear at first glance to be an academic distinction, it is essential when attempting to determine the formalities – and validity – of a contract which seeks to sell or transfer intellectual property rights. Likewise, certain provisions of contracts seem to contradict others, especially as to whether Clancy sufficiently retained enough ownership of the Jack Ryan character so as to permit him to use the characters in derivative works.

As a general rule, and as noted by the judgment in question, “courts should be cautious in granting summary judgment where issues of intent relate to an ambiguous contract or document”. Finding some merit in each side’s argument, the judge was unable to say with certainty what “a reasonable jury” would decide. Accordingly, as neither argument was obviously compelling over that of the other, the court denied summary judgment and reserved for trial the question of Jack Ryan’s ownership.

Alexandra Clancy v Jack Ryan Enterprises Limtied et al, Civil Action No. ELH-17-3371, U.S. District Court for the district of Maryland

https://casetext.com/case/clancy-v-jack-ryan-enters

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