

Comics and Controversy: **A Brief History of Comic Book Publishing**

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The great comic book artist, Will Eisner, defined the comic as a form of “sequential art.”¹

Indeed, the narrative use of a series of images is as old as art itself: Cave paintings, Egyptian hieroglyphics, and medieval tapestries are all precursors to the comic book.

Yet comics and controversy have been linked from the very start: Founder of the Protestant movement, Martin Luther, was an early target of editorial cartoons (well, engravings anyway); his critics created caricatures of him as a tool of the devil² (so in a sense, Spider-Man can trace his origins, not just from a radioactive spider, but also from the Reformation). With the advent of the printing press and the proliferation of newspapers and broadsheets, satirical political cartoons soon began to appear.

By the eighteenth and nineteenth centuries, editorial cartoons were a staple in the newspapers of the day. Benjamin Franklin’s famous “Join, or Die” is acknowledged as the first political cartoon in America, and served to galvanize support for colonial unity.

In 1837 the first graphic novel was published by Swiss cartoonist Rudolphe Töpffer and was serialized in the American newspapers as “The Adventures of Mr. Obadiah Oldbuck.”³ Although conspicuously missing our now-familiar word balloons and sound effects, the comic book panel

¹ Comics & Sequential Art. Eisner, W. (1990 Poorhouse Press (Expanded Edition)).

² The Comic Book History of Comics. p.8, Dunlavey, F. V. (IDW 2012)

³ <http://www.toonopedia.com/oldbuck.htm>

structure was beginning to take shape. The late nineteenth and early twentieth centuries saw the rise of the newspaper comic strip with characters such as “The Yellow Kid,” “The Katzenjammer Kids,” and the wonderfully proto-surrealist “Little Nemo in Slumberland.”

In 1896⁴, the ownership of R. F. Outcault’s character, “The Yellow Kid,” not only spawned a publishing battle between Joseph Pulitzer and William Randolph Hearst, but ushered in an all-too-common theme that would be heard time and time again over the next two centuries: Just who owns a popular cartoon character—the publisher or its creator? It’s an issue that we will explore in some depth in the course of *The Pocket Lawyer for Comic Book Creators*, with the eye towards putting the ownership of your characters—or the decision to part with them at a price—squarely in your own hands.

By the 1930s, comic strips had expanded beyond the newspaper; several popular newspaper comic strips were collected and published in small magazines that became the first American comic books. In 1935, National Allied Publications began to experiment with publishing original content in comic book form. And just three years later, in 1938, comic books officially came into their own with the publication of “Action Comics #1,” which introduced the world to Superman.

The arrival of the Man of Steel officially launched the comic books industry into its “Golden Age,” and its pantheon of super-powered heroes. Superman soon shared the comic book racks with Captain Marvel, The Human Torch, and Captain America⁵, as new comic book publishing companies rushed to capitalize on the success of the Man of Steel ... an entirely new kind of graphic and literary hero. Publishing titans DC Comics and Marvel Comics have their roots in this Golden Age, creating the comic book industry as they created themselves. They also

⁴ <http://xroads.virginia.edu/~MA04/wood/ykid/intro.htm>

⁵ As well as Sub-Mariner, Plastic Man, and my favorite, The Spirit.

created the term “SUPER HEROES®,” which is now a registered trademark, jointly owned by both DC and Marvel.⁶ That’s right, not only do DC and Marvel own the world’s most popular superheroes, they also have the exclusive rights to call them that!⁷

Indeed, ownership issues were at the forefront of the Golden Age comic book industry.

Copyright infringement lawsuits flew faster than a speeding bullet, as courts were forced to weigh in on just what part of a comic book hero could be protected from imitators. Comic book publishing companies didn’t always have the right agreements in place with their artists and writers, which created character ownership issues that plague publishing companies to this very day.

The entire comic book publishing industry came under legislative scrutiny in the 1950s with the fear that the new horror- and crime-themed comics led to juvenile delinquency. So publishers banded together to form the Comics Code Authority, a self-regulatory organization which would give a Seal of Approval only to comics which avoided such taboo issues as sexuality and excessive violence. Unfortunately for the more progressive publishers of the time, the Comics Code Authority may have also withheld its approval from stories that dealt with controversial topics like racism.⁸

The “Silver Age” of American comic books ran from the mid-1950s to the early 1970s. It witnessed the birth of The Fantastic Four, The X-Men, Thor, and Spider-Man—flawed heroes with real life problems beyond which villain they were fighting. Superheroes flew from the pages and onto both the big and small screens with television shows starring Superman,

⁶ Trademark Serial Number # 73222079 (for PUBLICATIONS, PARTICULARLY COMIC BOOKS AND MAGAZINES AND STORIES IN ILLUSTRATED FORM)

⁷ In reference to certain goods and services (see Appendix C of The Pocket Lawyer for Comic Book Creators).

⁸ http://en.wikipedia.org/wiki/EC_Comics#.22Judgment_Day.22

Batman, and the Amazing Spider-Man. The industry became more diversified as branded merchandise like action figures, lunch boxes, and Halloween costumes began to flood the toy-store shelves. Despite the creative and marketing acumen of the comic book industry, the legal issues of copyright ownership were often given short shrift, resulting in lawsuits that work their way through today's courts alongside their Golden Age lawsuit colleagues.

Self-publishing and small press underground comics began to gain some traction towards the end of the Silver Age, and luminary creators like Robert Crumb paved the way for today's "alternative" comic genre.⁹

The 1970s through the mid-1980s is the "Bronze Age" of American comic books. Plot lines grew increasingly dark and more socially relevant: Issues such as the Vietnam War, drug use, and suicide were not uncommon elements in the superhero universe. Old superheroes were rebooted or retired. From an ownership standpoint, comic book publishers began to let pencil artists keep their original artwork (but not copyright) for later resale. A few publishing companies began to experiment with letting creators hold the copyright to their creations.

The mid-to-late 1980s saw a flush of new genre-bending comic properties, such as Alan Moore's "The Watchmen," Frank Miller's "Batman: The Dark Knight Returns," and Neil Gaiman's "The Sandman." These properties all challenge the notion of what a superhero should be, and raise the question of how to define the line between hero and villain. They also changed the way readers identified with the comics' writers: readers were not just fans of the property, but of their creators as well. This turning point marks the beginning of the "Modern Age" of American comic books, which continues today.

⁹ http://en.wikipedia.org/wiki/American_comic_book#Famous_Funnies_and_New_Fun

The last thirty years has seen an unprecedented growth and power of the American comic book property. DC and Marvel comics exploited their heroes in every possible media: television animation, online publishing, video games, merchandising, apparel, novelizations, role-playing games, and especially, motion pictures. The superhero movie has become a vital Hollywood genre and staple of the summer “tent pole” blockbuster films. Screenwriters who were writing spec scripts twenty years ago are now writing comic books in the hopes that they can parlay them in to film deals.

However, the comic book publishing world was no longer a “two-party system”; while DC and Marvel comics remained dominant, powerful independent publishing companies such as Image Comics, IDW, and Dark Horse sprang up, in part, to allow creators to retain the rights to their own work. These newer publishing companies also licensed popular television and motion picture properties and developed them as comic book properties. Even within the independent comic book companies, however, new copyright ownership disputes arose, as creators and publishers were caught in the tangle of laws that control copyright joint authorship and work for hire.

In the past several years, the proliferation of online comics, mobile phone apps, and other low-cost digital publishing solutions have allowed solo artists to create and publish their own books in ways never before thought possible. Nonetheless, with any solo or small operation, resources typically go toward product creation and not toward legal protection. It’s increasingly critical for self-publishers to realize that they can be sued over ownership issues, just the same way as any big publisher can.

Although no one can predict what the next era in comic book history will bring, one thing is

certain: Intellectual property issues like trademark and copyright ownership will continue to determine who will make gold from the next Man of Steel.