

Bond to Big Bang: Who Owns those Names/Lyrics?

In previous article the topic of Copyright Law was considered, with reference to the fictional character of James Bond (007) as an example. An interesting additional fact is that the name “James Bond” was chosen by Ian Fleming from the name of the author of the text book that was in his study at the time he was writing, called “Birds of the West Indies”. The real Mrs James Bond (wife of the ornithologist) told Ian Fleming that they considered suing him for defamation and then decided he’d had too much fun with the named (Bond) to pursue a legal case. Ian Fleming’s response was to suggest that her husband might take his revenge by discovering some particularly horrible species of bird and naming it after Ian Fleming.

A current example of this type of dispute has arisen with the “Big Bang Theory” TV comedy show. One of the main characters, Sheldon periodically sings a lullaby with the lyrics “Soft Kitty, Warm Kitty”. The song has been used in at least 8 episodes of the TV show. However, it is alleged that the lyrics comes from a poem written in the 1930s by a school teacher, Ellen Newlin. It may seem to be trivial, yet in our commercial world in which we live, it is relevant that the producers of the TV show have financially benefited by using the lyrics in various merchandising, including on T-shirts, mousepads, magnets and other toys.

The interesting part legally is that the author of the poem gave permission for the lyrics to be used in a book called Songs for the Nursery School, and the producers of the TV show (Warner Bros. Entertainment and others) argue that they obtained permission from the publisher of the book. The matter of issue is whether the author of the poem retained copyright to the lyrics of the song, notwithstanding that the author permitted for the song to be included in the school book, since the producers of the TV show say that they sort permission from the publishers of the book (but not from the author of the poem). This case is a good sample of the complexity of the ownership and use of fictional works (whether a novel as in the case of James Bond or as a poem in the situation involving the song used in the Big Bang Theory popular TV show).

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