

借 文学 作品 人物 角色 创作的 版权 问题 研究

华 劼

内容提要

一、问题的提出

“ IP ” “ ” “ [1]

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[1] 2017 4 25

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二、美国司法判例对人物角色版权保护的判定方法

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told test	Specific appearance	Distinctly delineated standard	Story being
		Especially distinctive	

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Learned Hand

[1] ' ' " 2017 4 26 <http://book.sina.com.cn/news/whxw/2017-04-26/doc-ifyepsec1231992.shtml>

[2] IPRDaily 2017 2 21 <http://iprdaily.baijia.baidu.com/article/778651>

[3] There are a thousand Hamlets in a thousand people's eyes.

[4] U.S. Copyright Act, Section 102(a).

[1] Hand

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Neil Gaiman Todd McFarlane
Nicholas Cogliostro

Cogliostro

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[1]Nicolas v. Universal Pictures Corporation et al., 45 F. 2d 119 2nd Cir. 1930 .

[2]Nicolas v. Universal Pictures Corporation et al., 45 F. 2d 119, at 121 2nd Cir. 1930 .

[3]Nicolas v. Universal Pictures Corporation et al., 45 F. 2d 119, at 122 2nd Cir. 1930 .

[4]Warner Brothers Pictures v. Columbia Broad System, 216 F. 2d 945, at 947- 948 9th Cir. 1954 .

[5]Warner Brothers Pictures v. Columbia Broad System, 216 F. 2d 945, at 950 9th Cir. 1954 .

[6]Gaiman, et al. v. McFarlane, et al., 360 F. 3d 644 7th Cir. 2004 .

Robert E. Rice

[1]

三、文学作品人物角色版权保护方式不同的价值取向

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Burroughs

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Kipling 1894 Edgar Rice Burroughs 1914 Rudyard

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[1]Rice v. Fox Broadcasting Co., 330F. 3d 1170 9th Cir. 2003 .

[2]Burroughs v. Metro- Goldwyn- Mayer, Inc., 519F. Supp. 388, at 391 S.D.N.Y. 1981 .

[3]Samuel J. Coe,“ The Story of A Character: Establishing The Limits of Independent Copyright Protection for Literary Characters”, 86 Chicago- Kent Law Review 1305, at 1314 2011 .

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Salinger Colting
Holden Caulfield

Card

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[2]Salinger v. Colting, 641 F. Supp. 2d 250 (S.D.N.Y. 2009); Castle Rock Entertainment, Inc. v. Card Publishing Group, Inc., 150 F. 3d 132 2nd Cir. 1998 .

[3]Samuel J. Coe, “ The Story of A Character: Establishing The Limits of Independent Copyright Protection for Literary Characters”, 86 Chicago- Kent LawReview1305, at 1314 2011 .

[4]Makoa Kawabata, “ Building Character: How to Grant Actors Limited Copyright Protection for Performances Without Creating a New Species of Copyrighted Work”, 16 Texas Review of Entertainment & Sports Law1, at 35 (2014).

[5]Warner Brothers Pictures v. Columbia Broad System, 216 F. 2d 945 (9th Cir. 1954).

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Bach

[2]

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