

Worth the wait

Do Copyright holders waive the right to protect their works by waiting too long to file suit?

Miguel de la O and Daniel Leyton* report

Orrin Monroe Corwin v. The Walt Disney Company.

The Disney Company promotes the EPCOT Center as a standing memorial to Walt Disney's dream of a "city of tomorrow." Yet, when the Disney creative designers unveiled the original plans for EPCOT in 1976, a group of drawings showing two semi-circular buildings facing each other with a courtyard at the center and thirty industrial looking pavilions, it was ridiculed and criticized as sterile and robotic. Even though the original maligned model had taken over a decade to produce, it only took the Disney Corporation three years to replace it. The design unveiled in 1979 depicted the current park that millions visit each year. According to a lawsuit filed in Orlando, Florida, Disney was able to revamp the project so quickly because the 1979 EPCOT design was based on a plan and artwork that was submitted to Disney in 1962.

The lawsuit claims that the concept for EPCOT's World Showcase was the manifestation of the dreams of two other men – Colonel Robert Jaffray and Mark E. Waters II – who had met in Hawaii after World War II. These men wanted to create a theme park that would expose Americans to the cultures of various nations around the world, in an effort to build tolerance so to avoid a future planetary conflagration. Waters, an architectural artist, integrating his own ideas into the concepts discussed with Jaffray, created a painting entitled *Miniature Worlds*. When this painting, completed in 1961, is compared to the 1979 Disney

renderings and the current layout of EPCOT Center, the similarities are striking, including the giant globe that visitors see as they enter the park, the hourglass shape of the park, the giant lake in the back, the series of pavilions, restaurants, and shops, and numerous other remarkable parallels.

Publication

Mr. Waters died in 1997 of cancer, never knowing that anyone at Disney had seen his painting of *Miniature Worlds*, and possibly never even seeing EPCOT himself. Mr. Jaffray, heartbroken by the Disney rejection of his idea in 1962, had shelved the project. He was disturbed when he saw the Disney's EPCOT design around 1980, but did not pursue any legal action, thinking he had no chance against the multimedia giant. However, in 2000, in failing health and only days before his death, Col. Jaffray told a reporter about his meetings with Disney and showed him the materials presented at that time. This led to the publication of the *Miniature Worlds* painting in May 2000 and the subsequent discovery by the Waters Estate that Disney may have based its EPCOT design on Mark Waters' picture.

Copyright actions in the United States, like the one filed in the Disney case, are based on rights protected by federal statute, and – as in all causes of action – have a limitation as to the time in which an action may be brought. Because EPCOT Center opened in 1982 and the statute of limitations on copyright issues is three years, many might think that the Waters estate lost any right to recovery by the time it sued Disney in 2002. However, unlike the law of real property where a sufficiently lengthy trespass becomes an adverse possession and transfers ownership to the trespassing squatter, a copyright infringer does not obtain immunity from liability and damages by openly and notoriously infringing on another's copyright.

Deprived protection

The limitations period for bringing a suit based on a copyright infringement claim in the United States is three years after the claim accrues. According to *Hoteling v Church of Jesus Christ of Latter-Day Saints*, 118 F.3d 199, the measure of when a claim accrues is "when one has knowledge of a violation or is chargeable with a violation." It may never be known when, or if, Waters became aware of the infringement; but the Waters Estate's ability to prosecute its claim against Disney does

not hinge on Mr. Waters' knowledge. United States copyright law provides for a special measurement of damages for continuing copyright infringement because, "each act of infringement is a distinct harm giving rise to an independent claim for relief." *Id.* at 204 citing *Stone v. Williams*, 970 F.2d 1043. In other words, every time someone buys a ticket to enter EPCOT Center, buys a souvenir, or wears a t-shirt portraying the park, the Waters Estate is being deprived protection of Mr. Waters' intellectual property rights.

Numerous cases have interpreted the copyright law to hold that "a party does not waive the right to sue for copyright infringements that accrue within three years of filing suit by not asserting related claims that accrued beyond three years."

Laches

Another possible defense to the timing of the suit by the Waters Estate is laches. The doctrine of laches is an equitable concept in American jurisprudence that bars an action by a plaintiff who has "slept on his rights." While courts of equity and courts of law have merged in the United States to provide for one system of courts to hear all civil actions, the concepts of law and equity still apply to one's substantive rights and the types of remedies available to plaintiffs. However, in the case of copyright suits, Congress created a statute that provides for both equitable relief, in the form of injunction, and legal relief, in the form of money damages. In such situations, the timing limitation provided in the statute governs, regardless of the remedy sought. Thus, laches will not apply to the Waters Estate lawsuit against Disney.

The time element of this case will add much drama and may raise difficult issues of proof, considering many of the original players are no longer alive to provide their versions of the story, but the Waters Estate can still obtain compensation for some infringements in the past and full protection for its rights in the future, if it proves Disney infringed on Mr. Waters' copyright. It is unfortunate, of course, that a project that had its origin during the cold war, and was born out of a desire to foster a greater understanding and tolerance of one another, should now lead to an adversarial process. Regrettably, the well wishes of heroes of the past will not always shield us all from the bad deeds of others in the present. ♦

Footnotes

1 With assistance from David A. Ostrow, Esq.

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