

My Dear Watson: You Can Copy Non-Copyrighted Material

It's elementary, says Judge Posner. Because the copyrights have expired, there is no protection of early Sherlock Holmes stories.

The Seventh Circuit affirmed the trial court's summary judgment finding that the proposed publication of a sequel to an anthology consisting of "stories written by modern authors but inspired by, and in most instances depicting, the genius detective Sherlock Holmes" and Dr. Watson would not infringe on Arthur Conan Doyle's copyrights because they had expired. Doyle's estate argued that, because 10 works of Doyle were still copyrighted, the character of Sherlock Holmes was also still protected.

The plaintiff Leslie Klinger plans to publish a sequel to an earlier anthology, "A Study in Sherlock: Stories Inspired by the Sherlock Homes Canon." For the original book, the publisher paid a royalty to Doyle's estate. However, for the sequel, the author refuses to pay a royalty because the sequel covers only stories for which the copyrights have expired.

Doyle's estate made it clear "that if Klinger succeeded in getting his book published the estate would try to prevent it from being sold by asking Amazon and the other big book retailers not to carry it, implicitly threatening to sue the publisher, as well as Klinger and his co-editor, for copyright infringement if they defied its threat," Judge Posner wrote. The threat created an actual controversy giving the trial court jurisdiction over the case.

The estate argued that, because the character of Sherlock Holmes was not "rounded off until the last story written by Doyle," the earlier works still enjoyed copyright protection even though the copyrights technically had expired. "What this has to do with copyright law eludes us," Judge Posner observed, finding that "there is no copyright infringement of a story or character that is not under copyright. Anyway it appears that the Doyle estate is concerned not with specific alterations in the depiction of Holmes or Watson in Holmes-Watson stories written by authors other than Arthur Conan Doyle, but with *any* such story that is published without payment to the estate of a licensing fee."

Klinger v. Conan Doyle Estate, Ltd., Seventh Circuit No. 14-1128, issued June 16, 2014.