

infringement of the work rather than the character, this opinion implicitly acknowledged that the copyrightable essence of a story could be so deeply interwoven into the composition of a character that copying the character would intrinsically infringe the copyright of the work. This established that the character traits could be expanded and expressed through various aspects of a work such as its narrative, and subsequent cases would likewise explore how abstract attributes could manifest in forms meriting protectability.

In *Walt Disney Productions v. Air Pirates*, the Ninth Circuit discussed the way in which character traits could manifest through the physical and conceptual qualities of a character, such that these characters would merit protectability as component parts of the broader copyrighted work.¹⁶ The court remarked on the distinction between literary characters and comic book characters, stating that the former was more difficult to distinctively delineate, often embodying little more than an unprotected idea.¹⁷ Conversely, comic book characters, or rather visually represented characters in general, possessed physical and conceptual qualities that are more likely to contain unique elements of expression.¹⁸ In this same opinion, the court

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traits,

Though this case regarded visually depicted characters as protectable component parts of a broader copyrighted work, the Ninth Circuit later went on to broaden this ruling to attribute copyrightability to the visually depicted character itself.

Olson v. NBC played a crucial role in establishing character copyrightability because it both embraced and employed an analysis focused on determining whether characters were especially distinctive enough to qualify for copyright protection.²⁰ This case revolved around whether characters from *The A-Team* infringed upon the characters contained in the treatment and screenplay for the *Cargo* television series.²¹ Though the Ninth Circuit found that the *Cargo* characters did not meet the standard to merit copyright protections when taken alone, the fact that the court entertained

f independent copyrightability for characters.²²

16. *Walt Disney Prods. v. Air Pirates*, 581 F.2d 751, 754-55 (9th Cir. 1978).

17. *Id.* at 755.

18. *Id.*

19. *Id.* at 757 (quoting *Roth Greeting Cards v. United Card Co.*, 429 F.2d 1106, 1110 (9th Cir. 1970)).

20. *Olson v. NBC*, 855 F.2d 1446, 1452 (9th Cir. 1988).

21. *Id.* at 1447-48.

22. *See id.* at 1451-53.

it appears, displaying consistent, identifiable character traits and attributes.³⁰ Here, the distinctive delineation language can be traced back to *Nichols*, whereas the focus on consistent traits can be observed in the *Bond* case. The third and final prong requires the characte

discussed in *Olson*.³¹ In this way, this decision sought to reconcile the previous tests so that this comprehensive framework could be applied to the broadest spectrum of creative elements that qualified as characters.

Towle also controversially expanded the legal conception of characters,

creativity.³⁵

to reason that a fully formed and copyrightable character could be conceived and descriptively fixed without the need to identify the physical traits that are but one avenue for expressing conceptual qualities.

In *Towle*, the way that the Ninth Circuit addresses the physical and conceptual traits of the Batmobile illustrates why both requirements would not need to be met to ascribe independent character copyrightability. First, in applying the first prong, the analysis begins and ends with the court noting that the depiction of the car in visual mediums is enough to establish its

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This framework means that the creator of a character may jeopardize copyright protectability each time an iteration makes a key change to the character. This could be observed in *Daniels v. Walt Disney Company* *Towle* test to assess whether copyright protection applied to the Moodsters, a set of characters based on human emotions reminiscent of the characters from *Inside Out* (2014).⁴⁶

particularly in the current creative climate featuring plentiful reimaginings of

delineated characters tend to be those that evolve throughout a single work or across multiple depictions. This is because many characters have a story interwoven into their existence so as to make that character and their context within the work inseparable. In *Towle*, the Ninth Circuit unwittingly stumbles upon this reality when it strives to identify the Batmobile by describing its narrative role as a crime-fighting vehicle and its relationship to other characters such as the vehicle belonging to Batman himself.⁵⁵ This analysis implicitly reinforces a crucial truth, in that characters, as part of their very design, often serve as an intersection of narrative, relationships, themes,

works that provide further delineation of characters already sufficiently

property. To impose such a test would stifle creative works in fear that deviating depictions or further refinement of the characters could erode the scope of copyrightability.

The test that the Ninth Circuit crafted for assessing character copyrightability proves to be insufficient because its preoccupation with recognizability prevents it from recognizing the deeper and dynamic aspects that make up a character. Fictional characters are more than their physical appearances, immutable traits, snapshotted depictions, or the consistent qualities spanning across every iteration. Therefore, any legal framework for assessing their copyrightability must go beyond this narrow conception to embrace a nuanced and comprehensive understanding of what constitutes a character.