

Real Life Wizard Wars

Harry Potter and the Copyright Lawsuit

By Marc S. Cooperman

Have you heard of *Willy the Wizard*? Chances are pretty good that you haven't. The estate of Adrian Jacobs, author of *Willy*, however, believes that J.K. Rowling knew of *Willy* and his magical world at the time she penned at least one of the books in her iconic *Harry Potter* series. As a result, Scholastic, Rowling's U.S. publisher for *Harry Potter*, has found itself embroiled in yet another copyright battle.

Let's start with what Jacobs will have to prove to prevail. The key to proving copyright infringement is, unsurprisingly, proving copying. But it's rare that someone admits to actually plagiarizing someone else's work.

With that aspect of human nature in mind, the law allows copying to be established through circumstantial (indirect) evidence. If the alleged copier had access to the original work, and the

work that is accused is substantially similar to the original work, then copying is presumed.

According to the complaint filed against Scholastic, Rowling and her editors had access to *Willy*. Here's the supposed story: The book was first published in 1987 in the U.K., 13 years before any Potter novel. Jacobs apparently had difficulty getting *Willy* pub-



lished. His U.K. literary agent was unsuccessful in finding a publisher, so Jacobs found one himself. Eventually, after getting *Willy* published in the U.K., Jacobs gave his agent about 1,000 copies of the book to try and get it published overseas. Again his agent was unsuccessful

(the book was not published in the U.S.), and the book has apparently not had a wide distribution.

So what, you ask? Why does *Willy*'s success impact the case? If *Willy* was a bestseller, available in nearly any bookstore or website, then that would tend to be evidence that Rowling and her edi-

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tors would have had access to the book. But that's not the case here. However, there is a twist. It turns out that Jacob's literary agent ended up being Rowling's literary agent for at least the first five of the Potter books. According to the complaint, this common link gave Rowling and her editors access to Willy and his magical world. While far from conclusive, it certainly is a plausible theory.

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Now let's turn to the question of whether the books are substantially similar. The focus of the Complaint is the fourth installment of the Potter series, *The Goblet of Fire*, and Harry's adventures in the "Triwizard Tournament." At first blush, even suggesting that there is substantial similarity between *Willy* (a mere 36 page book) and *Goblet* (a whopping 600-plus pages) seems questionable. But length alone is not determinative.

The Complaint runs through a litany of comparisons of plots, themes, characters and setting between the two

books. For example, both books involve a year-long wizard contest; both involve a wizard attending school in Europe; and both involve competitors from real-world countries. These sorts of general similarities however, are unlikely to cut it in Court. They are more reflective of ideas than specific protectable expression of the ideas. In other words, copyright law doesn't protect merely an idea;

it protects the artist's particular expression of an idea. The more specific the expression, the more likely it is to be protectable.

Beyond these general similarities, the complaint does make comparisons at a more specific level. For example, the central characters in both books are said to be required to deduce the exact nature of a central task in the competition; both receive the central task in a form they can't understand initially and must decode; both uncover the central task covertly in a bathroom; and both involve rescuing hostages impris-

oned by half-human, half-animal creatures ("Kanganatives" in *Willy* versus the "Merepeople" in *Goblet*).

Whether these and other comparisons in the complaint are accurate or the result of clever wording in a legal filing is yet to be seen. However Scholastic and Rowling will have to take the accusations seriously. Jacobs' estate is asking not only for damages (in the U.K. lawsuit a spokesman for the estate has called it a "billion dollar case"), but also that all copies of *Goblet* that are on bookstore shelves, or in inventory, be recalled and destroyed. That relief (which sounds like one of Voldemort's plans) is, however, saved for only the most egregious bad guys, and is a highly unlikely scenario for Rowling, Scholastic and Harry. We'll see what happens. ■

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