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WHO OWNS THE FICTIONAL WORLDS? INTELLECTUAL PROPERTY BATTLES FROM MARVELS TO METAVERSE

~ *Gauri Rajeev*

INTRODUCTION

For a lot of us, one of the core memories of childhood can be associated to reading comic books, stories of Sherlock Homes, Lord of Rings, Percy Jackson and many others for long hours after school and later on watching them getting adapted to movies or series on television. When we think about fictional characters each of them has their own distinctive features that even by hearing the name, a certain colour, characteristics or their catchphrase that specifically resonate to them occur to your mind, naturally giving each of these fictional characters their own unique identity.

These distinctive characteristics are something that would instantly take a person back to time, whether joyful or even bittersweet moments. However, that is not how some of the creators, authors or even the corporations see it. They in fact see it as a golden goose as each of them strive on protecting their fictional characters or its world and thereby commercializing it under the intellectual property regime. Despite the decline of print media and comic books in comparison to digital era, intellectual property disputes persist, with some rights protected and others exploited. Therefore, this blog aims in diving deep into the topic of who really owns this enchanting world of fictional characters and its whole universe whether created through pages of comic books, novels or even in the realm of metaverse.

TRANSITION FROM THE MARVELS TO THE METAVERSE ERA

The theme of Superheroes paved its way through comic books in 1930s to late 1950s which is popularly known as the “golden age of comic books”. This age marked an era of innovation

and pop culture with the debuting comic, Superman (1938) by DC¹. Its grand success introduced costume superhero genre among the public. Thereafter, Marvel comics published its first edition of Marvel Comics No.1 following which many superheroes like Captain America, Iron Man, etc during the Silver Era were created². DC and MC were known as the big twos of comic industry becoming the rival companies creating many more superheroes like Batman, Wonder Woman, Hulk, Spiderman, etc where both the companies started focusing their stories around real life social issues³ and creating a multiverse.

By 2010, superhero genre started serving blockbusters⁴ as MCU and DC creators expanded their superhero universe beyond comic strips to the silver screens. But the 21st century took it one more step ahead with the rise of Metaverse which brought these fictional characters to life. Were fan didn't only enjoy their favourite characters in 3D but could also be part of the same reality through Virtual Reality and Augmented Reality fighting alongside them, wearing custom made avatars all by being part of the same digital space.

PROTECTION OF THE FICTIONAL CHARACTERS, AVATARS AND ITS UNIVERSE

Authors create fictional characters for books or movies which later results in multiple other sequels and thereby creating a universe of fiction. When these fictional characters moved from written pages to big screens they started having their own unique identity. On page, appearances of the characters were open to each person's imagination despite the descriptions. But when it came to the digital space all the characters got a common identity as in the case of Harry Potter or be it Star Trek, etc. Therefore, protecting this fictional world under intellectual property became essential to stop original work of creators getting exploited by others in the mask of inspiration when they are directly copying the expressed ideas.

The main Idea of copyright law itself is to protect original work and over the years, there have been many Intellectual property battles globally concerning the protection of fictional

¹Truth, Justice, and the birth of the superhero comic book | DPLA, <https://dp.la/primary-source-sets/truth-justice-and-the-birth-of-the-superhero-comic-book> (last visited Sep 29, 2025).

² Marvel comic, Encyclopædia Britannica, <https://www.britannica.com/money/Marvel-Comics> (last visited Sep 29, 2025).

³ Encyclopædia Britannica, <https://www.britannica.com/money/DC-Comics> (last visited Sep 29, 2025).

⁴ The evolution of superhero movies: From comics to blockbusters, [www.entertainmentstore.in, https://entertainmentstore.in/blogs/news/the-evolution-of-superhero-movies-from-comics-to-blockbusters?srltid=AfmBOor-dCbJAv-XfB42tT_GaQL3LGsAphMxNtm57n7v516kKzSoozgu](https://entertainmentstore.in/blogs/news/the-evolution-of-superhero-movies-from-comics-to-blockbusters?srltid=AfmBOor-dCbJAv-XfB42tT_GaQL3LGsAphMxNtm57n7v516kKzSoozgu) (last visited Sep 29, 2025).

characters, avatar and their universe. On such is the Warner Bros. case⁵ where in the case it was held that if the character is not a stock character and is “part of the story being told” and is “not just a chessman telling the story” only such fictional character can be protected instead of other characters who are merely just the backgrounds of the story which was later called as the Sam Spade test⁶. This is one of the tests that is used by the court to determine whether a character is just a stock character or they are a delineated character deserving a copyright. Another parameter to see if the character really does deserve a separate copyright is Sufficient Delineation test⁷, which is to check whether a character really is ‘especially distinctive’ based on parameters such as its own identifiable traits and if such character is known for those distinct able traits.

Fictional characters like Batman, Superman, even Godzilla are protected but when it comes to the fictional universe, they also enjoy protection as held in the case of Paramount Pictures⁸ where the Court extended the protection to not only the species of the Star Trek but also the planets they were coming. Also, by following the delineation test even Batmobile from the Batman movie got its own copyright.

CONCLUSION

When life goes the hay way, as fans they rely on fictional characters as if they are escaping from reality and finding solace in the world of their comfort characters. Even though such characters do enjoy protection separately including factors of their universe under the law is still not complete and up to date as per the ongoing spectrum. Especially, since the rise of AI authors or creators are more vulnerable to getting their content exploited and this still continues to remain as a grey area. Since the integration of metaverse the scope subject matter has increased which gave rise to complex challenge on the question of who really owns the fictional world with endless IP battles each minute.

Nevertheless, copyright or the world of intellectual property is not something that could be worked with a single rulebook or tests as each case is different and the decision thereby also

⁵ Warner Bros.. Pictures v. Columbia Broadcasting System, 102 F. supp. 141 (S.D. Cal. 1951) :: Justia, <https://law.justia.com/cases/federal/district-courts/FSupp/102/141/1382637/> (last visited Sep 29, 2025).

⁶ The stuff dreams are made of: Copyright in fictional characters, Axley LLP, https://www.axley.com/publication_article/copyright-fictional-characters/ (last visited Sep 29, 2025).

⁷ Supra note 6

⁸ Paramount Pictures Corp. v. Carol Pub. group, 11 F. supp. 2d 329 (S.D.N.Y. 1998) :: Justia, <https://law.justia.com/cases/federal/district-courts/FSupp2/11/329/2289079/> (last visited Sep 29, 2025).

would be entirely scenario based but as long as the fictional characters are protected and the authors creating them are well recognized, I think the justice is served.