

You Know His Name (Jason). You Know the Story (Friday the 13th). But Do You Know Who Owns Jason? The Second Circuit Does – and the Answer May Surprise You.

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As of today, there have been twelve (yes, twelve!) movies released as part of the *Friday the 13th* series of horror films, as well as a television series. For those of you who have not seen any of these films, they are not for the faint of heart. The focus of the *Friday the 13th* oeuvre is a deranged, apparently immortal serial killer named Jason Voorhees. Jason, who was apparently drowned before the events of the first movie began, was revealed at the tail end of that first film to have survived. But his miraculous resurrection was evidently not a cause for celebration or gratitude on his part, as he has spent the last eleven movies stabbing, strangling, decapitating and otherwise murdering the vast

majority of hapless individuals (mostly teenagers) who have strayed across his path. Jason has also been killed and resurrected several more times; dragged into Hell; and also cryogenically frozen, but that's probably more than readers of this blog need to know.

So what does any of this have to do with intellectual property? Well, while "intellectual" is not necessarily the first word that springs to mind when the *Friday the 13th* films come up, they are copyrightable works, and Jason therefore qualifies as intellectual property. A recent decision from the Second Circuit Court of Appeals has addressed the issue of who owns Jason or, more accurately, the screenplay for the first *Friday the 13th* film.

That screenplay was written by Victor Miller, who received sole credit as the author of the screenplay when the first film was released. Miller wrote the screenplay pursuant to an "Employment Agreement" with Manny, Inc., a production company controlled by Miller's friend and the first film's director, Sean Cunningham, and Miller was paid \$9,282 for his services. The film and screenplay for *Friday the 13th*, Part 1, were registered with the U.S. Copyright Office by the eventual producer of the film. As the eleven sequels confirm, the first *Friday the 13th* was a smash hit, and the series has generated over \$468 million worldwide since the first film was released in 1980, making it and/or the *Halloween* franchise the most financially successful horror films ever made.

In 2016, Miller sent several notices of termination to Manny and other entities that held or had held rights in the screenplay to the first *Friday the 13th* film under Section 203(a) of the U.S. Copyright Act. That statutory provision allows authors and other grantors of rights in copyrightable works to reclaim their copyrights after the passage of (usually) thirty-five years from the date of the original grant. This right of termination is subject to a number of limitations and restrictions, one of which is that the termination right is inapplicable to works made for hire, in which ownership vests not in the work's author, but the employer or other entity that commissioned the work. Manny and the other recipients of Miller's notices disputed his right to terminate, arguing primarily that the *Friday the 13th* screenplay was a work for hire, such that Miller could not terminate his grant made in 1979.

Both the District Court and Second Circuit disagreed, holding that based on the factors enumerated by the Supreme Court in *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), the *Friday the 13th* screenplay did not qualify as a work for hire because Miller was not an employee of Manny. Both courts based their decisions that Miller was an independent contractor on factors such as Manny's limited degree of control over Miller's writing, Miller's skill as a screenwriter, and the absence of any traditional employee benefits provided to Miller. In addition, both courts rejected the argument that Miller's membership in the Writers' Guild of America, East, Inc. and Manny's participation in the producers' collective bargaining agreement with the Guild in the same period established that Miller was an employee for purposes of the Copyright Act. In so holding, the Court held that copyright law, and specifically *Reid* and common law agency principles, controlled the question of whether Miller was or was not an employee of Manny, not the National Labor Relations Act or related principles of labor

law.

The Second Circuit's decision appears to be the first to address the interplay between copyright and labor law for purposes of determining whether a particular work was made for hire. The decision is also notable because there are not a lot of decisions applying Section 203(a) and the validity of notices of termination. Most such cases appear to be resolved by settlement, short of formal adjudication.

As to who owns Jason going forward, that's not necessarily an issue that has been resolved. Miller did not write the eleven screenplays for the subsequent *Friday the 13th* films, and Section 203(a) states that a "derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination." So, Miller's ability to profit from or interfere with the next eleven installments of the series would appear to be limited. But, that same subsection of Section 203(a) also states that the privilege to continue use of extant derivative works "does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant." So, it would seem that the Second Circuit's ruling has done what no weapon, law enforcement officer, plucky camp counselor or technologically advanced future society could do: stop Jason from killing again in any new *Friday the 13th* movies, unless some sort of accommodation with Miller is reached.