CONTENTS

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Agent 007: A License to Bill

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Abstract

Ian Fleming's famous James Bond novels–the favored Air Force One reading material of President Kennedy–created a piece of the Western cultural canon that endured translation to the film medium. The series survived massive cultural shifts on both sides of the Atlantic, the Cold War's apogee and decline, postcolonial alterations to Britain's global role, and other turmoil largely intact. However, the work required to defend, maintain, and expand the media empire surrounding the superstar spy continues into the twenty-first century, despite the fact that he would be over a hundred years old today (having been born in the early 1920s, Mr. Bond looks great for his age!); over half of this fictional lifespan features negotiation and litigation of the highest stakes, with billions of dollars in play. Today, while Bond may still serve the interests of His Majesty's Secret Service, he resides (since 2022) within a more modern kingdom: the intellectual property catalogue of megaretailer Amazon. This article recounts Bond's journey from being the protagonist of an obscure British spy novel series

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Muth would like to dedicate this piece to the real-life Bonds he had the privilege of working with and supporting circa 2010-13, when Muth was actively analyzing and developing intelligence related to the Gulf of Aden maritime crisis and supporting the work of Combined Task Forces 150 and 151; thank you for what you do, much of it unseen, perilous, tedious, and thankless, to make our world safer.

The views and thoughts expressed here are the author's/authors' own and may not reflect the views of others, including agencies, clients, or institutions with which the author(s) has/have been affiliated.

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to being one of the most-contested, most-successful, most-valuable entertainment brands in the world.

Introduction

Ever since Ian Fleming–then a still-undercover British spy–created the series of novels starring the famed Bentley-driving, Rolex-Explorer-1016-wearing,[1] Beretta-brandishing mascot of British espionage, the adventures of James Bond have been legendary. However, it was the transformation of Bond, an already-somewhat-dated spy character, into a postwar Aston-Martin-driving, Rolex-Submariner-wearing, Walther-PPK-carrying spy of the progressive and promiscuous 1960s that boosted his popularity and created one of the most valuable entertainment franchises in the world, on par with behemoths like *Star Trek*, *Star Wars*, and core Disney characters.

And yet, over the last sixty years or so, perhaps no high-profile property has seen more litigious posturing and legal interactions than the Bond franchise. In a multigenerational legal drama, talented attorneys fought for control of Bond's adventures in conference rooms and courthouses on both sides of the Atlantic and on front pages of major newspapers; recent chapters of the story include cameos from famous lawyers and judges, accusations of too-sharp tactics and unfair dealing, and a few sensational claims from celebrities.

This Article's storytelling occurs within the sixty-year period between 1961 to 2021, bookended by the original Bond film deal (the "United Artists Deal") and the premiere of *No Time to Die* (2021), the twenty-fifth Bond film and one of Daniel Craig's better performances as 007, a role he inhabited for fifteen years. This is the period during which litigation nearly sank the franchise. It seemed several times in recent decades that Mr. Bond would succumb not to an adversary's lucky bullet or sneaky booby-trap, but to the failure to properly secure an obscure-but-needed piece of intellectual property or failure to reach agreement as to a thousand-page revenue-sharing scheme. This sixty-year 1961–2021 period was chosen carefully; owing to the secrecy of the terms (even following the transaction's closure in 2022), this Article does not endeavor to describe the acquisition of MGM by Amazon in any substantial detail (this epoch will be left for future scholars to unpack).

The amount of legal work done to attack, defend, protect, license, and reallocate the James Bond intellectual property in the form of novels, films, toys, poster art, comic books, music, and collateral materials is measured not

[1] Ian Fleming, Live and Let Die (Cape Books London 1954).

in hours, but in careers.[2] Lawyers who worked on the litigation portray it a bit like a multi-decade secret agent career, too. Describing his role in the lawsuits against Ian Fleming (primarily involving *Thunderball*), Peter Carter-Ruck says it was "an exciting and demanding relationship of friendship, litigation[,] and much travelling which continued for over twenty years."[3] Luckily for his millions of fans, Bond was somehow able to escape what many law professors and experts thought might be a too-labyrinthine web of contracts and obligations.[4]

While many mysteries remain and we may never learn how the soundtrack revenues from each film were divided or the terms of Ford Motor Company's deal to feature its vehicles in the franchise's films,[5] we do know a great deal from the record and secondary accounts; this Article is the first sixty-year longitudinal review of litigation on this subject. While some threat of litigation is currently circulating and no review of litigation on a major entertainment property will ever be fully comprehensive, the goal here is to examine major controversies and their causes and resolutions, while also tracing the control of key intellectual property during this period.

Spoiler alert: Like all Bond films, this one has a happy ending: eventually, all the core intellectual property ends up pretty much in one place, ready for another few decades of daring secret missions.[6]

I. The Beginning (1930–1961)

The franchise as we know it today begins with a deal negotiated far from Hollywood: this story's genesis is in New York in the summer and autumn of

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[2] Much of the discussion of litigation tactics, including narration by Peter Carter-Ruck, is drawn from facts presented within Carter-Ruck's excellent-if-obscure pseudo-autobiography, *Memoirs of a Libel Lawyer* (Orion 1990), particularly pages 144 through 161 and 210 through 220 of the penultimate edition. Carter-Ruck is better known at law schools for authoring the comprehensive, if often (if law students' complaints are to be taken at face value) staggeringly expensive, red-canvas-clad casebook used in much of the English-speaking world for the study of libel and slander and contempt in law school classrooms.

[3] P.F. Carter-Ruck, Carter-Ruck on Libel and Slander (4th ed., Butterworths 1999).

[4] Carter-Ruck, *supra* note 2 at 151–54.

[5] These aspects are famously among the most secret among the franchise's relationships.

[6] Today, most but not all Bond-related intellectual property is locked up in various entities and licensed or utilized primarily through Eon Productions.

1961.[7] To introduce the scenario, however, one must first meet two of its main characters: Harry Saltzman and Cubby Broccoli.[8]

Herschel "Harry" Saltzman was a legally-savvy, gregarious Canadian film producer who spent much of his life in Buckinghamshire. Having run away from Jewish parents at age 15 in 1930, at the height of the Depression, Saltzman joined a traveling circus and earned enough money to get a one-way steamer ticket to Paris, where he studied under René Clair, who was known for mixing comedic moments into the actions or dialogues of violent or dark characters; this style can perhaps be seen in Bond's one-liner quips after making an escape or killing a henchman. During World War II, he was part of the then-secret U.S. Psychological Warfare Bureau, upon which he loosely based some of the U.S. clandestine bureaucracies with which Bond interacts. During the war, Saltzman bought the film rights for Bond from Fleming for a small sum. He would go on to use his fortune from the Bond franchise to make other films and, ultimately, to take over Technicolor Motion Picture Corp.

Albert "Cubby" Broccoli was an Italian American born in Queens to a family that bought a farm in a then-rural, now-suburban area of Long Island and had moderate success cultivating–you guessed it–vegetables including broccoli. After working a mixture of jobs during the Depression, including being a casket carpenter and a roadside vendor and struggling financially during the war years, Broccoli moved to London. The postwar British government was offering generous film subsidies in the early 1950s and took an interest in making films that featured British heroes in an effort to re-establish its position as the cultural capital of the Western world amidst a brewing Cold War and the emergence of the iron curtain.[9] Looking for literary source material, Broccoli discovered that a Canadian named Saltzman already owned the rights to the Bond character and stories.

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[7] The narrative in this section benefits greatly from two pieces of source material, Carter-Ruck, *supra* note 2, and David Foxton's *James Bond and the Law* 2023 lecture. *See* David Foxton, James Bond and the Law, Address Before the Manchester Business and Property Courts Forum (May 25, 2023), https://www.judiciary.uk/a-talk-to-the-manchester-business-and-property-courts-forum-by-mr-justice-foxton-james-bond-and-the-law/ [https://perma.cc/PLG4-F8YF].

[8] Mr. Broccoli's given name was Albert, though he joked that only his family and the film credits said "Albert." Carter-Ruck, *supra* note 2.

[9] Less known but worthy of watching for the mid-century film aficionado are the three espionage films Broccoli made based on Len Deighton's novels. The Ipcress File (Lowndes Productions 1965), in large part due to Michael Caine's fine performance, stands out among the Deighton-Broccoli collaborations as the best of the bunch.

Broccoli met Saltzman through their mutual friend Cyril "Wolf" Mankowitz, who was a Cambridge graduate,[10] an author and screenwriter, and a frequent customer at the bars of East London where artists and musicians would frequently congregate. At a meeting in London, Saltzman refused to sell the Bond rights to Broccoli but agreed to partner and develop them in conjunction with a major film studio.

Finding a suitable studio was more easily said than done. After several studios refused to take meetings from the duo, United Artists agreed to take a meeting in New York in 1961. The meeting involved United Artists, Harry Saltzman, Cubby Broccoli, and a small number of attorneys. Given that the twenty-five Bond films have today grossed over $7 billion nominally (over $20 billion if one accounts for interim inflation) and that Mr. Broccoli's family has made over $100 million on a single film, it may be incomprehensible to attorneys and law students today that the original governing documents were negotiated in under an hour, involved only $1 million in cash, and were written up in a dozen-page draft, typos and all, by one of the attorneys' secretaries on the only typewriter present.[11]

United Artists was not Broccoli and Saltzman's first choice; they had already shopped the rights to Columbia Pictures, a powerhouse for taking fiction books and turning them into successful movies. Fleming himself had reportedly enjoyed *Our Man in Havana* (1959), a Columbia film that took a rather serious British spy novel and introduced moviegoers to British espionage in an exotic tropical locale with a plot that combined humor, intrigue, and political commentary, not to mention a sexy-but-strong female ally (in this case, Irish redhead Maureen O'Hara's minor but important character). The pair also was intrigued by Columbia's ability to generate lucrative returns: Columbia managed to produce *Our Man in Havana* for under $1 million and to gross just over $2 million (worth approximately $10 million and $20 million if one accounts for interim inflation, respectively). Failing to interest Columbia, where Broccoli's acquaintance Hughes was a significant shareholder, Broccoli and Saltzman's legal entity had only a month left on the option contract before the rights to the Bond novels reverted to Fleming;

[10] Though Jewish students were not rare during the war, especially in the hard sciences, they were certainly not common in the arts or in literature. Like many who attended during the wartime years, Mankowitz found Cambridge. underpopulated and depressing; he was among only a dozen or so students who showed up to see George Bernard Shaw speak at Cambridge in 1942.

[11] Matthew Field & Ajay Chowdury, Some Kind of Hero: The Remarkable Story of the James Bond Films (2018).

time was of the essence and a deal was hurriedly struck in New York with United Artists.

At the time, there were nine recent Bond novels.[12] Ensconced in his tropical resort estate Goldeneye, Fleming had written a new Bond novel every year from 1952 to 1961[13] and hundreds of pages of additional material, sufficient to assemble plenty of additional films or novels. These additional materials and sketches of characters and locations and plotlines, which Fleming referred to as "the scraps" according to many contemporary collaborators, would become a key part of efforts to revive, reimagine, and modernize the character, particularly as the creation of post-Cold-War plotlines became necessary.[14]

By 1961, all rights to develop films based on the Bond novels, with the exception of *Casino Royale*, were purchased by producer Harry Saltzman for $50,000, with a commitment to invest $100,000 toward any properties that would be made into feature films. In the autumn of 1961, in contracts that surely totaled more than a dozen pages in length, Saltzman and Broccoli created a 50/50 split of the Bond intellectual property (except *Casino Royale*) and established that United Artists would enjoy 40 percent of initial box

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[12] For those interested in seeing the longevity and diversity of Bond-related litigation, one need look no further than litigation regarding the very first Bond storyline, *Dr. No*, which happened to share its name with a Continental European luggage brand, the German "Dr No" (with no period after "Dr" and substantial ambiguity as to whether it was "doctor no" or something else when in long-form). That matter, captioned in full Danjaq, LLC v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), unsurprisingly saw the British agent's supervillain nemesis invincible even against the attacks of German intellectual property owners' barristers. *See generally Danjaq*, (T-435/05) E.C.R. II-2097 (RCJ Reports; UK Unified Reporter 2009). This was a revolutionary ruling in European intellectual property law, as prior to this names of products were protected and generally more victorious when put against the rights held as to a fictional character's name or similar "derivative" claims that were not by themselves products in the marketplace; under this older rule, as there is no book or film simply entitled "James Bond," the central demonym in the portfolio might have been vulnerable to head-on assault. For reasons discussed later in the article, the reader will recognize this Dr No / Dr. No dispute was in some ways a foreshadowing of the IP change happening during the epoch this piece covers.

[13] The author's health declined following a heart attack in April of 1961. *See* Anna Mundow, *'Ian Fleming' Review: The Mind Behind James Bond*, Wall St. J. (Mar. 29, 2024), https://www.wsj.com/arts-culture/books/ian-fleming-review-the-mind-behind-james-bond-b5e5299e [https://perma.cc/7TD4-MMPT].

[14] Carter-Ruck, *supra* note 2, at 147–49.

office and trailing revenues, with the other 60 percent split evenly between Saltzman and Broccoli.[15]

The person who didn't get a cut in this deal was Fleming. Broccoli would record in his autobiography that of the $2 million figure for film production for the first film[16] Fleming was entitled to only a thousand dollars with no performance upside.[17] The rights were later re-sold for $6,000 (and no secondary residual paid to Fleming).[18]

This first deal is important to understand primarily because it specifically excludes *Casino Royale*, rendering this title a *rogue property* and separate for the purposes of financing and development.[19] The exclusion stemmed from the fact that *Casino Royale* had already been a "developed property" (show-business language for books having already been adapted for radio, film, or television) and hence the occlusion[20] of these rights after the CBS deal was either unclear or perhaps thought to be substantial. Having *Casino Royale* floating untethered from the main Bond catalogue also gave Columbia Pictures, who previously rejected the Broccoli-Saltzman duo in 1961, a second bite at the proverbial apple. Columbia Pictures would develop the 1967 James Bond film *Casino Royale* (1967), which would both enrage United Artists and confuse fans, though the material is reintegrated into the primary canon thanks to the 2006 film starring Daniel Craig.[21]

How important is the idea of a *rogue property*, or various properties of questionable provenance, in the instance of Agent 007? To quote Chief District Judge of the Western District of Washington:

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[15] Foxton, *supra* note 7.

[16] A cross-license deal with CBS for *Casino Royale* only.

[17] *See* Albert R. Broccoli with Donald Zec, When the Snow Melts 47–51 (Boxtree Publishing Ltd. 1999).

[18] *See* Mark Dent, *The Family Business that Owns a Share of the $7B James Bond Franchise*, The Hustle (Aug. 28, 2021), https://thehustle.co/the-family-business-that-owns-a-share-of-the-7b-james-bond-franchise [https://perma.cc/Z5FU-5FN6[.

[19] A *rogue property* is a piece or subset of an intellectual property portfolio that is cleaved from the portfolio and ends up on a separate arc of development, financing, or ownership from the portfolio's corpus.

[20] A term of art sometimes invoked when rights are perhaps limited but to an uncertain degree. In this instance, *Casino Royale* had already been optioned to be developed into a radio play, a television production, and other properties. *See* Carter-Ruck, *supra* note 2, at 102. This makes the property substantially harder to deal with from a rights standpoint than subsequent, less-complexly-licensed novels. Note this obstacle is very different from the later, much more serious, obstacle presented by the licensing surrounding *Thunderball* and its proposed lineage of sequels.

[21] The 2006 *Casino Royale* film is considered part of Eon Productions canon, though the 1967 *Casino Royale* film is not.

> This case [Johnson v. MGM] hinges on which films should and should not be included in DVD and Blu-ray box-sets of "*all*" James Bond films.[22]

II. The World is Not Enough: But the World Was Bond's Test Market (1962–1983)

Columbia Pictures might have made *Our Man in Havana* and succeeded with it, but the world was changing, and quickly. The film would not, perhaps, have been a hit in late 1962. The campaign strategy to release Eon's (owned by Saltzman and Broccoli) first Bond film was disrupted with a major historical wrinkle.

In 1962, Americans were closely watching the Cuban Missile Crisis[23] and the beginnings of the American-Soviet space race evolved through the autumn of 1962; President Kennedy had just pledged to land a man on the moon and return him safely to earth and Congress had authorized additional funds for what would become the Apollo program in late 1961 and again in multiple appropriations provisions passed in 1962.[24] With such high-stakes geopolitical tensions omnipresent in popular culture and dinner table conversations, that year's most controversial politically-themed film, John Frankenheimer's *The Manchurian Candidate* (1962),[25] drew fire from both the left and right. *Dr. No* (1962), involving a secret location immediately south of the Cuban coastline and a secret society[26]

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[22] Johnson v. Metro-Goldwyn-Mayer Studios Inc., No. C17-541 RSM, 2017 WL 3313963 (W.D. Wash. Aug. 3, 2017) (emphasis added).

[23] Younger readers may not know the Jovian gravity of these events; for those wanting more contextual information on the very start of this tumultuous decade with enough historical distance to make judgments, we suggest the excellent volume Don Munton & David A. Welch, The Cuban Missile Crisis: A Concise History (2011).

[24] As a mixture of defense appropriations, special projects funding, and other tools were used to fund the Apollo program it is difficult to point to any single piece of legislation as the source of Apollo's funding; the most recent comprehensive attempt to match appropriations with cost analysis is Casey Dreier's very inclusive analysis, which uses adjusted cost estimates on a moving-target basis and accounts for interim inflation, linking costs to specific appropriations or budget adjustments where possible. *See* Casey Dreier, *An Improved Cost Analysis of the Apollo Program*, 60 Space Pol. 101476 (2022).

[25] Distributed by United Artists.

[26] "The very word 'secrecy' is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths and to

of villains[27] planning to disrupt the American space program, seemed a bit too "ripped from the headlines" for American audiences.

Weighing their options, United Artists decided to release its first Bond film essentially everywhere in the developed Western world *other than* the United States. Released in October 1962 in every major market except the United States, *Dr. No* grossed $41 million worldwide on a production budget of just over $1 million. It would gross $16 million in America, but would not go into wide U.S. release until 1963 after the Congressional fallout from the Cuban missile crisis was wrapping up and Americans diverted their attention to an invasion from Liverpool, otherwise known as two new Beatles records hitting the charts.[28]

Nevertheless, the box office success of *Dr. No* abroad and at home, in that order, impressed United Artists and made Broccoli and Saltzman $10 million each. At the time and today, a windfall necessitates a call to the tax attorneys to fortify one's position and lessen one's burden. The structure invoked here was both simple and effective; a UK-based entity called Eon Productions (originally, and sometimes even recently, EON)[29] would make the films and control certain rights, including creative decision-making rights, while the core rights or property rights to the underlying intellectual property would reside in a Swiss entity, Danjaq.

GmbH.[30] Because profits would flow directly to Danjaq, UK taxes would be avoided. The agreement, referred to as a "distribution agreement," allowed third parties (notably United Artists and, post-acquisition, MGM) to distribute films to the monetary benefit of Danjaq and with little effect as to Eon's finances.

This is what is typically called a V-scheme or "incomplete triangle" scheme,[31] wherein a first entity provides capital to a venture but a second

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secret proceedings." John F. Kennedy, Address at the Bureau of Advertising (Apr. 27, 1961) (transcript available at the Kennedy Presidential Library and Museum).

[27] SPECTRE.

[28] The Beatles, With the Beatles (Parlophone 1963) and The Beatles, Please Please Me (EMI 1963).

[29] The name, whether capitalized or not, is an acronym for "everything or nothing," which Broccoli is said to have claimed described his negotiation style.

[30] The Danjaq entity would eventually relocate to Delaware. The strange name, pronounced "DANE-JACK," is a mash-up of the business partners' wives' given names: Dana Broccoli and Jaqi (Jacqueline) Saltzman.

[31] The triangle is incomplete because the second entity, in a diagram, never pays the first entity a share of its profits, though it may make repayment arrangements or make the first entity fully, but not more than, whole. In the most aggressive instances, there may be intentional defaults between the entities to "true up" key amounts.

entity collects amounts in the event of the venture's success, often in another jurisdiction. This creates tax losses in the first entity which, depending upon the entity's home jurisdiction and structure, can be used to shield its owners or partners from tax liability. Meanwhile, gains accumulate in the second entity while being free from the tax burden that might develop if the pecuniary rewards from the venture's success attached to the first entity.

District Judge Wilson describes the arrangement, dramatic Biblical prelude and all, in Danjaq v. MGM:[32]

> In the beginning, harmony prevailed among Bond's assistants. Danjaq, S.A. ("Danjaq") produced Bond films and MGM/UA Communications Co. ("MGM") distributed them. Sixteen Bond films in all, from "Dr. No" to "License to Kill," were produced and distributed under this arrangement, going back 19 years to the 1962 Distribution Agreement between Danjaq and MGM (the "Distribution Agreement").

Quickly, Bond was becoming more than a savvy rights purchase; United Artists was talking about potential sequels and Bond would soon be an international business to be professionally managed. And everybody, or nearly everybody, would soon get rich and subsequently sued. So how did the rights move from being Fleming's personal property to being distributed among various trusts and corporate entities?

In the ever-pertinent words of nuclear physicist and arms proliferation expert Christmas Jones, Ph.D.[33] in *The World Is Not Enough*: "It's complicated!"

It seems that only one U.S. court decision describes the entire chain of rights that connects Fleming to United Artists and MGM in the more modern (post-1964) context, and that is an obscure case from the Southern District of New York in 2006 captioned, in cryptic Bond fashion, *Legislator 1357*.[34] *Legislator* describes Fleming's *modus operandi*, which had become

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For voluminous scholarship on the topic of tax avoidance through this and similar planning, *see generally* the excellent work of Daniel Hemel and others at NYU.

[32] Danjaq SA v. MGM / United Artists, 773 F. Supp. 194 (C.D. Cal. 1991).

[33] Played by Denise Richards to the delight of teenaged boys of the era. Her character's throwaway line, "It's complicated!" seemingly pertained to everything from nuclear physics to geopolitical turmoil and became a quotable-if-shallow one-liner philosophical musing in the Gen X era of *Wayne's World*, *Beavis and Butthead*, *Clerks*, and *Bill & Ted's Excellent Adventure*. So connected was the quote with Dr. Jones / Ms. Richards that the Bond girl's 2008 network reality show was entitled *Denise Richards: It's Complicated!*

[34] Legislator 1357 v. MGM, 452 F. Supp. 2d 382, 385–86 (S.D.N.Y. 2006).

rather sophisticated by this point (circa 1962, after the original deal with Broccoli and United Artists).

As described in *Legislator*,[35] Fleming would transfer rights to a book publisher–in that case, Glidrose Publishing, Ltd.; Fleming was the principal shareholder in Glidrose, a company limited by shares.[36] Fleming would, however, typically retain other media rights, which included film, television, serial, and comic book or manga rights to develop the material in each new novel.[37] One week later, Fleming would transfer these remaining, valuable multimedia "non-book" rights to a trust created for holding such rights to his books. Confusingly, these non-book rights are held in a vehicle referred to in various litigation as the "Book Trust" so we will continue to use this name for the sake of consistency for scholars who are reading this article and those court decisions together, even though the nomenclature is somewhat misleading on its face.

Later, the Book Trust, as a function of its contractual arrangement with Saltzman, assigned the film and television rights in the work to Eon Productions;[38] the conveyance was enormous in scope and time:[39] "throughout

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[35] *Legislator* and the exhaustive historical text on the topic by Field and Chowdhury, *supra* note 11, disagree slightly as to how Fleming made these intellectual property conveyances and whether this structure was made on advice of counsel or at the suggestion of Saltzman. We have no new research to contribute to this aspect and concede some of these details may, at this point more than sixty years onward, have been lost to the sands of time. However, it does make some sense that Fleming would have made, or at least considered making, intermediate transfers to segregate book rights from other rights as the two kinds of rights had substantially different markets of potential licensees and Fleming must have realized by 1961–62 that the film and multimedia rights had the potential to be worth far more than the serial publishing rights to the novels. Fleming was also reasonably sophisticated in the use of companies, including holding companies, as illustrated by his purchase of Goldeneye as his private residence in Jamaica using a local company controlled by a tax-insulated special-purpose holding company in Gibraltar.

[36] The British equivalent of a stock corporation, similar to an American C-corp. *See generally* David Kershaw, Company Law in Context (2d ed. Oxford 2012).

[37] Importantly, this procedure, while uniform across most of Fleming's novel intellectual property, does *not* illustrate how rights were transferred for *Dr. No*, *Casino Royale*, or *Thunderball*.

[38] Though this arrangement was originally reached with Saltzman, it operated to the benefit of Saltzman and Broccoli as 50/50 partners. *See generally* the substantial (over 800 pages) tome produced by Field & Chowdhury, *supra* note 11, at 252–59 (2018).

[39] *Legislator*, 452 F. Supp. 2d at 385; idiosyncratic British capitalization as in original.

the World for the entire period of copyright and all extensions and renewals thereof." In the same conveyance instrument, it was warranted that "the Trustees are the absolute owners of the rights herein intended to be granted and assigned to the Purchaser hereby" and offered to indemnify any defects thereof.[40] Eon then assigned its interest in the work to Danjaq of Switzerland and Danjaq assigned its interest to United Artists.

United Artists and MGM then cooperated to produce a feature film based on the material in question.

The flow of rights from author to trust to production partner, who would then seek a producer-distributor pairing (usually Eon in tandem with United Artists, as in the case of *Goldfinger*), is a template, with mostly minor deviations, for how Fleming's books became films,[41] with the exceptions of *Casino Royale*,[42] *Thunderball*, and *Never Say Never Again*,[43] and any post-2022 films.[44]

But it leaves out a key figure that would animate and amplify future litigation: Kevin McClory.

III. Kevin McClory and the Alternate Bond Franchise (1962–1983)

Before and while *Dr. No* was printing money at the box office worldwide, in Jamaica Fleming was creating a Bond novel roughly every year.[45] However,

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[40] *Id.*

[41] Omitted here for relevance is the trust mechanism designed to distribute proceeds to Fleming's widow and other family members. Though this affected the total money involved in a slight way (less than $10 million in total value transferred in 2023 dollars), it had no effect on rights to develop the material into films.

[42] Unusual because of its licensing for radio, then television (CBS), and multiple films.

[43] Unusual because these are McClory-Sony productions, as discussed in detail *infra*.

[44] It is unknown how licensing revenue flows will be handled following Amazon's acquisition of MGM. *See generally* Amazon, *Amazon and MGM Have Signed an Agreement for Amazon to Acquire MGM*, Amazon Press Ctr. (May 26, 2021), https://press.aboutamazon.com/2021/5/amazon-and-mgm-have-signed-an-agreement-for-amazon-to-acquire-mgm [https://perma.cc/DXL7-TLJX].

[45] *See, e.g.*, Ian Fleming, Casino Royale (Cape Books London 1953); Ian Fleming, Live and Let Die (Cape Books London 1954); Ian Fleming, Moonraker (Cape Books London 1955); Ian Fleming, Diamonds Are Forever (Cape Books London 1956). Fleming was overwhelmed with long, flowing sections of creative ideas while at his jungle estate, Goldeneye, in Jamaica, but often found he was too distracted or busy to write long sections of novel text when in England. It is often

by 1963, the well of imagination was drying up and Fleming explored an assortment of source material, including a treatment written by Jack Whittingham, a qualified solicitor, wherein a secret agent battled a shadow cartel called SPECTRE, engaged in underwater combat and prevented the acquisition of a nuclear weapon by a non-state terrorist actor. Fleming may have gotten too inspired, as these core elements were all transported into the screenplay for *Thunderball* (1965).

As Kevin McClory had hired Jack Whittingham to write the treatment, the two men decided Fleming had stolen their ideas and expected compensation. The two brought an action in the Chancery Division in London that would attempt to hobble the release of *Thunderball*, add confusion related to the rights to James Bond, and effectively remove the title from the core intellectual property trove, subjecting the rights of *Thunderball* to a multi-decade dispute. Things were made more complex by Fleming's death in 1964 during the litigation.

Salzman and Broccoli correctly perceived McClory as a major problem for their plans to develop further Bond property. If McClory and Whittingham could claim *Thunderball* was a prerequisite to later expected Bond successes, and convince a court of the same, they could exact a pound of flesh from every post-*Thunderball* Bond production. Something had to be done, Salzman and Broccoli realized, and quickly! Their solution was to grant McClory a writing credit and a 20 percent profit share in *Thunderball* in exchange for Salzman and Broccoli receiving the rights to the film's intellectual property for ten years with an explicit reversion (no option to renew).

Though ten years must have seemed ample to Salzman and Broccoli's lawyers in 1963 when the bargain was struck, it proved manifestly inadequate. When the ten years expired and the rights to monetize *Thunderball's* intellectual property returned in perpetuity to McClory, he was ready to exploit them in full measure. To ensure Salzman and Broccoli wouldn't brush him off, the savvy McClory opted to co-author[46] the script for the next Bond installment with Sean Connery, the actor upon whom the film franchise then relied.

This "sequel" script,[47] which reinterpreted elements of *Thunderball* and revived the plot elements of an evil global conspiracy called SPECTRE

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said, though difficult to verify, that Fleming once wrote a book at Goldeneye in only a matter of weeks. *See* Field & Chowdury, *supra* note 11, at 98 and 128–30.

[46] There is a third credited co-author, Len Deighton, who is primarily known as a novelist rather than a screenwriter. Deighton does not hold any rights relevant to the lineages of litigation discussed here.

[47] McClory was careful to maintain his films were sequels to *Thunderball* and not attempts to co-opt the entire Bond IP trove, though he would later attempt

and an archvillain named Blofeld, was called *The Spy Who Loved Me* (1977). Controversially, Eon and Danjaq removed all references to SPECTRE and Blofeld but left the rest of the film intact and, like the films before it, this film enjoyed great commercial success. Annoyed but undaunted, McClory signed a deal with Paramount in 1976 and announced in 1977 that he'd received $22 million to make a new James Bond film that would be filmed in the Bahamas; he held close control over locations, plot elements, and casting, securing Sean Connery to star in the film in the spring of 1978.

IV. A Brief Interlude as to Expanding IP Protection for Characters and Their Attributes

Little did he know, in constructing the scaffolding for this competing or parallel Bond lineage of stories,[48] McClory was stumbling around amidst–and occasionally interacting with–some of the most important changes in the intellectual property law of the twentieth century. McClory was creating what he would contend was a valid lineage of Bond canon, while Eon and others would argue McClory's work beyond *Thunderball* was non-canonical, perhaps just fan fiction.[49] Of course even the word "canon," though today perhaps used more in debates over Marvel and *Star Trek* characters than in any other setting, traces its origins to the Greek (*kanōn* meaning a rule or measure or, earlier, a physical measuring rod).

The idea of a canon may be old,[50] but its meaning is ever-changing. Whether the law, from an intellectual property standpoint, operates to ignore, defend, or merely tolerate elements of canon was somewhat undecided

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the latter stratagem. *See* Lorenzo Semple Jr., Never Say Never Again (Warner Brothers, 1983), https://thescriptlab.com/wp-content/uploads/scripts/68070-Never-Say-Never-Again-1983-by-Lorenzo-Semple-Jr.-rev.-by-Dick-Clement-and-Ian-La-Frenais.pdf [https://perma.cc/7VHD-GV4M].

[48] And a litigation campaign to, if needed, accompany it.

[49] Fan fiction is a 1990s term for people creating narrative or pictorial art (including anime, film, and other media) that uses the setting or characters from established and protected works but in some new context that creates an original work of its own. For more on the legal status of this art form, *see* Aaron Schwabach's comprehensive and recent volume on the topic, Fan Fiction and Copyright (Routledge 2016).

[50] And to extinguish all uncertainty, it is: by the time the debate described in the Mishnah appears in Jewish law in the second century, that debate is already (at minimum) five centuries old and includes not only disputes over the status or provenance of some books of Ketuvim, but also more fundamental debates about what the Hebrew Bible can fairly be described as including; during the Hasmonean dynasty, debates of canon and non-canon are frequent and the modern Jewish canon

and even disregarded until the McClory v. Eon[51] era of litigation. Prior to the litigation revolving around *Thunderball* (and its potentially unlimited[52] sequel progeny), the title and verbatim text of a work was protected, but the use of characters (like caricatured, bizarre archvillain Blofeld) or settings (like the logistically-absurd *intramontagne* lair of Blofeld) or organizations (like the mysterious SPECTRE collective antagonist) was less clearly (if at all) embraced by protections.

In essence, prior to the Second World War, one could lift a character from one book or setting and plop him (or her) in another story with few, if any, legal worries. Neither American nor British law expressed much concern for this practice, and "variation" and "adaptation" had survived legal tests as ways to originate new works rather than modes of theft, particularly in the context of jazz music.[53] The litigation of this era (1960s–70s) in many ways backfired for Broccoli and Eon, with judges taking notice of the then-relatively-new recognition of character protections.

This was the key environmental factor that changed over the course of the McClory litigation, and judicial discussion of *Thunderball* threatened to repatriate archvillain Blofeld and other key plot elements to McClory, leaving Salzman and Broccoli with an antiquated superspy with no obvious purpose.

(five books of the Torah, eight books of the Nevi'im, and eleven books of the Ketuvim) was hardly a settled matter, even as a matter of intraregional consensus.

[51] This is not an actual caption of any dispute, but instead used as a moniker for this epoch of discord.

[52] Salzman and Broccoli weren't threatened by *Thunderball* itself, but rather by the arrangement's potential to create *Thunderball* sequels, a parallel set of competing products for their Bond films decades into the future. *See, e.g.*, Danjaq LLC v. Sony Corp., 263 F.3d 942, 960 (9th Cir. 2001) (discussing possibility of sequels and spin-offs).

[53] *See*, *e.g.*, the tripartite-captioned Berlin v. Daigle v. Russo, 31 F.2d 832 (5th Cir. 1929). *But see* in principle perhaps the most famous IP case that never reached trial: Bowie v. Van Winkle (S.D. Fla. circa 1990) (complaint moot, matter settled prior to trial). Whether deviations from jazz standards, digital music sampling, DJ live performances, and other kinds of art are more like one thing or another is an area of IP of its own, and we refer interested readers to Jason H. Marcus, *Don't Stop That Funky Beat: The Essentiality of Digital Sampling to Rap Music*, 13 Hastings Comm. & Ent. L.J. 767 (1990) for an amusing and decidedly contemporary take on these matters penned in the same era *Bowie v. Van Winkle* simmered. To understand the current state of play in this area of law, and the difficulty of crafting bright-line rules, the sometimes-acclaimed-and-oft-critiqued thoughts of the Sixth Circuit in *Bridgeport Music v. Dimension Films* are a must-read; *see* 410 F.3d 792 (6th Cir. 2005).

As a unanimous Ninth Circuit wrote in summarizing McClory's arguments,[54] "McClory argue[s] he possessed the rights to both the novel *Thunderball* and the materials developed during the writing of the initial *Thunderball* script, he also possessed the rights to certain plot elements that first appeared in those works: namely, the 'cinematic James Bond' character,[55] SPECTRE, the villain Ernst Stavro Blofeld, and the theme of nuclear blackmail."[56] Note the judge correctly identifies the two things claimed here: rights to the underlying material and, separately, to the surrounding characters, themes, and key elements.

Prior to the late sixties, plaintiffs' bullets could be dodged with the finesse of paraphrasing or in the guise of parody, rendering civil litigation an expensive and largely impotent way for IP originators to police the use of popular characters in unintended settings (even if those settings might jeopardize or devalue the character's credibility for the original publisher). However, changes in law on both sides of the Atlantic shifted to recognize fictional story elements as central to the value of fictional franchises, to the massive benefit of firms like Disney and Lego.[57]

The character, starting in the late 1960s, began to be recognized as a molecule with two atoms: the name and then the traits that define the character. So the name of the character is James Bond or Agent 007, but his traits include his weapon of choice (Walter PPK pistol) and his favorite cocktail preparation (shaken not stirred, of course).[58] The transition from the 1950s (where the protection was textual and technical)[59] to the 1970s-80s (where

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[54] We cite Judge McKeown here both for her precise prose and her succinct summary of McClory's argument, though this passage comes from a round of litigation in which these McClory arguments did not prevail.

[55] This argument is carefully designed to sever the two characters, leaving Broccoli and Salzman with an outdated 1950s Beretta-carrying, Bentley-driving, cigar-smoking, uptight Oxbridge version of Bond and allowing McClory to own the popular, updated, Walther-carrying, Aston-Martin-driving, athletic-action-hero, sexually-liberated Bond of the films, a protagonist now familiar to global audiences.

[56] *Danjaq LLC*, 263 F.3d at 948.

[57] Disney is an American multimedia production house, holding company, and hospitality services operator. Lego is a Danish multimedia holding company, major plastic recycler, and manufacturer of physical educational toys.

[58] Brylawski's article from the mid-seventies must have seemed minor and obscure at the time, but today is the gold standard of contemporary work on this topic. *See* E. Fulton Brylawski, *Protection of Characters-Sam Spade Revisited*, 22 Bull. Copyright Soc'y 77, 78 (1974).

[59] To understand the state-of-the-art in the 1950s, we recommend the still-underrated on-point article by Kellman: Leon Kellman, *The Legal Protection of Fictional Characters*, 25 Brooklyn L. Rev. 3 (1958).

the protection became contextual and thematic)[60] was extreme and hyper inclusive; by the start of the 1980s it was widely-accepted that a character's "association with the other designated characters and his outlook or view of life" were protected,[61] despite not being exhaustively-described in the originally-protected text.[62]

To understand the distinction between, and radical departure from, the original rule (where textual content was protected but contextual content was not) and today's more inclusive doctrine, one need only examine interpretations of fair use and parody post-WWII; fair use doctrine and parody still exist, but are narrowed substantially.[63] Today, using any more than needed to "conjure up the original" or indicate[64] what is being lampooned is risky.[65] This parallels increased postwar momentum in branding/advertising-related litigation[66] and enhanced protections in the late twentieth century for celebrities,

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[60] *See generally* Leslie A. Kurtz, *The Independent Legal Lives of Fictional Characters*, 1986 Wis. L. Rev. 429 (1986).

[61] Quoting from Roger L. Zissu, *Whither Character Rights: Some Observations*, 29 J. Copyright Soc'y 121, 122 (1981).

[62] Though we hesitate to mention a four-factor test that is applied with little uniformity of outcome, at least in theory the test involves 1) purpose and kind of use of a character, 2) nature of the copyrighted work itself, 3) amount used relative to the scale of the derivative work or in some interpretations degree to which the derivative work depends upon the borrowed character, and 4) effect upon the future market value of the borrowed character. *See generally* 17 U.S.C. § 107 (1988).

[63] Today, using nearly anything referential to iconic characters Mickey Mouse or Donald Duck risks evoking these well-legally-protected Disney characters. Walt Disney v. Air Pirates, 581 F.2d 751, 757 (9th Cir. 1978). *But see* Lyons P'ship v. Giannoulas, 179 F.3d 384, 388 (5th Cir. 1999) (team's sports mascot "killing" annoying singing purple tyrannosaurus aesthetically similar to Barney the Dinosaur was humorous parody and did not injure Barney's marketability and caused no confusion as to licensing).

[64] Characters, setting, music, and other cues may communicate to viewers what is being parodied, but protection is not unbounded; for instance, inserting a lightsaber-powering-up-like sound effect with comedic timing when a male actor reveals his private parts in a pornographic video does not *per se* infringe upon Lucasfilm's rights. *See* Lucasfilm Ltd. v. Media Mkt. Grp., Ltd., 182 F. Supp. 2d 897, 900–01 (N.D. Cal. 2002) (controversy involving pornographic video meant to parody *Star Wars*-related content but not copying any specific plot elements from franchise films).

[65] *Walt Disney* at 756–57. *See also* Walt Disney Prods. v. Air Pirates, 345 F. Supp. 108, 115 (N.D. Cal. 1972); the authors offer a warning to readers, however, that the trial court (N.D. Cal.) appears to apply the "no other means available" standard to defendants' actions, which is higher than standards typically applied in such cases.

[66] *See*, *e.g.*, Motschenbacher v. R.J. Reynolds Tobacco Co., 498 F.2d 821, 822, 827 (9th Cir. 1974) (race car driver's car in "Marlboro red and white" livery distinctive and part of driver's marketable likeness or commercial image).

who began to police use of their catchphrases and other identifiable characteristics in settings that might have, years prior, been seen as acceptable or parody.[67]

The general trend, which shows little sign of abating, has been toward more control for property owners and less latitude for subsequent derivative content creators. Even in the past twenty years we've seen continuing expansion of owners' rights; one wonders if today the same result would be reached in *Mattel* (9th Cir. 2003)[68] in the wake of Greta Gerwig's *Barbie* (Mattel / Warner Bros. 2023). In that case, the Ninth Circuit concluded that even though the derivative work used the identifiable Barbie character owned by Mattel and did so in ways Mattel found objectionable (including due to nudity, narration, context, and message) this production of new media featuring Barbie was fair use.[69] We posit today, on the same facts, in the same venue, the defendant party might not be so lucky.

V. The Blofeld Falls Far (Enough) From the Tree

Obviously, there is an enormous gulf between strictly protecting the verbatim text of a novel or comic book or screenplay and instead protecting the penumbra of ideas surrounding a character. If one envisions a well-known fictional person like Batman, we can associate him with Gotham City (especially its rooftops and alleyways at nighttime), high-tech gadgets, his loyal butler Alfred, his various love interests, his conspicuous customized automobile, his alter ego Bruce Wayne's ties to the military-industrial complex, a rooftop spotlight used to invite his participation in crime-fighting, and the list goes on and on… wait: is everyone who is summoned via a spotlight in the sky a theft of Batman's adjacent intellectual property?

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[67] *See*, *e.g.*, Carson v. Here's Johnny, 698 F.2d at 832, 836 (6th Cir. 1983) (litigation to prevent unlicensed humorous use of Johnny Carson's "Here's Johnny" catchphrase to market port-a-potty-style portable cabinet toilets); *see also* Ali v. Playgirl, Inc., 447 F. Supp. 723, 726–27 (S.D.N.Y. 1978) (litigation by eponymous famous boxer seeking to prevent use of "the greatest!" as catchphrase inexorably intertwined with boxer's successful career).

[68] *See* Mattel, Inc. v. Walking Mountain Prods., 353 F.3d 792 (9th Cir. 2003).

[69] *Accord* Mattel v. MCA Records, 296 F.3d 894 (9th Cir. 2002) (Judge Kozinski concludes 1997 Aqua song "Barbie Girl" successfully parodied Barbie as "a bimbo" invited to "go party" rather than trampling Mattel's rights).

And what if the allegedly-infringing art in question involves a milkman summoned via spotlight rather than a crime-fighter?[70] Is the Beretta-holstered Bentley-driving Bond from the books covered or the Walther-carrying Aston-driving Bond from the films covered? Or some of each or both so long as the character's love interest is named Vesper?

Attitudes toward fictional heroes (and villains, fear not of being left out, Pan Blofeld![71]) have changed, as have their levels of legal protection. As recently as 1951 (when Fleming was in his early forties and still an active field-work asset of Her Majesty's Secret Intelligence Service), the Second Circuit[72] wrote (on the topic of comic book heroes and the means of recourse available for publishers to enforce their rights), "In the case of these silly pictures nobody cares who is the producer," while that same court would take what can only be described as the opposite view one generation later.[73]

McClory's litigation, which begins with saber-rattling in the 1960s, would prove well-timed and his recruiting of Fleming as a credited screenplay author very savvy. The buttressing of McClory's filmmaking efforts as 1) direct sequel(s) to *Thunderball*, 2) efforts with not only the blessing but the direct involvement of Fleming himself, and 3) films explicitly allowed via his arrangement with Salzman and Broccoli positioned him not as a mere "misuser" or "trespasser" of the Bond intellectual property, but rather as a meritorious and explicitly-allowed promulgator of further "official" Bond adventures.[74]

This gave McClory unusually powerful ammunition to defend *Thunderball* and the films to follow, and each case he won must have made major studios and publishers uneasy, as holders of narrow licenses or restricted rights could claim they were not returning to the primary trove of IP but instead merely developing sequels to, or expansions of, their own IP in the style of what McClory was doing. Worse for the studios and publishers, these

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[70] This example may seem absurd but is no more absurd than many fact patterns that are contentious today.

[71] *Pan* seems the right *prélude*, as Blofeld's character is Polish by origin.

[72] National Comics Publications v. Fawcett Publications, 191 F.2d 594, 603 (2d Cir. 1951).

[73] *See*, *e.g.*, Warner Bros. v. ABC Television, 530 F. Supp. 1187 (S.D.N.Y. 1982), *aff'd*, 720 F.2d 231 (2d Cir. 1983); though, it is worth noting, the importance of recognizing and defending these rights was seen as early as that same year of *National Comics* on the west coast, *see cf.* Warner Bros. v. Columbia, 102 F. Supp. 141 (S.D. Cal. 1951).

[74] And this is to say nothing of Connery's presence in both the Salzman and Broccoli productions and the McClory productions, making the war between Eon and McClory look, from velvet seats in the cineplex, more like a truce.

mavericks might enjoy financial backing from big players, as McClory found with Warner Bros. as a distributor for his *Thunderball* and *Never Say Never Again*.

But other creators were not so lucky as McClory to timely fortify their legal positions. Many were stuck with IP partly reliant on or derived from unrelated portfolios that could not be further developed without risk of litigation or could not be sold without the blessing of heretofore unrelated parties.[75]

How did the law in this important area change so quickly and radically?[76] The short answer is the right answer in most cases of fast, unexpected change: technology.

Undoubtedly, part of the transformation of this area of law comes not from comic books or "grown-up" books but rather from the internet-connected computers now so familiar to us. The fact that software could be protected by copyright law in the United States (under the 1976 Copyright Act[77]) led to the concept that perhaps video files and other media were really more like software than like books.[78] By the late eighties or early nineties, this not a stretch metaphor but rather became the prevailing view.

By the mid-1970s, it became clear that characters, costumes, and defining contextual clues could be damaged[79] by misportrayal, parody, and misappropriation. The cartoon section of *Playboy Magazine*, a periodical people mostly read for the articles,[80] once playfully manipulated well-known comic

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[75] The inability for independent comic book publishers to have their characters visit Gotham or fight with popular villains likely contributed to the death of smaller publishers in the 1970s and 1980s. *See* Thomas A. Crowell, Comics and Controversy: A Brief History of Comic Book Publishing (2014).

[76] For a less dramatic, more incremental, summary of these changes, *see* Michael Todd Hefland's excellent "now that the dust is settled" summary from the early 1990s: Michael Todd Hefland, *When Mickey Mouse Is as Strong as Superman: The Convergence of Intellectual Property Laws to Protect Fictional Literary and Pictorial Characters*, 44 Stan. L. Rev. 623 (1992).

[77] Public Law 94-553 (19 Oct. 1976 effective immediately and, in a limited sense, retrospectively).

[78] For more on how this metaphor was cemented into the façade of blackletter law, *see* Louis Peter Pataki Jr., *Copyright Protection for Computer Programs Under the 1976 Copyright Act*, 52 Ind. L.J. 503 (1977).

[79] The damage here is to the character's franchise value and potential for reuse in future prequels, sequels, or spin-offs.

[80] This is an allusion to a common defense of *Playboy*, not an empirical assertion as to the male majority's revealed preferences. *See* Zoe Chance & Michael I. Norton, *I Read* Playboy *for the Articles!* (Harvard Bus. Sch. Working Papers Series 2009, Paper No. 10-018).

book characters and caricatured politicians in ways that would make modern broadsheet readers blush but this ended abruptly with the arrival of the seventies and a new IP regime.[81] Whether a loincloth-clad muscular primitive *was Tarzan* or *simply similar-to-Tarzan* was a key question at issue in *Edgar Rice Burroughs v. High Society Magazine82* and a close enough call to scare off many a subsequent parodier-to-be. It was evident by then that non-licensees hoping to use recognizable characters would need to tread carefully if they did not seek to become parties defendant. This meant that Salzman and Broccoli had an enemy in the form of McClory, but likely would not have new Bond appropriators to fight off.

The McClory problem was a nonperipheral, but instead central, IP headache for Salzman and Broccoli. As a result of including characters and key plot features within the ambit of a given IP portfolio's protections, Bond's archenemy Blofeld and the evil SPECTRE organization fell on McClory's side of the fence (Blofeld was played by Anthony Dawson in *Thunderball*). As a result, Bond ran around the world for over a dozen Salzman-and-Broccoli films, which must have felt like *Eons* (pun much intended)[83] to Salzman and Broccoli, chasing lesser baddies and solving rudimentary puzzles. Without the ability to mention Blofeld and SPECTRE, Bond was an unbelievably overskilled, overpowered, overintelligent protagonist up against wimps and chumps–it was like watching Firpo knock Dempsey[84] out of the ring with no second round.

In essence, Bond was a troubled-orphan-turned-killer with all the tools Fleming could imagine and little to do with them–much like the author

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[81] Perhaps no *Playboy* comic strip illustrates this more vividly than *Playboy*'s *Little Annie Fanny*, a strip that ran from 1962 and 1970 that oscillated between jarring pedophilia and misdemeanor-grade poor taste in its depictions of a young girl eerily similar to *Little Orphan Annie* (a 1920s *Chicago Tribune* strip later nationally syndicated) and her insatiable salivating benefactor Sugardaddy Bigbucks with occasional cameos from real-life people recently in the tabloids for brushes with girls of younger vintage (in an episode that in some courtrooms today might teeter on the edge of defamation, Terry Thomas makes an appearance as Huck Buxton and takes a crack at bedding young Annie, Thomas then having recently filmed the risquély-named *Operation Snatch* where he signals an interest in Jackie Lane, more than 25 years his junior).

[82] 7 Media Law Reporter (BNA) 1862, 1863 (S.D.N.Y. 1981) (dealing with lewd depiction of muscular primitive character who may or may not have been reasonably confused with Mr. Burroughs's work on *Tarzan*).

[83] "Eon" Productions being a central corporate vehicle in the Salzman and Broccoli empire.

[84] Probably the most important boxing rout of the interwar period.

himself, a man full of diplomatic secrets and spycraft abilities now fixing himself Vespers[85] to medicate boredom, drinking alone in the tradewind twilight of Jamaica.[86] Embroidered in Blofeld and SPECTRE was Bond's purpose; without them, Bond was an answer to a question nobody was asking.[87] And, like Bond, Salzman and Broccoli were in need of a villain of similar skill and ability to spar with, and they'd found it in McClory who claimed to have "transformed the supposedly violent and alcoholic James Bond of the Fleming books into the movie character who is so beloved, recognizable and marketable" today.[88]

VI. Preventing McClory's Sequel Strategy—But How?

This intellectual property jurisprudential interlude complete, we now return to "your regularly-scheduled programming" in the form of the main branch of Bond's intellectual property family tree–and its attempts to prune any green, competing McClory branches. Upon learning of this *Thunderball*-descended rival Bond production lineage, Salzman and Broccoli worked with Ian Fleming's estate and MGM to bring a hailstorm of litigation against McClory, who was now adequately financially backed and well-enough acquainted with the legal system to be undaunted. Broccoli correctly appraised

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[85] Fleming never ordered the famous drink at a bar, feeling it was almost always made incompetently by barmen in real life (even when the novel-style instructions were given), but did fix and shake the drink for himself on occasion. Field & Chowdury, *supra* note 11, at 262–63.

[86] Fleming sometimes cited the lack of things to do in Jamaica as part of its appeal as a place to write; there was little to do on long afternoons but admire the horizon, go over his notes, and write another chapter. Boredom (or, to use a kinder word, restlessness) was both a long-term affliction and an authorial asset for Fleming. Carter-Ruck, *supra* note 2, at 72–75.

[87] An allusion to President Johnson's summer-of-'68 remarks regarding nuclear weapons negotiations with the Soviets, a key diplomatic achievement not anticipated by Fleming's nuclear blackmail Bond plotlines. Johnson signed the treaty on 1 Jul. 1968, famously quipping that nuclear bombs are an answer to a question nobody's asking. Today, thankfully, the question remains unasked and no nuclear device has been deployed in anger (or detonated outside a controlled test environment) since August of 1945; contrary to four Bond plotlines, no terrorist or rogue / non-state organization has ever been in a position to credibly threaten a nuclear attack (nor have NATO-aligned agents needed to fight an evil genius who lives inside a mountain with his henchmen and a cat).

[88] McClory's position as restated by the Ninth Circuit in Danjaq LLC v. Sony Corp., 263 F.3d 942, 947 (9th Cir. 2001).

McClory this time as a patient and crafty defendant, unhurried, and in a better position to run out the clock; Broccoli needed to keep producing films to impress the studio bosses and secure funding for future Bond-related projects, things that would be hard to do with McClory in the way.

Broccoli was astute, but McClory had a plan. It was clever, if highly unusual. McClory would work closely with Paramount to create a film that was in every way a sequel to *Thunderball* but would not be promoted as such and would never mention the original film. This was carefully orchestrated to allow McClory to argue in future litigation that this new film was simply a continuation of his indisputably-permitted utilization of the *Thunderball* intellectual property, though audiences would see the new film as an expansion of the Bond franchise; done carefully and correctly, it would allow McClory to produce his own lineage of Bond films with powerful villains (Blofeld and his SPECTRE network of operatives) while Salzman and Broccoli would be stuck producing Bond films without the canon[89] antagonists.

The title *Never Say Never Again* (1983) was chosen, with "*Again*" being relevant because it further allowed McClory, if needed, to defend the film as a sequel.[90] The suit to enjoin and prevent the release of this film[91] by Broccoli and others was in the papers and represented by celebrity counsel, but it was too late.

Never Say Never Again was released and remains the most recent Bond film to not be produced by Eon, to not be distributed by United Artists or MGM (it was distributed by Warner Brothers), and to be principally funded by Paramount, earning over $160 million on a budget of $36 million

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[89] Not every Bond novel revolves around Blofeld and SPECTRE, but as Bond changes his mission profile, fieldwork identity, and female companion, the enemy provides a sort of point on the horizon for readers who otherwise would be without continuity (continuity being one thing that cannot be offered by the title character, a constantly-identity-changing spy who occasionally provides unreliable narration and displays erratic behavior).

[90] The continuity rule for characters and fictional places would protect this maneuver generally, if not specifically, even if McClory had not chosen to use the word "Again," but at this point the teapot of litigation was boiling at such a high temperature that its whistles could be heard across the Atlantic. The same principle would later protect a wide variety of parties far beyond the Bondiverse.

[91] This case is normally captioned The Right Honourable Raymond Arthur Clanaboy O'Neill v. Paramount Pictures Corporation and was not reported; because the plaintiff was ostensibly Fleming's estate, it was heard in that context: Aldwych, RCJ, Chancery on Special Petition. Sam Stamler QC represented the estate and the various co-plaintiffs, while Leonard Hoffmann QC victoriously defended McClory and Paramount.

($480 million and $108 million today, accounting for interim inflation), a big success. In the same year, Broccoli and Eon would release *Octopussy* (1983); because Connery was filming McClory's film, Eon had to continue filming with the less popular[92] Roger Moore.[93] United Artists came out ahead of Paramount that year, as *Octopussy* made $187.5 million against a budget of $27.5 million ($562 million and $82 million if one accounts for interim inflation).

VII. A Fresh Era of Litigation (1983–Present)

As mentioned earlier, for all his talents, Ian Fleming was not a screenwriter and had struggled to produce both radio plays and screenplays periodically during his writing career. And he would no doubt come to regret working with Whittingham and McClory to craft screenplay material from his novels, notes, and novella-length treatments of the James Bond material.[94]

Having succeeded in making, and harvesting hefty profits from, *Thunderball* and *Never Say Never Again*, McClory decided that *his* Bond lineage was the real one and that Broccoli's success was merely a branch of his own.[95] McClory signed an audacious deal in the autumn of 1997 to produce an entire lineage of his own Bond films, each of which would theoretically be beyond the grasp of Broccoli-funded litigation, as this entire universe would descend from the plotline of *Thunderball*, conspicuously featuring Blofeld and SPECTRE. He also contended Broccoli's own filmmaking had chronically trespassed on themes, elements, and aspects of Bond that McClory created.[96] Under McClory's theory, this would enable him and Sony, the studio behind his aspirations of grandeur, to produce Bond films 5a (*Thunderball*), 5b (*Never Say Never Again*), through 5*n* (*SPECTRE*?) without

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[92] Though many Bond fans, including the Author, do not particularly like Moore's portrayal of Bond, he appeared as the famous spy in seven feature films, more than any other actor in the Eon canon.

[93] Moore makes many arguments about, or perhaps excuses for, his lack of popularity with audiences in the role in his cheekily-titled autobiographical text. Roger Moore, Bond on Bond: Reflections On 50 Years of James Bond Movies (2012).

[94] *See Danjaq*, 263 F.3d at 947–49.

[95] Much of the historical research in this section relies heavily on the wonderfully researched and very readable volume by Robert Sellers on the litigation surrounding Bond. Robert Sellers, The Battle for Bond (2008).

[96] *Id.*

any continuing financial obligation fiscal or otherwise to Broccoli, Saltzman, Eon, or Fleming.[97]

MGM, after its acquisition of United Artists and upon learning of the Sony deal for new Bond films in a "*Thunderball*-as-Genesis universe," filed a lawsuit against both McClory and Sony seeking to prevent the production and release of these films as well as tens of millions of dollars in pecuniary damages. Unwilling to even discuss a settlement and adding more fuel on the fire, McClory and Sony counterclaimed not just to assert their right to create a post-*Thunderball* lineage of Bond films, but also claimed that they (McClory and Sony) were owed a portion of revenues from every Bond film ever created and released by Broccoli and Eon. In the end, Judge Edward Rafeedie (S.D. Ca.) granted to Broccoli and Eon a sweeping injunction that prevented McClory or Sony from doing any of the things needed to begin constructing a portfolio of Bond films tracing their pedigree back exclusively to *Thunderball*; Sony's appeal found no relief.[98]

Though alien to the jurisdiction of combat, we do wish the English courts in these matters had taken notice, as Justice Souter did years ago in another case involving a major motion picture studio,[99] of a brilliant but little-known passage from Judge Posner (7th Cir.) which addresses the distinction between a competitor suing a rival to achieve victory and collect damages and another, similar, competitor who files suit only to make noise in the courts, give gossip to the newspapers, and impose a burden on the defendant litigant:

> But we are not prepared to rule that the difficulty of distinguishing lawful from unlawful purpose in litigation between competitors is so acute that such litigation can never be considered an actionable restraint of trade, provided it has some, though perhaps only threadbare, basis in law. Many claims not wholly groundless would never be sued on for their own sake; the stakes, discounted by the probability of winning, would be too low to repay the investment in litigation. Suppose a monopolist brought a tort action against its single, tiny competitor; the action had a colorable basis in law; but in fact the monopolist would never have brought the suit—its chances of winning, or the damages it could hope to get if it did win, were too small compared to what it would have to spend on the litigation—except that it wanted to use pretrial discovery to discover its competitor's trade secrets; or hoped that the competitor would be required to make public disclosure of its potential liability in the suit and that this disclosure would increase

[97] This IP "offramp," however, was structurally compromised by McClory's greed and litigiousness, failing to support even Sony's first planned sequel.

[98] Sellers, *supra* note 95.

[99] PREI Inc. v. Columbia Pictures Ind. Inc., 508 U.S. 49, 73–74 (Souter, J., concurring).

> the interest rate that the competitor had to pay for bank financing; or *just wanted to impose heavy legal costs on the competitor in the hope of deterring entry by other firms*.[100] In these examples the plaintiff wants to hurt a competitor not by getting a judgment against him, which would be a proper objective, but just by the maintenance of the suit, regardless of its outcome.

Posner's concept of fair mutual combat is nice in principle but hard to apply to a slippery player; McClory was able to change disguises with skill fit for a *double-0* agent: when convenient, he was the poor little guy being beaten up by big, bad Eon (*see* various cases captioned *Danjaq*), but when needed he was a Sony-backed business mogul ready to take on Salzman and Broccoli toe-to-toe (*see Sony* lineage of litigation). This battle of injunctions and orders to interrupt or stall production did not, however, resolve the underlying problem of some rights residing within the Eon/Broccoli universe and other rights being held in perpetuity by McClory. As a result, and thanks to all parties' endurance for decades-long periods of litigation, Eon would not be able to use the Blofeld character or the SPECTRE organization until 2015, in the film *SPECTRE*, after rights reconciliation within the master portfolio was complete and McClory had been told to go away.

VIII. Comparative Calm and Rights Reconciliation (2006–Present)

Perhaps no film better wraps up the Bond rights battles than 2006's substantially reworked version of *Casino Royale* (2006). It introduces a new Bond in the form of Daniel Craig, brings the material into the present (Bond here plays Texas Hold 'Em poker, rather than the book version of baccarat), retains and restates his famous cocktail order, and only had a few clunky moments, like Eva Green's groan-inducing Omega wristwatch shout-out on the train.[101]

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[100] Emphasis added. The Author suspects Eon's aggressive posture toward McClory was rooted in part for its animosity toward its enemy's friend, Sony Pictures Entertainment, and in part in a deep desire to prevent other McClories (we beg Irish readers for forgiveness regarding this inappropriate plural form, perhaps offering *McCloryacha* as plural will appease those readers…).

[101] Green, whether through her brush with stardom in the franchise or from some other source, was also infected with the litigiousness that seems to soak all things Bond; it took only a few years from abandoning her role as (the now deceased) Vesper to take on her next role: plaintiff. *See* Green v. White Lantern Films (Britannica) Ltd., EWHC 930 (2023) (litigation related to non-Bond-franchise failed film project).

Nevertheless, it's a big step forward from watches with transmitters and lasers to Roger Moore driving an (gasp!) Italian GTV6 and then crashing it through a fence and having to dress up as a clown. No, really, that happened.

The franchise's fresh romance with a new Bond (Daniel Craig) coincides with the marriage between Sony and MGM, finally uniting the rights portfolio through studio M&A rather than the troubled rights-for-cash negotiations that may have never reached a resolution. It also reboots the franchise's relationship with key brands, abandoning Rolex[102] and re-embracing a post-Ford Aston Martin.[103]

Exactly one week after Daniel Craig and Eva Green visited the red carpet of the Odeon Theatre at Leicester Square in London to launch *Casino Royale* (2006), McClory died in Ireland. In another changing-of-the-guard moment, it was the first Bond premiere not attended by Sir Sean Connery.[104] If given an epitaph of his choosing, McClory might have opted to quote the Ninth Circuit's statement of his relationship with Bond: "McClory transformed the supposedly violent and alcoholic James Bond of the Fleming books into the movie character who is so beloved, recognizable and marketable … that [he earned] a significant stake in the Bond movies, which stems from rights to *Thunderball* obtained long ago."[105]

Fitting that Bond, woven from postwar misogynistic English fabric, with a ready-in-the-holster prejudice against Irish characters,[106] and surrounded by one-dimensional beauties of every corner of the Commonwealth, would have boundaries for his adventures and fortunes set by a woman that shared her macroancestry with McClory's: the Ninth Circuit's own Irish Margaret McKeown. A Clinton appointee, McKeown was no stranger to this area and

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[102] The Hans Wilsdorf Foundation, which owns Rolex, does not pay filmmakers for product placement.

[103] While Aston Martin technically left the Premium Auto Group portfolio of Ford on 12 March 2007 in a 479M GBP complex two-stage divestment arrangement, it was clear during the production of *Casino Royale* that Aston Martin was not only actively for sale but likely to be sold around the time of the film's release. Aston is, as of this writing, subsisting on Canadian and Saudi cash infusions and actively recruiting for its fourth CEO in five or so years.

[104] Sir Sean Connery had not appeared on-screen since 2003 and reportedly suffered from health issues, including dementia, intermittently between 2005 and his death in 2020.

[105] Danjaq LLC v. Sony Corp., 263 F.3d 942, 947 (9th Cir. 2001).

[106] Whether this prejudice is inherited from Fleming or an invention of fiction is unclear, but Irish characters in Bond novels generally fit one of three stereotypes: innkeepers/bartenders/hoteliers, terrorists/saboteurs/henchmen, valets/chauffeurs/cabdrivers.

today, though retired from the Ninth Circuit, she is currently working on the *Restatement of the Law, Copyright* and received the ABA Margaret Brent Women of Achievement Award; she was (and is) not the pliable lass the fictional Bond might encounter in his international fieldwork. And opinions like McKeown's made it clear, if it was not already, that only corporate maneuvers on a grand scale would reunite the lineages of Bond IP.[107]

It is, for landscape context, worth noting that at this same time other great IP portfolios were also being reunited, or at least *kintsugi*-ed back together, through some combination of license renegotiation, corporate merger, and/or restatement of canon.

Other than the Bond franchise, perhaps the most famous example would be the reunion of Marvel comic book IP during this time under the Disney umbrella. Even though Krysten Ritter's enigmatic and gritty Jessica Jones (a Marvel character reunited with the canon MCU[108] in 2023-24) was originally created by ABC[109] and distributed by Netflix and Sam Jones's athletic and at times comedic Flash Gordon was originally created by Starling Productions and distributed by Columbia Pictures,[110] both Jones and Gordon are now eligible to be folded back into Disney's encyclopedic Marvel IP trove.

Many of the same updates given to modern Bond are applied to these other characters in the spirit of modernization and reconciliation; while Bond goes from Beretta-carrying[111] baccarat player to Walther-toting poker shark,

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[107] The McKeown opinion is the best-written and most entertaining piece of jurisprudential prose to emerge from the *Sony* litigation, 263 F.3d at 942, and kicks off with a quote from 1981's *For Your Eyes Only*.

[108] MCU stands for Marvel Cinematic Universe and is meant to distinguish this universe from the universes created in different eras of comic books and through non-Disney-controlled IP lineages, though these lineages sometimes intersect with and, rarely, are integrated with the MCU, as was the case with Jessica Jones and Luke Cage.

[109] Marvel Television was a venture within ABC Studios and, despite its name, was the result of an IP carve-out and not initially affiliated with the sleeve of Marvel IP purchased by Disney in its 2009 deal to buy similarly-named Marvel Entertainment, Inc.

[110] Flash Gordon (Universal Pictures 1980) remains Prof. Muth's favorite superhero film with its ambitious production by Dino De Laurentis, its soaring score by rock band Queen, and its fantastic recipe of humor, intrigue, and action. And if scientists ever find climate change originated on the planet Mongo, "you heard it here first."

[111] The small-caliber Beretta, though easily concealable and issued to Fleming himself during his time as an agent, was seen as not manly enough with its small frame size and small caliber and, perhaps more problematic, *too Italian* for a hero designed to appeal to postwar Western audiences who'd just prevailed over Axis enemies.

Gordon[112] goes from upper-crust Yale polo star to secretly-a-superhero NFL quarterback. Some similar IP cleanup was applied to the rights Lucas and Lucasfilms had sold over the years for *Star Wars*-related costumes, videogames, and toys, which are now reclaimed and reside firmly within the ambit of the Disney empire.

Conclusion: Simplified Timeline of Portfolio Fracture and Reunion

Though the modern-day *Casino Royale* (2006) allowed fans to reunite with some of the most beloved Bond IP in the wake of MGM's sale to Sony, it wouldn't be until 2013–14 that all McClory-related claims would be resolved, not through McClory's disarmament, but through his death, extinguishing potentially problematic remaining rights litigation. Final-phase principal filming and post-production for *Spectre* (2015) could then be completed, reintroducing viewers to SPECTRE and Blofeld. Today, after decades of litigation, no major rights controversies plague the Bond franchise. As of this writing, Eon has produced twenty-five films, the most recent being *No Time to Die* (2021).

When all is said and done, the multi-decade disputes and myriad high-profile copyright litigations proved monumental in establishing legal precedents that shaped copyright laws for decades to come. The Thunderball lawsuit established that copyright protection extends to characters and titles of fictional works. This had enormous implications for large IP portfolios that depend upon recognizable characters and a presence in the UK and European market(s),[113] allowing them to creatively leverage names of fictional characters, places, and storylines in a way they never had before.[114] The protections

[112] Some will argue Gordon is not an original Marvel canon character, and they would be right, but he's one of the few heroes to appear in both DC and Marvel universes in the modern era (the Dan Jurgens version of Flash for DC starting in 1988 and the Mark Shultz version of Flash for Marvel starting in 1995).

[113] And by doctrine of coterminous market inclusion prior to Brexit and by virtue of treaty post-Brexit.

[114] For an example, see perennial Marvel rival DC Comics's litigation campaign against nearly anyone making a toy, car, appliance, or cleaning product using any language similar to "super man" or "wonder woman" in its marketing within the ambit of European commercial litigation: DC Comics (Partnership) v Unilever Global IP Ltd. [2022], EWHC 434 (Ch), E.C.C. 18 (arguing "Wonder Mum" is a Class 3 trademark for soaps/shampoos/cosmetics/etc. vulnerable to invalidation due to its similarity to DC's competing mark "Wonder Woman," Wonder Woman was trademarked by DC in the European market in 2015 and Wonder Mum filed for

Disney's "MCU" enjoys[115] stem from this period; in some earlier era,[116] a non-licensee author could write a story where Ironman goes to the planet Mongo and battle archvillain Ming (a plotline never explored in Marvel's comic canon, though this mission is discussed in detail in the fifteenth strip of Flash)[117] with little fear of trespassing on Marvel's IP trove; today, such a story would be risky to publish, as it might invite litigation.

Furthermore, various Bond lawsuits over the years have also crystalized the court's position regarding what constitutes derivative work, precedents cited in numerous subsequent cases involving copyright infringement. Decisions from these cases helped clarify what it means for a work to be "based upon" or "adapted" from a pre-existing work, elements that today can be observed in the highest level of legal bases, including the Copyright Act of 1976. This broader concept of "adaptation" links written, film, and other work more tightly than ever before, allowing truly multimedia empire-building.[118]

In the context of the Bondiverse, it's crucial to understand that, unlike *Casino Royale* (1967) (not to be confused with *Casino Royale* (2006)), *Thunderball* was never intended to be a parody. Rather, it was a serious continuation of the Bond franchise and developed the same key source material, the same main character, and the same antagonist themes. In the modern framework,[119] a defendant cannot credibly plead in the alternative that the work is a serious sequel and a parody; the somewhat-obscure recent case on point is *Salinger v. Colting*,[120] which holds the unusual procedural provenance

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trademark protection in 2019 in the same market by Unilever; today, the two coexist thanks to a ruling by a London judge in 2022).

[115] MCU defined, *supra* note 108.

[116] True generally, *but see* Lone Ranger, Inc. v. Cox, 124 F.2d 650, 651–52 (4th Cir. 1942) (defendant, in choreographing cowboy-themed circus performance, misappropriated Lone Ranger IP).

[117] Alex Raymond & Don Moore, Flash Gordon (S015, first published 19 Jan. 1941 and syndicated by King Features); today, the *Flash* comic strip lives on under the care of Dan Schkade and King Features is now a business unit of Hearst Publications and occasionally cross-licenses or co-promotes characters or other content with Marvel.

[118] Perhaps no beneficiary in the European market stands out as much a winner than Studio Ghibli, the top producer of Japanese-style anime content and the books, games, music, and other assets that surround that nihoncentric art form; its portfolio is protected (and occasionally expanded) by an army of London's top white shoe IP law groups.

[119] This framework predates *Salinger*, *infra* note 120, but that case is most illustrative of this conceptually.

[120] Salinger v. Colting, 641 F. Supp. 2d 250, 255 (S.D.N.Y. 2009), *vacated*, 607 F.3d 68, 73–74 (2d Cir. 2010).

of being oft-cited but also not good law. In that case, the trial court notes that a defendant cannot "*post hoc*" to gain an advantage in the courtroom adopt a theory that a work was merely a parody when it was in fact a sequel.[121] In other words, fair use is claimed in the context of parody or it is not.

Unfortunately, the author from whose mind Bond was born would be unavailable for comment.

Ian Fleming, the author of the James Bond novels whose passing in August of 1964 accelerated the litigation between the parallel Bond film franchises, the culmination of his life works–all 12 books that have collectively sold a total of 18 million copies in 10 languages–created a complex web of trusts that continue to pay dividends to its beneficiaries today. He created two primary or principal trusts, the Book Trust and the Will Trust; the Book Trust oversees the copyrights to his James Bond novels, while the Will Trust manages the rest of his estate. According to Fleming's agent, Peter Janson-Smith, Fleming has made a total of $2.8M from his books. His famed tropical resort–Goldeneye–was acquired by Bob Marley and subsequently resold to his record company owner; today, it operates as a destination 5-star resort.

In any writing about Bond's legal adventures of less-than-book length, decisions to crop the edges of discussion are mandatory. This Article disregards earlier forays into Bond-on-film: prior to all the Broccoli and Saltzman productions, CBS created a 50-minute film based on the book *Casino Royale*; it is the only time actor Barry Nelson portrays Bond. Also largely ignored is the *Casino Royale* (1967) film that appeared in 1967, produced by Charles Feldman and not endorsed by Eon, Broccoli, or Saltzman, which was a satire (according to contemporary reviews, even a parody) of the underlying material; it was a too-many-cooks-in-the-kitchen production, with John Huston, Woody Allen, Peter Sellers, Orson Welles, and many others involved.

As this Article goes to press, the Bond franchise has finally resolved its 1961-2021 legal woes and doesn't face another major foreseeable legal hurdle until a decade from now, in 2034, when the UK copyrights on Ian Fleming's works are set to expire.[122] That said, no sequel to *No Time To Die* (2021)

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[121] Whether the work in question was "in fact" a sequel was a question disputed at trial in that case. However, the trial court found credible some evidence offered that the defendant had described the work as a sequel. *See id.* at 260 n.3.

[122] Fleming's novels are not vulnerable to the so-called 2039 rule under which UK copyrights expire on 31 Dec. 2039 if the death of the author is before 1969 and the works were not published until after 1988, as Fleming did die prior to 1969 (12 Aug. 1964) but his works were published and well into subsequent editions prior to 1988. Intellectual Property Office, *Copyright Notice: Duration of copyright (term)*, Gov't of the United Kingdom (Jan. 15, 2021), https://www.gov.uk/government/

has yet been announced, no actor has yet been named as a replacement for Daniel Craig in the eponymous leading role, and key allies of the franchise like Swatch Group[123] and Aston Martin[124] struggle with their own corporate strategy and financing challenges, respectively.

Just as *Dr. No* launched into a world defined by U.S.-Soviet tensions and the Cuban missile crisis, today the number of homelands and origin stories available for Bond villains dwindles: *The Man with the Red Tattoo*, a canonical Bond novel, deals with a weaponized variant of the West Nile Virus (*Flaviviridae*) [125] and likely is subject matter too hot to touch as the world recovers from the COVID-19[126] global pandemic; similarly, the plotline of the novel *On Her*[127] *Majesty's Secret Service*, which involves biological weapons possibly made in a lab in Asia,[128] might also too-closely track the recent pandemic to be remake-eligible.

Putting aside questions of political-correctness and recent events, audience revenue dynamics are also changing. The importance of the mainland Chinese (PRC) audience to total box office revenues is massive and hence Bond novels like *Colonel Sun* (1968), where Bond's principal adversary is a Chinese disinformation conspiracy involved in kidnapping and "turning" key people[129], may seem too similar to China's Great Firewall project and

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publications/copyright-notice-duration-of-copyright-term/copyright-notice-duration-of-copyright-term#:~:text=Some%20works%2C%20even%20though%20created,this%20notice%20for%20further%20information [https://perma.cc/QB34-4TEB].

[123] Swatch Group, a complex Biel, CH-based holding company, owns Omega, Bond's watch of choice in recent films. *See* Casino Royale (Eon 2006).

[124] At the time of this writing, Aston Martin recently closed the sale of more common shares to the Saudi sovereign wealth fund, bringing the Saudi-owned portion of Aston Martin to over 20 percent of the firm's common equity. Eva Mathews, *Saudi Wealth Fund to Become Aston Martin's Second-Largest Shareholder*, Reuters (July 15, 2022), https://www.reuters.com/business/autos-transportation/uks-aston-martin-raise-653-mln-pounds-equity-financing-2022-07-15/ [https://perma.cc/5B2B-67MW].

[125] Raymond Benson, The Man with the Red Tattoo (Hodder & Stoughton 2002).

[126] SARS-CoV-2, a quickly-mutating unstable coronavirus with many variant strains.

[127] With the ascension of King Charles III, presumably it would be remade as a contemporary "On His Majesty's Secret [Intelligence] Service" film.

[128] Ian Fleming, On Her Majesty's Secret Service 134 (Jonathan Cape 1963) ("Biological warfare? Yes, that's right. Anthrax and so on.").

[129] Ian Fleming, Casino Royale 79 (Cape Paperbacks, 3d ed. 1978) ("History is moving pretty quickly these days and the heroes and villains keep on changing parts.").

the disappearings of prominent people by the Chinese government (the 2020-21 disappearance of Chinese billionaire Jack Ma, followed by Ma's benign-to-positive comments about the Communist Party, being an oft-cited example[130]).

Audience tastes have also shifted; after the *Bourniverse*[131] films, the introduction of a more troubled and violent Batman,[132] and Daniel Craig's portrayal of Bond not as a class clown[133] but as a colder assassin, the audience expects something closer to the Rolex-favoring, Beretta-toting, Bentley-straight-eight-piloting semiautobiographical secret agent Fleming originally created. Whether this harder-edged Bond who does many of his own stunts[134] can be paired with an engrossing, but unlikely-to-offend-abroad, storylines remains to be seen. But one thing can be predicted with *near* certainty: we haven't seen the final legal siege of Eon, Danjaq, and the now-reunited Bond intellectual property fortress.

How audiences interact with content has also changed, especially in this most recent decade. The popularity of streaming services, including Amazon's Prime Video[135] where the next Bond film will likely premiere alongside

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[130] *See* Li Yuan, *Why China Turned Against Jack Ma*, N.Y. Times, Dec. 24, 2020, https://www.nytimes.com/2020/12/24/technology/china-jack-ma-alibaba.html [https://perma.cc/3SN3-3VGM].

[131] Films produced by Universal Pictures and loosely based on Robert Ludlum's novels. As of this writing, the universe includes six canon feature films, many authorized and unauthorized additional pieces of literature, and parallel fanfiction ranging from manga to novellas.

[132] These films are often referred to by fans as "The Dark Knight Trilogy," though Warner Brothers does not use this demonym except in the marketing of its three-DVD Blu-ray box set. The films are all written and directed by Christopher Nolan and feature continuity elements with a few discontinuity elements (including the controversial recasting of Rachel Dawes). The films are Batman Begins (Warner Bros. Pictures 2005), The Dark Knight (Warner Bros. Pictures 2008), and The Dark Knight Rises (Warner Bros. Pictures 2012), though theatrical release dates varied and some markets did not receive *Batman Begins* until the winter of 2005 or even early 2006; it was the first DC universe film to premiere outside the U.S. (Tokyo).

[133] Many critics disliked Pierce Brosnan's overly-comic portrayal of Bond, turning the character into a grinning Casanova rather than a crafty, brooding, tradecraft-obsessed secret agent.

[134] An audience expectation arguably created and maintained by Tom Cruise's *Mission Impossible* films.

[135] Prime Video is a service of parent megaretailer Amazon and offers a variety of content including film and television content, some of which is produced as original content by Amazon MGM Studios, some of which is purchased from third parties, and some of which is licensed for streaming distribution. Several

theatrical debuts, has altered how viewers receive content. Simultaneous launches, in theaters and streaming on the same day or within same week, are rising in popularity as this article goes to press—with Denis Villeneuve's film *Dune: Part Two* (2024) being a successful example, perhaps because so many watched the first of these films at home amidst the COVID-19 global pandemic's restrictions on theater-going. Today, with Bond intellectual property being united after the Sony–MGM (circa 2005) and now residing within Amazon's library (post-Amazon's acquisition of MGM circa 2022), it seems likely many more *007* adventures lie ahead.

In the meantime, something to wet your whistle,[136] as they say: "In a deep champagne goblet. … Three measures of Gordon's, one of vodka, half a measure of Kina Lillet. Shake it very well until it's ice-cold, then add a large thin slice of lemon-peel. Got it?"[137]

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important aspects of the terms of the arrangement between Amazon and MGM have not been made public—perhaps, someday, more will be known and the Authors imagine future legal scholars might write an article covering the sixty-year period following the Amazon deal. *See generally* Todd Spangler, *Prime Video Now Reaches More Than 200 Million Monthly Viewers, TV Ads 'Off to a Strong Start," Amazon CEO Says*, Variety (Apr. 11, 2024), https://variety.com/2024/digital/news/amazon-prime-video-200-million-monthly-viewers-tv-advertising-ceo-1235967913/.

[136] *See* Lauren Bacall's famous scene as Marie "Slim" Browning to Humphrey Bogart in *Key Largo*.

[137] Bond in *Dr. No* at ch. 7 during his meeting with Felix Leiter, a retired Marine turned CIA asset (1958).

Appendix: Syllabus of Key Cases*

Danjaq, SA v. MGM/UA Communications Corp., 773 F. Supp. 194 (C.D. Cal. 1991) (important as to discussion of distribution agreement between Eon and Danjaq and effects on other parties).

Danjaq, SA v. Pathe Communications, Corp., 979 F.2d 772 (9th Cir. 1992) (causes Danjaq to commit to Delaware after 9th Cir. finds corporation is resident both in home jurisdiction and principal place of business).

Danjaq, LLC v. Sony Corp., 1998 WL 957053, (C.D. Cal. 1998) (Sony and Columbia enjoined from making any further Bond films).

Danjaq, LLC v. Sony Corp., 165 F.3d 915, (9th Cir. 1998) (affirms injunctive order above).

Fogerty v. MGM Group Holdings Corp., Inc., 379 F. 3d 348 (6th Cir. 2004) (controversy over theme song for *The World is Not Enough*).

Legislator 1357 v. MGM, 452 F. Supp. 2d 382, 385-86 (S.D.N.Y. 2006) (describes how rights to Fleming's works moved from his personal property into trusts and then through various entities).

Johnson v. Metro-Goldwyn-Mayer Studios Inc., Case No. C17-541 RSM and not reported (W.D. Wash. 2017) (important for showing level of tension over what is and is not a "canon" Eon Bond film).

* Note: these cases are organized chronologically rather than by jurisdiction.