

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK : CIVIL TERM : PART 43

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3 MARK WARREN PEARY,

Index No.  
155397/2025

4 Plaintiff,

**PROCEEDINGS**

5 -against-

6 DC COMICS, INC., DC COMICS, DC  
7 ENTERTAINMENT, INC., WARNER BROS.  
8 DISCOVERY, INC., DOES 1-10,

9 Defendants.

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10 60 Centre Street  
11 New York, NY 10007  
12 June 4, 2025

13 B E F O R E:

14 HONORABLE ROBERT R. REED,  
15 J U S T I C E

16 A P P E A R A N C E S:

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DANIELLE FEUER, ESQ.

Alecia Hines, RPR  
Senior Court Reporter

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1 COURT OFFICER: All rise. Part 43 is now in  
2 session. The Honorable Robert R. Reed presiding. Come to  
3 order.

4 THE COURT: All right, everyone could be seated.  
5 If I could have appearances, plaintiff first.

6 MR. TOBEROFF: Good afternoon, your Honor. It's  
7 great to be back in my hometown, New York.

8 THE COURT: All right.

9 MR. TOBEROFF: We're here today seeking, on behalf  
10 of the plaintiffs --

11 THE COURT: If I could just have your appearance  
12 first?

13 MR. TOBEROFF: Marc Toberoff on behalf of the  
14 plaintiff, Mark Warren Peary, Executor of the Estate of  
15 Joseph Shuster.

16 THE COURT: Counsel.

17 MR. KLINE: Good afternoon, your Honor. Matt Kline  
18 for the DC Comics defendants.

19 MS. FEUER: And Danielle Feuer, also for  
20 defendants.

21 THE COURT: All right. Go ahead, Counsel.

22 MR. TOBEROFF: We're here today to seek a  
23 preliminary injunction. It's a prohibitory injunction, not  
24 a mandatory injunction. It's to prevent the continued  
25 copyright infringement of my clients Superman copyrights in

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1 limited to four distinct territories, the United Kingdom,  
2 Ireland, Australia and Canada.

3 The beauty of this case is that the facts required for  
4 the injunction and to win this case are not disputed, and  
5 the law is very straight forward, almost with the precision  
6 of a scalpel, which I'll get to in a moment.

7 For a preliminary injunction, we need to show a  
8 likelihood of success on the merits but that does not mean  
9 certainty of success, that means that we have established a  
10 prima facie case. *Tucker versus Toia*, and the *Terrell*  
11 *versus Terrell* say exactly that.

12 We must show irreparable injury which we have here  
13 because you're dealing with control over a property right  
14 and the lack of that control and a compulsory license is  
15 insufficient. And the cases show that when you're dealing  
16 with copyright infringement, it's very easy to show  
17 irreparable injury. And the balance of the equities tip  
18 sharply, I believe, in my client's favor because DC, the  
19 defendants, should not be heard a complaint about  
20 self-inflicted wounds.

21 As far as the choice of law, New York choice of law  
22 brings us to the laws of these four distinct countries. The  
23 laws are very straight forward. These are English-speaking  
24 common law countries. Expert testimony is not required to  
25 understand something written in plain English -- or as my

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1 father would say, "Plain Brooklyn English."

2           Essentially, 25 years after an author's death, his  
3 copyright automatically reverts on the day of death to his  
4 estate. And in the case of Joe Shuster who died in 1992,  
5 the copyright in the UK, Ireland, and Australia reverted in  
6 2017. In Canada, it's only slightly different when there  
7 are two authors who created a joint work, and Superman is a  
8 joint work, then you go 25 years from the date of the last  
9 author. And since Jerry Siegel -- Superman was created by  
10 Joe Shuster and Jerry Siegel. Jerry Siegel died in 1996, so  
11 the rights automatically reverted in 2021.

12           Defendants -- therefore, we show a clear case.

13           My client was duly appointed executor of the estate.  
14 These rights reverted the estate. Warner Bros. and DC had  
15 every opportunity. They are fully aware of these  
16 reversionary rights. They've been around since the UK  
17 Copyright Act of 1911. And these companies are valued on  
18 the basis of their libraries. And they have scores of IP  
19 attorneys. They're very well aware of these reversions.

20           They never approached my client, never sought a  
21 license from my client. Their defenses are completely  
22 meritless. They're essentially relying on a 1992 agreement  
23 that, basically, when Shuster died, even though he had  
24 co-created Superman and started a billion -- which is a  
25 billion dollar industry in itself, he died penniless. And

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1 his sister went to Warner Bros. and asked for them to  
2 continue a \$25,000 a year stipend that they had started to  
3 pay him later in life. And in exchange, they had her sign a  
4 1992 agreement which was essentially a quitclaim saying  
5 whatever rights you have, you quitclaim to us.

6 But the estate had not been probated, and he died in  
7 California, he was a resident of California, and therefore  
8 California probate law applies to his estate. And that law,  
9 California probate law, section 13100 states that -- in 1992  
10 it stated that if you have an estate with assets over  
11 \$60,000, you must probate the estate in order to deal with  
12 those assets. The estate was never probated.

13 She signed this -- she was named in the will as one of  
14 the heirs and a potential executrix. Sorry, I can never  
15 pronounce that. And, yet, the estate had not been probated  
16 when she signed this 1992 agreement. And when it was  
17 probated in 2003, years later, she specifically declined to  
18 act as the executor. So she had no legal capacity, nor  
19 legal authority to sign away rights worth millions of  
20 dollars which the Superman rights, obviously, are.

21 So their focus on this 1992 agreement as a defense is no  
22 defense at all.

23 Secondly -- and their whole case turns on this  
24 discrete issue of the 1992 agreement in the effect of the  
25 1992 agreement, because if the 1992 agreement doesn't have

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1 the effect of transferring these rights, then ball game's  
2 over. That's the whole ball game because there's no dispute  
3 that the rights reverted to the estate on the date of his  
4 death.

5 They rely on a prior litigation, approximately -- it's  
6 been a while, I think 10 years ago or more in California in  
7 federal court. And that litigation did not concern these  
8 rights at all, or these statutes at all; that concerned what  
9 are called termination rights under the US Copyright. And  
10 those rights are not automatic.

11 Fifty-Six years after a work was first created, you  
12 have a right to statutorily terminate prior transfers  
13 without cause. That was the sole issue in those cases, the  
14 prior Superman cases. And, in fact, in those cases, DC  
15 argued that their foreign copyrights are completely in tact.  
16 They said the US Copyright Act--and I believe they were  
17 correct in this argument--they said the US Copyright Act has  
18 no extraterritorial effect. It's a US statute; and, therefore,  
19 it has no effect on our foreign rights. And they convinced  
20 the Court to agree with them. So they're judicially  
21 estopped to now argue that that case 10 years ago decided  
22 rights under a completely different statute and decided  
23 foreign rights which they say were specifically excluded  
24 from that case.

25 In order for there to be issue preclusion or

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1 collateral estoppel, as it used to be called, you need three  
2 basic things: One, the issues had to be identical.

3 Here, the issues weren't identical. One concerned US  
4 Copyrights of the US Copyright Act. Here, the issue has to  
5 do with Foreign Copyright Act.

6 Two, the issue has to be actually litigated, and it  
7 was not litigated. How do we know that? Well, they claim  
8 that the district court impliedly ruled on the issue of Joe  
9 Shuster's sister's authority in the 1992 agreement,  
10 impliedly ruled on the issue. We disagree with that. But  
11 even if that's true, the cases are crystal clear. And so  
12 what happened is, when it went up on appeal and the argument  
13 was made that Jean Peavy lacked authority, the appellate  
14 court, the Ninth Circuit, specifically and expressly ruled  
15 that the issue of whether or not Jean Peavy had authority  
16 under the probate laws of California is a complex one or not  
17 -- or declining to rule on it because we believe that issue  
18 has been waived for purposes of the appeal.

19 And the cases are clear that when an appellate -- when  
20 there is an appeal, and this is federal common law because  
21 when you're dealing with the preclusive effect of a federal  
22 decision, you look to federal common law. And so the cases  
23 are clear that even if the district court had passed on the  
24 issue, and we don't believe it did, but even if that were  
25 the case, when a case goes up on appeal and the appellate

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1 court declines to act, and in this case, they expressly  
2 declined to rule on the issue, then it has no collateral  
3 estoppel effect because it wasn't actually litigated.

4 And those cases are -- first of all, the *Fuchberg* case  
5 -- I can give the cites.

6 Your Honor, would you like me to give the cites into  
7 the record?

8 THE COURT: I think so.

9 MR. TOBEROFF: That case is *300 F.3d 105 at page*  
10 *109*, Second Circuit case, 2002. And I'll quote, If a Court  
11 does not address an issue because it deems the argument on  
12 the issue to have been waived, then for a collateral  
13 estoppel purposes, the issue has not been decided.

14 That's exactly on point here. The Ninth Circuit decision  
15 specifically said the probate authority of Jean Peavy is  
16 something we're not deciding. We believe it's been waived.

17 In the *Crysknife* case, *223 Westlaw 3255777 at page 9*,  
18 and I'll quote, "Time and again the Second Circuit has noted  
19 that res judicata and collateral estoppel do not apply to  
20 lower court findings that are not addressed on appellate  
21 review. Thus, when appellate court intentionally declines  
22 to rule on certain issues decided by a lower court, those  
23 lower court findings are not given preclusive effect, and  
24 the appellate court's silence is not read to be preclusive.  
25 And I can go on and on. I'll just cite a couple other

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1 cases. *Gelb versus Royal Globe Insurance Company* 798 F.2d  
2 348 page 46, note six, Second Circuit 1986. Un reviewed  
3 (SIC) findings are not preclusive under our general rule  
4 once an appeal is taken. *PCH Associates* 949 F.2d 585 at  
5 page 595, Second Circuit 1991, and there are more cases.  
6 That is a well-settled rule.

7 So that case has no preclusive effect here and since  
8 the California probate code is clear that the estate, the an  
9 estate must be probated to deal with assets over \$60,000 in  
10 value, and Superman copyrights are obviously worth over  
11 \$60,000. Jean Peavy, before the estate was ever probated,  
12 had absolutely no legal capacity or legal authority to bind  
13 the estate when it was later probated in 2023. And  
14 interestingly they -- in 2003, excuse me.

15 And interestingly, they can't argue that when the estate  
16 was probated somehow later ratified the 1992 agreement  
17 because when it came up for probate, she specifically  
18 declined to act as executrix. And the alternative executor  
19 is my client, Mark Warren Peary, who is seeking to enforce  
20 these copyrights.

21 So since these -- the laws of these four  
22 English-speaking common law countries are crystal clear that  
23 these rights reverted to the estate -- and there's another  
24 interesting twist to this, I'd add, they argue that Jean  
25 Peavy -- that this little quitclaim that she signed effected

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1 a -- somehow a novation and revocation of the 1938 grant  
2 from Jerry Siegler and Joe Shuster of Superman tat Warner  
3 has been relying on for decades for their chain of title,  
4 and still relies on, they claim that it revoked that grant  
5 and because it was revoked, the foreign reversion statutes  
6 don't function because you need to have in tact an author's  
7 grants, and they rely on the 1992 agreement. What they  
8 missed was the 1992 agreement is dated -- is backdated one  
9 day after Shuster's death. So even if they were -- even if  
10 they were correct on the other things that they're wrong on,  
11 since it's dates one day after his death, and if it revoked  
12 the 1938 grant, well, the rights were already in the estate  
13 because on death, the rights revert to the estate. So how  
14 could an agreement dated after his death stop these rights  
15 from reverting? It can't. That doesn't -- their defense  
16 about the 1992 agreement, as they say in the south, "That  
17 dog don't hunt."

18 In any event, that brings me now to the other aspects  
19 of this case. For an injunction, we need to show a  
20 irreparable harm, and the cases show it used to be that in  
21 copyright infringement cases, irreparable harm was presumed.  
22 That's no longer the case; however, the Court -- the cases  
23 still continue to hold that -- you know, what does copyright  
24 mean, your Honor? It means that you have exclusive  
25 ownership over property. In this case, it's intellectual

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1 property. And when someone owns property, it's for them to  
2 decide whether other people can exploit their property, it's  
3 for them to license that property, it's for them to use  
4 their ownership as negotiating leverage to negotiate a  
5 reasonable license.

6 Here, when Warner Bros., with knowledge of these  
7 reversions, have gone ahead and just exploited these  
8 reverted copyrights in these countries, they essentially --  
9 by denying an injunction, you're essentially compelling my  
10 client to have licensed his copyrights to them, which is not  
11 the law. Effectively, the denial of an injunction is a  
12 compulsory license. That's not the law.

13 My client should be able to decide to license these  
14 rights and to negotiate for these license to these rights.  
15 And if Warner Bros. had only attempted to do so, they could  
16 have easily arrived at a license. Instead, they chose to  
17 spend money on pricey counsel.

18 The loss of the control --

19 THE COURT: The difficulty, Counsel, with that  
20 statement you just made is that it kind-of affirms that the  
21 goal here is proper compensation. I mean, the statement you  
22 offered suggests that if they'd had but tried to come to the  
23 negotiating table, you could have come to some arrangement,  
24 and that suggests that money is ultimately the issue. The  
25 difficulty, too, and you're talking about the loss of

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1 control, well, we have a Ninth Circuit decision, US Court of  
2 Appeals for the Ninth Circuit--and they certainly understand  
3 or have reason to understand copyright law--they issue a  
4 decision in 2013. And then you have Superman versus Batman,  
5 Dawn of Justice, right, that's 2016, right? So this has  
6 been out here for a long time. And let's not forget  
7 television and whatever streaming platforms -- you know, the  
8 Superman property has been used throughout all of my  
9 65 years on the planet, right? All of them, and well  
10 before. So this is an issue of if -- you know, I get it to  
11 the extent we're talking about what rights you have to vie  
12 over what percentage of moneys your client may be entitled  
13 to under specific laws of those foreign countries, that's  
14 all fine for a later date, but in terms of meeting the  
15 preliminary injunction standards, you know, you're talking  
16 about a property that has been continuously exploited by DC  
17 since the 1930s, continuously, either in television, film,  
18 documentaries, comic books, toys, all manner of things.

19 So to the extent that the concern is your client's  
20 control, that's long gone out the window. He hasn't been  
21 able and hasn't attempted, it seems, to try to exercise any  
22 actual control over the entity. He hasn't tried to exploit  
23 it, himself. No indication that he's tried to put together  
24 a production to make some value for himself out of this  
25 property separately and independently knowing that from his

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1 standpoint he had rights beginning in 2017 that were fully  
2 his to exploit, at least, in the four countries we're  
3 talking about here, and those are not insignificant  
4 opportunities for business exploitation if he was of mind to  
5 do so. And so it rings hollow when you say he has lost the  
6 control. He lost the control over something that ultimately  
7 falls to him by inheritance, not something he created, but  
8 something that falls to him by inheritance, and he's done  
9 nothing, put no sweat, no money into trying to take  
10 advantage of a property interest that you say was fully  
11 explicit in 2017.

12 MR. TOBEROFF: Your Honor, if I can address this  
13 point?

14 So the rights in Canada reverted in 2021, in the other  
15 countries, 2017. And the way it actually works is any  
16 exploitation -- he wouldn't be able to exploit these rights.  
17 It's really a question of when he would be prepared -- and  
18 this is an individual with limited resources compared to a  
19 huge media conglomerate.

20 THE COURT: Of course.

21 MR. TOBEROFF: When he could be prepared to take on  
22 Warner Bros. -- this isn't just DC, this is really Warner  
23 Bros. Discovery that owns DC. And any exploitation, he  
24 can't put together --

25 First of all, you can't put together something like a

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1 film just for one discrete country. A business is a  
2 worldwide business. But what it really comes down to, he  
3 knows that any attempt to do anything with these rights  
4 would be met with very aggressive litigation from Warner  
5 Bros., and so it's a question of when is -- this is really,  
6 you know, how things work in the real world. When is what's  
7 at stake significant enough, and the dollar's significant  
8 enough to justify full-blown litigation in taking on Warner  
9 Bros? And the there hasn't been a dedicated Superman film  
10 in 10 years. And I don't believe -- and people can, you  
11 know, respectfully, differ on this point, but I don't  
12 believe that when you're looking at irreparable injury, the  
13 loss of choice, the loss of control, whether you're the  
14 author or the -- you know, he was actually very close to his  
15 uncle, he lived with his uncle in his last years of his  
16 life, and they were pretty close, my understanding, but  
17 regardless of that, whether you're the author or you're the  
18 heir, when you have property, you should have some say how  
19 that property is being used and how that property is being  
20 exploited, and you shouldn't lose that by virtue of the fact  
21 that you didn't take on a conglomerate earlier.

22 This was an occasion to do so, and, you know, people  
23 are reluctant to engage in full-blown litigation. You know,  
24 individuals are reluctant to do that. But it's really a  
25 matter of his choice. And he doesn't lose his copyrights

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1 and he doesn't lose his right to an injunction, and he  
2 doesn't lose the ability to show irreparable injury because  
3 he didn't immediately sue in 2021 because he would have  
4 waited for that point. And --

5 THE COURT: I think the case law does suggest that  
6 if you delay, if you sit on your hands, you do lose that  
7 right to get a preliminary injunction.

8 Again, I'm not prejudging this from a standpoint of  
9 any kind of damages, but in terms of preliminary injunction,  
10 the fact that you sit on -- that your client sits on his  
11 rights from, you know, 2016 and 2021 while a Warner Bros.  
12 and DC are exploiting this property in every conceivable way  
13 throughout the globe, and your client sits on his hands and  
14 waits until the strategic point where Warner Bros. has  
15 finally decided, after some years, to put forward a new film  
16 with a new director, new producer, they sink millions of  
17 dollars into the production of this film across a multitude  
18 of countries, and then have to -- they're rolling out, you  
19 know, the distribution of this, sending out little teasers  
20 here and there, and that's when your client decides to  
21 strike.

22 At least, one of the things we're looking at is a  
23 balancing of the equities. You say it's own your client's  
24 side because simply because he's the little guy, but on the  
25 other hand, your client has, it would appear, strategically

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1 allowed Warner Bros. and DC to pour in all this money into a  
2 property and then has waited to try to strangle them -- put  
3 a strangle hold on them at the last possible moment.

4 MR. TOBEROFF: Your Honor, when your looking at the  
5 balance of the equities, the cases cite --

6 First of all, when you're looking at a studio  
7 complaining about the hardship, it's, again, my point that  
8 does anyone think they don't know about these foreign  
9 reversions? The net value of a studio is based on its  
10 library of films. They're well aware of these laws.  
11 They're very straight forward. They're very simple.  
12 They're well aware of these reversionary laws. They --

13 You're asking why a person who has a property right,  
14 why he loses the right to an injunction because he didn't  
15 rush to sue and take on a huge conglomerate earlier on, but  
16 we should really be asking the question is why didn't Warner  
17 Bros. go to him for a license? Why didn't --

18 This is a self-inflicted wound. And the cases say  
19 that when you're balancing equities that -- and I'll read,  
20 for example, *WPIX versus IV Inc.* 691 F.3d 275 at page 287, a  
21 Second Circuit case, 2012 case. It says, An infringer of  
22 copyright cannot complain about the loss of ability to offer  
23 its infringing product when you're balancing the equities.

24 Another case, *Warner Bros. Entertainment Inc. versus*  
25 *RDR Books*, 575 F.2d, 513 at page 552, quote, "The only

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1 possible harm to defendants is the loss of the chance to  
2 sell an infringing movie, but the law does not protect this  
3 type of hardship."

4           So the real -- I believe that if your Honor believes  
5 and finds that they are -- that Warner Bros. DC is  
6 infringing these copyrights in these countries-- and again,  
7 we're not talking about stopping the entire movie. It's  
8 plenty of money to be made in the interim. But if your  
9 Honor believes that this is as simple as I'm saying, and  
10 that there is no collateral estoppel effect from the prior  
11 decision. So it's a absolutely infringement that to just --  
12 that to not nip this in the bud, and to let this  
13 infringement go on -- you know, it would also bring a  
14 resolution of this case. If there's a preliminary  
15 injunction, this case is going to get settled before you can  
16 say knife, and in a fair and reasonable way.

17           And, essentially, Warner Bros. should have come to my  
18 client, not this that my client should have sued Warner  
19 Bros. earlier, and now they're bemoaning the terrible  
20 hardship that the money they've put into this movie.  
21 There's plenty of money for them to make out there from  
22 Superman.

23           And they've made all sorts of absolutely meritless  
24 arguments. And I think this is -- this case is -- because  
25 of the issues that the facts that we agree on, for purposes

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1 of this motion, give you the facts you need and the law  
2 gives you the law you need, and I believe this infringement  
3 should be nipped in the bud through a preliminary  
4 injunction.

5 Thank you, your Honor.

6 MR. KLINE: Your Honor, do you mind if I stand over  
7 there?

8 THE COURT: That's fine. Just make sure the mic is  
9 on.

10 MR. KLINE: I see a green light.

11 THE COURT: Yeah.

12 MR. KLINE: Your Honor, I think you've -- at least  
13 your questions. I don't want to presume that you have made  
14 up your mind at all. But I think your questions identify  
15 the key issue here. At the outset which is delay. And  
16 Mr. Toberoff is incorrect, the year that he says these  
17 rights automatically reverted, and they didn't, and I'll  
18 explain why in a minute.

19 But the year that he says that happened, DC Comics  
20 released a much anticipated movie called Justice League.  
21 That movie had been held up for many years because he had  
22 been challenging -- Mr. Peary had been challenging the  
23 ability to use Superman in the Justice League, and the  
24 Justice League is not the Justice League without Superman in  
25 it.

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1           What did Mr. Peary do? Having lost the federal  
2 litigation in front of Judge Wright, having lost the federal  
3 litigation in the Ninth Circuit -- and, your Honor, I wanna  
4 be really clear, what was decided in that case is this  
5 agreement gave us any and all copyrights. And any and all  
6 copyrights means these foreign reversionary claims that he's  
7 talking about. That was a binding federal ruling. And all  
8 these arguments you hear about California probate law and  
9 all like, he made in the Ninth Circuit, he made in the  
10 district court, and he lost. It's quite curious to us, your  
11 Honor, that he says this is all about California probate  
12 law, but he's forum shopped to New York to bring this case  
13 to get away from Judge Wright, to get away from the Ninth  
14 Circuit, to get away from everything.

15           But what does he do when DC launches this Justice  
16 League movie which is a big block busker movie in 2017? He  
17 does nothing because he had know rights. The contract said  
18 any and all copyrights. They did absolutely nothing. And  
19 you're right, your Honor, over the next many years, there  
20 were other exploitations. There were comic books, there  
21 were video games, there were boxer briefs you could buy sold  
22 all over the world. And they did absolutely nothing.

23           This claim that we should have gone and negotiated  
24 with him is, honestly, it's fanciful. Why would we go  
25 negotiate with somebody who we just got a Court to say we

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1 have any and all rights? We soon, thereafter, launch one of  
2 the biggest most anticipated movies ever and he says  
3 nothing. He says to you about 15 times, "The law is crystal  
4 clear," "The law is crystal clear." Your Honor, on a  
5 preliminary injunction motion, he has the burden to come in  
6 and share the law with you in an honest, transparent and  
7 open way. And if you look at our foreign expert's  
8 declarations, he comes nowhere close.

9 The *Redwood* case that comes out of England absolutely  
10 eviscerates his arguments. He didn't mention it in his  
11 briefs. Instead, he tried to sandbag us with this so-called  
12 expert on reply when he knows in New York State Court, the  
13 forum that he came and shopped in, doesn't allow reply  
14 briefs on an OSC like this. It's the same type of  
15 sandbagging he engaged in the Ninth Circuit. He represents  
16 to you that we just say Judge Wright decided this probate  
17 issue. Judge Reinhardt, in his opinion, in footnote 3,  
18 these were his words, "The heirs argued explicitly below as  
19 a grounds for rejecting DC's claims for summary judgment  
20 that the 1992 agreement could not bind the estate." This is  
21 the argument he makes here, "The district court's ruling  
22 implicitly rejected this argument."

23 so Mr. Toberoff stands up in front of you and makes  
24 this argument that, you know, well DC just says this  
25 happened. No, this is what the Ninth Circuit says in its

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1 ruling. These are not the sorts of arguments that gets  
2 somebody a devastating injunction. And, your Honor, I'm not  
3 aware of a single case where a judge started enjoining  
4 movies around the world where clearly all he wants is money.  
5 He said 15 times now, I want leverage. I want money. Give  
6 me an injunction so I can make a deal. This isn't about  
7 property rights, this is a shakedown. And he waited exactly  
8 till this moment. He waited exactly until the launch of  
9 this movie to make these claims. Two years ago -- I'm  
10 sorry, three years ago, your Honor, DC announced that it was  
11 gonna make this movie -- I'm sorry, two years and  
12 four months ago, I wanna be accurate, DC announced it's  
13 gonna make this movie. It's a big public splash. If they  
14 really believed in this theory and he really believed he was  
15 owed some money, he could have come to us then. But what  
16 does he do? He let's us go out and spend hundreds of  
17 millions dollars to make the film. He let's us spend all  
18 this money and effort promote the film. Your Honor, this is  
19 the absolute quintessential example of waiting in the bushes  
20 as somebody's going by and just tryna mug 'em at the very  
21 end.

22 This is not -- you know, he makes all these claims  
23 about how Mr. Peary, you know, he's this you know destitute  
24 guy, and you should, you know, do him a favor --  
25 Mr. Toberoff, all he does in his professional career, is he

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1 goes around and he finds heirs like this, and he files suits  
2 on their behalf. Ms. Feuer was in a court in the Ninth  
3 Circuit yesterday battling one of these lawsuits over the  
4 Top Gun: Maverick movie. He's had this lawyer as his  
5 business partner, as the Ninth Circuit found, and found that  
6 those relationships were unethical. He's had this lawyer as  
7 his business partner and lawyer for the last 20 years. All  
8 they needed to do is file a complaint back in 2017 if they  
9 had any real belief that these claims have any merit. And,  
10 your Honor, these claims have zero merit.

11 We spent six years litigating these same false  
12 accusations, that DC didn't treat these heirs correctly.  
13 Judge Wright, in his detailed opinion -- and if there's one  
14 document I would want to read in this case if I got into it,  
15 it'd be Judge Wright's opinion. He documents how the heirs  
16 made millions of dollars in their lifetime. If they died  
17 penniless, I don't know, that's not in the record. He's not  
18 put in any record of it, but if they did that, that's their  
19 decision.

20 In 1992, Jean Peavy makes an agreement. She comes to  
21 DC, she says I'm the sole heir under the will. She's the  
22 executor. She had just filed an affidavit in California  
23 State court saying I'm the sole heir. I'm the executrix of  
24 this will. She comes to DC--Judge Wright details this in  
25 his opinion--She has a conversation with Paul Levitz who is

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1 the head of DC who's dealt with heirs like this his entire  
2 career. And he says, look, this is your one last chance to  
3 make a deal with us. It's gonna be one any and all -- it's  
4 your one last chance. It's documented in Judge Wright's  
5 ruling. They make the deal.

6 The contract could not be more clear, your Honor. It  
7 doesn't talk about US copyrights, doesn't say foreign  
8 copyrights are different. It says any and all copyrights.  
9 And Mr. Toberoff made all the arguments, this is a flimsy  
10 piece of paper, this is a vague document, it's not a  
11 revocation. If you read Judge Wright's opinion, if you read  
12 Judge Reinhardt's opinion, they go over again and again and  
13 again, nope, under clear New York law, this is an  
14 unambiguous contract. It assigns everything, any and all  
15 rights to DC. And Judge Wright says you have bound everyone  
16 going forward fully settling all claims forever.

17 And so what they're trying to do is get a do-over  
18 here. And saying, oh, you know, ignore the experts. Ignore  
19 what the actual case law is in England like the Redwood  
20 case, ignore the actual statute in Canada that says very  
21 specifically that an heir like Jean Peavy has full authority  
22 to do this and just believe my legal brief and shut down  
23 these movies.

24 He had the burden to come forward and prove foreign  
25 law to you. He didn't do that. He made a tactical choice,

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1 once again to sandbag and not have an expert witness come  
2 in. And now he's just saying, hey, the law is real clear.  
3 Read the statutes, Judge.

4 Well, we've all been lawyers for a long long time. We  
5 know the statutes get interpreted by case law, and he omits  
6 the case law that rejects his very argument. And if you  
7 look at our expert's declarations, they point that in  
8 detail.

9 And he knew we were gonna make these arguments, Judge,  
10 because the first time he forum shopped, he didn't sue here,  
11 he sued in federal court in New York. And we had to brief  
12 all these preliminary injunction issues. We gave the  
13 federal judge all of our expert reports. And the judge  
14 said, look, Mr. Toberoff, you do not have subject matter  
15 jurisdiction. You sued in the wrong court. And we told Mr.  
16 Toberoff that months ago. And he didn't re-file here, he  
17 didn't re-file in England, he rolled the dice. He wanted  
18 the Federal Court to give him a ruling, but the case got  
19 thrown out. And then so what does he do? He doesn't say,  
20 okay, DC has all these experts, they're gonna raise these  
21 defenses, they're gonna talk about the Redwood case that  
22 rejects my arguments, he just ignores it because he wants to  
23 sandbag us on reply.

24 And your Honor correctly under the very plain New York  
25 rules said there aren't reply briefs on these OSCs.

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1           So, your Honor, this is a pattern and practice here.  
2           They lost the last cases. Those cases were definitive. The  
3           collateral estoppel rules could not be more clear. If a  
4           ruling is necessary to a Court's decision, and it was  
5           necessary to Judge Wright's decision that he rejected these  
6           lack-of-authority arguments to say the 1992 agreement  
7           replaced the 1938 agreement, he's done. The case is over.  
8           His entire case rests on the fact that there's a 1938  
9           assignment that he we wants to rely on to go back to get  
10          these reversion rights. We spent six years litigating that  
11          That 1938 agreement does not exist anymore.

12          All of the arguments you heard today, the attacks on  
13          expensive counsel, self-inflicted wounds, all this rhetoric,  
14          every little bit of it was presented at Judge Wright, was  
15          presented at Judge Reinhardt, was presented in the Ninth  
16          Circuit panel, and it was all rejected. And all we're  
17          seeing here is give me a do-over, Judge. And, hey, it wont  
18          harm them too much. Just get me a new negotiation room so I  
19          can get some money out of these guys. That is not the basis  
20          for a preliminary injunction motion. A preliminary  
21          injunction motion is something terrible is happening right  
22          now. I run into court and I say, Judge, please stop this  
23          thing that's terrible that's happening right now. It has  
24          just come to my attention. I know you're really busy.  
25          Please do something about it. Here's my best evidence.

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1 Here's everything.

2 This guy's been waiting for years and years and years  
3 to strategically file this lawsuit and hope that some judge  
4 won't respect what the judges did out in California, hope  
5 that some judge will just rely on his representations of  
6 what foreign law are so that he can get in a negotiation  
7 with us. That is not the basis for a preliminary injunction  
8 motion, your Honor.

9 With that, if there's no questions, I would submit and  
10 I would thank the Court and your staff for your time today.  
11 We really appreciate it.

12 MR. TOBEROFF: I don't think I have the saying  
13 right, but I think I have it pretty right where it says if  
14 the facts are in your favor, lead with the facts, if the law  
15 is in your favor, lead with the law, if neither are in  
16 your favor, attack opposing counsel.

17 You can call me "this guy," you can call me names, I'm  
18 going to rely on the law because the law here cuts like a  
19 knife, and I'm a surgeon, and I'm going to use a scalpel and  
20 point that out to the judge.

21 This kind of hype is not gonna win the case. Okay.  
22 We know for a fact because it's written in a footnote in  
23 the Ninth Circuit opinion that they specifically declined to  
24 rule on the issue of Jean Peavy's legal capacity and  
25 authority to transfer any Superman rights to DC or anyone

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1 else prior to the estate being probated, prior to her being  
2 duly appointed, and she never was duly appointed. You can't  
3 do that. A probate of an estate is first you have to pay  
4 off debts, and Shuster had a lot of debts, then you  
5 distribute the assets. There are also a state, the City of  
6 -- the State of California and the feds have a tax interest,  
7 millions of dollars in estate taxes. You can't avoid all  
8 that by having someone sign a piece of paper.

9 And she wasn't the sole heir. That's also -- there  
10 are so many misrepresentations that --

11 THE COURT: What brings this case to New York if it  
12 was so clearly addressed by California probate law?

13 MR. TOBEROFF: DC -- what brings it to New York  
14 is --

15 First of all, I'm barred in New York, I grew up, born  
16 and raised in New York, I have an apartment here. I have  
17 other cases that I file in New York, Joe Shuster was  
18 originally from New York, DC Comics was from New York, all  
19 the activity -- the 1992 agreement was drafted in New York.  
20 The 1938 agreement was drafted in New York --

21 THE COURT: But the thing you say controls is  
22 California probate law. That's thing that you say makes the  
23 difference. And so it would seem that you'd go to an expert  
24 on California probate law and try to get this addressed  
25 there in the state courts or in the federal courts there.

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1 MR. TOBEROFF: Yeah, I understand. But the  
2 California probate code 12100 is clear, 1992. If assets are  
3 over \$60,000 you must probate the estate. You can't act for  
4 the estate, you can't transfer assets. Why? Because you  
5 have to pay off debts, you have to pay estate taxes, you  
6 have to do all sorts of things. This is not a complex  
7 issue --

8 THE COURT: Why did the Ninth Circuit choose to  
9 ignore that, and why did the district court choose to ignore  
10 that?

11 MR. TOBEROFF: I don't know. I think --

12 THE COURT: So that's not a good answer. You know,  
13 you're talking about Judge Wright and you're talking about  
14 Judge Reinhardt. Those are respected jurists, and you tell  
15 me they simply ignored the clear applicability of the  
16 California probate law.

17 MR. TOBEROFF: Yeah. Your Honor, I disagree with  
18 the ruling in that case. I have to live with it. I felt  
19 that, literally, defendants got away with murder in that  
20 case. And I'd ask you to look at this ephemeral 1992  
21 agreement.

22 I have the transcript in front Judge Wright where he  
23 said to Warner Bros. on the record -- he had a tentative  
24 which was ruling in their favor, but then I put the 1992  
25 agreement in court up in front of an easel in front of Judge

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1 Wright and he said on the record, when opposing counsel got  
2 up and said counsel, do you expect me to believe that Warner  
3 Bros., a sophisticated company like Warner Bros. who has  
4 relied for decades on this 1938 grant for Superman, a  
5 billion dollar industry like Superman would rely for their  
6 -- would replace that ironclad chain of title from 1938  
7 upheld by the Second Circuit as giving them all rights to  
8 Superman with this ephemeral document? And he used the word  
9 "ephemeral document." And I walked out of the courtroom --  
10 you know, they were decimated. And I walked out of the  
11 courtroom with a, you know, a smile on my face. And the  
12 1992 agreement, which I had blown up, under my arm. And  
13 then two weeks later -- and, usually, tentatives are signed  
14 right away--two, three weeks later we thought he was writing  
15 a new opinion, and he just signed the tentative. So I don't  
16 really know what happened. But what I do know is, that case  
17 did not concern foreign copyrights, so it didn't concern the  
18 identical issue which you need for collateral estoppel. The  
19 issue of her probate authority was never decided, so the  
20 issue was never actually litigated which you need for  
21 collateral estoppel.

22 And, specifically, when a case goes up on appeal and  
23 the appellate court declines to rule on the probate issue,  
24 which they did, they specifically say in a footnote, "We  
25 decline to rule on this issue," then it has no collateral

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1 estoppel effect, the law is iron clad, and that's the sole  
2 issue.

3 So, now, your Honor can decide for yourself whether  
4 Jean Peavy, one of two heirs named in the will before an  
5 estate is probated can just go ahead and transfer -- for  
6 \$25,000 transfer rights worth millions of dollars --

7 THE COURT: All rights, all rights, Counsel.

8 MR. TOBEROFF: Yes.

9 THE COURT: Including US, the UK, Canada, Australia  
10 and Ireland, all rights. So that was necessarily addressed  
11 by Judge Wright and by Judge Reinhardt.

12 MR. TOBEROFF: It was not addressed by Judge  
13 Reinhardt.

14 THE COURT: It was necessarily addressed by Judge  
15 Reinhardt because it was addressed by Judge Wright. They  
16 are saying that that contract gave DC all rights to the  
17 property wherever it might be in the world.

18 MR. TOBEROFF: So what I'm saying, your Honor, is  
19 that that case did not concern --

20 THE COURT: And to the extent that you're bringing  
21 it up on appeal, the statement is that the issue has been  
22 waived below. You don't get to try to add something new on  
23 the appeal, right? They've addressed the contract that said  
24 all rights, and now, trying to articulate something else.

25 MR. KLINE: Your Honor, I hate to interject --

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1 THE COURT: Stand if you're talking.

2 MR. KLINE: I really hate to interject, but I wanna  
3 clarify one thing.

4 What happened was, we had this hearing. Judge Wright  
5 did not say what Mr. Toberoff said. He said certain words,  
6 but what happened was there was additional briefing that  
7 occurred. This probate issue got briefed all over the  
8 place. And what Judge Wright held was that yes, you have  
9 assigned all rights in the 1992 agreement to DC and you have  
10 revoked the earlier agreement. Then we go up on appeal and  
11 he makes the tactical choice -- Peary makes the tactical  
12 choice not to present this probate argument. He waits until  
13 later on in the appeal to raise it like in reply of the oral  
14 argument, and Judge Reinhardt says -- he doesn't say that  
15 Judge Wright didn't address the probate issue, he says he  
16 implicitly rejected it and it was necessary to his decision.

17 So all these cases he keeps citing about, hey, it's a  
18 waiver so it doesn't count, they actually stay opposite.  
19 They say if it's necessary to the Court's decision below, it  
20 does have res judicata affect. And it was necessary for  
21 Judge Wright to reject his arguments about probate to rule  
22 in DC's favor, to grant judgment in DC's favor and to say DC  
23 owned all of these copyrights.

24 Had Judge Wright accepted this--your Honor, I want to  
25 be charitable--untenable argument under California probate

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1 law, and we cited the cases of the State of Molina and the  
2 cases in the UK are the same, the Redwood case, these rights  
3 automatically passed when he died, through his sister. And  
4 then the sister comes to us, along with her brother, and  
5 they signed the 1992 agreement. So it's game over, your  
6 Honor.

7 And I wanted to clarify that one point because Judge  
8 Wright was presented with all these probate arguments and he  
9 didn't buy it. He rejected it. He said Jean Peavy had the  
10 power to convey all of these rights, any and all of these  
11 rights, to DC. Peary made the tactical choice not to  
12 preserve that issue correctly on appeal, and Judge Reinhardt  
13 said, well, it got rejected below and you waived it so, oh  
14 well, we're moving on. But the case law in collateral  
15 estoppel is clear in those circumstances where it was  
16 necessary to his decision below, it has collateral estoppel  
17 effect. So that's footnote 3 of the opinion, your Honor.

18 MR. TOBEROFF: Your Honor --

19 THE COURT: Go ahead, Counsel.

20 MR. TOBEROFF: Judge Reinhardt didn't say that the  
21 district court implicitly decided this is incorrect --

22 MR. KLINE: I could read from it, it says the  
23 judge's --

24 MR. TOBEROFF: Please don't interrupt me.

25 MR. KLINE: No, because --

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1 THE COURT: Counsel, wait.

2 MR. TOBEROFF: I rest on these decisions and on the  
3 cases that I cited.

4 In that case, Judge Thomas, who's also a very  
5 distinguished Ninth Circuit judge, and very close friends  
6 with Judge Reinhardt, totally agreed with the decision in  
7 his descent and wrote a very detailed descent. And first he  
8 said that the record is totally insufficient to establish --  
9 and I'm quoting, "The record is not sufficient to establish  
10 that Joe Shuster's siblings had the authority in 1992 to  
11 revoke and supercede his 1938 copyright grant."

12 At that time, Frank was a third-party beneficiary of  
13 Joe's agreement with DC under which DC agreed to pay Frank  
14 some survivor benefits. Jean was a stranger to that  
15 agreement. Jean had identified herself as Joe's executor  
16 and sole heir. But Joe's estate hadn't been probated, nor  
17 had Jean been appointed his executress. Although, title to  
18 property transfers to heirs upon death, California -- that  
19 transfer of title is subject to probate administration.  
20 California probate code, sections 7001" --

21 THE COURT: Slow down, Counsel.

22 MR. TOBEROFF: "1992" --

23 THE COURT: Counsel, make sure you slow down when  
24 you read.

25 MR. TOBEROFF: I'm sorry. I apologize.

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1 THE COURT: Comes out more difficult.

2 MR. TOBEROFF: I got carried away.

3 "In 1992, California law required probate of any  
4 estate in which the value of the personal property exceeded  
5 \$60,000. California probate code, section 13100 1992.  
6 "Under California law, Jean could not dispose of Joe's  
7 copyright interest before probate. Thus, neither Frank nor  
8 Jean had the authority to enter into any novation of the  
9 original contract."

10 So this is our point here. On collateral estoppel, we  
11 have three reasons for why there's no collateral estoppel  
12 here. One, the issues were not identical. The sole issue  
13 in that case was the US Copyrights. And they're judicially  
14 estopped from arguing otherwise because they specifically  
15 said the US termination rights at issue have no effect on  
16 our foreign rights. So the issues are not identical. They  
17 deal with different statutes.

18 Two, this was not actually litigated and that's proven  
19 by the footnote in the Ninth Circuit appeal. Opposing  
20 counsel can hype all he wants, but the record, your Honor,  
21 speaks for itself. It's crystal clear that there is no  
22 preclusion here.

23 And it was not necessarily a case about US rights.  
24 You don't have to necessarily decide the transfer of foreign  
25 copyright interest reverting. They could say "all rights"

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1 all day long, but if you don't have the authority to  
2 transfer any rights, the fact that the transfer says "all  
3 rights" is irrelevant.

4 It's a question of legal authority and legal capacity,  
5 and either Jean Peavy had it or she didn't. And if you look  
6 at the cases we cite in our brief closely, and you look at  
7 the record closely, I am convinced you'll come to the same  
8 conclusion.

9 THE COURT: All right.

10 This action concerns the ownership interest in and  
11 alleged exploitation of the Superman copyright, a work  
12 created in 1933 by Joseph Shuster and Jerome Siegel.

13 On April 25, 2025, plaintiff, Mark Warren Peary, in  
14 his capacity as executor of the estate of Joseph Shuster  
15 commenced this action against defendants, alleging that DC  
16 defendants intended to distribute, license and exploit the  
17 work in purported violations of foreign copyright law.

18 In motion sequence number 001, plaintiff moves by  
19 order to show cause for a preliminary injunction enjoining  
20 DC's exploitation of the work in the United Kingdom, Canada,  
21 Ireland and Australia. This motion comes ahead of the  
22 impending release of DC's Superman movie scheduled for  
23 July 11, 2025.

24 Plaintiff alleges that Joseph Shuster's estate owns an  
25 undivided one-half interest in the Superman copyright in the

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1 foreign reversionary territories. He asserts that the  
2 release of the film constitutes infringement of the estate's  
3 alleged copyright interest, and that such exploitation  
4 without plaintiff's authorization threatens to cause  
5 irreparable harm.

6 A preliminary injunction may be granted in any action  
7 where it appears that the defendant threatens to do, or is  
8 doing, an act in violation of the plaintiff's rights, or in  
9 any action where the plaintiff would be entitled to a  
10 judgment restraining the defendant from permission or  
11 continuance of said act which, if committed or continued,  
12 would produce injury to the plaintiff.

13 See CPLR section 6301.

14 The remedy of preliminary injunction is granted under  
15 extreme circumstances. A party seeking the drastic remedy  
16 of a preliminary injunction must demonstrate, one, a  
17 likelihood of success on the merits, two, irreparable injury  
18 absent the granting of the preliminary injunction;  
19 and, three, a balancing of the equities in the movant's  
20 favor. Again, see CPLR 6301.

21 See, also, *Nobu Next Door LLC versus Fine Arts Housing*  
22 *Inc.*, at 4 NY3d, 839 at 840. If a party can be fully  
23 compensated by a monetary award, a preliminary injunction  
24 will not be granted because no irreparable harm will be  
25 sustained in the absence of such relief.

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1           See *Mar versus Liquid Management Partners LLC* at 62  
2 *AD3d*, 762 at 763. Here, plaintiff asserts that an undivided  
3 one-half interest in the work's copyright reverted to the  
4 Shuster estate pursuant to the copyright laws of the foreign  
5 reversionary territories on July 28th of 2017. Plaintiff  
6 submits that the upcoming film is the first major Superman  
7 film to be released in almost a decade and the first to be  
8 released since the purported reversion occurred. Absent the  
9 issuance of a preliminary injunction, plaintiff argues the  
10 Shuster estate stands to suffer irreparable harm resulting  
11 from the loss of the right to exclude exploitation of the  
12 work, loss of expressive control of the work and the  
13 complexity that would be involved in measuring damages.

14           Aside from stating that the exploitation of the work  
15 is imminent, plaintiff fails to offer any substantive  
16 argument that irreparable harm occur if a preliminary  
17 injunction is not issued. This is not to suggest that  
18 infringing conduct causes no harm or that this Court would  
19 condone DC's conduct if infringement were established on the  
20 merits.

21           See *Wave Studio LLC versus Trivago N.V.*, at 2023  
22 *Westlaw 3720079 Southern District of New York case from*  
23 *2023*. However, the relevant harm is the harm that cannot be  
24 remedied after a final adjudication whether by damages or a  
25 permanent injunction.

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1           See *Salinger versus Colting*, 607 F.3d 68 at 81 Second  
2 Circuit case from 2010. This Court finds plaintiff's  
3 argument concerning the complexity of calculating damages in  
4 the foreign reversionary territories unpersuasive.  
5 Plaintiff's lack of sophistication or lack of resources to  
6 determine damages does not, by itself, render the alleged  
7 harm incurable by money damages.

8           Furthermore, plaintiff's loss of control does not  
9 warrant a finding of irreparable harm. Plaintiff has never  
10 had any direct involvement with Superman's exploitation.  
11 Plaintiff did not create Superman, and plaintiff concedes  
12 that DC owns all US rights in Superman such that he never  
13 could have fully prevented DC from making any derivative  
14 work.

15           With respect to the element of likelihood of success  
16 on the merits, plaintiff also fails to make the required  
17 showing. Plaintiff's instant claims appear to this Court as  
18 an attempt to revive issues that were previously raised on  
19 the federal level before the Ninth Circuit Court of Appeals.  
20 This is particularly true regarding the issue of whether the  
21 1992 agreement superseded Shuster's original grant in 1938  
22 and regarding whether Frank Shuster and Jean Peary could  
23 bind the estate in executing the 1992 agreement, an issue  
24 the circuit court found to have been implicitly rejected by  
25 the lower court. See *DC Comics versus Pacific Pictures*

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1        *Corp., at 545 Federal Appendix 678.* Again, that's the Ninth  
2        Circuit in 2013. In that action, the Ninth Circuit held  
3        that the 1992 agreement granted DC rights to resolve any  
4        existing and future copyright claims by the Shuster family  
5        and estate. See that 545 federal Appendix, 678 at 680  
6        through a 682.

7                On this point, I'm going to read a portion of footnote  
8        three from the case because I think it's important. "The  
9        heirs argue explicitly below as a ground for rejecting DC's  
10       claim for summary judgment that the 1992 agreement could not  
11       now bind the estate because, quote, "The Shuster executor  
12       was not a party to the 1992 agreement." An issue of state  
13       law that they appeared to have tried to rely at oral  
14       argument. The district judge's ruling implicitly rejected  
15       this argument holding that the estate was bound by the 1992  
16       agreement. The factual and legal dispute regarding whether  
17       Joseph Shuster's sister acted as his executor when she  
18       signed the 1992 agreement is a potentially complex one. We  
19       do not address this question of state law because the heirs  
20       failed to raise it in their opening brief.

21                The Court cites the following that, see *Dream Games of*  
22        *Arizona Inc. versus PC Onsite, 561 F.3d 983 at 994 and 995,*  
23        also a Ninth Circuit case of 2009. The Court also refers to  
24        federal rules of appellate procedure 28A9A.

25                At least, at this point, it appears to this Court that

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1 the issues here have been necessarily litigated and decided  
2 in the federal action. For these reasons, then, plaintiff  
3 has failed to meet his burden of showing any likelihood of  
4 success on the merits by clear and convincing evidence.

5 Now, nor does balancing of the equities tip in favor  
6 of plaintiff. Balancing the equities requires the Court to  
7 determine the relative prejudice to each party accruing from  
8 a grant or denial of the relief requested. See *Barbs*  
9 *Restaurant Inc. versus ASRR Sezer 218 LLC at 140 AD3d 430 at*  
10 *432*. In this action, plaintiff does not -- excuse me. In  
11 this action, plaintiff not only seeks a declaration of  
12 rights pursuant to the copyright laws in the foreign  
13 reversionary territories, plaintiff also seeks to enjoin the  
14 release to the upcoming Superman film set to premier  
15 approximately five weeks from today's hearing. Plaintiff  
16 asserts that the Superman copyright reverted to the estate  
17 automatically in 2017, almost eight years ago, and at the  
18 same time argues that the film's imminent release warrants  
19 immediate judicial intervention to prevent infringement of  
20 plaintiff's rights. This Court decision agrees.

21 For decades, DC has produced works pursuant to the  
22 1938 and then 1992 grants which the Ninth Circuit deemed  
23 proper, and their continued release of works under these  
24 grants follows naturally from such authorization. Plaintiff  
25 fails to demonstrate that a future judgment would be

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1 rendered ineffectual without issuance of a preliminary  
2 injunction prior to an adjudication of his claims on the  
3 merits. Instead, plaintiff merely asserts that DC's  
4 exploitation of the work without the estate's consent would  
5 create complexities in tracking and calculating damages. By  
6 contrast, DC would suffer actual and substantial harm if  
7 delayed or prevented from releasing a film that has required  
8 years of development and millions of dollars to produce  
9 across multiple countries with millions more dollars  
10 invested in the worldwide promotion and distribution of the  
11 new film. Thus, even if an adjudication on the merits were  
12 to establish that plaintiff was harmed by DC's exploitation  
13 of the film, such harm is outweighed by the harm defendant  
14 stands to suffer if injunctive relief were granted today.  
15 Given these facts, the drastic remedy of injunctive relief  
16 is not warranted, certainly, not at this stage.  
17 Accordingly, it is hereby ordered that plaintiff's motion  
18 for preliminary injunction is denied.

19 I'll direct that counsel for the movant order a copy  
20 of the transcript of today's proceedings, present to the  
21 clerk of Part 43 for so-ordering by this Court. The Court  
22 will separately upload a short form gray sheet order which  
23 merely reflects that the motion has been denied, but in  
24 order to capture parties' arguments and the Court's  
25 reasoning for his decision, it would be necessary to have

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that transcript so-ordered.

The direction is to the movant. The nonmovant is free to obtain a copy and present it to the Court, as well.

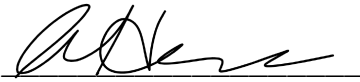
The record is closed.

MR. KLINE: Thank you, your Honor.

MR. TOBEROFF: Thank you, your Honor.

\*\*\*\*\*

Certified to be a true and accurate transcript of the stenographic minutes taken within.



Alecia Hines, RPR  
Senior Court Reporter

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