Copyright and Toys: On King Features Syndicate v Kleeman (1941)

Syndication is a key activity to trace the emergence of new property relations characteristic of copyright in the twentieth-century (Bellido and Bowrey 2014). In the late nineteenth century international telegraphic routes and the typewriter simplified international trade communications. In early twentieth century, technological advances such as the dry mat or matrix facilitated the possibility for artwork to be licensed worldwide. Hearst’s publishing business was among the first to realise the potential of linking technical changes to particular property strategies based upon circulation of content. Hearst launched the International News Service and King Features Syndicate, a branch devoted to service newspapers with comic strips. King Features soon became renown in common law copyright (and design) scholarship as the litigants in King Features Syndicate v Kleeman (1941) – the ‘Popeye’ case. The case concerned the infringement of comic strips by the making of unlicensed toys. This paper explores the historical context of this case showing the link between newspaper copyright syndication and the development of character merchandising. The significance of the decision lies not only in the doctrinal attempt to clarify an overlap between copyright and design law. More importantly, the case illustrates how foreign licensors (KFS) began to mobilise themselves in order to litigate abroad and secure their syndicated (copyright) network. We argue that the economic character of copyright was transformed in the early 20th century from an exclusive right to particular copyright subject matter to a launchpad for commercial activities centred on the circulation of knowledge and deployment of new kinds of expertise related to merchandising and franchising opportunities.

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Jose Bellido is senior lecturer in law at the University of Kent, Canterbury. He is particularly interested in the cultural and economic history of intellectual property law. His recent work includes a historical study of newspaper copyright and The Times [with Kathy Bowrey], an essay on the rise of trade mark watching agencies in the twentieth-century and an analysis of litigation strategies in music copyright infringement cases in the 1960s. Contact: J.A.Bellido@kent.ac.uk