



## A look at Marvel IP

Stan Lee's passing shook the comic book industry and superhero film industry he inspired, leaving the question: what is the future of Marvel IP?

**Ben Wodecki reports**

Superheroes are more than a cultural phenomenon and nowadays they are present in almost every aspect of our lives. One of the men responsible for bringing them to the forefront of society was Stanley Martin Lieber, better known as Stan Lee.

Born on 28 December in 1922, Lee died in November this year shaking the comic book industry and the superhero film industry he inspired.

Stan Lee's estate may be relatively new, but it has a long and complex history, filled with various disputes over the ownership of certain intellectual property. Now that Disney owns most of Marvel's—and subsequently Lee's—IP, the future of Lee's estate may seem clear. However there is fragmentation to all that created by Lee and aspects of its future remain to be seen.

Alan Behr, partner at Phillips Nizer, is intimately acquainted with Marvel disputes over the years and explains that not only are characters like the Hulk, Iron Man and Spiderman

protectable by copyright, but original stories and illustrations related to those characters as well.

Behr says he first heard about Marvel from other children when he was in camp during his childhood—they had only just come out. Behr adds that they caught on fast.

Behr remarks on some of the ownership disputes Lee had with Jack Kirby, the American comic book artist who drew some of Marvel's most iconic superheroes, who claimed partial ownership of some characters and contributions.

Behr highlights that there were numerous lawsuits and that litigation only ended a few years ago, as the US Federal Courts "getting tired of hearing about it". He adds that the US Supreme Court declined to hear the last of those cases in March of 2015.

Behr, who has been involved in business relations with Marvel, says the company is known for being "very protective of its IP". He explains: "It did sometimes feel like whenever you called Marvel on a legal matter, the second sentence back to you (after salutations) would be, 'and we will sue'".

He says that Marvel is and was very clear about what it claimed to own and he believes that Disney was very thorough in its due diligence following its \$4 billion purchase of Marvel in 2009. Behr believes that Disney was confident upon purchase that when it bought Marvel, it bought total control of its IP. While ownership now goes to Disney, which Behr calls "the big guys", attribution will always go to Stan Lee and Jack Kirby.

In terms of issues arising for Marvel IP following Lee's death, Behr admitted that he didn't see anything arising unless someone steps forward and says they're going to try and make a meal out of it. Would this happen? Behr didn't outright say no but did say it is hard to believe anyone would claim ownership of Marvel IP that either Lee or Kirby had not already.

Behr notes other cases of writers and illustrators making claims against publishers and studios over well-established content that have gotten bigger time have not gone well.

He says: "When something consequential of a property this big has been purchased, the lawyers from the purchasing company tend to be pretty good at their due diligence and they tend to be very accurate in assessing ownership."

He adds that it's not surprising that these kinds of lawsuits of unfairness "tend to look petulant", and often stem from a product gaining more worth and

writers claiming they deserve a bigger cut. He explains that acceptance of that argument is more a matter of morality, ethics, and gentlemanliness, but tends not to be a legal obligation.

Behr says that he doesn't see any reason for a break up of Marvel's IP following Lee's passing.

He remarks: "Close your eyes and think of Spiderman. Is there anything missing? The character is full, complete, complex, developed—even though he is a high school kid who gets bitten by a radioactive spider and he turns into a superhero—the same for his other characters."

"Lee was a success because his characters had fully formed biographies (flaws and all) and inhabited unique worlds."

"What's to break up", Behr asks, "the characters are whole, and they play well together in the same pop-culture sandbox."

But Behr does warn of problems when these characters become public domain. Characters like Spiderman will one day be available to all.

Behr adds that any alterations to the character that were made over time would become available in a similar way, as would each of the stories as their respective copyright terms expire.

In similar circumstances, Behr notes that Disney is preparing for the loss of copyright in Mickey Mouse. He adds that Disney is adding clips of Steamboat Willie, the first appearance of Mickey from 1928, to the beginning of non-Mickey movies in order to show that they are now trademarks and therefore perpetually owned by Disney.

He adds that Disney's Marvel will likely try to do the same thing and thereby hold onto those rights.

Behr reminds me that genius can arise from nearly anywhere, and that nobody knows who is currently creating something that everyone will want.

He says that it is often the case that, when you are a young person, and you create the next Mickey Mouse or Spiderman, you might not yet be sophisticated enough to understand what your contribution will mean for pop culture and what it will ultimately be worth.

If you knew you were a genius when you created it and if you could have predicted the sales figures, you would probably have asked for a better deal—but art of any character rarely reaches the world based on such certainty. [IPPro](#)