Chapter 11: Now you own it, now you don’t – or do you? Copyright and related rights in magic productions and performances

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Abstract

Magic has many forms, and many variations in its content. Patent and trade secret laws can provide legal rights to magicians in some cases, but often are not practicable or are ineffective. Copyright law might provide the magician with a property right, but its limiting doctrines preclude protection in many instances. With all of the elements carved out of potential copyright protection, what, if anything, remains? This chapter will explore that question, primarily under U.S. law. It will discuss several types of copyrightable subject matter that might in some circumstances be found in a magician's performance. The level of protectability will depend upon the type of magic and its presentation. In some cases, a magic performance may include copyright-protected characters, dialogue, dramatic works, choreography, or perhaps most promisingly, copyrightable pantomime. After exploring both the limits on copyright and potentially protectable subject matter, the chapter will discuss in some detail two judicial decisions that have confronted claims for the protection of magic productions, one where the magician failed to receive protection and a more recent case where the magician, Teller, was successful. Finally, it will briefly discuss potential legal claims protecting the performance itself. Some other nations recognize a type of right related to copyright, known as 'performers' rights'. The chapter will conclude with a brief discussion of certain other legal theories that might provide legal protection to a magician's performance, namely, 'common law' copyright, unfair competition and the right of publicity. DelGaudio knows that when many of us think of magic, we summon cartoonish stereotypes: top hats and wands at children's birthday parties, etc. His conviction – one he articulates with winning passion and occasional Shakespeare-quoting grandiosity – is that magic offers a means of exploring ideas just as complex, and of provoking emotions just as powerful, as those encountered in any other art form.1

It looks like Now You See Me has already pulled a box office rabbit out of its figurative hat, by topping After Earth at the box office on Thursday night. The Summit film arrived in theaters last night and managed to bring in $1.5 million for its Thursday night haul, a half-million more than was earned by After Earth, which took in $1 million. Kelly West May 31, 2013. Meet Now You See Me's Four Horsemen In This Magical Opening Sequence Clip. Jesse Eisenberg And Woody Harrelson Rob Banks With Magic In First Now You See Me Trailer. The Tomb Gets A Release Date, The Big Wedding And Now You See Me Get Delayed. Summit Entertainment and Lionsgate Films merged as one company this year and now even their release date announcements and changes are coming together as well.