PART I

Introduction

The comic art form, whose hallmark is the telling of stories via a combination of text, dialogue and graphic art in a sequence, usually of panels, is one of the oldest and most popular forms of art in the world. In its most traditional mode, as comic books and graphic novels, it is a popular form of literature, and also provides the storyboards and scripts for blockbuster motion pictures, top-rated television shows, and a dizzying array of merchandise. More so than purely textual literary works, comic art works transcend geographic barriers, and are often used to communicate cultural values and social mores, as well as political messages, on a global basis.

This diverse art form, perhaps because of its widespread use, also draws the attention of a number of different laws and legal doctrines. The intersection between comics and the law has, at times, helped to foster the creative process necessary to the creation and distribution of comic art. At other times, the application of law and legal doctrine has worked to constrain that creative process, hindering, and in some instances doing great harm to that process.

While there is a well-established and extensive body of scholarship, both in the law and in other disciplines, which studies how the law generally affects the creative process, there is very little discussion about the impact of the law on the creative process necessary for developing and distributing comic art. It is to add to that body of work, and to further the dialogue about that impact that is the mission of this book.

I begin with two chapters of foundational material – a discussion of the neuroscience of creativity that explores how the mental process of creation works, followed by a brief look at some of the ways the legal academy views the intersection between legal doctrine and that creative process.
Following this initial structure of first exploring the non-legal structure, then by an examination of how the law interacts with that structure, the next section of the book, Part III, discusses the history, structure, and modes of comic art. Armed with that understanding, the focus shifts in Part IV to discussion of two legal doctrines, contract and copyright law, which are generally beneficial to the creative process of comic art.

The contract chapter, Chapter 5, looks at the effect contracts have on comic book creation, and on the process necessary to create the newspaper comic strips that are so much a part of our morning rituals in the USA.

The copyright chapter, Chapter 6, focuses on the impact copyright law has on the creation of characters in comic art, and on limits placed on creators to use the likeness of well-known people, and to parody elements of popular culture and politics. The ability of creators to retain, or in some cases to terminate and recapture, their copyright rights are also explored in this section of the book. Chapter 7 takes a quick look at the world of fan art, and the implications it has on copyright protection for creators.

Part V of the book introduces readers to two areas of the law whose effect has primarily been to constrain the creative process of comic art. Chapter 8 details the harrowing tale of underground comix artist Paul Mavrides, whose multi-year battle with the taxing authorities of the state of California offers evidence of the truth of the maxim ‘the power to tax is the power to destroy’.

Chapters 9 through 11 detail what has become the greatest challenge to the creative process of developing and distributing comic art – charges that the art is obscene and violates the local community standards of decency, and undermines the moral values of young people. Chapter 9 provides the historical context for this challenge, beginning with the efforts of the US Congress in 1954 to censor comics, which in turn led to the self-regulation of comics via the Comics Code Authority. The effect of the counter-culture movement of the 1960s in the USA, which gave birth to the underground comix movement – a potent answer by the creative community to the constraints of the Comics Code Authority – is then examined.

Chapter 10 provides a look at five cases in which the creative process of comic art creators, distributors and even readers has been adversely affected by the prosecution of comic art under obscenity and indecency laws. The efforts of the Comic Book Legal Defense Fund to protect that creative process – efforts that have had mixed success – are profiled.

At this point, in Chapter 11, the broader picture of the merit claimed by obscenity prosecutions, the protection of the moral education of young people, is scrutinized. Does the evidence support the suppression of the creative process by these obscenity prosecutions? Is there really a causal
link between the controversial works of these comic art creators and a claim of damage to public morality, particularly that of young people?

In Part VI, the last section of the book, I look beyond the borders of the USA in two different contexts – the international market of comic art, specifically bande dessinée in Europe and manga in Japan; and the borderless world of cyberspace in the digital creation and distribution of comic art online. Four different future scenarios for comic art’s existence in the future, and how law and legal doctrine will affect those scenarios, bring the book to its conclusion.

Like many kids born in the 1950s, I spent my time and meager allowance on my entertainment of choice: comic books, newspaper cartoons and comic strips, and Saturday morning cartoon shows. When I went to college at Berkeley in the 1970s, my focus shifted from superhero comic books to what were called ‘underground comix’, a heady mix of anti-war politics, drugs and sex – the creations of artists like R. Crumb, Art Spiegelman, Vaughn Bode, Gilbert Shelton and Paul Mavrides. My interest in this art form never faded, and I continue to read and collect comic art to this day. Over the years, I have found it particularly interesting to note the number of lawyers and law professors who share my passion for this genre of expressive works.1

Cartoons and comics have been a part of American culture since the formation of this nation. Throughout that lengthy history, comics and cartoons have also been a subject of controversy, censorship, legislation and litigation. They have been viewed as a threat to society, amid claims that they incite juvenile delinquency, and are scandalous, indecent and obscene. So how exactly does the creative process that leads to such a great impact begin?

1 In one very interesting use by lawyers of comics, the creators of the Law and the Multiverse blog site, http://lawandthemultiverse.com/, use current superhero comics plot lines as a base upon which to discuss law and legal doctrine. For example, in one blog posting, the authors use a scene from the recent Thor motion picture, in which government agents seize the research of scientist Jane Foster (played by Natalie Portman), as a basis to discuss the circumstances under which such government seizures are lawful (see, for example, http://lawandthemultiverse.com/2011/05/06/thor/; for a different approach to the intersection between lawyers and comics, see William A. Hilyerd, Hi Superman, I’m A Lawyer: A Guide To Attorneys (And Other Legal Professionals) Portrayed In American Comic Books: 1910–2007, 15 Widener L. Rev. 159 (2007), in which the author offers a detailed and exhaustive study of the numerous ways in which attorneys have been portrayed in comic books over a 93-year period, http://lawandthemultiverse.com/.