The Story Behind the Big Eyes Copyright Dispute

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The upcoming release of the film "Big Eyes" brings back a famous copyright dispute case from the 1980s between Walter and Margaret Keane over a set of big-eyed child paintings that generated a pop cultural phenomenon two decades before.

A fad of the 1960s, Walter Keane's claimed paintings of big-eyed children are forever cemented in American **pop culture**. The only problem is that Walter Keane did not paint, his wife did.



In 1970, six years after their divorce, Margaret Keane told radio audiences the truth: she was the artist behind the brush. Even after Walter failed to show up to her challenged "paint-off," it was still unclear to the American public who had done what. However, once Walter suggested to USA Today that the only reason Margaret claimed she was the painter was because she believed he was dead, Margaret **sued based on slander** [diffamation].

Walter **counterclaimed** [faire une demande reconventionnelle] for **copyright infringement** [violation du droit d'auteur]. Over the course of a **three-week trial** in May of 1986, Judge Harold M. Fong ordered both Margaret and Walter to create a painting of a big-eyed child in the courtroom, in front of the jury. Walter claimed that he was taking medication for a painfully injured shoulder and refused, whereas Margaret created her painting in fifty-three minutes, **exhibit** 224 [pièce à conviction]. The jury **awarded** Margaret **$4 million in damages**, and Walter **appealed**.

The **Ninth Circuit Court of Appeals** [the largest of the thirteen courts of appeals] in Keane v. Keane, 893 F.2d 1338 (9th Cir. 1989), **vacated the award** and **remanded** [renvoyer] the damages issue for a new trial, but **upheld** the district court's entry of **summary judgment** [référé] in favor of Margaret on Walter's copyright infringement claims.

A successful **copyright infringement** claim requires a showing of:

1. a valid copyright; and
2. **actionable copying** [une reproduction pouvant donner lieu à une action en justice]

Actionable copying can be found through either illicit copying**,** wherein an ordinary observer would find substantial similarities in the protectable material, or through actual copying. Actual copying can be shown through either direct or circumstantial evidence. Circumstantial evidence of actual copying can be presented through two different methods. The first method requires access to the original work and **probative** [probant] similarity, which is similarity that makes independent creation unlikely, and may be **opined** [reconnaître/convenir] upon by expert witnesses. The second method should be used where no access to the original work is found, and relies upon a showing of "striking similarity" that precludes the possibility of independent creation.

Because the **pro se** [Pro se legal representation comes from Latin, literally meaning "on behalf of themselves", which basically means advocating on one's own behalf before a court, rather than being represented by a lawyer] Walter failed to present evidence of substantial similarity, or even **allege** [prétendre] that Margaret copied his work, the Court of Appeals **reiterated** that there was no genuine issue of material fact and the summary judgment on the copyright infringement claim was proper. Finally, Margaret had shown that the only big thing Walter could brag about was his mouth.

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