

## ***It's a Prop!***

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Copyright law's special deference to characters as protectable subject matter has long attracted controversy. Disputes arise over the line between well-delineated characters subject to special protection, and uncopyrightable stock characters; the differences between characters described in written literature and those visually portrayed; the nature of infringement of characters as independent works; and the very nature of characters as independently separable from their underlying narratives.

Yet underlying these longstanding disputes is a deceptively simple question: What is a character? Without a clear answer, courts have in recent years been willing to expand special copyright protection over characters to things decidedly not character-like, in particular cars in motion pictures. Without a boundary delimiting characters, copyright law's special solicitude for character protection could threaten to swallow all sorts of literary elements within fuzzy, ill-defined tests.

This article identifies the need for a test for characters, and offers such a test. Insofar as characters deserve special protection in copyright law, it is because characters are special in literature: Literary theorists have long understood that characters are unique vehicles that readers can connect and identify with. To do so, characters must think and act like their (human) readers; that is, they must have mental personalities and agency to act upon their thoughts. Agency and personality should similarly be the qualifying test for characters in copyright law. Such a test is consistent with existing case law, comports with the expectations of authors and readers, limits the scope of concerns over character copyright protection, and best promotes the underlying purposes of access to new creative works.