No. 13-1178

In the Supreme Court of the United States

LISA R. KIRBY, NEAL L. KIRBY, SUSAN N. KIRBY, BARBARA J. KIRBY,

Petitioners,

v.

MARVEL CHARACTERS, INCORPORATED, MARVEL WORLDWIDE, INCORPORATED, MVL RIGHTS, LLC, WALT DISNEY COMPANY, MARVEL ENTERTAINMENT, INCORPORATED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* BRUCE LEHMAN, FORMER ASST SECRETARY OF COMMERCE AND DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE; RALPH OMAN, FORMER U.S. REGISTER OF COPYRIGHTS; THE ARTISTS RIGHTS SOCIETY, THE INTERNATIONAL INTELLECTUAL PROPERTY INSTITUTE, AND VARIOUS PROFESSIONAL ASSOCIATIONS, ILLUSTRATORS AND CARTOONISTS IN SUPPORT OF PETITIONERS

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INTERESTS OF THE *AMICI CURIAE*[1]

Bruce Lehman, as Assistant Secretary of Commerce and Director of the U.S. Patent and Trademark Office from 1993 through 1998, served as the chief advisor to the President for intellectual property matters, including copyright. He supervised and coordinated development of the Administration's position in support of the Copyright Term Extension Act of 1998 ("CTEA"), including the provisions permitting authors to recapture for the extended term copyrights they had transferred to others during the first 75 years of the term of copyright in works created by them. From 1974 through 1983 he served as counsel to the Committee on the Judiciary of the U.S. House of Representatives and during that time was the principal legal counsel to the Committee on copyright matters. In that capacity, he advised the Committee in the 93rd Congress and the 94th Congress during the process of consideration and final passage of the 1976 Copyright Act which extended the 56-year term of protection for works created under the 1909 Act for an additional 19 years, and gave the authors of those works the right to recapture for the extended term their ownership of copyrights previously transferred to others. These experiences afforded Mr. Lehman a thorough understanding of the intent and objective of Congress in defining works-made-for-hire

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than the *amici* made such a monetary contribution. The parties have been given at least ten days' notice of *amici's* intention to file this brief and have given *amici* consent to file. Copies of the letters of consent will be filed with the Clerk of the Court.

and in establishing the author's right to terminate previous transfers of copyright ownership.

Ralph Oman served as U.S. Register of Copyrights from 1985 to 1993. As Register, he filed with the Acting Solicitor General an *amicus curiae* brief with the Supreme Court in a case that dealt with the application of the work-made-for-hire doctrine -- *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), and the Court's opinion did not conflict with the brief's conclusions. For the past 22 years, Mr. Oman has taught copyright law at George Washington University Law School, but it is his wealth of first-hand experience that has made him a true expert. He served as Chief Counsel of the Subcommittee on Patents, Trademarks, and Copyrights of the U.S. Senate Committee on the Judiciary and as chief minority counsel of the Senate Subcommittee on Patents, Trademarks, and Copyrights during the final two years of Senate consideration of the landmark 1976 Copyright Act. As the former Register of Copyrights, Mr. Oman recognizes that this case raises issues of national importance and implicates wide-ranging and recurring policy concerns of constitutional dimension. Mr. Oman cautions not to draw conclusions from the Copyright Office's failure to intervene at this point in the proceeding because during his tenure as Register of Copyrights it was the Office's policy not to weigh in at the cert stage, absent an express request from the Court or the Solicitor General that it do so. At this preliminary stage, the Court has yet to make such request.

The International Intellectual Property Institute is a nonprofit think tank and development organization

that promotes the effective use of intellectual property rights throughout the world.

The Artists Rights Society (ARS) is the preeminent copyright, licensing, and monitoring organization for fine artists in the United States. Founded in 1987, ARS represents the intellectual property rights interests of over 60,000 visual artists and the estates of visual artists from around the world (painters, sculptors, architects, photographers and others). Among its American members are Jackson Pollock, Alexander Calder, Georgia O'Keeffe, Frank Lloyd Wright, Willem de Kooning, Mark Rothko, Robert Indiana, Sam Francis, Bruce Nauman, Frank Stella, Arshile Gorky, Richard Serra, Sol LeWitt, Lee Krasner, Barnett Newman, Milton Avery, Susan Rothenberg, and many others. Foreign members include Henri Matisse, Pablo Picasso, Rene Magritte, Marc Chagall, Marcel Duchamp, Joan Miró, Man Ray, Edvard Munch, Joseph Beuys, Pierre Bonnard, Fernand Léger, Alberto Giacometti, Georges Braque, Constantin Brancusi, Jean Dubuffet, Max Ernst, Le Corbusier, Vassily Kandinsky, and many others. A large percentage of the artists represented by ARS created works prior to enactment of the 1976 Copyright Act and have a strong interest in being able to assert the termination rights in such works granted to them under 17 U.S.C. § 304.

Joining as *amici* are 12 professional associations and societies that provide standards, education and advocacy services for illustrators, as set forth in Appendix A at App. 1; and 221 nationally celebrated illustrators and cartoonists, several of whom have received the Pulitzer Prize, and artistic professionals as set forth in Appendix B at App. 10.

All of the *amici* represent self-employed, working freelance artists whose livelihood depends on the ability to retain and exercise effective control of their copyrights in an environment in which the clients served are more often than not publishers or institutional and corporate purchasers who regularly use their greater market power to provide the minimum compensation possible in return for transfer of the greatest possible copyright control in works commissioned by them. The ability to make effective use of the termination rights at issue in this case is essential if these artists are to retain meaningful benefit from the use of their copyrights, as Congress intended, in the face of the disproportionately greater negotiating power of their clients.

SUMMARY OF THE ARGUMENT

Amici urge this Court to grant the petitioners' request to review the decision of the court of appeals, which denied them their statutory rights to recapture the copyright interests of their father, Jack Kirby – a world famous creator and illustrator of comic book characters and stories – in works that were sold for $18-20 per page and have subsequently generated billions for respondents. It is undisputed that Kirby was an independent contractor who assigned to Marvel rights in the works Marvel chose to purchase for publication.

When the petitioners exercised their right to terminate those assignments under 17 U.S.C. 304(c) respondents sought a declaratory judgment; arguing that under a judicial "instance and expense" test all of Kirby's creations published by Marvel in 1958-63 were exempt as "work for hire" under the 1909 Copyright

Act. The district court granted Marvel summary judgment pursuant to this highly presumptive "test," and the Second Circuit affirmed. It essentially held that because Marvel was Kirby's primary client, he created his works at the publisher's "instance" and at its "expense," even though Marvel only paid Kirby for those submissions it wished to publish.

Amici vehemently disagree with the court of appeals's retroactive re-characterization of Kirby's freelance work as "made-for-hire" under the 1909 Act. The Second Circuit's controversial "instance and expense" test unfairly imposes an "almost irrebuttable presumption" that commissioned works were "for hire" under the 1909 Act, effectively gutting the termination rights provided by the curative 1976 Copyright Act.

Kirby's creations in 1958-63 were not works for hire according to the interpretation of the 1909 Act by this Court, Congress, and under the common law. Per Section 26 of that statute only a traditional "employer" is considered an "author … in the case of works made for hire." In drafting that provision, Congress clearly contemplated regular, salaried employment and Congress's exhaustive research leading up to the 1976 Act shows that certainly no one in 1958-63 construed work for hire to include the copyrighted material of freelancers like Kirby. This Court's articulation in *Community for Creative Non-Violence et al v. Reid*, 490 U.S. 730 (1989) of well-established norms of statutory construction; work for hire doctrine under the 1909 Act, and the 20-year legislative history of the 1976 Act – all lead to the natural conclusion that Kirby's creations in 1958-63 were *not* Marvel's works for hire.

Petitioners were thus clearly entitled to exercise the termination rights vested in them by the 1976 Act. Congress intended the termination provisions to give authors and their heirs the opportunity to share in the proven value of their works. Yet, the Second Circuit has gone out of its way to thwart congressional intent, ignore the text and legislative history of the 1909 Act, and disregard this Court's teaching in *CCNV* – all to deny creators, like Kirby, their termination rights and to bestow on publishers an unjustified windfall.

Amici encourage this court to grant the Kirby family's petition for *certiorari*.

ARGUMENT

I. THE COURT OF APPEALS INCORRECTLY FOUND THAT THE WORKS IN QUESTION WERE MADE FOR HIRE UNDER THE 1909 COPYRIGHT ACT, DIVESTING PETITIONERS OF THEIR STATUTORY TERMINATION RIGHTS

A. The Second Circuit Disregards the Legislative History and Contemporaneous Understanding of the Term "Employer" in the 1909 Act

1. The Legislative History of the 1909 Act Clearly Shows that the Term "Employer" Connotes Traditional Employment

Section 26 of the 1909 Copyright Act provides that "the word 'author' shall include an employer in the case of works made for hire…" 17 U.S.C § 26. This language is echoed in 17 U.S.C. § 24 with no further explanation. There are no other uses of the term "for hire" in the

1909 Act. Section 24 makes clear that, where a work is not created for hire, the renewal term vests in the author or certain heirs. 17 U.S.C. § 24.

Although the word "employer" is undefined, it is clear from its common meaning and legislative history that the drafters of the 1909 Act intended work for hire to only apply to regular hierarchical employment. The drafters discussed that payment of a salary, "entitle[d] an employer to all rights to obtain a copyright in any work performed during the hours for which such salary [was] paid." Stenographic Report of the Proceedings of the Librarian's Conf., 2d Sess. 65 (Nov 1-4, 1905). More strikingly, the drafters discussed that"the artist who is employed for the purpose of making a work of art so many hours a day" and "the independent artist" should have different rights. *Id*.

The 1909 Act codified then existing case law governing employed authors. In 1903, this Court for the first time considered the question of whether an employer could be considered the author of a work created by an employee. *Bleistein v. Donaldson Lithographing Co.,* 188 U.S. 239 (1903). The Court found that copyrights in advertising lithographs belonged to the employers of the designers of those works because the designers were "persons employed and paid by the plaintiffs in their establishments to make those very things." *Id.* at 248 (citations omitted). These employees fit the traditional model of full time salaried or hourly workers performing their tasks using the equipment and workspaces of the employer and under the direct supervision of the employer. Congress codified this principle in the 1909 Act by defining "author" to

include the "employer in the case of works made for hire." 17 U.S.C. § 26 (1970) (Repealed 1976).

2. The Law in 1958-63 When Kirby Sold His Work to Marvel Was that Work for Hire Applied Only to Traditional Employees Not Freelancers

Given that the Second Circuit applies the "instance and expense" test as a means of establishing the presumptive intent of contracting parties, Pet. App. 33-46, it is critical that during the 1958-63 period when Kirby created the works at issue that work for hire applied solely to work created within a traditional employment relationship, not to commissioned works of an independent contractor like Kirby.

When Congress initiated the process of revising the 1909 statute it was commonly understood that work-for-hire encompassed only works by salaried employees. At the time of the copyright revision the courts had not applied Section 26 or the work-made-for-hire doctrine to commissioned works. Instead, the courts applied a common law presumption that a commissioned party effected an implied assignment. The leading case was the Second Circuit's decision in *Yardley v. Houghton Mifflin Co.*, 108 F.2d 28 (1939), cert. denied, 309 U.S. 686 (1940). After the City of New York commissioned an artist to paint a mural on a wall in a public high school, the court of appeals held that the city was assigned the copyright and artwork. *Yardley*, 108 F.2d at 30-31. Not once did *Yardley* cite the work for hire provision in the 1909 Act, and the

court went on to state that the artist's executor, not the city, held the renewal right. *Id*.[2]

In *Mills Music, Inc. v. Snyder* this Court found that the Copyright Office held the primary responsibility to develop the 1976 Act, including "authorizing a series of 34 studies on major issues of copyright law"; "conduct[ing] numerous meetings with representatives of the many parties that the copyright law affected"; "issu[ing] a preliminary draft revision bill"; "submitt[ing] [a] 1965 draft revision bill"; and "prepar[ing] a supplementary report to accompany the 1965 draft revision bill." 469 U.S. 153, 159-160 (1985). *See also* Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 87th Cong., 1st Sess. (Comm. Print 1961) ("Register's Report"). All of its findings were that "employer" in the 1909 Act meant a formal, salaried employee.

This was acknowledged in an analysis by Borge Varmer, who, at the request of the Register of Copyrights authored one of its thirty-four monographs. Varmer stated "[I]t may be concluded that section 26 [of the 1909 Act] refers only to works made by salaried employees in the regular course of their employment." B. Varmer, *Works Made For Hire And On Commission,*

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[2] Cases following *Yardley* also used assignment language. *See*, *e.g., Official Aviation Guide Co. v. American Aviation Associates, Inc.*, 150 F.2d 173, 178 (7th Cir.), cert. denied, 326 U.S. 776 (1945); *McKay v. Columbia Broadcasting System, Inc.*, 324 F.2d 762, 763 (2d Cir. 1963); *Grant v. Kellogg Co.,* 58 F. Supp. 48, 51 (S.D.N.Y. 1944), aff'd, 154 F.2d 59 (2d Cir. 1946). *See also* Varmer *Works for Hire*, at 130. None of these cases equated an "employee" and a commissioned creator under Section 26.

Copyright Office Study No. 13, 86th Cong., 2d Sess. 130 (Comm. Print 1960) ("Varmer *Works for Hire")*.

Varmer posed the question of whether revision of the 1909 Act should alter this presumption and treat commissioned works as works-for-hire. Varmer *Works for Hire,* at 143. The Register's Report concluded that the answer to this question was no. The Report observed that "[t]he courts … have not generally regarded commissioned works as 'made for hire'" and recommended that any revision should make this clear by defining works-for-hire as "works created by an employee within the regular scope of his employment." Register's Report at 87.

The 1961 Register's Report was followed two years later by a Preliminary Draft Bill that embodied the conclusions of the 1961 report, explicitly stating, "[i]n the case of a work made for hire, the employer shall, for purposes of this title, be considered the author and shall have all the rights comprised in the copyright unless the parties have expressly agreed otherwise." Copyright Law Revision, Part 3, Preliminary Draft for the Revised U.S. Copyright Law and Discussions and Comments on the Draft, 88th Cong., 2d Sess. 15 (Comm. Print 1964) (quoting section 14) ("Preliminary Draft"). A footnote stated that "[a] 'work made for hire' would be defined elsewhere in the statute as a work prepared by an employee within the scope of the duties of his employment, but not including a work made on special order or commission." *Id.* At 15 n. 11.

A contemporaneous statement of the American Book Publishers Council and the American Textbook Publishers Institute acknowledged that "[w]orks for hire – in which copyright is by law owned by the

employer – would be redefined to include only work done by a salaried employee in the scope of his regular duties, and would exclude works made on special order or commission." William F. Patry, *The Copyright Law*, 120 n.28 (2d ed. 1986), *quoting* Copyright Law Revision, Part 4, Further Discussions and Comments on Preliminary Draft for Revised U.S. Copyright Law, 88th Cong., 2d Sess. 250 (Comm. Print 1964) ("Further Discussions on Draft").

B. The Court of Appeals's Decision Violates Supreme Court Precedent

1. The Decision Ignores the Supreme Court's Canon of Statutory Interpretation

In the decision below and the cases preceding it, the Second Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10. In *Community for Creative Non-Violence et Al. v. Reid* 490 U.S. 730 (1989) ("*CCNV")* this court clearly rejected the Second Circuit's "instance and expense" test as applied to works created after January 1, 1978, the effective date of the 1976 Copyright Act. The Court held that the test could not apply to define "employee" under the 1976 Act for the universal reason that undefined terms in statutes must be read in accordance with their common law definition. *Id*. at 741.

The issue in *CCNV* was whether a commissioned work of sculptural art could be a work-made-for-hire "prepared by an employee within the scope of his or her employment …" where the party commissioning the work actually designed part of the final sculpture, developed the concept for the sculpture and closely

supervised its creation. *Id*. at 737. Justice Marshal discussed the prior analyses used by four different circuits, including the "approach formulated by the Court of Appeals for the Second Circuit" in *Aldon Accessories Ltd. v. Spiegel, Inc.* 738 F. 2d 548 (5th Cir. 1984), cert denied, 469 U.S. 982 (1984). *Id*. at 739. He viewed the *Aldon Accessories* approach as "turning on whether the hiring party has actually wielded control with respect to the creation of a particular work." *Id*. This is the basis for the "interest" prong of the "interest and expense" test. However, Justice Marshall *rejected* the Second Circuit's "instance and expense" test and endorsed the D.C. Circuit's approach, concluding that "the term 'employee' should be understood in light of the general common law of agency." *Id.* at 741.

"If the word 'employee' in the 1976 Act provides an adequate basis for the Supreme Court to interpret the statutory provision in light of the general common law of agency, then there seems no good reason why the use of the word 'employer' in the 1909 Act should not do the same." 1 H. Abrams, The Law of Copyright ("Abrams") (2005) § 4:11, at 4-44 to 4-45. Moreover, *CCNV* defined "employer" in addition to "employee." *Id*. at 732. Ignoring this part of *CCNV* to theorize about a putative distinction between "employee" in the 1976 Act and "employer" in the 1909 Act misses the point. There is no reasonable explanation of how "employer" could have a broad scope in the 1909 Act when as *CCNV* held it has a narrow scope in the 1976 Act bound by the common law of agency and traditional employment.

It was not until 1966 that the Second Circuit, in a line of cases beginning with *Brattleboro Publishing Co. v. Winmill Publishing Corp.,* 369 F.2d 565 (2d Cir.

1966), began to read commissioned works of an independent contractor within the term "employer" in the 1909 Act, contrary to the well-settled "principle that where words are employed in a statute which had at the time a well-known meaning at common law or in the law of this country they are presumed to have been used in that sense unless the context compels to the contrary." *Standard Oil Co. v. United States,* 221 U.S. 1, 59 (1911). This principle was well understood when *Brattleboro* ignored it, and it remains a "cardinal rule of statutory construction." *Molzof v. United States,* 502 U.S. 301,307 (1992), *citing Morissette v. United States,* 342 U.S. 246, 263 (1952). Under this canon it is clear "that Congress means an agency law definition for 'employee' unless it clearly indicates otherwise." *Nationwide Mut. Ins. Co. v. Darden,* 503 U.S. 318, 325 (1992). Thus, "employee" means "the conventional master-servant relationship as understood by common-law agency doctrine." *CCNV,* 490 U.S. at 739-40. The correlative term "employer" has the same obvious meaning. *Id.*, at 740-41 ("When we have concluded that Congress intended terms such as 'employee,' 'employer,' and 'scope of employment' to be understood in light of agency law, we have relied on the general common law of agency, rather than on the law of any particular State, to give meaning to these terms")(citations omitted).

The mandatory practice of examining the common law to interpret undefined statutory terms did not come into existence by accident: "federal statutes are generally intended to have uniform nationwide application," and this is especially true for statutes using the terms "employer" or "employee." *CCNV,* 490 U.S. at 740 (quoting *Mississippi Band of Choctaw Indians v.*

Holyfield, 490 U.S. 30, 43 (1989)). The subject at issue in the statute in *CCNV* was work for hire, but the decision explicated this broader holding. The Court emphasized the importance of giving the same common law meaning to undefined terms in statutes that are commonly understood. *CCNV,* 490 U.S. at 740. This copyright legislation is only one statute amidst many. The Second Circuit's expansive unsupported construction of "employer" in Section 24 to include independent contractors not only contorts copyright law but is contrary to the goal of consistency across federal statutes.

All courts of appeals which have addressed work for hire under the 1909 Act now follow the infirm "instance and expense" test.[3] The circuits' total disregard for this Court's holding and reasoning in *CCNV* is matched only by their lack of concern. Indeed, since the creation of this test, not one circuit interpreting the 1909 Act's work for hire doctrine has even attempted to reconcile its holding with this Court's "well-established rule of [statutory] construction," *Neder v. United States,* 527 U.S. 1, 21 (1999), or to square the "instance and expense" test's expansive construction of "employer" with this Court's narrow one.

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[3] *See Twentieth Century Fox Film Corp. v. Entertainment Distributing*, 429 F.3d 869 (9th Cir. 2005), *Brunswick Beacon, Inc. v. Schock-Hopchas Pub. Co.,* 810 F.2d 410, 412 (4th Cir. 1987); *M.G.B. Homes, Inc. v. Ameron Homes, Inc.,* 903 F.2d 1486, 1490 (11th Cir. 1990); *Community for Creative Non-Violence v. Reid,* 846 F.2d 1485, 1489, 1493 (D.C.Cir. 1988), *aff'd on other grounds*, 490 U.S. at 736; *Forward v. Thorogood,* 985 F.2d 604,606 (1st Cir. 1993); *Easter Seal Soc'y v. Playboy Enters.,* 815 F.2d 323, 327 (5th Cir. 1987); *Real Estate Data, Inc. v. Sidwell,* 907 F.2d 770, 771 (7th Cir. 1990).

2. The Decision Disregards the Supreme Court's Ruling in CCNV v. Reid

The Second Circuit apparently felt free to disregard this Court's teaching in *CCNV* because Jack Kirby created the works at issue under the 1909 Act. However, the law as understood in 1958-63 that time does not support the "interest and expense" test it retroactively applied. To understand the contours of that law the court of appeals had to look no further than Justice Marshal's opinion in *CCNV*.

Justice Marshal discussed the evolution of the law under the 1909 Act as follows:

> In 1955, when Congress decided to overhaul the copyright law, the existing work for hire provision was § 62 of the 1909 Copyright Act, 17 U.S.C. § 26 (1976 ed.) (1909 Act). It provided that "the word 'author' shall include an employer in the case of "works made for hire." Because the 1909 Act did not define "employer" or "works made for hire," the task of shaping these terms fell to the courts. They concluded that *the work for hire doctrine codified in § 62 referred only to works made by employees in the regular course of their employment* (emphasis added). As for commissioned works, the courts generally presumed that the commissioned party had impliedly agreed to convey the copyright, along with the work itself, to the hiring party. *See*, *e. g., Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.,* 221 F. 2d 569, 570, rev'd, 223 F. 2d 252 (CA2 1955); *Yardley v. Houghton Mifflin Co.*, 108 F. 2d 28, 31 (CA2 1939), cert. denied, 309 U.S. 686 (1940).

CCNV, 490 U.S. at 743-74.

The court of appeal's analysis conflicts with Justice Marshal's analysis of the work for hire doctrine under the 1909 Act. Jack Kirby's works at issue fell into the category of "commissioned works" which Justice Marshall concluded were "convey[ed]," i.e., assigned. Furthermore, all of the evidence available to the lower courts supported that Kirby "convey[ed] the copyright" to Marvel, not that Marvel owned Kirby's work at creation. That is precisely the circumstance 17 U.S.C. § 304 is intended to address by giving authors or their statutory heirs the opportunity to terminate such copyright transfers.

Justice Marshall gave only a brief description of the pre-1978 law of work-made-for-hire. A closer look provides no support whatsoever for the court of appeals bold assertion that "the law in effect when the works were created …. requires us to apply what is known as the 'instance and expense' test." Pet. App. 33-34.

The court of appeals departs from uniform statutory interpretation and Supreme Court precedent without justification. It applied the "instance and expense" test despite acknowledging that it had erred in using *Yardley's* implied assignment factors to find that an independent contractor's work was "for hire." Pet. App. 34-36; *see also Estate of Burne Hogarth v. Edgar Rice Burroughs, Inc*., 342 F.3d 149, 159-160 (2d Cir. 2003). The Second Circuit further admits that the sweeping "instance and expense" test was adopted "without explanation or citation of authority." *Martha Graham Sch. and Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, Inc.,* 380 F.3d 624, 635 (2d Cir. 2004). In particular, *Hogarth* could not reconcile its

expansive reading of "employer" in Section 26 of the 1909 Act with this Court's express reasoning in *CCNV*. Leading commenters have noted that the use of the "instance and expense" test transform freelance material into work for hire is "wrong both on principle and under the rule of the early cases." 3 M. & D. Nimmer, *Nimmer on Copyright* ("*Nimmer*")(2005) § 9.03[D], at 9-28.2 to 9-28.3. The court of appeals' view is "untenable" under *CCNV*, which explains that copyright vests in a commissioned author "rather than vesting automatically in the hiring party." 3 *Nimmer*, *id.*, § 9.03[D], at 9-28.4. *See also* 1 Abrams, *supra*, § 4:9, at 4-12 to 4-15 (criticizing the Second Circuit's reasoning in cases, including *Brattleboro Pub. Co.* and *Picture Music, Inc. v. Bourne*, Inc., 457 F.2d 1213 (2d Cir. 1972)).

II. MARVEL'S RELATIONSHIP WITH KIRBY IS SYMPTOMATIC OF THE PREDATORY PRACTICES OF PUBLISHERS, AND THE VERY IMBALANCE CONGRESS SOUGHT TO REMEDY BY THE 1976 ACT'S TERMINATION PROVISIONS

A. The 1976 Act's Termination Provisions Demonstrate Congress's Well-Considered Policy to Protect and Benefit Authors

The termination right first appeared in the 1963 Preliminary Draft bill prepared for Congress by the Copyright Office. Copyright Law Revision, Part 3, Preliminary draft for Revised U.S. Copyright Law and Discussions and Comments on the Draft, 88th Cong., 2d Sess. 15 (Comm. Print 1964).

Publishers' reactions to the termination provisions in the 1963 Preliminary Draft bill were negative. To

limit their impact they proposed that the definition of work-for-hire be retained insofar as it referred to "employees", but that it be expanded to incorporate commissioned works, without regard to subject matter, "if the parties so agree in writing." Further Discussions on Draft at 274.

Representatives of authors strongly objected to the publishers' proposal. The legendary Irwin Karp, long-time counsel for the Authors' League of America, argued that publishers would use their superior bargaining position to force authors to sign work for hire acknowledgements, thereby relinquishing all of their copyrights if they wanted to get their works published. "[A]n author could easily be induced to sign a form contract stating that his work is 'made for hire,' and that ordinary book publication contracts, signed before the author has completed the work and calling for an advance against royalties, could be converted into 'employment agreements' as a matter of course." Copyright Law Revision, Part 6, at 67. He urged that language in the 1963 Preliminary Draft bill be retained – that works made "on special order or commission" be excluded from the definition of work for hire. *Id.* at 239, 245.

Ultimately, after introduction of the termination right in an earlier draft bill, a compromise was reached in 1965 providing authors the termination right as to both pre-1978 and post-1978 grants, 17 U.S.C. §§ 203(a), 304 (c), while publishers gained the right to commission "works for hire" under limited circumstances. 17 U.S.C. § 101. The subsequent judicial decisions that unjustifiably expanded work for hire in the last years the 1909 Act were never examined by the

legislature in enacting the 1976 Act's termination provisions. *See Mills Music*, 469 U.S. at 160-161 ("Although additional hearings were held in subsequent sessions, and revision bills were submitted to Congress in each term for the next 10 years, discussion over the termination provisions … was essentially completed at this time. Congress enacted the termination provisions … in the 1976 Act in virtually the same form as they appeared in the 1965 draft revision bill.") "There is no indication that anyone involved in copyright revision later became aware of the line of cases expanding the work made for hire doctrine." Jessica Litman, *Copyright, Compromise, and Legislative History,* 72 Cornell L. Rev. 857, 901 (1987).

The termination right applies only to the period of copyright protection extended by the 1976 Act, and further extended by the 1998 CTEA. 17 U.S.C. § 304. In enacting this right, Congress honored the fact that the parties to a pre-1978 copyright grant had bargained for a maximum term of 56 years per the 1909 Act. Congress gave authors and their families the opportunity to benefit from its extensions by recovering copyrights for the extended term. *See* H.R. Rep. No. 105-452, 105th Congress, 2d Sess., at 8 (1998) (the intention is for "original authors of works and their beneficiaries to benefit from the extended copyright protection"). If the court of appeals' decision is allowed to stand the benefits Congress expressly intended to bestow on authors and their families will be rendered meaningless.

The *amici* represented in this brief can attest through personal experience that Mr. Karp's concerns, articulated 51 years ago, remain as valid today as then.

Not only because many of them created material before 1978, but because they cannot rely upon the legislative compromises that their representatives reached in Congress. The Second Circuit's misinterpretation of work for hire under the 1909 Act unfairly strips freelance artists of their termination rights and provides an unintended and unwarranted windfall to publishers.

B. The Inequitable Treatment of Artists Like Jack Kirby Is Typical of the *Amici's* Experience and Will Continue Without This Court's Much Needed Review

It is undisputed that Jack Kirby was *not* an employee of Marvel at the time he created the works in question. Kirby was typical of the professional illustrators and cartoonists comprising the *amici*. He was a freelancer who, as sole proprietor of his own business, paid his own income and social security taxes, worked out of his own home, purchased all his own materials and paid all of his expenses. Pet. App 44. Marvel paid none of these costs and bore no responsibility for Kirby's authorship of comic book characters, storylines, text and illustrations. Kirby "pitched" and discussed concepts with Marvel's editor and submitted completed material to Marvel which it thereafter purchased for publication or rejected. Pet. App. 44-46. While Marvel may have been Kirby's biggest client in 1958-63, Kirby had no engagement agreement, was non-exclusive, and retained the right to submit his original work to other publishers, even material originally conceived for a sale to Marvel.

The only contemporaneous agreement between the parties consisted of legends inserted by *Marvel's attorneys* on the back of its checks to Kirby "with

assignment, instead of work-for-hire, language." Pet. App. 47. Those very assignments are subject to the 1976 Act's termination provisions. 17 U.S.C. § 304. However, Kirby's children had no opportunity to present evidence to the trier of fact because they were thrown out of court on summary judgment based on the Second Circuit's "instance and expense" test which ignores the text and legislative history of the 1909 Act, this Court's precedent and Congress's clear objectives in enacting the termination provisions. Pet. App. 2.

Like most freelance commercial artists Jack Kirby had little choice if he wished to continue to sell his work to his biggest client. The working artists among the *amici* are intimately familiar with this kind of pressure. They face it each time they attempt to sell a work to a publisher with vastly greater market power than they possess.

Amici strongly urge this Court to review this important case. The "instance and expense" test for retroactively characterizing independent work as employment "for hire" establishes a game of "gotcha" designed to block freelance artists from exercising their rights under the Copyright Act. If the court of appeals unsupportable decision is allowed to stand, Congress's twice expressed intent to give authors and their families the benefit of its copyright term extensions, will be nullified.

CONCLUSION

The "almost irrebuttable presumption" established by the Second Circuit – which disregards the definition of "employer" as it was universally understood at the time Jack Kirby created the works in question – renders meaningless the termination right established for the benefit of freelance authors and artists under the 1976 Act and should be rejected by this court consistent with its decision in *CCNV*.

Respectfully submitted,

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APPENDIX

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APPENDIX A

This amicus brief is joined by the following organizations:

The American Society of Illustrators Partnership

The American Society of Illustrators Partnership (ASIP) is a grassroots coalition of twelve visual artists organizations, founded and funded entirely by working artists. ASIP was founded in 2007, as an initiative of the Illustrators' Partnership of America (IPA), although many of its member organizations have distinguished histories dating back more than 50 years. The coalition encompasses a broad spectrum of creative artists, ranging from the nation's editorial cartoonists to medical illustrators, architectural and science illustrators, aviation artists, magazine, book and advertising illustrators. Combined, its members create much of the visual material in American contemporary culture. ASIP's board includes a Pulitzer Prize winner, a muralist for the Smithsonian's Air and Space Museum and two members of the Illustrators Hall of Fame; as well as artists who have received the top awards for achievement in their respective fields. The partnership consists of thousands of freelance creators or small business owners that earn their livelihood by licensing the copyrighted work they create. Therefore, ASIP has a compelling interest in the continued effectiveness of copyright law in the field of visual art, as well as unique insight and unparalleled experience in how art is created, licensed and managed by the people who actually create it.

National Cartoonists Society (NCS)

The National Cartoonists Society is the world's largest and most prestigious organization of professional cartoonists. The NCS was born in 1946 when groups of cartoonists joined forces to entertain the troops and decided to meet on a regular basis. Today, the NCS membership roster includes over 500 of the world's major cartoonists working in many branches of the profession, including newspaper comic strips and panels, comic books, editorial cartoons, animation, gag cartoons, greeting cards, advertising, magazine, book illustration, and more. The primary purposes of the Society are to advance the ideals and standards of professional cartooning in its many forms; to promote and foster a social, cultural and intellectual interchange among professional cartoonists of all types; and to stimulate and encourage interest in and acceptance of the art of cartooning by aspiring cartoonists, students and the general public.

American Society of Architectural Illustrators (ASAI)

The American Society of Architectural Illustrators (ASAI) was founded in 1986 as a professional organization to represent the business and artistic interests of architectural illustrators throughout North America, and now includes over 450 practitioners worldwide among a total of eighteen countries. The Society's principal mandate was and remains the fostering of communication among its members, raising the standards of architectural drawing, and acquainting the broader public with the importance of such drawings as a conceptual and representational tool in architecture. The Society also assists in the advancement of the art

and profession in a number of significant ways: as a referral agency for those seeking the services of a perspectivist, as a network among the world's practitioners and affiliated organizations, as a clearing-house for ideas and discussions about architectural illustration, and a sponsor of regional and local member activities. ASAI members have authored many books on the profession, and contributed to numerous sourcebooks and reference publications during its history. By recognizing and celebrating the highest achievements in the illustration of our built environment, the Society and its dedicated, committed and passionate members continue to further the quality of the work and working conditions, to benefit all who have an interest in architectural illustration and its end, architecture.

Association of American Editorial Cartoonists (AAEC)

The Association of American Editorial Cartoonists is a professional association concerned with promoting the interests of staff, freelance and student editorial cartoonists in the United States. The AAEC sponsors a "Cartoons for the Classroom" program designed to aid educators at all levels in teaching history, economics, social studies and current events. The AAEC's annual convention in June gives member cartoonists an opportunity to meet and consider issues through panel discussions and guest speakers. Between conventions, cartoonists can discuss issues on a daily basis through a members' only email list-serve.

Association of Medical Illustrators (AMI)

The profession was defined over 100 years ago and a professional association was established in 1945. Since then, AMI has codified the profession by setting the academic standards and guidelines through the accreditation of graduate programs; by establishing a scholarly journal to disseminate knowledge and skills; and by launching a program to recognize the continued competencies of a professional through board certification of medical illustrators. Medical Illustrators are highly specialized visual artists that apply their creativity, scientific expertise and interdisciplinary skills to further medical and scientific understanding for purposes of teaching, research, marketing, or demonstrative evidence in the courtroom. They have graduate level training or higher and possess dual skills in science and visual communication with advanced courses in human anatomy, pathology, molecular biology, physiology, embryology and neuroanatomy. Scientific and medical concepts are taught visually, and the expertise of medical illustrators makes it possible to convey complex aspects of anatomy, biology and related scientific disciplines. The visual artistry of medical illustrators utilizes diverse techniques and media, from classical painting and drawing to 21st Century techniques such as animation, 3D modeling and augmented reality, medical models and surgical simulations prosthetics and anaplastology. As creators of original work that they may assign, the members of AMI have a direct interest in the realization of Congress' objectives regarding the termination right.

Guild of Natural Science Illustrators (GNSI)

The Guild of Natural Science Illustrators, Inc. is an international non-profit organization comprised of individuals employed, or genuinely interested in the field of natural science illustration. The Guild encourages increased communication between individuals in the field of natural science illustration, assistance to those with the desire and ability to enter the profession and promotes better understanding of the profession to the general public and those requiring natural science illustration services. From its inception in 1968, the Guild has had the support of the National Museum of Natural History, Smithsonian Institution. Membership has burgeoned to nine hundred fifty-three members representing individuals living in all fifty states, the District of Columbia, Puerto Rico and twenty-three foreign countries. Natural science illustrators work in the service of science. Various membership discipline specialties include but are not limited to: anatomy, anthropology, archaeology, astronomy, biology, botany, cartography, education, entomology, ichthyology, invertebrates, mammals, medical, ornithology, paleontology, vertebrates, veterinary and wildlife. Much of the work created by natural science illustrators is published in books, journals, and magazines but is also utilized in other venues such as museum dioramas and exhibitions, the internet, CD-ROMS and shown as fine art.

San Francisco Society of Illustrators (SFSI)

In 1961, thirteen San Francisco illustrators formed a chartered society for illustrators. In addition to promoting illustration, The San Francisco Society of Illustrators encourages independence, fair practices and

personal artistic excellence as its goals. For several decades, SFSI members have participated in the US Air Force Documentary Art Program and the National Parks Art Program, resulting in50 paintings and 18 drawings now permanently on display at the Department of the Interior in Washington DC, and at the Forest Service Design Center at Harpers Ferry, West Virginia. SFSI members have also been involved with the National Aeronautics and Space Administration in documenting various NASA activities. Today many of the members are known nationally for their illustrations, which appear throughout the country in books, periodicals, postage stamps advertisements, publications, television and film. A large group, both past and present, have been involved in the education of aspiring illustrators at Bay Area professional schools and colleges.

Pittsburgh Society of Illustrators (PSI)

Pittsburgh Society of Illustrators began meeting in late 1996 to serve as a social and business networking outlet for free-lance illustrators. PSI quickly morphed into a sophisticated trade organization with the aim of achieving a closer social and professional contact among illustrators in the Pittsburgh area; cultivating and strengthening the profile of the illustration art form in the Pittsburgh region by exhibiting and promoting members' work of the highest aesthetic caliber; acquanting Pittsburgh art and illustration patrons with members' work; hosting visiting illustrators, lecturers, and teachers; and fundraising and donating (including but not limited to scholarships) to worthy and needful college age art and design students pursuing the illustration craft. For the past 15 years, PSI has

held art shows for its members and operated a scholarship program with local colleges.

Society of Illustrators Los Angeles (SILA)

The Society of Illustrators of Los Angeles was founded in 1953 by a handful of Southern California advertising artists and designers primarily to promote the professional status of illustration as well as foster philanthropic and educational goals. From this small beginning it has grown to a very productive membership whose work is seen nationally by millions each year in all printed media, television, films, the Internet and gallery exhibitions. SILA has close to 200 members and is firmly established as the major professional art entity on the West coast providing significant contribution to the vitality of not only the community itself but the nation as well.

The Society of Illustrators San Diego (SISD)

The Society of Illustrators San Diego was formed in 1989 as a chapter of The Society of Illustrators Los Angeles. The purpose behind the formation of this group of professionals was to promote awareness and abilities, to network among each other and with professionals in related fields, to create programs and activities for educational growth, and to provide social interaction for people who share similar experiences and interests. The primary activity of SISD is to provide a forum for guest speakers to show their work, to talk about their experiences as a professional illustrator, and to demonstrate their style and techniques. Additionally, SISD has hosted non-illustrators to address topics on the business side of illustration, such

as pricing sessions, panel discussions on illustration buying and marketing; and future illustration trends.

American Society of Aviation Artists (ASAA)

The American Society of Aviation Artists is a non-profit organization dedicated to the bringing together of artist and public for the purpose of sharing special aviation knowledge and traditional artistic processes necessary to the creation, improvement and public appreciation of aviation art. Since its incorporation in 1986, the American Society of Aviation Artists has pursued its mission of bringing together aviation and aerospace artists in an effort to encourage excellence in this unique genre of art. Aviation and aerospace art are creative responses to premiere technologies of our time. The need for accurate and artistically creative representation of the machines, events, and people involved in the history of flight has provided the impetus for an association promoting high standards of excellence. ASAA has fulfilled that need through its annual exhibitions and forums, regional meetings, scholarship programs, a quarterly journal, an informative and colorful website, and of course, the member networking that a professional art society provides.

The Illustrators Club of Washington DC, Maryland and Virginia (IC)

The Illustrators Club of Washington DC, Maryland and Virginia (IC) is a non-profit, all-volunteer trade association dedicated to promoting the art and business of illustration since 1986. IC's membership network includes professional illustrators, graphic designers, educators, students, vendors and related businesses. IC provides a broad palette of resources, programs and

opportunities to educate and benefit members, art buyers and the general public. The Illustrators Club strives to protect the rights and interests of all members, while maintaining high standards and encouraging fair business practices throughout the graphic arts community.

APPENDIX B

The following illustrators, cartoonists, and artistic professionals individually joined this amicus brief to show their support:

Clay Bennett
Five-time Recipient of the Pulitzer Prize for editorial cartooning, two-time recipient of the United Nations Political Cartoon Award, and recipient of the RFK Journalism Award, Mr. Bennett has earned almost every honor his profession has to offer. Mr. Bennet is a former president of the Association of American Editorial Cartoonists and his work is syndicated internationally

David Hosey
Two-Time Pulitzer Prize-winning editorial cartoonist, recipient of the Robert F. Kennedy Journalism Award and named National Press Foundation's 1998 Cartoonist of the Year, Mr. Hosey's work is currently featured at the Los Angeles Times

Ann Telnaes
The second woman cartoonist to receive the Pulitzer Prize and a former Disney illustrator, Ms. Telnaes's cartoons are currently featured at the Washington Post and syndicated nationally

Nick Anderson
Pulitzer Prize-winning editorial cartoonist currently at the Houston Chronicle and syndicated in over one hundred newspapers, Mr. Anderson is also the recipient of the Society of Professional Journalists' Sigma Delta Chi Award, the National Press Foundation's Berryman Award, and the Charles M. Schulz Award for best college cartoonist in the United States

Mike Keefe
Pulitzer Prize-winning editorial cartoonist, co-creator of two nationally-syndicated cartoon strips, published author, former president of the Association of American Editorial Cartoonists, and former U.S. Marine. Mr. Keefe has also received the Sigma Delta Chi Award and the Berryman Award

Gary Trudeau
Creator of the *Doonesbury* Cartoon Strip and the first cartoon strip artist to receive a Pulitzer Prize

Matt Davies
Pulitzer Prize-winning editorial cartoonist, author, illustrator, and former president of the Association of American Editorial Cartoonists, Mr. Davies cartoons are syndicated nationally and he has given talks at the UN, The Library of Congress, and The National Press Club to discuss cartooning and politics

Hilary Price
Creator of the nationally-syndicated *Rhymes with Orange* Comic Strip and three-time recipient of the Best Newspaper Panel Cartoon Award from the National Cartoonists Society

David Silverman
Animator and Director for *The Simpsons*, the longest running American scripted primetime television series

Bill Morrison
Editor for all *Simpsons* and *Futurama* comics

Ron Ferdinand
Cartoonist for *Dennis the Menace*, a daily syndicated comic strip in one thousand newspapers in forty eight countries and nineteen languages

Pat Brady
Creator of nationally syndicated comic strip *Rose is Rose* and 2004 recipient of the Reuben award by the National Cartoonists Society

Bunny Hoest
Cartoonist for *The Lockhorns*, a single panel cartoon distributed to five hundred newspapers in 23 countries

Brian Crane
Cartoonist for nationally syndicated comic strip, *Pickles* and recipient of the Reuben Award for Outstanding Cartoonist of the Year by the National Cartoonist Society

Bill Griffith
Creator of and cartoonist for comic strip *Zippy*, currently syndicated in more than 100 newspapers

Greg and Brian Walker
Sons of legendary comic artist Mort Walker, and cartoonists for internationally syndicated comic strips, *Beetle Bailey* and *HI and Lois*

Rick Kirkman
Co-creator of and cartoonist for nationally syndicated comic strip *Baby Blues*

Ernie Colón
Comics Artist for *Casper the friendly Ghost* and *Richie Rich*, and former editor at DC Comics

Jim Keefe
Artist for nationally syndicated comic strips *Sally Forth* and *Flash Gordon*

Jim Meddick
Cartoonist for nationally syndicated comic strip *Monty*

Sergio Aragones
Cartoonist for Mad Magazine, creator of comic book *Groo the Wanderer*, and nine-time recipient of the Harvey Award for Humor

Rick Stromoski
Creator of nationally syndicated comic strip *Soup to Nutz*, and past president of National Cartoonist Society

Mason Mastroianni
Cartoonist for internationally syndicated comic strip *B.C.* and grandson of the comic's creator, Johnny Hart

Brad Holland
Internationally acclaimed and award winning illustrator, whose work has been exhibited in the Library of Congress and museums, and appeared in nearly every major U.S. publication. A Seminal voice in copyright policy for illustrators, Holland participated in the Copyright Office Orphan Works Roundtable

Frank Constantino
Recipient of world's most prestigious award for the architectural illustration, the Hugh Ferriss Memorial Prize, Mr. Constantino's work has been exhibited in museums internationally, including the Art Institute of Chicago, the Octagon Museum in Washington DC, as well as in Tokyo, Berlin, and Lisbon

Keith Ferris
Award-Winning Aviation Artist whose work has been internationally published and showcased, Mr. Ferris also created the 25 foot high by 75 foot wide mural "Fortresses Under Fire" in the World War II Gallery of

the National Air and Space Museum of the Smithsonian Institution in, and the 20 foot by 75 foot Evolution of Jet Aviation Mural in the museum's Jet Aviation Gallery

Lori Mitchell
Children's Book Writer and Illustrator, Mitchell's work includes award-winning children's book, *Different Just Like Me*, as featured on Oprah and the Today show

C.F. Payne
Award-Winning Illustrator whose work has been featured at several art galleries and museums, including the National Portrait Gallery in Washington D.C.

Dolores Santoliquido
Prominent natural science illustrator, whose work has been showcased extensively, including at the Smithsonian Institution in Washington D.C.

Dena Matthews
Medical illustrator, international speaker, author, artist, and teacher, Ms. Matthews is a partner at LifeHouse Productions, LLC, a leading edge biomedical animation and illustration studio, honored with numerous awards including the Medical Marketing Association InAwe Gold award, Telly Awards, and Rx Club awards

Michel Bohbot
Award-winning illustrator of video games, books, and magazines, Mr. Bohbot was named one of the New Masters of Fantasy

Cynthia Turner
Award-winning certified medical illustrator, Fellow of the Association of Medical Illustrators, and a founding member of the Illustrator's Partnership of America

Joe Cepeda
Award-winning illustrator of more than twenty children's books, and a sought-after public speaker at public schools around the country

Ilene Winn-Lederer
Internationally Published and Showcased Illustrator

Terrence C. Brown
Director Emeritus of the Society of Illustrators, Author, and Museum Curator

Guy Dorian, Marvel Comics artist

Cyndy Bohonovsky, Disney character artist

John Glynn, President of Universal Press Syndicate

Amy Lago, Editor of Washington Post Writers Group

Steven G. Artley, Award-winning editorial cartoonist

Rob Rogers, Editorial cartoonist for Pittsburgh Post-Gazette

Joe Azar, Esq, Cartoonist and Representative of the Illustrators Club of Washington DC

Jim Nuttle, Former President of Art Directors Club of Metropolitan Washington

Joe Sutliff, Finalist in Washington Post's Next Great American Cartoonist

Ed Steckly, Illustrator and Chairman of the National Cartoonist Society, NY Chapter

Joe Wos, Executive Director of ToonSeum, Museum of Comic Art

Charles Kichman, Editorial Director at Abrams Comicarts

Michale Jantze, Cartoonist for syndicated comic strip *The Norm*

Stephen Silver, Character designer for animated series *Kim Possible* and *Danny Phantom*

Tom Scioli, Writer/Artist/Colorist for *Transformers vs GI Joe*

Chris Burnham, Artist of *Batman, Inc.*

Graham Nolan, Artist for *Sunshine State*

DJ Coffman, Creator of *Hero by Night*

Dave Coverly, Artist for *Speedbump*

Oliver Simonsen, Film director, and cartoonist for the comic *Cerebus*

J. David Spurlock, Artist for *The Space Cowboy* & *Tales from Edge*

Rich Tennant, Cartoonist for *The 5th Wave* and *For Dummies* Books

Celina Barajas, Animator at Calabash Animation Studios, Inc.

Artie Romero, Producer for ARG! Cartoon Animation, LLC

Tom Heintjes, Editor at Hogan's Alley, the Magazine of the Cartoon Arts

Jim Valentino, Founder of Shadowline, Ink Publishing

Mike Gold, Editor-in-chief of *ComixMix*

Javier Hernandez, Creator of the comic books *El Muerto*,
The Coma, and *Weapon Tex-Mex*

Mark Marderosian, Artist for *Angels from the Attic*

Rafael Navarro, Creator of comics *Sonambulo* & *Guns A' Blazin*

John Kovalic, Artist for *Dork Tower*

Dave Blazek, Artist for *Loose Parts*

David Wachter, Artist for *Guns of Shawdow Valley*, *Breath of Bones*, *Godzilla*

Juan Arevalo, Artist for *OYA*, *Vilkon Chronicles*

Ed Siemienkowicz, Artist for *Chrome and Dust*

Denny Riccelli, Artist for *Cousin Harold*

David Lawrence, Writer/Editor for *Red Giant Comics*

Gerry Mooney, Artist for *Sister Mary Dracula*

Arlen Schumer, Author of *The Silver Age of Comic Books*

Maria Scrivan, Artist for *Half Full*

Mike Edholm, Artist for *Undercover Cockroach*, *Secret Agent 69*

CC Rockenbach, Cartoonist for *Sabine*

Steve Conley, Author of *Bloop*

Corwin Scott Gibson, Author of *Galaxy of the Damned*

Tim Mellish, Cartoonist for *LadderCorp*

Birgit Keil, Cartoonist for *Just Bea*

Ronald AG Grant, Cartoonist for *Benjamin Breadman*

Pab Sungenis, Author of *Sidekick: The Misadventures of the New Scarlet Knight*

George Gant, Cartoonist for *On The Grind*

John Auchter, Creator of *Auchtoon*

Dan Thompson, Cartoonist for *Rip Haywire* and *Brevity*

Charles D. McConnell, Cartoonist for *Then & NOW*

Mark Parisi, Cartoonist for *Off The Mark*

Jan Eliot, Cartoonist for *Stone Soup*

Andrew Pepoy, Creator of *The Adventures of Simone & Ajax*

Jimmy Gownley, Author and Illustrator of *Amelia Rules!*

Robert Rich, Cartoonist for Hedgeye

Kate Beaton, Owner of Kate Beaton Cartoons Inc.

Ruben Gerard, Creator, writer, and artist of *Penny Strikes*

Isabella Bannerman, Cartoonist for *Six Chix*

John Hazard, Artist for *Frankenstein Superstar*

Joe Vissichelli, Owner of Joe's Caricatures

Hilary Barta, Comic Book Artist

Joseph D'esposito, Graphic novel artist

Tim Perkins, Graphic artist and comic book artist

Janine Manheim, Cartoonist and *Berndt Toast Gang* member

Stu Rees, Esquire to cartoonists and law cartoonist

Peaco Todd, Cartoonist and author

Sean Kelly, Illustrator

Danielle Thillet, Illustrator

Randy Elliott, Cartoonist

Bucky Jones, Cartoonist

John Kovaleski, Cartoonist

Erika Moen, Cartoonist

Kristin Cheney, Cartoonist

Jonathan A. La Mantia, Cartoonist

John Klossner, Cartoonist

Janet O'Keefe, Cartoonist

Blue Delliquanti, Cartoonist

Carlos E. Mendez, Cartoonist

Greg Hinkle, Cartoonist

Tom Stemmle, Cartoonist

Bob Englehart, Cartoonist

Mark Nelson, Cartoonist

Mike Joffe, Cartoonist

Chris Collins, Cartoonist

Jessica Fink, Cartoonist

Kelly Aarons, Cartoonist

Tony McMillen, Freelance Writer

Mark Wheatley, Cartoonist

Rusty Gillgan, Comic Book Artist

Gregory Giordano, Cartoonist

Mike Lynch, Cartoonist

Roger Green, Cartoonist

Melanie Gilman, Cartoonist

Arnie Levin, Cartoonist

Michael Pohrer, Cartoonist

Scott Jenson, Cartoonist

Peter Davis, Cartoonist

Wayno Honath, Illustrator

Stephen Bissette, Cartoonist

Dan Carrow, Cartoonist

Brian Denisiuk, Cartoonist

Bill Hernandez, Cartoonist

Nathan Webster, Cartoonist

Steven Brower, Cartoonist

Joseph Krejci, Cartoonist

John Wilcox, Cartoonist

Eddite Pitman, Cartoonist

James Lyle, Cartoonist

Howard Beckerman, Animator

Marcel Walker, Cartoonist

David Pasciuto, Cartoonist

Ron Evry, Comics historian, writer, artist

Sal Amendola, Cartoonist

William Pardue, Cartoonist

Charles Andrew Bates, Cartoonist

Brian Crowley, Cartoonist

Mark Brewer, Illustrator

Adrian Sinnott, Illustrator

Kenn Dancer II, Cartoonist

Thomas Andrea, Cartoonist

David Coulson, Illustrator

Kurt Hoss, Cartoonist

Marc DiPaolo, Cartoonist

Albert Hoch III, Cartoonist

Mark Fakhry, Cartoonist

Bob Domfried, Cartoonist

Dr. Mark Staff Brandl, Phd. Art Historian, Artist

Paul Fell, Cartoonist

Mark Bilokur, Artist

Taylor Jones, Cartoonist

Jessica Kemp, Cartoonist

Alex Wald, Art Director

Bart Mallio, Cartoonist

Aldin Baroza, Cartoonist

Michael McParlane, Cartoonist

Annie Mok, Cartoonist

Jan Elliot, Cartoonist

David Folkman, Cartoonist

James Robert Smith, Cartoonist

Tom Racine, Cartoonist

John Rozum, Cartoon Creator/Writer

Scott C. Hamilton, Cartoonist

Matt Kennedy, Cartoonist

Ann Reinertsen Farrell, Illustrator

John Pierard, Cartoonist

P.s. Mueller, Cartoonist

Anthony Zicari, Freelance Writer/Editor

Jim Brenneman, Children's Book Author, Illustrator

Maria Rabinsky, Illustrator

Joseph Barbaccia, Illustrator

Patricia Palermino, Illustrator

Nicolle R. Fuller, Award-winning illustrator

Barbara Dale, Cartoonist and best-selling author

Annie Lunsford, Free-Lance illustrator

Linda Lunsford, Free-Lance illustrator

Devon Stuart, Medical illustrator

Lili Robins, Illustrator

Bruce Guthrie, Photographer

Susan Harriet Baker, Illustrator

Jim Haines, Cartoonist

Derf Backderf, Cartoonist, Graphic novelist

Dave Kellet, Cartoonist, Filmmaker

Chip O'Brien, Cartoonist

Robin Koontz, Children's Book Illustrator

Johnny Alexander Briedis, Caricature artist

Dan Nott, Cartoonist

John H. Johnson, Cartoonist

David Cohen, Cartoonist

Geoff Hassing, Cartoonist

Flash Rosenberg, Cartoonist

Justin Piccirilli, Cartoonist

Dale Stephanos, Illustrator

David Concepcion, Cartoonist

Harry Bliss, Cartoonist

David Cooney, Cartoonist

Al Bigley, llustrator/cartoonist

Dave Mowder, Illustrator/cartoonist

Phil Fehrenbacher, Illustrator/cartoonist

Chari Pere, Cartoonist

Steve Barr, Illustrator/cartoonist

Kerry G. Johnson, Caricaturist/cartoonist

Buzz Dixon, Cartoonist/story editor

Karen Coplen, Cartoonist

Joel Siegel, Artist