

# Kluwer Copyright Blog

## Turning a person into a character

Maria Fredenslund (RettighedsAlliancen) · Friday, December 21st, 2012



*“He decides to write an alternative super hero tale, and uses his partner Thomas’ identity. So the real Thomas turns into the fictive super hero in the book.”*

This is a story that started out with two partners doing art related projects together. One day one of them, Claus Beck-Nielsen, decides to write a book about a man who wants to save America from the spiral of descending moral and growing evilness, which according to his mind had evolved among the Americans. He decides to write an alternative super hero tale, and uses his partner Thomas’ identity ([Thomas Altheimer](#), born Thomas Skade-Rasmussen Strøbech, a Danish artist), describing his real family, wife job, incidents etc. So the real Thomas turns into the fictive super hero in the book. And the book is both a true story about the real Thomas, and a fiction about him being a hero who wants to save America.

Thomas does not agree with the presentation of the figure in the book [Suveraenen](#) (The Supreme), and by not having given his permission to use his character in the Supreme in addition to the fact that he is not credited by his former partner in art, the author of the book, he feels infringed on his copyright and his right to privacy. Therefore, he submits a case to the High Court of Denmark, where he challenges that the author of the book is entitled to use and publish personal information about him.

Apart from being a story worth reading this is a good case of the balancing of two fundamental rights; the right of privacy and the right to freedom of speech. Besides the balancing of rights, the High Court is also asked to decide whether or not the author and his publisher were entitled to publish texts in The Supreme which Thomas is the author of. These texts were at made public back in time as blog posts on a joint website of the two partners.

The reproduction and publication of Thomas’ texts are justified, [states the High Court](#) and argues that by not opposing to the use of these texts in other contexts (not related to this book), and by publishing them on the joint website, he has given an implicit consent to the author of The Supreme and thereby authorised the publication and reproduction of his works.

The private data which is used in the Supreme is concrete information about Thomas' work, his name, his picture and other information which is public assessable. Also non-public information such as details about his separation from his wife, the names of his children and the name of the street where he lives is used in The Supreme.

The Hight Court reflects on the fact, that especially political art must have an extensive scope of protection. This is a fiction book and a way of participating in the public political debate; a freedom of speech, which is important to protect. So the artistic expression of the book outweighs the interests of Thomas in protecting information about his private and family life. Thereby, the High Court acquits the author and his publisher from responsibility in relation to the use of personal data and reproductions of Thomas' texts in The Supreme.

It is relatively unusual that a court decision, so clearly addresses the balancing of privacy and freedom of expression. Two interesting conclusions leap out from the judgment of the High Court: The use of Thomas' personal information in this artistic work is to a very large extent legitimate. Certainly the court emphasize that the two persons have a personal interrelation. Nevertheless, it requires personal data with a very high degree of sensibility if the right to privacy can overrule the right to freedom of expression. Also, the concept of consent related to the use of copyright protected works is expanded beyond the usual requirements of explicit consents since here the court states that Thomas approves by means of former cooperation with the author.

In other words, Thomas would have been very far-sighted if he should have avoided this use of his works and of his personal information.

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*Maria Fredenslund works as a lawyer in Kopenhagen. A full Summary of this case has been added to the Kluwer IP Cases Database ( [www.KluwerIPCases.com](http://www.KluwerIPCases.com)).*

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