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Welcome (Sort Of) to the Public Domain Mickey Mouse!

January 5, 2024

On November 18, 1928, the black-and-white animated short film *Steamboat Willie* premiered.[i] The film featured the first iterations of Disney's beloved Mickey Mouse and Minnie Mouse, who are two of the most iconic animated characters in the world. On January 1, 2024, *Steamboat Willie* entered the public domain, meaning the original versions of Mickey Mouse and Minnie Mouse are now available for public use, subject to certain limitations.

When a copyright, trademark, or patent is lost or expires, the intellectual property which it had protected becomes part of the public domain.[ii] The term "public domain" refers to creative works that may be used without payment, attribution, or permission.[iii] When a creative work enters the public domain, the public is not limited to using only exact replicas of the public domain material.[iv] Creative works in the public domain can be used to make derivatives by adding to and/or recombining elements of the public domain materials.[v] Once a creative work enters the public domain, no individual, not even its original creator, may copyright it.[vi]

The freedom, however, to make new works based on public domain materials ends where the resulting derivative work comes into conflict with a valid copyright.[vii] This means that if material related to certain characters is in the public domain, but later copyrighted works add new aspects to those characters, a derivative work developed from the materials in the public domain could potentially infringe on the later copyrighted works.[viii]

Steamboat Willie, and Disney's aggressive lobbying efforts to protect its intellectual property, have long been a topic of discussion in copyright law.[ix] Generally, the term of a copyright for a particular creative work depends on several factors, including its date of first publication.[x] Initially, under the Copyright Act of 1909, *Steamboat Willie* was entitled to copyright protection for twenty-eight years from the date of publication, with the option for renewal for another twenty-eight years of copyright protection.[xi] *Steamboat Willie*, therefore, was originally only entitled to copyright protection until, at the latest, 1984.[xii]

With Disney's lobbying efforts, Congress passed the Copyright Act of 1976, which displaced the Copyright Act of 1909.[xiii] The Copyright Act of 1976 extended copyright protection for *Steamboat Willie* until 2003.[xiv] Disney again lobbied Congress and, in 1998, Congress passed The Sonny Bono Copyright Term Extension Act of 1998.[xv] This Act, sometimes referred to as the "Mickey Mouse Protection Act," extended the duration of copyrights in their renewal term to ninety-five years from the date such copyrights were originally secured.[xvi] This final extension gave Mickey Mouse copyright protection until January 1, 2024.

As *Steamboat Willie* enters the public domain, artists are now able to use the 1928 depictions of Mickey Mouse and Minnie Mouse in new creative works. An artist's use of Mickey Mouse and Minnie Mouse may not, however, infringe on later, copyright protected versions of Disney's famous animated couple. For example, artists may not use the version of Mickey Mouse seen in the classic 1940 Disney film *Fantasia,* which will not enter the public domain until 2036. Additionally, artists may not use the original versions of Mickey Mouse or Minnie Mouse in a manner that would confuse consumers into thinking that the new work is created by Disney.[xvii]

In anticipation of January 1, 2024, Disney released a statement which read, "Ever since Mickey Mouse's first appearance in the 1928 short film *Steamboat Willie*, people have associated the character with Disney's stories, experiences, and authentic products. That will not change when the copyright in *the Steamboat Willie* film expires. More modern versions of Mickey will remain unaffected by the expiration of the *Steamboat Willie* copyright, and Mickey will continue to play a leading role as a global ambassador for the Walt Disney Company in our storytelling, theme park attractions, and merchandise. We will, of course, continue to protect our rights in the more modern versions of Mickey Mouse and other works that remain subject to copyright."[xviii]

Shortly after the stroke of midnight on January 1, 2024, two horror films featuring a spin-off of the 1928 version of Mickey Mouse were announced, including one titled *Mickey's Mouse Trap*, in which a group of friends are terrorized by someone in a smiling rodent mask.[xix] Several game designers have also announced the release of Mickey Mouse themed video games.[xx] Others have created images ("memes") that place Mickey Mouse in compromising positions, such as steering the OceanGate submersible that exploded underwater in 2023, tragically killing five people.[xxi]

Mickey Mouse and Minnie Mouse have plenty of company in the public domain. On January 1, 2022, the copyright to A.A. Milne's 1926 book *Winnie-the-Pooh* expired, sending Pooh, Piglet, Eeyore, and Christopher Robin into the public domain.[xxii] Some have already taken advantage of Pooh's public-domain status. In February 2023, a not-so-friendly version of Pooh and Piglet were featured in a slasher film titled *Winnie the Pooh: Blood and Honey*. [xxiii] Pooh's friend Tigger was not featured in the horror film, as he also remained protected by copyright laws until January 1, 2024.

As Mickey Mouse and other treasured childhood characters enter the public domain, creators should be mindful of the manner in which they use these works in order to avoid infringing on valid copyrights.

Cullen and Dykman's Intellectual Property team continues to monitor important developments in trademark and copyright law. Should you have any questions about this legal alert, please feel free to contact Karen Levin (**klevin@cullenllp.com**) at (516) 296-9110 or Ariel Ronneburger (**aronneburger@cullenllp.com**) at (516) 296-9182.

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

[i] Brook Barnes, *Mickey's Copyright Adventure: Early Disney Creation Will Soon Be Public Property*, N.Y. Times, Dec. 27, 2022, https://www.nytimes.com/2022/12/27/business/mickey-mouse-disney-public-domain.html (last

accessed Dec. 27, 2023).

[ii] PUBLIC DOMAIN, Black's Law Dictionary (11th ed. 2019).

[iii] § 13:19. Defenses Commonly Arising in Copyright Litigation—Public domain, Copyright Litigation Handbook § 13:19 (2d ed.) (citing *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 33 (2003).

[iv] *Warner Bros. Ent. v. X One X Prods.*, 644 F.3d 584, 596 (8th Cir. 2011).

[v] *Id.*

[vi] *Golan v. Gonzales*, 501 F.3d 1179, 1184 (10th Cir. 2007).

[vii] *Id.*

[viii] *Warner Bros. Ent. v. X One X Prods.,* 644 F.3d 584, 596 (8th Cir. 2011).

[ix] Jennifer Jenkins, *Mickey, Disney, and the Public Domain: a 95-year Love Triangle,* Duke University School of Law Center for the Study of the Public Domain, https://web.law.duke.edu/cspd/mickey/ (last accessed Dec. 27, 2023).

[x] *How Long Does Copyright Protection Last*?, U.S. Copyright Office, https://www.copyright.gov/help/faq/faq-duration.html (last accessed December 26, 2023).

[xi]Kaitlyn Hennessey, *Intellectual Property-Mickey Mouse's Intellectual Property Adventure: What Disney's War on Copyrights Has to Do with Trademarks and Patents*, 42 W. New Eng. L. Rev. 25, 28 (2020).

[xii] *Id.*

[xiii] *Id.*

[xiv] *Id.*

[xv] *Id.*

[xvi] *Id.*

[xvii] Andrew Dalton, *Mickey Mouse Will Soon Belong to You and Me — With Some Caveats*, Associated Press, Dec. 30, 2023, https://apnews.com/article/mickey-mouse-public-domain-disney-minnie-tigger-1dbfa3982a172334503bc8cf87302b6f (last accessed Jan 4. 2024).

[xviii] Andrew Dalton, *Disney's Dominance of Copyright Law Prevails as Only the 'Steamboat Willie' Version of Mickey Mouse Enters Public Domain*, Fortune, Dec. 23, 2023, https://fortune.com/2023/12/23/disney-mickey-mouse-copyright-public-domain-steamboat-willie/ (last accessed Dec. 27, 2023).

[xix] Gene Maddaus, '*Steamboat Willie' Horror Film Announced as Mickey Mouse Enters Public Domain*, Variety, Jan. 2, 2024, https://variety.com/2024/film/news/steamboat-willie-horror-film-mickey-mouse-public-domain-copyright-1235849861/ (last accessed Jan. 4, 2024).

[xx] Kat Tenbarge, *Mickey Mouse Copyright Expiration Inspires Horror movies, Video Games and Memes,* NBC News, Jan 2., 2024, https://www.nbcnews.com/tech/internet/mickey-mouse-horror-movie-slasher-trap-public-domain-rcna131897 (last accessed Jan. 4, 2024).

[xxi] *Id.*

[xxii] Jake Coyle, *In Which Winnie the Pooh Stars in an R-rated Slasher Movie,* Associated Press (Feb 14, 2023), https://apnews.com/article/winnie-the-pooh-copyright-blood-and-honey-batman-mickey-717bf5a77eed30fe02283f1439ca6cd7 (last accessed Dec. 27, 2023).

[xxiii] *Id.*

Practices

- Intellectual Property

Attorneys

- Karen I. Levin
- Ariel E. Ronneburger