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The Disney Effect

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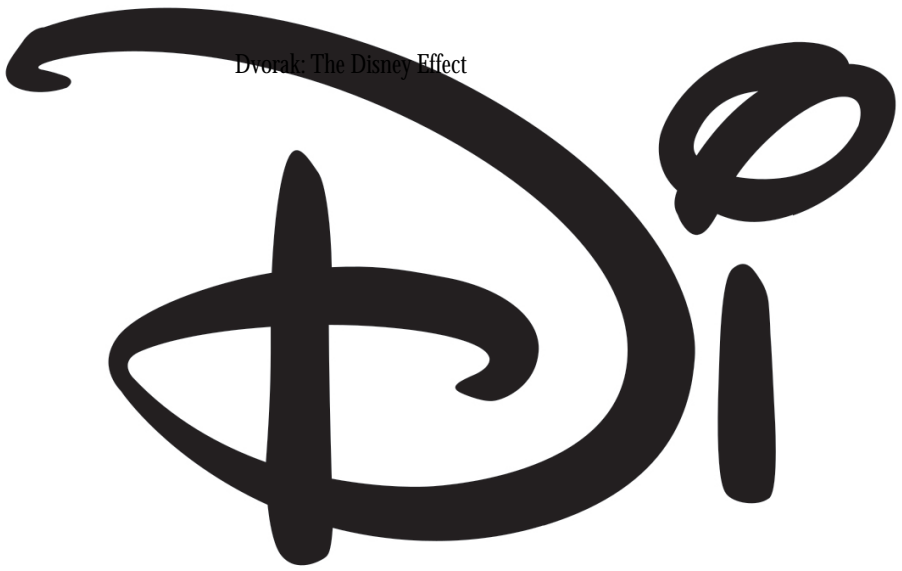


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In 1928, a young, up-and-coming cartoonist named Walt Disney approached his boss, Charles Mintz, at Universal Studios looking for a budget increase for his popular cartoon, *Oswald the Lucky Rabbit*. Mintz informed Disney that not only would his budget not get an increase, it would be getting a cut, and most of the animation staff working on the Oswald cartoons had already signed the paperwork agreeing to their new budgetary constraints. To make matters worse, even though Disney had created the character, Universal owned Oswald, which meant if Disney were to leave the studio, he would also leave the rabbit. Angry and unwilling to play by Universal's rules, Disney left Oswald behind and decided to start fresh by opening a new animation studio, one that would give Disney complete control of his characters. Later that year, after several rounds of trial and error, the first Mickey Mouse cartoon short was released by The Walt Disney

Company. Despite a rocky and unpopular start, the cartoon mouse hit its stride in the third short, *Steamboat Willie*, one of the most iconic Mickey cartoons ever made. Fast forward 90 years, and The Walt Disney Company, more commonly known as "Disney," has become more of a media titan than even Walt Disney could have imagined. Disney has managed to expand its influence into almost every aspect of entertainment, including film, television, radio, publishing, theme parks, and much more. All under the logo of Mickey Mouse, a character created to spit in the face of the establishment, Disney has become the second largest media conglomerate in the world. But despite all its power and influence, some things never change, and the Disney crusade to hold onto its icons still rages.

Ever since Walt Disney had to relinquish Oswald to Universal in 1928, control of intellectual property became a fixation of his, something which has continued long after his

THE SNEEP EFFECT

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death. As a result, The Walt Disney Company has become extremely reliant on copyright to defend its famous characters. According to Siva Vaidhyanathan, “At its simplest, copyright is the exclusive right to copy” (18). Of course, this is purposefully vague, much like the copyright laws themselves, which exist to protect the creator of intellectual property. Copyright law is based on the idea that by making anything original in a “tangible medium of expression” (Vaidhyanathan 19), whether that be a book, poem, film, character, etc., a creator has essentially made an investment. Due to this investment, whether that be time or money, the creator deserves to run a monopoly on his or her creation for a limited amount of time. This gives the creator the sole right to

“reproduce the works; to produce what are called derivative works, such as sequels, toys, clothes, lunchboxes, and other products inspired by the work; to decide

how and where to sell, lease, or lend the work; to perform the work publicly if it is a literary or dramatic work; to display the work publicly if it is a picture or sculpture; and to transmit a sound recording over digital networks.”

(Vaidhyanathan 18)

While the work is still subject to fair use laws, where it can still be used freely for educational and parody purposes, the creator is the only one who can reap its benefits monetarily.

After the life of the copyright has ended, the work passes into the public domain and can be used by anyone for free. Public domain works can take life in a variety of mediums, whether it be as straightforward as using a public domain song in a movie or adapting existing characters into new stories and mediums. One of the most famous examples of public domain characters is Sherlock Holmes, who made his first appearance in 1887 by Sir Arthur Conan Doyle. Recently, Sher-

lock Holmes has found new life in the 2009 and 2011 Warner Bros. movies, the BBC show *Sherlock*, the CBS show *Elementary*, and various books, video games, and short films. Even Disney has used the character, featuring him in the film *The Great Mouse Detective* and a cameo in the television show *Phineas and Ferb*. These adaptations have allowed Sherlock Holmes to remain current and culturally relevant, long after his creation. Additionally, these creations have granted both the artists and the entertainment companies with funds that allow them to continue to create material and add to the world's cultural capital. This would not be possible if not for a plethora of artists and creators, who otherwise would not be able to afford the license to adapt him and share their own takes with the world.

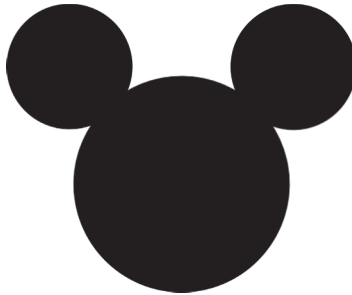
However, many corporations fail to see the public domain as a well of inspiration to foster art and creativity and see it more as an infinite black void coming to poach their characters and profits. Disney, emblematic of this second view, has fought tooth and nail to keep its own characters locked in its vaults, away from third party creators. In this herculean effort, Disney has been able to change copyright law in its favor, thus changing the entire world of intellectual property. In 1928, when Mickey was born, the duration of copyright law was very different and was governed by the 1909 Copyright Act. Under this law, all creators possessed a monopoly over their creations for 28 years starting at their initial appearance, with the

potential for renewal. If renewed, the holders of the copyright would receive an additional 28-year extension, adding up to a grand total of 56 years, after which the copyright could no longer be renewed, and would enter the public domain. To avoid an experience similar to Oswald and Universal, Disney extended the copyright of Mickey Mouse in 1956, which provided protection through 1984.

As 1984 crept closer, the company began to get anxious about the idea of turning over the character who had laid the foundation of the entire Disney empire to the public domain. Despite Walt's death nearly a decade earlier from lung cancer, the company set out in the early 70s to defend his creation with the same vigor that Disney would have himself. The main difference between Disney in 1928 and The Walt Disney Company in the mid-70s was millions, if not billions of dollars, which could be used in lobbying to change the

system itself. As a result, with a considerable fund from Disney's dollars, the 1976 Copyright Act was passed, further expanding the lifespan of copyright. Now, rather than 56 years after creation, all American creations would receive the lifespan of the creator plus an additional

50 years, a practice that was already common in Europe. However, these extensions only applied to works published after the bill in 1976. As a compromise, all American works published after 1922 would get a 19-year copyright extension, which meant protection for 75 years. Mickey was now safe until 2003, buy-



ing Disney some short-lived peace of mind.

Again, as the end of their copyright grew near, and with far less time to waste, Disney had absolutely no intention of letting their mouse fall into the wrong hands and set out to further expand the life of a copyright. The Disney Company found hope in a new bill in the mid-1990s, the Copy-

es, corporations sought to limit the entrance of work into the public domain by hiding business interests under the guise of ownership via authorship. Ultimately, the favor was found to lie with Donaldson, a Scottish bookseller who had been publishing books that have passed into the public domain and were previously owned by Becket and other Lon-

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right Term Extension Act. Originally spearheaded by Sonny Bono, a congressman and singer who passed away several months earlier, the act fought to expand the copyright length with much support from Disney. The main argument of the bill was that it would provide significant benefits by substantially harmonizing U.S. copyright law into that of the European Union while ensuring fair compensation for American creators who deserve to benefit fully from the exploitation of their works. Moreover, by stimulating the creation of new works and providing enhanced economic incentives to preserve existing works, such an extension will enhance the long-term volume, vitality, and accessibility of the public domain. (S. Rep. No. 104-315, 1995) This bill was remarkably similar to the 1774 *Donaldson v Becket* case, in which “The principle in question was whether literary property was a statutory right, a limited creation of the State, or a common-law right and therefore absolute and perpetual” (Rose 21). In both cas-

es, corporations sought to limit the entrance of work into the public domain by hiding business interests under the guise of ownership via authorship. Ultimately, the favor was found to lie with Donaldson, a Scottish bookseller who had been publishing books that have passed into the public domain and were previously owned by Becket and other Lon-

don booksellers who owned the copyrights and ran monopolies. Unlike *Donaldson v Becket*, in 1998 the Copyright Term Extension Act was found to be in the best interest of intellectual property and the United States entertainment industry and was voted into law by the Senate. Under this new law, the 50-year copyright after the creator’s death was now extended to 70 years, and already published works received an additional 20. Mickey, whose copyright was intended to expire in 2003, was now extended out until 2023, buying Disney some more time. The passage of this law was considered such a large victory for Disney that in popular culture it has been nicknamed the “Mickey Mouse Protection Act,” due to Disney’s outspoken and financial support for its legislation. As it currently stands, this is the most current version of America’s copyright law, but it begs the question, where does Disney go from here? Now in 2018, Disney has five more years to figure out a way to hang onto its rodent icon before he passes into the public domain.

While it does seem that many authors and creators would be in favor of having their works protected, this is far from the case. Many feel that Disney has done irreparable damage to the public domain and will only continue to do so if not stopped. In its nearly 100-year history, despite creating some of the most iconic works of our time, Disney has managed not to contribute a single piece to the public domain. Additionally, because of Disney, according to James Boyle, author, law professor and owner of the twitter account @thepublicdomain, “we are the first generation to deny our culture to ourselves” because “no work created during your lifetime will, without conscious action by its creator, become available for you to build upon” (@thepublicdomain, 2009). Single-handedly, Disney has paid its way to nearly triple the time it takes for a work to become free to use. Because of the industry-wide

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scope of their actions, it is difficult to imagine just how much damage they have caused, both creatively and monetarily. Had it not been for Disney and the 1998 Copyright Act we would have some incredible properties in the public domain including Batman, Superman, the Wizard of Oz, and Mickey himself. It is impossible to say what could be done with these characters in the hands of the public, but based on the success of Sherlock Holmes, I am sure some of the works would be great.

To make matters worse, while Disney has crusaded to make itself exempt from copyright laws, it has drawn heavily from the public domain for its own productions. In his essay “The Ecstasy of Influence,” Johnathan Lethem discusses the practice of helping texts find a second life, and how Disney’s action has made the task more difficult. Lethem at one point calls Disney out by name, saying “The Walt Disney Company has drawn an astonishing catalogue from the works of others: *Snow White and the Seven Dwarfs*, *Fantasia*, *Pinocchio*, *Dumbo*, *Bambi*, *Song of the South*, *Cinderella*, *Alice in Wonderland*, *Robin Hood*, *Peter Pan*, *Lady and the Tramp*, *Mulan*, *Sleeping Beauty*, *The Sword in the Stone*, *The Jungle Book*, and, alas, *Treasure Planet*, a legacy of cultural sampling that Shakespeare, or De La Soul, could get behind. Yet Disney’s protectorate of lobbyists has policed the resulting cache of cultural materials as vigilantly as if it were Fort Knox” (65). Lethem goes on to refer to this practice as “imperial plagiarism,” based on the profiteering of Disney from cultural works. While I don’t see Lethem’s point as incorrect, I believe a better term would be “cultural poaching,” where they pick and choose works simply to lock them down as their own, effectively taking them out of the public domain while contributing nothing.

Based on a crowdsourced list on the website “Medium.com,” Disney has created over 40 films since their founding based on works that were free to use. While it should be wonderful that these old stories have new life breathed into them, just as Lethem encourages, the hypocrisy of the company making these movies taints them. In addition to the films in Lethem’s list, some more recent films include *Tangled* and *Frozen*, both of which

were free to the public and made millions of dollars, with *Frozen* making over a billion. In making a fortune off free works, Disney has the bonus of adding them to its own copyright repertoire. Disney may not be able to copyright the original stories that its adaptations are based on, but they can copyright their own adaptations. This can greatly limit access to the source material for outside parties, seeing as Disney can sue if they feel any other versions infringe upon their own, and based on prior predatory behavior, it is safe to say they will.

All of this leads back to one important question: What about Mickey? While Disney has done significant damage to the creative world, much of it was collateral damage in pursuit of protecting its icon. Back when copyright was created, the state of the entertainment industry was very different, with no such thing as a massive international multimedia conglomerate, especially ones that rely on mice as their symbol. It is very true Mickey is the cornerstone of the Disney brand, and to allow anyone to use him would damage the brand identity. The argument could be made for the state of copyright that everyone would be better off if we provided specific protection for extremely important characters as a way of limiting collateral damage. It certainly is strange to imagine a world where Batman is no longer exclusive to DC, Ironman is no longer exclusive to Marvel, and Mickey is no longer exclusive to Disney. We might all be better off to find ways to make cultural allowances to avoid making the whole picture worse. Until then, we as citizens and writers must use our voices and our written word to fight any future expansions to copyright. In just a few short years, Mickey will once again

be in jeopardy, and Disney will surely try to find a way to keep him in their grasp. Then we will have the opportunity to make ourselves heard, fight their creative oppression, and keep the public domain public.

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