Protecting the Mouse at All Costs:

Disney's Influence on American Copyright Law

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What comes to mind when you think about Disney? Maybe it is the magical theme parks filled with rides and entertainment. Or the hundreds of movies and TV shows that take you back to those Saturday mornings spent in front of the television, eating your favorite cereal. Whatever it is, there is no doubt that Disney has influenced generations of people over the years. Arguably the most significant symbol of the multi-national, multi-industry powerhouse is that of Mickey Mouse. Recently, Disney properties have begun to enter the public domain, meaning the copyrights are now free from copyright restrictions. In the near future, the acclaimed Mickey Mouse will find himself in the public domain as well unless the Disney corporation can swing its giant hammer down to stop it. Whether it is through court cases, legal workarounds, or lobbying Congress, Disney has been attempting to swing the law in its favor for years. Pulling back the curtain, we will examine how Disney has its paws on copyright law in the United States and the implications its actions have on the public domain and fair use.

Copyright Law

Before diving into the details of Disney's power moves, a basic understanding of United States copyright law is needed. The foundations of copyright law stem from Article I of the U.S. Constitution. This provides protection "for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (Association of Research Libraries, 2020, 1787: US Constitution section). The first law passed by Congress directly dealing with copyright was the Copyright Act of 1790. Among other things, this law gave authors exclusive rights to their works for a limited time of 28 years. This limited-time has been extended many times over the years, the latest being in 1998 (Olson, 2002). Once a work has passed the allotted time given under copyright law, it enters the Public Domain. This archive of human achievement known as

the public domain is a collection of "ideas, notions, and works that are usable by all" (Picker, 2012, p. 1184). Once a work is opened to the public, those who use the works in their projects do not have to seek permission to do so. The public domain includes "works published in the United States before 1923" as well as other works that have passed their copyright protection period (Picker, 2012, p. 1185). Disney has put a tremendous amount of effort into prolonging its period of protection.

History of Disney

What is known today as The Walt Disney Company was founded by Roy and Walt Disney in 1923 under the name Disney Brothers Cartoon Studio (History.com Editors, 2019). The brothers struck gold with the success of the Oswald the Lucky Rabbit cartoon, among other ventures. However, the company lost the rights to the character after selling it to a distributor. While rebuilding, gold was struck again when the team drew up a sketch of a mouse. The beloved Mickey Mouse that we know today was introduced in a 1928 short titled *Steamboat Willy* (History.com Editors, 2019). The success of the character prompted Disney to dive further into the film industry with titles such as *Snow White and the Seven Dwarfs* and *Bambi* (Jacobs, 2016). To date, Disney has made its mark on industries such as film and television, theme parks, and merchandising and has no plans of slowing down. Even after the death of Walt Disney, the company continues to thrive. Disney has a grip on the entertainment industry and has even acquired major properties such as Star Wars, Marvel Studios, and 20th Century Fox. Disney has constantly stayed on the cutting edge of whatever industry it touches. Along with the company's rise, Mickey Mouse has been there every step of the way.

Court Cases

There is an old saying that reads, "with great power comes great responsibility". But in the case of Disney, one could also say, "with great success comes great commercialism". This is because Disney is adamant about profiting from its content for as long as possible. The last few years have seen the beginning of Disney properties entering the public domain. At the onset of 2022, the original Winnie-the-Pooh character completed its 95-year sentence and broke free into the public domain (Cavna, 2022). Additionally, the original *Steamboat Willy* iteration of Mickey Mouse will enter the public domain in 2024 (Jacobs, 2016). Disney has kept the image of Mickey family-friendly for generations. However, Disney is worried that access to the character through the public domain could lead to "racially insensitive or even pornographic" versions of the character which would tarnish its image (Jacobs, 2016, p. 406).

Even though Mickey is protected under copyright law until 2024, Disney has spent millions in the courtroom defending its property from copyright infringement. This was demonstrated well in *Walt Disney Productions v. Air Pirates (1978)*. In 1971, cartoonist Dan O'Neill and a group of artists who released a number of comic books portraying Disney characters such as Mickey Mouse "engaged in very un-Disney-like behavior, particularly sex" (Levin, 2004, para. 5). Later that year, Disney filed a lawsuit accusing the Air Pirates of copyright infringement, intentional interference with business, and a list of other things. The mouse house shared its concern with the court that depictions of this nature tarnish the family-friendly image they have worked so hard to create (Levin, 2004). After years of arguments over copyright infringement versus fair use, Disney came out on top when "the 9th Circuit ruled 3-0 that the Pirates were guilty of copyright infringement" (Levin, 2004, Delivering the Shock of the Unexpected" section, para. 5). The ruling was a win for Disney's conquest to have full control

over its image but was a major blow for proponents of fair use. This decision set a precedent that parodies of a copyrighted work could be considered copyright infringement.

While the court ultimately aired on the side of copyright infringement in *Walt Disney Productions v. Air Pirates (1978),* the argument that the group's actions fell under fair use gained traction in later years. What is known as the fair use doctrine states that the use of copyrighted work is fair game so long as it is used for "criticism, comment, news reporting, teaching[,] . . . scholarship, or research." (as cited in Jacobs, 2016, p. 397). More than ten years after this case, the U.S. Supreme Court heard a similar case involving a parody of a song. In *Campbell v. Acuff-Rose Music (1989)*, the high court established that the question of infringement had nothing to do with "whether [a work] was commercial or noncommercial," but whether the work was copied in order to displace it (Levin, 2004, Most Courts Are Too Sexually Ill at Ease section, para. 2). The Supreme Court even went so far as to say "that it did not matter if the parody depressed the sales of the original" (Levin, 2004, Most Courts Are Too Sexually Ill at Ease section, para. 3). Had this ruling occurred prior to the 9th Circuit ruling on the Pirates, Disney's fight to protect the family-friendly image of its characters could have fallen short. Even still, the entertainment giant has other means of getting its way.

Lobbying

The Walt Disney Company has not been sitting idly by waiting for its exclusive ownership of Mickey to run out. It is quite possible that without Disney's involvement, the term would have ended much sooner than 2024. For decades, Disney has been quietly shelling out millions of dollars to lobby for changes to U.S. copyright law. In fact, in 2009 alone, over $5 million was given to the government (Kenny, 2011). Lobbying has a stereotype of being bad. However, the First Amendment of the U.S. Constitution protects the right "to petition the

[g]overnment for a redress of grievances" (U.S. Const. amend. I.). Disney's lobbying ramped up in the 90s as Mickey Mouse was originally set "to enter the public domain in 2004" under the Copyright Act of 1976 (Jacobs, 2016, p. 395). Disney's expenditures were not in vain as they led to the passing of the Copyright Term Extension Act of 1998 (Jacobs, 2016). The success of this law was attributed to Disney so much so that it was unofficially dubbed The Mickey Mouse Protection Act. This legislation extends the copyright life of works "created on or after January 1, 1978, to the life of the author and 70 … years after the authors death," among other adjustments to previous regulations (S.505 - 105th Congress, 1997-1998, sec. 102). In addition to this, the law extended the time of copyright protection for "all existing copyrights by twenty years" (Jacobs, 2016, p. 395). This provided Disney an extra two decades to exclusively own and profit from its most prized creation.

Copyright Term Extension Act Constitutionality

While the Copyright Term Extension Act was passed into law, its constitutionality has been questioned by some on the Supreme Court. Justice Ruth Bader Ginsburg "acknowledged the risks in extending copyright repeatedly" (Zeitchik, 2003, p. 12). However, she recognized that courts do not have the authority to change the law and that responsibility falls on Congress (Zeitchik, 2003). Additionally, Justices Breyer and Stevens expressed great concern with the law going so far to say that it "crossed a constitutional line" and "benefited copyright-holders at the expense of the public interest" (Zeitchik, 2003, p. 12).

Eldred v. Ashcroft (2003) brings into question the constitutionality of extending already existing copyrights, something that Disney has benefitted from greatly. However, claims that this is unconstitutional have ultimately been debunked. The Supreme Court ruled that Congress was within its rights to extend new copyright protection to existing copyrights (Jacobs, 2016). In fact,

the Court pointed out that Congress enacted the CTEA to keep up with a European Union law requiring other counties to have a certain copyright term limit to receive protection. (Jacobs, 2016). Extending U.S. copyright would in turn allow "U.S. authors [to] receive the same protection for their works in other countries" (Jacobs, 2016, p. 396). The legislative body has the right to determine how to protect copyright, and for how long, as long as it does not go against the U.S. Constitution (Olson, 2002). Even with all of the concerns brought forward about the CTEA, the Supreme Court, in 2003, upheld the law in a 7-2 ruling (Zeitchik, 2003). The Mickey Mouse Protection Act once again lived up to its name as it continued to prolong the entrance of the character into the public domain.

Trademark

As Mickey's 2024 deadline approaches, it seems unlikely that an additional copyright extension will be put into place in time. However, Disney still has a bit more magic left to use. In addition to being protected by copyright, Mickey, along with all other Disney characters are trademarked. A Major question at play is how far Disney's trademarks will go in preventing others from copying its creations once the copyright term has expired. A company such as Disney is instantly recognizable through Mickey Mouse. Disney has trademarks on the name Mickey Mouse as well as many visual representations of the character. Mickey's likeness has been used by Disney for decades in animations, video games, merchandise, and even in Disney theme parks as a mascot (Jacobs, 2016). There is no doubt that when someone sees Mickey Mouse, they immediately associate him with Disney.

Trademarks are important because they work to "prevent customer confusion" in the marketplace (Jacobs, 2016, p. 397). If a clothing company unrelated to Disney decided to use Mickey Mouse as its mascot without permission, Disney would have grounds to sue for

trademark infringement. While copyright protection has a limited time frame, trademark law can last indefinitely so long as it is not abandoned (Jacobs, 2016). This is a major win for Disney because its trademarks may be able to continue its exclusive rights to the character long after it has entered the public domain. Jacobs (2016) considers Mickey Mouse to be a "trademark-copyright hybrid that should fall into a specialized area of protection" (p. 416). Even still, it is unknown whether trademark law or pubic domain law will come out on top.

Conclusion

Throughout Disney's long history, it has become more than just an animation studio. Today the company spans the globe and many of its properties are household names. From its start, the company has made it a priority to control how to world views it. Whether it is the numerous court battles such as *Walt Disney Productions v. Air Pirates (1978),* or the millions of dollars spent each year lobbying the United States government, Disney has been adamant about retaining full control over its assets for as long as possible. Disney's influence on U.S. copyright law will likely not go away anytime soon. With recent court rulings upholding copyright extension, challenging future legislation "will likely become more tricky" (Zeitchik, 2003, p. 12). Additionally, Disney's trademark work-around will also make it difficult for artists to profit from creative works involving Disney characters that find themselves in the public domain.

Currently, Disney is facing opposition from the Florida state government. The company has shown opposition to a bill signed into law by Florida governor Ron DeSantis. The law, named the "Don't Say Gay bill" by many in politics and media, limits "classroom discussion of sexual identity" (Frankel, 2022, para. 5). After Disney's public disapproval of the bill, many republican lawmakers in Florida have begun stripping the company of many of the benefits it currently enjoys. Lawmakers have even taken a stab at Disney's beloved Mickey Mouse. In a

letter to Disney's CEO, a number of Republican Congress members stated that "they would not support extending copyright protection for Mickey Mouse beyond the 2024 expiration date" (Frankel, 2022, para. 23). There is no evidence that this threat holds any water considering that the copyright deadline is fast approaching and there are no current efforts to extend it further. However, this situation shows that Disney's time of having political influence may be coming to an end. At least in Florida.

As artist Luke McGarry's comic strip read when Winnie-the-Pooh entered the public domain in 2022, "Disney still own their version of me. … But as long as I don't put a little red shirt on, I can do as I like" (as cited in Cavna, 2022, para. 2). Excluding the grammatical errors, there is some truth to that statement. In order to keep creativity and the fair use of works alive, artists must be both careful and creative in the ways they depict art by copying another work. However, this does not mean that Disney will have full control over Mickey forever. Fair use and public domain law still apply, even to companies such as Disney. There is hope for those excited about Mickey entering the public domain. But in the end, one must ask, how far will Disney go to protect the Mouse?

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