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Streamboat to Freeboat: Mickey's Public Domain Adventure

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ABSTRACT

After being protected by copyright for almost a century, Mickey Mouse, or a version of it, hopped into the public domain in the United States on January 1, 2024. The legendary mouse first appeared in "Steamboat Willie and the silent rendition of Plane Crazy" in 1928, and as of New Year's Day 2024, it could be seen in the public domain.

While previous years have seen considerable entries to the public domain, the excitement around Mickey's arrival was unprecedented. What set this event apart wasn't just Mickey's status as a well-known copyrighted figure. While other famous personalities, such as Sherlock Holmes and Winnie the Pooh, had received a bit of spotlight, Mickey's situation drew particularly a lot of attention. The attraction originated from the convoluted 95-year-old three-way relationship that involved Mickey, Disney, and the Public Domain, a chronicle as fascinating as any Disney story. Their connection exemplified the unclear dynamics captured in the phrase "it's complicated," which is similar to contemporary dramas.

Therefore, the question arises: What exactly does Mickey's Streamboat Willie version entering the public domain mean? There is a lot of misinformation floating around online about these topics. My purpose for the following research paper is to provide a clear explanation. What activities can be carried out using Mickey starting this year; 2024? How will this change affect Disney? Does Disney continue to own the copyrights to subsequent editions of Mickey? On top of that, is trademark law applicable to this scenario?

Keywords: Mickey Mouse, Copyright, Trademark, Public Domain, IPR.

I. INTRODUCTION

In terms of intellectual property, Disney is well-known for fiercely protecting the characters it brings to life. The entertainment giant has gone to great lengths to protect its iconic inventions, from demanding a Florida day care center² to remove an unlawful Minnie Mouse painting to informing a stonemason that carving Winnie the Pooh onto a child's headstone would infringe

¹ Author is a student at Symbiosis Law School, Hyderabad, India.

² Barnes, B. (2022) *Mickey's copyright adventure: Early disney creation will soon be public property*, *The New York Times*. Available at: <https://www.nytimes.com/2022/12/27/business/mickey-mouse-disney-public-domain.html> (Accessed: 10 March 2024).

its copyright. So much so that its 1998 push for copyright extensions gave it the amusing nickname “Mickey Mouse Protection Act.”³

Despite this heritage of fierce resistance, a major shift is on the way. For the first time, one of Disney's most iconic characters, the legendary Mickey Mouse, has broken free from the shackles of copyright. On January 1, 2024, “Steamboat Willie,”⁴ the 1928 classic that introduced Mickey to the world, lost its copyright protection, bringing the beloved rodent into the public domain.

This pivotal event is an important milestone in the history of intellectual property rights. Following almost a century of unyielding control, Disney had to relinquish its exclusive rights to Mickey Mouse's image and likeness. However, when Mickey enters the public domain, a maze of legal complexities arises, with trademarks, copyrights, and public domain status all combined to determine the landscape of his usage.

For decades, Disney has used a variety of legal strategies to keep Mickey's copyright protected, including smart lobbying attempts to extend the life of copyright laws. With Mickey entering the public domain, the borders of intellectual property rights become murky. While early variations of Mickey, particularly those shown in “Steamboat Willie,” are made available to the public, Disney retains trademark rights to Mickey and his iconography, causing misunderstanding over the famous character's authorized use in different creative and commercial activities.

The relationship between copyright expiry and trademark protection is a complex legal weave with far-reaching consequences for artists, producers, and corporations alike. As Mickey Mouse begins his trip into the public domain, the conversation around intellectual property rights and the fragile equilibrium involving protection and accessibility to cultural icons evolves, engaging minds and provoking controversies in equal measure.

II. INTELLECTUAL PROPERTY IN INDIA

(A) Characteristics of Copyright

Copyright is a type of intellectual property right granted to authors of literary, theatrical, musical, and creative works, as well as makers of cinematographic films and sound recordings. The aforementioned legal structure applies to architectural works and computer programs,

³Harvard Law IP expert explains how Disney has influenced US copyright law to protect Mickey Mouse and Winnie the Pooh (2023) Harvard Law School. Available at: <https://hls.harvard.edu/today/harvard-law-i-p-expert-explains-how-disney-has-influenced-u-s-copyright-law-to-protect-mickey-mouse-and-winnie-the-pooh/> (Accessed: 10 March 2024).

⁴*Id.*

containing a variety of rights including reproduction, communication, modification, and translation. Essentially, copyright protects writers' creative work, intending to reward their inventiveness.⁵

India is a signatory to the Berne Convention for the Protection of Literary and Artistic Works⁶ and is therefore required to grant equal protection to works created not just inside its boundaries, but also beyond, in any contracting state. A perusal of the abovementioned Convention makes it clear that copyright registration is optional. Similarly, in India, registration of a work is not a prerequisite to obtain protection under the Copyright Act of 1957.⁷

The period of copyright protection in India varies according on the type of work. Original literary, dramatic, musical, and creative works are given protection for a period of 60 years after the author's lifetime. In the case of numerous writers, the period lasts 60 years following the last author's death.⁸

Copyright protection for cinematographic films, sound recordings, pictures, posthumous publications, government works, and international organizations lasts 60 years following the year the said work was published. Cinematograph films, pictures, and computer programs which are not published could be protected for 60 years after creation.⁹

Before a copyrighted work becomes public domain, the author retains exclusive rights to reproduce, distribute, make derivative works, perform publicly, and exhibit it. Others who wish to use the work must receive authorization from the creator. Even after the passing of the author, the protection given to the copyrighted work still remains with the author's family.¹⁰

When popular works become public domain, there is typically an increase in the use of characters and stories from those works in new productions. However, it is crucial to highlight that the phrase “public domain” can occasionally lead to misunderstandings. Characters may appear in many tales by the same author, and the release of the first narrative into the public domain does not invalidate copyright protection for all uses of that character.

⁵ *Copyright* (no date) WIPO. Available at: <https://www.wipo.int/copyright/en/> (Accessed: 12 March 2024).

⁶ Vyas, L. (2023) *Oops! India fell into the Berne Convention, SpicyIP*. Available at: <https://spicyip.com/2023/06/oops-india-fell-into-berne-convention.html> (Accessed: 10 March 2024).

⁷ The Copyright Act, No. 14 of 1957, INDIA CODE (1993).

⁸ (No date) *Hand book of copyright law*. Available at: <https://copyright.gov.in/documents/handbook.html>. (Accessed: 12 March 2024).

⁹ *Id.*

¹⁰ *Understanding copyright and related rights* (2016) WIPO. Available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf (Accessed: 12 March 2024).

(B) Characteristics of Trademark

Brands represent a history and narrative that have been developed throughout time; they are more than just labels. Each and every brand has a captivating background and a distinct path that has shaped its personality and propelled its success. These storylines are profoundly embedded in the company's DNA, acting as effective tools for building brand loyalty and connecting with customers.

At the core of a brand is its trademark, which represents the brand's name or logo linked to the business's products. People pay attention to these trademarks and consider them as signals of trust and familiarity.¹¹ Trademarks can include words, numbers, designs, or a combination of these components.

Serving as the indication of source or origin of a product or service, trademarks take upon themselves an important role in every Country's commercial market.¹² They not only identify the product's origin but also guarantee its quality, serving as a mark of approval. Furthermore, trademarks are effective advertising tools, validating the product's virtues and instilling its image in the public mind, particularly among customers and potential purchasers. Trademarks are essential for creating customer impressions and fostering brand interaction due to their diverse purposes.¹³

III. MICKEY MOUSE OUT OF THE CLUBHOUSE

(A) Mickey Mouse

During a train ride from New York to Los Angeles in 1928, Walt Disney had the idea for Mickey Mouse during a difficult time. Following the loss of the rights to his first popular character, "Oswald the Lucky Rabbit", and the departure of animators, Disney set out to develop a new figure that he could control and own.¹⁴ Disney drew a design of a cunning mouse, originally named Mortimer, but, following his wife's recommendation, renamed Mickey, with the help of his friend Ub Iwerks. Mickey Mouse's path to become a cultural icon began with this. On November 18, 1928, "Steamboat Willie," the first Mickey Mouse cartoon, had its debut. It was an enormous hit, propelling Mickey Mouse to stardom and setting the stage for Disney's

¹¹ Ritwik Guha Mustafi & Mahim Gupta, *The Contentious Issue of Deceptive Similarity and the Defense of Prior Use vis-a-vis the Trademark Law in India - A Comprehensive Study*, 5 INT'L J.L. MGMT. & HUMAN. 745 (2022).

¹² *Id.*

¹³ Komal Shrivastav & Eshita Yadav, *Law Relating to Dilution of Trademark in India: An Appraisal*, 2 INDIAN J.L. & LEGAL RSCH. 1 (2021).

¹⁴ Dewan, D.M. (2023) *Stories behind brands- Walt Disney's Mickey Mouse all things are possible for one who believes.*, *LinkedIn*. Available at: <https://www.linkedin.com/pulse/stories-behind-brands-walt-disneys-mickey-mouse-all-things-dewan> (Accessed: 11 March 2024).

empire.¹⁵

Early versions of Mickey Mouse resembled real mice quite a bit, thus he did not look anything like the famous character we know and love today. This first iteration had a long, rat-like black snout, plain eyes with no pupils, and a thin, curved black tail.

What should be known, is that the first image of Mickey Mouse from "Steamboat Willie," is the only one that will officially become a part of the public domain. Disney will still be in charge of Mickey Mouse's ensuing versions, such as colored versions and later adaptations.

(B) Mickey Mouse Protection Act

First enacted in 1790, the United States' first federal copyright law offered protection for "fourteen years from the time of recording the title thereof," with an additional fourteen years granted if the author was still alive.¹⁶ At first, the law only included books, maps, and charts; later, it was amended to include music and paintings. With the founding of Disney Brothers Studio in 1923—later renamed as Walt Disney Studio and Walt Disney Productions—and subsequent changes to the copyright law, the most recent of which was made in 1909, published works could be protected for 56 years, of which the first 28 years could be extended by another 28 years.¹⁷

According to this arrangement, Disney believed that "Steamboat Willie" would become public domain in 1984. As a result, the business vigorously lobbied Congress to change the legislation and extend the period of copyright expiration. The Walt Disney Company won a battle when the Copyright Act of 1976 was passed.¹⁸ It gave published works copyright protection for the duration of the author's life plus an extra 50 years, or 75 years for corporately held works. As a result, Mickey Mouse's copyright was renewed through 2003.¹⁹

But, the copyright for "Steamboat Willie" did not, expire in 2003 because Disney was not ready to give up on its first animated feature. Disney therefore launched another round of lobbying efforts, which resulted in the passage of the Copyright Term Extension Act of 1998, often referred to as "The Mickey Mouse Protection Act."²⁰ For corporately produced works, such as

¹⁵*Id.*

¹⁶ Sarah Sue Landau, *Of Mouse and Men: Will Mickey Mouse Live Forever?*, 9 NYU J. INTELL. PROP. & ENT. L. 249 (2020).

¹⁷ Jessica Litman, *Mickey Mouse Emeritus: Character Protection and the Public Domain*, 11 U. MIAMI ENT. & SPORTS L. REV. 429 (1994).

¹⁸ Mark S. Torpoco, *Mickey and the Mouse: The Motion Picture and Television Industry's Copyright Concerns on the Internet*, 5 UCLA ENT. L. REV. 1 (1997).

¹⁹ *Supra* note 16, at 7.

²⁰ Holly Lechner, *Mickey Mouse - Finally Whistling His Way into the Public Domain*, 14 CYBARIS INTELL. PROP. L. REV. 71 (2023).

those created by Disney, this law extended copyright terms to the author's lifetime plus 70 years, or 95 years from the date of first publication.²¹

(C) National or International Application

Although individuals in the United States are allowed to use the 1928 short in order to produce new works of art based on Steamboat Willie, different nations have different copyright laws that protect the work until at least 2042 in those that do so for seventy-five years following the death of the last author. Since Ub Iwerks, the co-creator of Steamboat Willie, died in 1971, the additional protection is applicable in some areas.²²

Because India and the US both abide by the Berne Convention, Indian courts honor all copyrights related to Steamboat Willie, even though the film was first made and released in the US. The copyright rights of artists are protected by this international agreement in more than 180 nations. In contrast to US copyright rules, Indian copyright laws provide broader protection. Disney's entire body of work is therefore safeguarded by Indian law, with copyright protection continuing for 60 years beyond the passing of the final creator.²³

Since director Ub Iwerks was the last surviving author of Steamboat Willie, his death in 1971 might have allowed the copyright to be extended until 2031. Therefore, Indian businesses and producers are not allowed to use Steamboat Willie in any brands or marketing campaigns. If they do, Disney might take legal action right away.

(D) Are all versions of Mickey available for creative pursuits?

You may use the original Mickey and Minnie Mouse characters in new creative works once copyright expires, even if those characters are also used in more recent copyrighted works.

Disney is the exclusive owner of copyright of original, creative representations of these characters that satisfy the requirements for copyright protection, even in their more recent incarnations. This does not include simple concepts, generic or unoriginal character traits, or small alterations to the original characters.

Mickey's look has changed throughout the years, going from a little rat-like to more of a young adult. His eyes, for example, first showed up as big white ovals with pupils in "Plane Crazy"

²¹ *Id.*

²² Cain, S. (2024) *Mickey Mouse's first 24 hours in the public domain: Slasher Flicks, horror games and nfts*, *The Guardian*. Available at: <https://www.theguardian.com/film/2024/jan/02/mickey-mouses-first-24-hours-in-the-public-domain-slasher-flicks-horror-games-and-nfts#:~:text=But%20as%20copyright%20protections%20vary,Iwerks%20only%20died%20in%201971>. (Accessed: 11 March 2024).

²³ *Supra* note 7, at 5.

and then as tiny black dots in “Steamboat Willie”²⁴; as of 2024, both of these renditions are in the public domain. In 1929, Mickey started using gloves, and in subsequent versions, he was coloured. Nonetheless, copyright still applies to the general look of characters such as Fantasia Mickey.²⁵

However, not all of Mickey's subsequent incarnations are eligible for individual copyright protection. Copyright does not apply to simple concepts, unoriginal characteristics, or stock materials; it only covers original, creative expressions.²⁶ For modifications made to the original Mickey character, they need to be more than “merely trivial” or “minuscule” in order to be protected by copyright.²⁷

Therefore, even if using the 1928 version of Mickey would be the safest course of action, subsequent content that complies with copyright laws may still be used. Giving a talking mouse a squeaky voice, for example, is not protected by copyright, and general character attributes like adorableness or modified dancing routines are acceptable. You are also not limited to black and white; whatever you independently develop, like choosing your own color scheme, is legally acceptable.

(E) Disney’s Trademark Hold over Mickey!

When one considers Disney's trademark rights, the narrative becomes more complex. The true legal position is different from the claims made by several sites claiming Mickey's usage is still forbidden because of Disney’s trademark even if he is no longer protected by copyright in 2024. The use of a trademarked character is only forbidden under trademark law if it is likely to lead to confusion regarding the origin or sponsorship of the new product.

Words, logos, pictures, and other symbols used as brands to identify the source of a service or a product are all covered by trademark protection, and the main goal of a trademark is preventing customer misunderstanding in the marketplace.²⁸

Trademarks, in contrast to copyrights, are perpetual as long as they are used in commercial contexts.²⁹ Trademark rights, however, are more restricted and only prohibit the use of a mark on identical items in cases where it raises questions regarding the product's sponsorship or place of origin. Legal protections exist for the non-confusing use of trademarks in expressive works

²⁴ *Supra* note 19, at 8.

²⁵ *Supra* note 19, at 8.

²⁶ Gaurav Rao, *Ownership of Copyright in UK, US and India*, 2 INDIAN J. INTEGRATED RSCH. L. 1 (2022).

²⁷ *Id.*

²⁸ Joseph Greener, *If You Give a Mouse a Trademark: Disney's Monopoly on Trademarks in the Entertainment Industry*, 15 WAKE FOREST J. BUS. & INTELL. PROP. L. 598 (2015).

²⁹ *Id.*

such as music, novels, and movies. There might be scenarios where an overlap can be seen between trademark protection and copyright protection. Considering the present case, Trademark Protection might prohibit the unlawful usage of Mickey on products, while copyright protection strictly deals with creative works. Nevertheless, as the Supreme Court³⁰ and the Ninth Circuit Court of Appeals³¹ have made clear, trademark law cannot be used to avoid copyright expiry.

With regard to Mickey Mouse, Disney has the trademark rights for Mickey imagery and the term “Mickey Mouse” on a variety of items, even if the Steamboat Willie copyright expires in 2024. The applicability of trademark law is contingent upon the likelihood of misrepresenting the origin of a work of art to the public.³² Trademark interference shouldn't occur as long as it is evident that the work is unaffiliated with Disney.

If Mickey’s character is utilized to identify a brand on products or in an artistic piece that suggests a Disney creation, there might be a possibility of confusion. Mickey, however, does not deceive customers about the product's origins when he appears in a new cartoon or book; rather, it serves the goal of copyright expiration.

(F) Understanding Mickey’s new freedom with Winnie-the-Pooh

Though Winnie-the-Pooh, the beloved figure from that original work, is still closely protected by copyright, Milne's timeless 1926 masterwork is freely accessible in the public domain. What should be noted here, is that Milne's depiction of Winnie-the-Pooh omitted the trademark red shirt, which was added by another author.³³ Disney acquired the rights to this representation in 1961 and still owns the image of the figure wearing a small red shirt today. Furthermore, another fact that should be looked into, is that Milne spelt Pooh's name with hyphens, but Disney decided to delete them. This raises the question of whose version of this fluffy bear Rhys Frake-Waterfield chose.

Welcome "Winnie the Pooh: Blood and Honey," a thrilling horror flick that premiered in the United States. Surprisingly, this unorthodox take on a beloved character has earned more than \$2.5 million globally.³⁴ The filmmakers turned the cute, cuddly picture created by A. A. Milne and E. H. Shepard—and made famous by Disney—into a frightening depiction of a terrible,

³⁰ *Dastar v. Twentieth Century Fox*, 539 U.S. 23 (2003).

³¹ *Comedy III v. New Line*, 200 F.3d 593 (9th Cir. 2000).

³² K. Nawvi, *Trademark Infringement and Comparative Advertising: Position in the US, UK and India*, 4 JUS CORPUS L.J. [266] (2023).

³³ Peter S. Menell & David Nimmer, *Pooh-Poohing Copyright Law's Inalienable Termination Rights*, 57 J. COPYRIGHT SOC'y U.S.A. 799 (2010).

³⁴ *Id.*

gruesome killer. One could wonder why Disney, which has had the sole rights to “Winnie the Pooh” since 1961, permitted such a dramatic representation. Simply put, they were left with no other option.

This is because the original 1926 children’s book “Winnie-the-Pooh,” which debuted the beloved character, sawn into the ocean of public domain in 2022.³⁵ As a result, the protection given to the work expired, ending Disney's commercial exclusivity on “Winnie-the-Pooh”. As Pooh's copyright had lapsed, it enabled everyone to get creative and make movies, shows etc, starring the cuddly animal. In the next years, a slew of other legendary figures will join Winnie the Pooh in the public domain, threatening the supremacy of entertainment behemoths like Disney and Warner Bros., who have made significant revenues from them. For this year, joining the public domain, is our beloved mouse, Mickey.

IV. PUBLIC DOMAIN

The idea of the public domain comprises a wide range of literary and creative works that are no longer protected by copyright law due to the expiration of their copyright limitations. This allows these works to be used for a variety of purposes, including performance, replication, and sale, without requiring permission or fees. Crucially, it enables the development of new works based on public domain materials. For example, with "Steamboat Willie," one might create completely new adventures for Mickey and Minnie Mouse based on the film's classic portrayal of them.

However, there are some legal limitations in the public domain. For starters, copyright periods vary between nations, so works that are in the public domain in one may still be protected by copyright in another. Second, while works published before 1928 are in the public domain in the United States, later works, even those influenced by previous public domain works, are nonetheless copyrighted. For example, while the 1928 version of Mickey Mouse became public domain, later incarnations, such as Mickey's representation as the Sorcerer’s Apprentice in the 1940 film “Fantasia,” remain copyright protected for another 12 years.³⁶

Furthermore, although copyright no longer protects public domain works, other types of intellectual property law might still be protecting those works. For example, if a celebrity appears in a 1928 film, their estate may have posthumous publicity rights if their appearance is utilized commercially. Furthermore, while the character Mickey Mouse from “Steamboat

³⁵ John Frow, *Intellectual Property Rights and the Public Domain in the New World Order*, 2 INDIAN J. L. & TECH. 106 (2006).

³⁶ *Supra* note 19, at 8.

Willie” is in the public domain, the same is still heavily protected under trademark law by the Walt Disney Company. Unlike copyrights, trademark rights remain beyond their expiration date, barring any fraudulent associations with Disney in works featuring the 1928 adaptation of Mickey Mouse.

(A) Flow of Work

Enabling work to flow into the public domain is crucial for various reasons:³⁷

1. **Fostering Growth and Creativity:** As soon as protected works reach the public domain, they are freely available for everyone to use, expand on, and remix without requiring permission or money. This promotes innovation and creativity since producers may freely use current cultural works to create new ones.
2. **Safeguarding Culture:** Many copyrighted works have high cultural and historical worth. By joining the public domain, these works may be conserved and made available to future generations, thus guaranteeing our cultural history isn't forgotten or overlooked.
3. **Promoting Education:** Works found in the Public Domain are great educational tools. These can be referred to freely and be utilized as educational materials, textbooks, and research without the constraints and expenses that come with copyrighted works. This promotes access to knowledge and facilitates lifelong learning.
4. **Boosting Economy:** Contrary to popular belief, permitting works to flow into the public domain can boost economic growth. Public domain works can be utilized as the foundation for new goods, services, and creative works, resulting in the growth of new businesses and markets.
5. **Creating a Balance:** Copyright law seeks to create a balance so it meets the interests of creators and the general public. Enabling protected works flow into the public domain once a set amount of time has passed, guarantees that authors be compensated for their labor throughout their lifetimes while also enabling society to profit from those works.

V. SUGGESTIONS

After Steamboat Willie and all of its portrayed characters—including Mickey and Minnie flow into the public domain, anybody can distribute, modify, and remix the content. But it's imperative to refrain from violating the rights that already exist, namely:

- Make use of the 1928 original Mickey and Minnie Mouse drawings, leaving out any

³⁷ Monica Adriana Lupascu, *Public Domain Protection: Uses and Reuses of Public Domain Works*, 22 LEX ET SCIENTIA INT'L J. 38 (2015).

copyright-protected content from subsequent versions. Not every version after then will be covered by copyright.

- According to trademark law, don't induce customers to believe that your product is associated with or supported by Disney. Make sure the title screen or cover makes it obvious who did the work—you or your company—to avoid misunderstandings. Put a clear disclaimer at the top of your work noting that it is not created, supported, licensed, or authorised by Disney

VI. CONCLUSION

Mickey Mouse's entry into the public domain is a watershed moment in the history of intellectual property rights. After over a century of strict copyright protection, the famous rodent; or at least his initial version, the "Steamboat Willie," is available for creative exploitation by anybody. This transformation not only represents a change in the legal environment, but it also raises serious problems regarding the relationship between copyright, trademark, and public domain status.

As we go forward through this uncharted territory, it's critical to understand the ramifications of Mickey's public appearance. While his early variations are now available to adaption and reinterpretation, trademark rules nonetheless protect Disney's corporate identification by limiting how his images may be utilized. The complexity of this legal interaction highlight the importance of clear advice and knowledge, especially for artists, producers, and companies alike.

In addition to that, the importance and impact of works entering the public domain cannot be emphasized. Beyond fostering creativity and invention, it is an important method for protecting cultural heritage, encouraging education, and fostering economic progress. By achieving an equilibrium between authors' rights and the public's greater good and interest, the public domain promotes a vibrant environment in which ideas may thrive and information can be freely disseminated. As Mickey begins his new journey swimming and exploring the public domain, the same acted as a good reminder of the complex relationship between law, creativity, and culture. In this changing context, it is critical to manoeuvre with knowledge, respect for rights, and a dedication to build a dynamic and inclusive creative society.
