Mickey Mouse will be public domain soon—here's what that means

Enlarge / The copyright to *The Great Gatsby*—the 1925 novel, not the 2013 movie starring Leonardo di Caprio—will expire two years from today.
Warner Bros. Picture

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As the ball dropped over Times Square last night, all copyrighted works published in 1923 fell into the public domain (with a few exceptions). Everyone now has the right to republish them or adapt them for use in new works.

It's the first time this has happened in 21 years.

In 1998, works published in 1922 or earlier were in the public domain, with 1923 works scheduled to expire at the beginning of 1999. But then Congress passed the Sonny Bono Copyright Term Extension Act. It added 20 years to the terms of older works, keeping 1923 works locked up until 2019.

Many people—including me—expected another fight over copyright extension in 2018. But it never happened. Congress left the existing law in place, and so those 1923 copyrights expired on schedule this morning.

And assuming Congress doesn't interfere, more works will fall

into the public domain each January from now on.

Next January, George Gershwin's *Rhapsody in Blue* will fall into the public domain. It will be followed by *The Great Gatsby* in January 2021 and Ernest Hemingway's *The Sun Also Rises* in January 2022.

On January 1, 2024, we'll see the expiration of the copyright for *Steamboat Willie*—and with it Disney's claim to the film's star, Mickey Mouse. The copyrights to Superman, Batman, Disney's Snow White, and early Looney Tunes characters will all fall into the public domain between 2031 and 2035.

The expiration of copyrights for characters like Mickey Mouse and Batman will raise tricky new legal questions. After 2024, Disney won't have any copyright protection for Mickey's original incarnation. But Disney will still own copyrights for later incarnations of the character—and it will also own Mickey-related trademarks.

James Grimmelmann, a copyright scholar at Cornell Law School, tells Ars that this is an uncharted area of law because licensing practices for modern characters are "so much more intensive and so much more comprehensive now" than in the 1920s and 1930s. "We never had megacharacters in the same way" prior to the 1920s, he says.

Internet activism made another extension untenable

Enlarge / Sonny Bono (right) in 1965. Bono was elected to Congress and then died in 1998. His colleagues in Congress dedicated the 1998 copyright extension legislation to his memory.

Dennis Karjala was a law professor who helped lead the doomed resistance to the 1998 extension. He passed away in 2017, but when I interviewed him in 2013, he told me that it was "basically the Gershwin family trust, grandchildren of Oscar Hammerstein, Disney, others of that ilk" who pushed for ever-longer copyright terms.

Most copyrighted works become commercially worthless within a decade or two. But a small minority of famous works from the 1920s and 1930s were still generating significant revenues in the 1990s. Retroactively extending copyright terms meant an enormous windfall for the companies and families that owned the copyrights.

"There was not a single argument that actually can stand up to

any kind of reasonable analysis," Karjala said. But the public domain had few defenders. So even though the arguments for longer copyright terms weren't very strong, they won the day in Congress.

Until recently, I assumed that the same interest groups would try to extend copyright terms again in 2018. But the political climate for copyright legislation has changed radically over the last 20 years.

A year ago, Ars Technica broke the news that three of the nation's most powerful rights holder groups in the country, the Motion Picture Association of America, the Recording Industry Association of America, and the Authors Guild, were not even going to try to pass legislation extending copyrights.

"It's not something we are pursuing," an RIAA spokesman told me.

The reason was simple, Grimmelmann argues: they knew they weren't going to win.

"There's now a well-organized, grassroots lobby against copyright expansion," Grimmelmann tells Ars. "There are large business interests now on the anti-expansion side. Also a wide popular movement that they can tie it into."

The rise of the Internet and its remix culture means that a lot of people now benefit from a growing public domain in ways that weren't true in 1998. That includes big companies like Google, but it also includes grassroots communities like Wikipedia editors and Reddit users. This emerging copyright reform coalition flexed its lobbying muscles in 2012 when it overwhelmingly defeated an Internet filtering bill called the Stop Online Piracy Act.

So if the usual suspects had pushed for another copyright extension, they would have had a serious fight on their hands.

Digital rights groups, online activists, and lobbyists from big technology companies would have swarmed Capitol Hill, making the case against copyright extension. Evidently, major rights holders didn’t have the stomach for another battle like that.

Of course, it’s possible they could make another effort in the future. But such an effort would face long odds: today’s opponents of copyright extensions are vastly better organized and better funded than the ragtag band that tried to stop the 1998 copyright extension.

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