

The internet copyright machine wasn't made for Mickey Mouse

Earlier this week, Disney's film *Steamboat Willie* entered the US public domain after nearly a century – and so did its star Mickey Mouse. It was a turning point for one of the 20th century's most iconic and rigorously protected pieces of intellectual property, and it was celebrated by an explosion of irreverent Mickey reinterpretations, including at least two film trailers, a horror game, a custom AI model, and a slew of predictably tasteless memes. The original cartoon was also uploaded in full on platforms like YouTube, letting anyone watch it for free.

The change has also been marked by a confusing string of moderation decisions. In the first days of January, *Techdirt* noted that Disney was apparently still filing claims to block the video on YouTube in some international markets. *Mashable* reported that a remix was demonetized alongside being restricted in those markets. And illustrator Jef Caine posted a takedown notice he'd gotten on TeePublic for a stylized Mickey Mouse-themed shirt with the slogan "No Man Owns My Destiny," invoking the memorable term "steamboated" to describe receiving the demand.

It remains unclear whether each of these restrictions was a reasoned call, a cautious bit of over-policing, or a simple fluke. But the fact that they're cropping up isn't surprising. Blunt-force copyright enforcement has shaped the boundaries and culture of the internet. It's ill-equipped for a world where huge numbers of people are testing the edges of a

nuanced legal framework – and as more pop culture becomes public property, the situation may only become more complex.

The Verge has reached out to YouTube and TeePublic for comment on their policies; YouTube has declined to comment on the record, and TeePublic hasn't responded. But there are a few obvious possible explanations for the takedowns, since the examples above touch gray areas where restrictions could still apply. The first is that *Steamboat Willie*'s copyright status remains potentially messier outside the US, particularly in Europe, which is where YouTube appears to be restricting access. The second is that Disney still holds a trademark on Mickey, so – as explained by Duke School of Law professor Jennifer Jenkins with a handy mouse-shaped diagram – it can argue that certain merchandise might mislead people into believing it's created or endorsed by Disney. The third is that Disney still holds a copyright on later iterations of the character, who appeared in *Steamboat Willie* without now-standard features like his white gloves or (since it's a black-and-white film) bright red shorts. Both these features were included in Caine's original shirt design and, notably, not a reworked version that remains online.

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dark: [>a: hover]: text-gray-bd dark: [>a: hover]: shadow-underline-gray [>a]: shadow-underline-gray-63 dark: [>a]: text-gray-bd dark: [>a]: shadow-underline-gray">Image: Jennifer Jenkins and Sean Dudley

But the ambiguity isn't all in Disney's favor. Jenkins points out that "not every feature of Mickey's later iterations is individually copyrightable," including "merely trivial" updates or ones that use obvious stock elements. (Courts could decide a simple red color scheme might not be a protectable addition, for instance.) *Techdirt* notes that Europe's "rule of the shorter term" policy for international copyright may push Mickey into the public domain there.

Separate from public domain freedoms, US fair use law allows

for parodies and commentaries on a copyrighted work, so some of these explicitly subversive takes on Mickey might have been legal even before this week. It's hard to say for sure, because fair use isn't a simple flowchart of cut-and-dried rules; it requires a case-by-case call balancing several factors. Relying on the public domain is a far safer bet.

Content moderation at scale, on an internet dominated by a handful of huge and powerful platforms, masks all this complexity – although to YouTube and other platforms' credit, you *can* find a lot of *Steamboat Willie* content right now. Internet moderation is an impersonal, multilayered, and frequently automated process that often gives recipients almost no information about what they've done wrong. Particularly given the massive volume of content involved, false positives are common. Companies sometimes fail to update takedown databases when moderators have declared a post doesn't violate the rules.

In theory, platforms are intermediaries passing along copyright notices, and people are free to file a counter claim if they think there's a mistake. But the balance of power isn't on users' side. Taking a risk could result in a black mark on your account's record or a temporary lockdown with a real financial cost. And the options for gaining a big audience without access to a few social media giants, even if the forecast feels a little brighter lately, remains bleak. Meanwhile, the repercussions for overzealous takedown-filing or even deliberate extortion are much less clear, despite the occasional legal smackdown on trolls. And platforms like YouTube are increasingly bypassing unsettled legal questions by cutting deals with the world's biggest rightsholders, effectively codifying their own rules.

The obvious outcome is a system that favors conservative interpretations of copyright law, regardless of whether they would hold up in court. Large media companies can fend off spurious complaints – like Netflix, which faced a lawsuit in

2020 for the crime of making public domain Sherlock Holmes too friendly. Small creators who depend on a platform's largesse may decide it isn't worth the trouble. The stakes will only get higher as major characters like Superman, Batman, and James Bond begin losing copyright protections in the US, something currently set to happen in the coming decade.

And an evolving US public domain is a fairly new problem for many web platforms. In the late 1990s, Congress passed the Copyright Term Extension Act (sometimes dubbed the "Mickey Mouse Protection Act"), which retroactively extended copyright terms on media like *Steamboat Willie*. Today's web behemoths gained power during a resulting 20-year freeze on the public domain – with speculation it might even be extended *again*, something that thankfully didn't come to pass. Until the start of 2019, sites like YouTube simply didn't have to navigate a world where major pieces of intellectual property passed out of copyright in one of their biggest markets.

Now that world is becoming a clear reality, and users are taking advantage of its opportunities. It's been just a few days since 2024 began, so we likely haven't seen the last of Mickey Mouse remixes, let alone what people will do with other newly available works. Nor have we probably seen the last takedown notices for them – or the last questions about whether they're fair.

<https://www.theverge.com/2024/1/5/24026433/mickey-mouse-steamboat-willie-youtube-teepublic-takedowns-public-domain>