

The Public Domain Opens Again in the United States for the First Time Since 1998

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by Jeffrey R. Cadwell

As we previously reported on our blog, the doors to the public domain will open in the United States for the first time since 1998. On January 1, 2019, any works published in the United States in 1923 or prior are freed from the shackles of copyright protection and can be copied, remixed, distributed, etc. without authorization from the copyright owner.



According to some brief internet research, 1923 saw the following cultural highlights, to name just a few:

- Louis Armstrong made his first studio recording
- Two iconic sports stadiums opened: the original Yankee Stadium in New York and the original Wembley Stadium in the United Kingdom
- The Hollywood Sign in California was inaugurated
- The Walt Disney Company was formed
- The film “The Ten Commandments” was released (*** Cecil B. DeMille’s silent film version, not the version starring Charlton Heston that was released in 1956*)
- Robert Frost’s “New Hampshire” poetry collection was published, which includes “Stopping By Woods on a Snowy Evening”
- William Carlos Williams published the poetry collection “Spring and All,” which includes “The Red Wheelbarrow”

So, why has the public domain been effectively sealed in the United States for over 20 years?

When the 1976 Copyright Act became effective on January 1, 1978, the term of copyright was set at life of the author plus 50 years. The term for works created before January 1, 1978, was 75 years (though the blogger notes that calculating the term of protection for pre-1978 works can be complicated and not all works benefited from such a lengthy term based on a number of circumstances, the discussion of which is beyond the scope of this post). Hence, as the late 1990s drew near, key players in the United States entertainment industry (including Disney, Time Warner, Universal, and Viacom) started

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recognizing that works created in the 1920s would soon lose copyright protection. A notable oft-cited example in copyright lore is Walt Disney's "Steamboat Willie" cartoon that was copyrighted in 1928 and would have entered the public domain on January 1, 2004.

These industry giants convinced Congress to extend the term of copyright protection for an additional 20 years. This extension is known as the "Sonny Bono Copyright Term Extension Act," named after Sonny Bono, because he was one of the original sponsors of similar legislation and passed away nine months before the bill was signed into law by President Clinton on October 27, 1998. The effect of the term extension is generally as follows:

- For works created on or after January 1, 1978, the term is life of the author plus 70 years.
- For works made for hire and anonymous or pseudonymous works, the term is 95 years from publication or 120 years from creation, whichever comes first.
- For works created prior to January 1, 1978, and still under protection, the term is 95 years from the original copyright date.

This means the first depiction of Mickey Mouse in a sound cartoon enters the public domain on January 1, 2024. Will we see lobbying efforts to keep Mickey locked safely away in the "Disney Vault" for an additional term of protection? Only time will tell, but if it happens, you can rest assured that we will be writing about it here at The TMCA.