

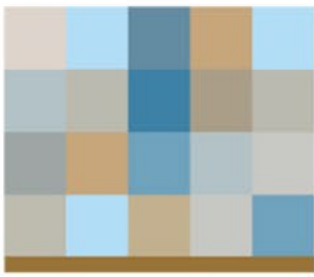
Mickey Mouse and the Public Domain: Is Use of Mickey Mouse Now Fair Game or Is that Just Fantasyland?

By: Terese L. Arenth

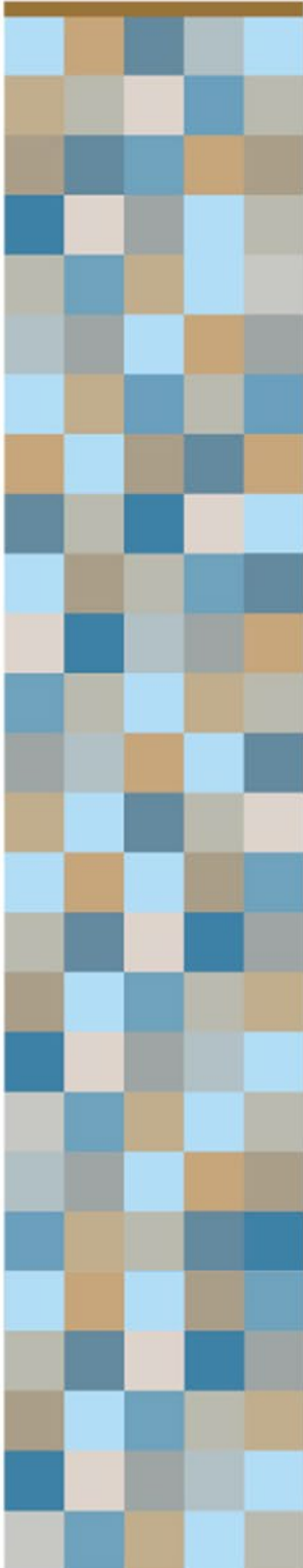
If you know me well, you know that I am an admitted Disney fanatic. So, you can imagine my initial horror when I heard media rumblings that Disney was losing its copyright to my favorite mouse, Mickey. Upon further investigation, I was relieved to learn that my beloved Mickey Mouse was safe. Well, the modern-day version(s) of Mickey that most of us know and love. The first iteration of Mickey Mouse looked a bit different (dare I say, more rat-like?) and made its public debut in the black-and-white animated short *Steamboat Willie* in 1928.

The copyright on *Steamboat Willie* expired on January 1, 2024. What does this mean? It means that *Steamboat Willie* is now in the public domain. Copyright is a type of intellectual property right that protects original creative works of authorship that have been fixed in a tangible form of expression, such as books, films, images, and songs, from being copied without the permission of the work's creator and copyright holder. Limited exceptions are allowed for "fair use" such as parody, criticism, comment, news reporting, teaching, scholarship, and research. Under current United States copyright laws, copyright protection is granted for 95 years from publication. Hence, any copyright-protected works that were published in 1928, like *Steamboat Willie*, entered the public domain on January 1, 2024, with the expiration of their copyright. Legally, that means that anyone in the U.S. can now copy and reproduce the *Steamboat Willie* version of Mickey Mouse without permission and without fear of copyright infringement. (While the lawyer side of me gets it, the Disney side of me was somewhat disturbed to already see the release of a trailer for a Mickey Mouse horror flick).

While this is fairly big news, don't get too excited. It's not quite open season on Mickey Mouse, like some people would have you believe. First, over the years, the *Steamboat Willie* version of Mickey (Mickey 1.0) has been tweaked, modified, and modernized many times. These later versions of Mickey that most of us grew up with (Mickey 2.0. et seq.) are still subject to copyright protection. Second, Mickey Mouse is protected not only by copyright law, but also by trademark law. Disney has multiple registrations, including for the word mark MICKEY MOUSE and various versions of the mouse character. Disney has also strategically used a clip from "*Steamboat Willie*" in the opening sequence of Walt



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Disney Animation Studios films, reinforcing it as a trademark. Trademark law protects brand names and logos used as an identifying source of goods and services. Trademark infringement occurs when the use of a trademark is likely to cause confusion, or to cause mistake, or to deceive consumers about the source of a good or service.

So where does this leave Mickey? Now that *Steamboat Willie* is in the public domain, will everyone live happily ever after? Well, it depends. Both copyright law and trademark law can be fairly nuanced as to what is or is not protectible. But in short, you can freely copy or create derivative works from Mickey Mouse 1.0. You cannot use new, copyrightable versions of Mickey Mouse that are still subject to copyright protection. Also, you cannot use Mickey Mouse in a way that misleads consumers or is likely to confuse them into thinking that your goods or services are produced or sponsored by, or affiliated with, Disney. Unless, of course, you want to receive an evil cease and desist letter from Disney.

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