

## Freeing Mickey Mouse ↗0

Owning the Future By Seth Shulman November 2002



### Extended copyright terms help large corporations - not individual artists.

Congress has passed plenty of Mickey Mouse legislation over the years. But a few years ago, lawmakers sneaked through the actual article: a Mickey Mouse bailout bill. Now the U.S. Supreme Court can redress Congress's ill-considered public ripoff.

Formally known as the Sonny Bono Copyright Term Extension Act of 1998, the legislation addressed all "original works of authorship" (books, articles, songs, and graphic art) copyrighted since 1923, extending their copyright protection by at least 20 years. Works copyrighted in 1978 or later retain copyright protection for the duration of the author's or artist's life and the next 70 years (up from 50 years); those copyrighted before 1978 are protected for 95 years, regardless of how they were produced or when the author or artist died.

Why, in 1998, did Congress feel the urgent need to extend copyright? The legislators certainly weren't being lobbied by the Dead Poets Society. The plain fact is that this was a corporate giveaway. The beneficiaries are big publishing conglomerates including AOL Time Warner and movie studios such as Disney. The first Mickey Mouse character, copyrighted in 1928, was set to revert to the public domain in 2003. Now thanks to Congress, Disney can keep Mickey until 2023. Considering that the cash cow mouse helps earn the company billions of dollars a year in products and theme park revenues, the giveaway was lavish indeed.

What's important to intellectual-property owners is simple: duration, duration, duration. That's why, when the expiration of a drug company's patent nears, we see the company scrambling shamelessly to propose dubious new, patentable uses for its lucrative products. A pharmaceutical maker will do anything to lengthen its exclusive hold on its drugs. In the realm of copyright, we see intellectual-property titleholders trying to earn royalties for longer periods.

This fall, the legal challenge to the Sonny Bono Act reached the U.S. Supreme Court. The case, *Eldred v. Ashcroft*, addresses a pressing intellectual-property issue—namely, how committed are we to the notion of the public domain? The case involves the right of Eric Eldred, a computer analyst and Internet hobbyist, to post pieces of literature—including *The Great Gatsby* by F. Scott Fitzgerald—whose copyrights would have expired were it not for Congress's intervention. Many of the works Eldred wants to make freely available at [www.eldritchpress.org](http://www.eldritchpress.org), his noncommercial Web site, are now out of print. Examples include *Horses and Men*, a collection of stories by Sherwood Anderson, and a rare edition of Robert Frost's *New Hampshire* poetry collection; both were published in 1923. The Sonny Bono law denies the public the chance to view these works on free sites; any such use or other copying would require paying royalties to the authors' estates.



Like patent rights, copyright is covered by Article 1 of the U.S. Constitution, which states that Congress shall have the authority "to promote the progress of science and useful arts, by securing *for limited times* [emphasis added] to authors and inventors the exclusive right to their respective writings and discoveries." Originally, Congress specified that copyright should last 14 years, renewable to no more than 28 years.

The idea was wise and simple: authors and inventors should be able to control rights to their works for a brief period during which they can reap the rewards. This encourages creativity and innovation. But to help disseminate these works widely, the works should revert to the public domain as soon as reasonably possible. That way the public benefits, too.

Lawrence Lessig, a Stanford University law professor, champion of the public domain, and the driving force behind the Eldred case, likes to remind people that the classic renderings of both Uncle Sam and Santa Claus were the work of Thomas Nast. We take them for granted now, but had the Sonny Bono Act been in place, everyone from the Department of Defense to department stores would have had to pay royalties. Neither image would likely be a feature of our public life.

But all that was forgotten when the Mickey Mouse legislation was passed in October 1998. The public was thoroughly shut out of the process. There was virtually no

open debate in the House or Senate, and President Clinton quietly signed this travesty into law. The lawmakers and Clinton knew they were robbing the public to enrich a few powerful corporate titleholders. They knew they were limiting the public's access to its own cultural heritage.

Thanks to the tireless work of people such as Lessig, the case is now before the U.S. Supreme Court. Eldred has been joined by some nine additional plaintiffs—organizations in the business of providing access to such public-domain works as songs, books, and films. Friend-of-the-court briefs in support of the plaintiffs have been filed by economists, intellectual-property law professors, no fewer than 15 library associations, and a bevy of well-known authors, including Peter Matthiessen.

The Supreme Court's track record on copyright issues offers little to indicate how the justices might rule; indeed, most analysts were surprised the justices even agreed to hear the case. Copyright lawyers emphasize that a Supreme Court decision is likely to have profound implications for intellectual property. Whatever the outcome, the showdown shines a spotlight on a shameful corporate handout that ought to prompt us to reassert the public's part in the patent and copyright bargain.

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