



Sérvulo & Associados | Sociedade de Advogados, SP, RL

Update

Intellectual Property

December 2023

Lapsing Copyright: Mickey's Steamboat Willie on its way to the public domain

Ana Mira Cordeiro | ami@servulo.com
Paulo Meireles de Oliveira | pmo@servulo.com

The management and maintenance of Copyright is a substantial source of income for many major entertainment producers such as Disney. Making good use of the full extent of Copyright is essential, especially given its the limited time span.

For Disney, the year 2023 will go down in history as the last year of full retention of the rights to its greatest creation, Mickey Mouse. As of January 2024, the first version of Mickey (in the 1928 version of "Steamboat Willie") will enter the public domain.

Protection under current US law¹ provides that creations (prior to 1978) made to order/under a contract of employment or provision of services are protected, depending on precedence, for 95 years after the date of publication or 120 years after the date of creation.

"Steamboat Willie" has benefited from successive legislative changes which have delayed its entrance into the public domain. Since the 1909 Copyright Act, the limitation period for Copyright has increased from 28 years (with the possibility of renewal for an equal period), to 75 years with the 1976 Copyright Act, to the current 95 years with the 1998 Copyright Extension Act.

This is not the first time that Disney has dealt with the transfer of its Copyright to the public domain. In 2022, the entry of the original story of Winnie-the-Pooh into the public domain, ended Disney's dominant position over the beloved *yellow bear*, leading to the appearance of creations such as "Winnie-the-Pooh: Blood and Honey".

The paradox between public domain as the basis of most of Disney's creations (from The Lion King to Alice in Wonderland) and the allegedly fierce lobbying for the extension of the copyright protection

period in the United States, which led to the 1998 Copyright Extension Act even being informally called the Mickey Mouse Protection Act, never gets old.

However, considering that Mickey Mouse's figure is one of Disney's main brand images, it is expected that the entrance in the public domain of this version of Mickey Mouse (notably very different from the current version) is rather symbolic than commercially significant, considering Disney's strong trademark registrations in the most diverse categories.

In any case, given Disney's history of defending its copyright and intellectual property rights, we can expect court rulings on this issue, which may be of particular interest in the copyright/industrial property rights dichotomy if the future use based on public domain conflicts with the extensive trademark registrations granted to Disney Enterprises, Inc.

¹ 17 U.S.C. § 302 - U.S. Code - 17. Copyrights § 302. Duration of copyright: Works created on or after January 1, 1978