

## RIGHTING COPYWRONGS

By James Surowiecki

*The New Yorker*

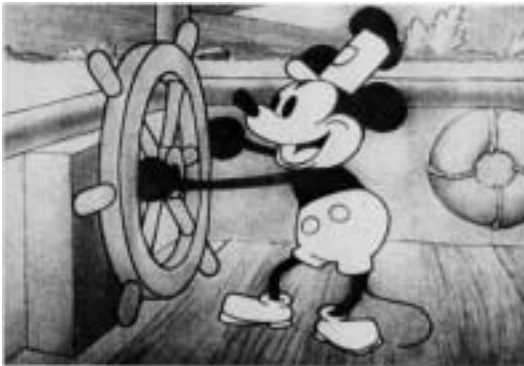
January 21, 2002

**T**hree years ago, the Walt Disney Company pulled off a nifty legal heist. Disney's copy-right on Mickey Mouse—who made his screen debut in "Steamboat Willie," in 1928—was due to expire in 2003. The rights to Pluto, Goofy, and Donald Duck were to expire a few years later. This spelled trouble for Disney. But, after some aggressive lobbying and well-targeted campaign contributions from Disney and others, the threat was quashed: Congress quietly passed the so-called Sonny Bono act, which extended all copyrights for twenty more years and kept Mickey out of the public domain.

At the time, Lawrence Lessig was a law professor at Harvard, where he'd earned a reputation

as the most important thinker on intellectual property in the Internet era. Lessig was so outraged by the Bono act that he helped orchestrate a lawsuit challenging its constitutionality. Now Lessig has published a book, "The Future of Ideas," which serves as a bleak summa of his thoughts on intellectual property. For Lessig (who's now at Stanford), the Bono act was not just another instance of fat-cat favoritism but part of a disastrous trend toward what might be called property-rights fundamentalism. In his view, this trend is threatening to destroy the Internet and plunge us into a cultural dark age.

Property rights, most Americans will agree, are a good thing. They give people an incentive to



Mickey Mouse—who made his screen debut in "Steamboat Willie," in 1928—was due to fall into the public domain in 2003. But Disney successfully lobbied for the Sonny Bono Copyright Extension Act, which gave Disney exclusive rights to Mickey for another twenty years.

work and produce, by allowing them to reap the benefits of their own labor and creativity. But though the Framers treated property rights as essential, they did not view them as absolute. In particular, they drew a sharp distinction between physical property and intellectual property. If you own a house, it's yours until you sell it. But if you have a neat idea, or write a fine book, it's yours for only a limited period, after which it enters the public domain, where everyone can have free and equal access to it. Theoretically, a copyright should last just long enough to give people an incentive to create and innovate.

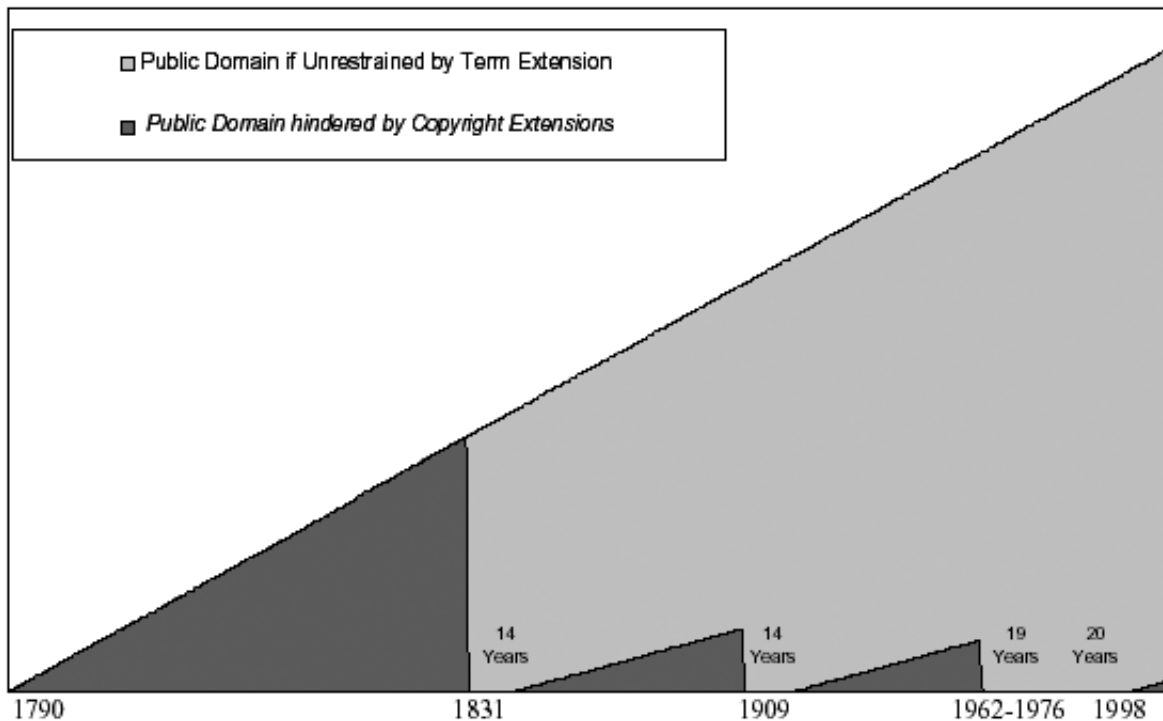
In the past forty years, though, we've somehow lost sight of the notion that a copyright should be temporary. The distinction between real property and intellectual property—between things and ideas—has been blurred. Since 1960, copyrights have been extended eleven times; they can now, in some cases, last well beyond a hundred years (the life of the artist plus seventy years). As Lessig remarks, it seems as if every time Mickey is in danger of entering the public domain copyright

terms get longer.

Think about it. If current copyright law had been in effect a hundred years ago, the U.S. government might have had to pay royalties to use the image of Uncle Sam, and so would anyone who wanted to depict a jolly red-suited Santa Claus. (both were created by the cartoonist Thomas Nast, who died in 1902.) The consequences of broader intellectual-property protections have at times been ridiculous. In 1995, ASCAP tried to get summer camps to pay licensing fees for the songs the kids sang around the campfire. Disney went after day-care centers in Florida that had crude murals of Mickey and Goofy on their walls. And last year a satirical novel that borrowed elements from "Gone with the Wind" found itself embroiled in litigation with Margaret Mitchell's estate. The once open fields of culture are increasingly fenced in with concertina wire.

In Lessig's view, this aggressive regime of copyright protection has allowed the media and software giants (the "old Soviets," he calls them) to monopolize our cultural, intellectual, and politi-

#### EFFECTS OF THE SONNY BONO ACT ON THE PUBLIC DOMAIN



Due to the repeated extensions of copyright law, the growth of the public domain has declined. This means that fewer works are available to libraries, educators, publishers, and artists who would like to use them.

cal life. In particular, the Internet, which once promised to be a wonderful new mechanism for producing and distributing culture from the bottom up, has been reduced to territory, colonized and crisscrossed with barricades. "There's no chance of changing this," he told me. "This is over."

Lessig may be nostalgic for the Internet's Paris Commune phase, when anyone could be an artist or an entrepreneur, without lawyers and corporations manning the gates. Still, he retains a healthy respect for property, and his prescriptions take account of copyright owners' interests. He suggests that copyrights should last five years but be renewable fifteen times, except for copyrights on software, which should be renewable once. And anyone should be able to license music from a record company for a reasonable fee.

One can quibble over the details. If you were thinking about deploying a team of top engineers to come up with a sophisticated new operating system, you might hesitate if you knew that home-grown variants were soon going to flood the mar-

ket. But this is only a matter of where to draw the line. Lessig's real concern is that we return to the way America approached intellectual property throughout most of its history. Traditionally, legislators sought to balance competing interests. Lessig cites the example of the piano roll. A century ago, a boom in player-piano sales led sheet-music authors to complain that piano-roll makers were stealing their music and violating their copyrights. So, to protect the songwriters, Congress rewrote the law, but in a manner that allowed the player piano, a new technology, to continue to flourish. Henceforth, once a song was recorded, any piano-roll maker could copy it, for a small fee. The song was available to all, but the songwriter got paid for it. In essence, Congress said that copyright was about compensation, not control.

That idea became the basis for laws regarding everything from jukeboxes to cable TV. But when the Internet came along the government forgot about balance and decided that property rights trump all. Maybe we ought to stop coddling the Scrooge McDucks and free Steamboat Willie.



**Sonny Bono is dead, but his copyright legislation is not.**