THE STEAMBOAT WILLIE SMOKESCREEN

by ZVI S. ROSEN*

In a previous article, Who Framed Mickey Mouse, *I argued that The Walt Disney Company's role in copyright term extension in 1998 – although real and substantial – has been seriously exaggerated by opponents of copyright term extension.[1] In this shorter piece I wanted to explicate on a related point, which is the degree to which the focus on the copyright status of Mickey Mouse has resulted in a copyright policy debate unusually focused on the copyright status of older works, especially a few high-profile ones like Walt Disney's Steamboat Willie. Meanwhile, the actual copyright policy debates of 2025 are much more about compensating current creators – especially as it becomes harder and harder for ordinary creators to earn a living through commercialization of their work. In that way the focus on Mickey Mouse creates a useful smokescreen for those intermediaries (especially but not uniquely Alphabet, Inc., the corporate parent of Google and YouTube), which profit from ubiquitous and under licensed exploitation of the work of creators.*

INTRODUCTION: THE MICKEY MOUSE FLUB

Painting The Copyright Term Extension Act of 1998 (CTEA) as being a bill designed primarily for the benefit of Disney is to commit a historical flub – Disney was only one of many interested in term extension and was neither the primary not the driving force behind it. The CTEA was of course hardly the first term extension, and the term of copyright – set originally at fourteen years in 1790, with the possibility of a fourteen year second term upon renewal by the author or their family – slowly crept up over two centuries.[2] In 1831 the initial term was extended to twenty-eight years, for a total term of 42 years.[3] At the end of the nineteenth century there was a general sense that the copyright term was insufficient and that the law needed modernization.[4] Most of the world's most

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[1] Zvi S. Rosen, *Who Framed Mickey Mouse*, 73 KAN. L. REV. ___ (2024).

[2] Copyright Act of 1790, ch. 15, § 1, 1 Stat. 124.

[3] Copyright Act of 1831, ch. 16, § 1, 4 Stat. 436.

[4] Zvi S. Rosen (@zvisrosen), X (formerly TWITTER) (June 19, 2019, 1:20 PM) https://x.com/zvisrosen/status/1141410480516452352 (Susan B. Anthony, among others, arguing for perpetual copyright).

active producers of literature had signed the Berne Convention in 1886 setting the copyright term at life of the author plus fifty years, but the United States was not one of them.[5] Although it had been hoped to adopt this term in the United States, the 1909 Copyright Act produced a more moderate change in the copyright term by extending the renewal term another fourteen years for a total of 56 years.[6]

The goal of putting copyright term in the United States on par with the rest of the world as the Berne Convention's term became increasingly ubiquitous was one of many motivations for the copyright revision process which began in the mid-1950s.[7] While a number of organizations were active in pushing for another extension of copyright term, perhaps most notably the Church of Jesus Christ, Scientist, the Walt Disney Company was not one of them.[8] The 1976 Act which emerged after decades of wrangling adopted the life plus fifty term prospectively, but for works protected under the 1909 Act the renewal term was extended nineteen years to forty-seven years, bringing the total term to seventy-five years.[9]

A series of factors including term extensions for the World Wars and harmonization as the European Union came together in the early 1990s led Europe to extend the copyright term to life of the author plus seventy years in 1993.[10] The United States began exploring a similar term extension that year, with special impetus coming from songwriters and their families working through ASCAP, but generally supported by a wide coalition of copyright industries.[11] Hearings were held in 1995 with testimony and letters in favor from creators including Quincy Jones, Don Henley, Bob Dylan, and Stephen Sondheim. The measure was generally supported, but the National Restaurant Association and their allies in Congress insisted that it be paired with a measure expanding the scope of the "homestyle exemption" to performance rights for bars and restaurants.[12]

As negotiations over term extension continued, Disney did engage in lobbying over term extension, including meetings between Senate Majority Leader Trent Lott and Disney CEO Michael Eisner in early 1998.[13] While this was not necessarily decisive in the success of term extension, it surely helped. A compromise was reached between the National Restaurant Association and

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[5] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 828 U.N.T.S. 221.

[6] Copyright Act of 1909, ch. 320, § 1, 35 Stat. 1075.

[7] U.S. Copyright Office, *Copyright Law Revision Studies*, https://www.copyright.gov/history/studies.html (last visited Oct. 26, 2024).

[8] Rosen, *supra* note 1.

[9] Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541. Starting in 1962 a series of piecemeal extensions for works about to expire had also been passed, and they were folded into the new law.

[10] Rosen, *Who Framed Mickey Mouse*; Council Directive 93/98/EEC, 1993 O.J. (L 290) 9.

[11] William Patry, The Failure of the American Copyright System: Protecting the Idle Rich, 72 Notre Dame L. Rev. 904, 924 (1997).

[12] Fairness in Music Licensing Act of 1998, Pub. L. No. 105-298, §§ 201-205, 112 Stat. 2827, 2830.

[13] Alan K. Ota, *Disney in Washington: The Mouse That Roars*, Cong. Q., Aug. 10, 1998.

ASCAP and term extension became law on October 27, 1998.[14] The measure had passed the Senate by unanimous consent on October 7, and the House by voice vote the same day, where it was renamed after the recently deceased Rep. Sonny Bono, who had supported the measure.[15]

Although earlier opposition to term extension was focused on a wide variety of works produced in the 1920s, in 1998 the opposition became particularly focused on the Walt Disney Company and the character of Mickey Mouse. A constitutional challenge to the new law was quickly brought by online publisher Eric Eldred, represented by law professor Lawrence Lessig.[16] As the matter worked its way to the Supreme Court the rhetoric regarding term extension being the work of Disney only intensified, as supporters of the lawsuit united around the slogan "Free The Mouse." In early 2003 the Supreme Court found that term extension was constitutional, but the linkage had been firmly made.[17] When *Steamboat Willie* became public domain at the beginning of 2024 along with many other works, news coverage would often still tell that same story – that Disney had persuaded Congress, through various means, to pass what was essentially a private bill for their benefit in 1998.[18]

I. FIDDLING WHILE ROME BURNS

During the debates over term extension, longtime copyright attorney Art Levine remarked "Berne fiddles while Rome burns."[19] In retrospect, the energy put into term extension by the copyright sector was likely misallocated – and distorted the debate about copyright in the internet era.

The CTEA came along at a transition time in technology and the consumption of media – when the Copyright Office studied the issue in 1993 the White House was experimentally using email via a Compuserve address, but by the time of its passage in 1998 almost half of households in America were online.[20] It was

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[14] Dorothy Schrader, Copyright Term Extension and Music Licensing: Analysis of Sonny Bono Copyright Term Extension and Fairness in Music Licensing Act, CONG. RSCH. SERV., No. 98-904, at CRS-2 (Oct. 27, 1998), https://www.everycrsreport.com/files/19981027_98-904_9dbd38efdc82402b43a76ff31b89074f0f71f4bd.pdf.

[15] *Id.* at CRS-3.

[16] Eldred v. Reno, Complaint, https://cyber.harvard.edu/eldredvreno/cyber/complaint_orig.html (last visited Oct. 26, 2024).

[17] Eldred v. Ashcroft, 537 U.S. 186, 205 (2003).

[18] *Mickey Mouse Protection Act*, COPYRIGHT LIB. (NOVA SE. U.), http://copyright.nova.edu/mickey-mouse-protection-act/ (last visited Oct. 26, 2024).

[19] This refers to the Berne and Rome copyright conventions, the latter of which the U.S. had not entered into, but also more generally to priorities with the rise of the internet. E-mail from Arthur Levine to Author (Mar. 31, 2024) (on file with author).

[20] U.S. Census Bureau, *Household and Family Characteristics: March 2000*, at 3, https://www.census.gov/content/dam/Census/library/publications/2001/demo/p23-207.pdf (last visited Oct. 26, 2024). By 2000 the number was over half.

obvious to all that the internet would revolutionize copyright law, and an effort to modernize copyright law to meet the internet was underway in parallel to the CTEA, incorporating a substantially larger number of stakeholders and attention in Washington.

In 1993, the Clinton Administration announced plans for a "National Information Infrastructure," sometimes called NII or more commonly "information superhighway."[21] A working group on IP Rights was set up within the NII Policy Committee, chaired by PTO Commissioner Bruce Lehman, and in 1995 they issued a report providing recommendations for copyright law on what was rapidly becoming the modern internet.[22] As this was ongoing in the United States the discussions over a proposed protocol to the Berne Convention, which at one time included a provision for copyright term extension, crystallized into a special agreement under Berne – the WIPO Copyright Treaty (WCT).[23] The WCT requires that signatories incorporate legal protections regarding technological protection measures (TPMs) into their laws, and as such discussions of a digital copyright law included these protection measures.

These protection measures were particularly important to the movie industries, including but obviously not limited to Disney.[24] The whirlwind of Napster had not fully hit yet, but some in the music industry were already aware that by releasing CDs without any copy protection, they had given the public original digital files they could freely copy further.[25] It was clear that at least some form of digital distribution was on the horizon, and the movie industry was eager to provide legal protections against the copying of the DVD format which was first released in late 1996 in Japan.[26] As a result, while the movie sector was

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[21] The National Information Infrastructure: Agenda for Action, https://clintonwhitehouse6.archives.gov/1993/09/1993-09-15-the-national-information-infrastructure-agenda-for-action.html (Sept. 15, 1993); U.S. Gov't Accountability Off., *Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology*, AIMD-95-23, https://www.govinfo.gov/content/pkg/GAOREPORTS-AIMD-95-23/html/GAOREPORTS-AIMD-95-23.htm (last visited Oct. 26, 2024).

[22] Bruce A. Lehman, Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights, ERIC No. ED387135 (Sept. 1995), https://eric.ed.gov/?id=ED387135 (last visited Oct. 26, 2024).

[23] *Summary of the WIPO Copyright Treaty (WCT) (1996)*, World Intell. Prop. Org., https://www.wipo.int/treaties/en/ip/wct/summary_wct.html (last visited Oct. 26, 2024).

[24] H.R. Rep. No. 105-551, pt. 2, at 86 (1998).

[25] Stephen Witt, *How Music Got Free: The End of an Industry, the Turn of the Century, and the Patient Zero of Piracy* (Penguin Random House 2015). An attempt to mitigate this danger was the Audio Home Recording Act, which would prove less than satisfactory when it was held not to apply to MP3 players. RIAA v. Diamond Multimedia, 180 F.3d 1072, 1079 (9th Cir. 1999).

[26] DVD, Wikipedia, https://en.wikipedia.org/wiki/DVD (last visited Oct. 26, 2024). Another alternative, the ill-fated DIVX format which was pushed by Circuit City, would call a central server by modem with each play. DIVX, Wikipedia, https://en.wikipedia.org/wiki/DIVX (last visited Oct. 26, 2024).

interested in term extension, substantial lobbying effort was put into the digital copyright bill as well.

In Congress, the telecommunications and technology sectors were not prepared to accept a law implementing the WCT without some concessions. There had already been cases holding that operators of electronic bulletin board services were liable for copyright infringement on their services even if they were unaware of the infringement.[27] On the other hand, a 1995 decision held that an internet service provider was likely not liable for posting of copyrighted material by a user.[28] These sectors were eager to see such a decision formalized and expanded by a statute, and ultimately the copyright sectors acquiesced – and the digital copyright bill which started with the NII became the Digital Millennium Copyright Act (DMCA).[29] Of course, the devil is in the details.

Regarding TPMs, the DMCA's provisions were helpful – especially at first. Software which cracked the copy protection on DVDs was banished from the internet – or at least to its dark underbelly.[30] These measures continue to be important to the copyright sector, banning, for instance, tools for "stream-ripping" of copyrighted material.[31] At the same time, sales of physical media are increasingly a footnote as discs are largely absent from store shelves.[32] The concession given to the technology and telecom sectors, on the other hand, only grows more important.

The other major part of the DMCA, Section 512 of Title 17, has increasingly outshined the TPM portions in significance.[33] Under its terms digital platforms are immunized from liability for a variety of conduct by their users, including conduct that leads to platforms hosting infringing material for the browsing public, provided the provider is unaware of the infringement itself or "facts or circumstances from which infringing activity is apparent," if the provider removes the material upon notice.[34] If the user of the online service files a counter notification, though, the platform is essentially required to put the material back

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[27] Playboy Enters., Inc. v. Frena, 839 F. Supp. 1552, 1559 (M.D. Fla. 1993); Sega Enters. Ltd. v. MAPHIA, 857 F. Supp. 679, 686-87 (N.D. Cal. 1994).

[28] Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs., Inc., 907 F. Supp. 1361, 1376 (N.D. Cal. 1995).

[29] Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860.

[30] Universal City Studios, Inc. v. Corley, 273 F.3d 429, 459 (2d Cir. 2001) ("Fair use has never been held to be a guarantee of access to copyrighted material in order to copy it by the fair user's preferred technique or in the format of the original.").

[31] Aaron Moss, *YouTube Stream-Ripping Copyright Claims Heat Up in U.S. Courts*, Copyright Lately (Oct. 28, 2020), https://copyrightlately.com/youtube-stream-ripping-copyright/.

[32] Nicholas Vega, *Best Buy will stop selling Blu-rays, DVDs in 2024: 'The way we watch movies and TV shows is much different today'*, CNBC MAKE IT (Oct. 13, 2023, 4:12 PM), https://www.cnbc.com/2023/10/13/best-buy-will-stop-selling-blu-rays-dvds-in-2024.html.

[33] 17 U.S.C. § 512.

[34] *Id.* at 512(c)(1)(A).

online in less than three weeks unless the copyright owner files a lawsuit against the user in federal court.[35] Under the terms of 512 a platform must adopt a repeat infringer policy and work in hand with "standard technical measures" (STMs) used by copyright holders.[36] The focus was on limiting platform liability – ensuring they could operate without constant fear of a existential lawsuit provided they remained good actors.

In theory this should lead to a balanced copyright ecosystem on the internet. However, mounting problems led the U.S. Copyright Office to conclude in 2020 that Section 512 had become "unbalanced" to the detriment of copyright holders.[37] While platforms were largely satisfied with Section 512, copyright holders reported a range of problems, noting that evolving "technologies have enabled piracy to grow to a level far beyond what could have been contemplated in 1998."[38] As audiovisual media is shared seamlessly in a way which would never have been possible on a dial-up internet connection, online platforms have every incentive to support the sharing of media while the copyright holder is left – at best – to using automated means to try to find it and take it down. The work of sending takedown notices under Section 512 is substantial and beyond the means of smaller copyright owners. Even if a takedown is sent, there is a "whack-a-mole" problem where other uploads may proliferate.[39] And if the uploader sends a counter-notification, the only real way to assess its merits – or even veracity – is to file suit.[40] In practice, "requiring court action to contest a counter-notice is not feasible given the volume of infringement and the associated federal court costs." [41] Of course, if the counter notification is sent from outside the United States, especially from a jurisdiction where merely serving process of a suit might

[35] *Id.* at 512(g) (with the passage of the CASE Act in 2020, filing an action with the Copyright Claims Board also requires that the material be taken back down); Copyright Alternative in Small-Claims Enforcement Act of 2020, 17 U.S.C. §§ 1501-1511 (2020); Keith Kuperschmid, *Why is No One Talking About this Provision of the CASE Act? It's Because it Benefits Users of Copyrighted Works*, COPYRIGHT ALL. (Aug. 27, 2019), https://copyrightalliance.org/why-is-no-one-talking-about-this-provision-of-the-case-act-its-because-it-benefits-users-of-copyrighted-works/; Rachel Fertig, Oscar Orozco-Botello, Jenna Rowan & J. Kevin Fee, *What we've learned from ten months of Copyright Claims Board proceedings: Eight things for companies to consider*, DLA PIPER (Apr. 25, 2023), https://www.dlapiper.com/en-us/insights/publications/intellectual-property-and-technology-news/2023/what-weve-learned-from-ten-months-of-copyright-claims-board-proceedings (service of process has been an issue, though, with a "vast number of cases" being "dismissed for deficiency before service.").

[36] 17 U.S.C. § 512(i).

[37] U.S. COPYRIGHT OFF., SECTION 512 OF TITLE 17 72 (2020), https://www.copyright.gov/policy/section512/section-512-full-report.pdf.

[38] *Id.* at 77.

[39] *Id.* at 81.

[40] *Id.* at 146 n.782.

[41] *Id.* at 163.

require the cumbersome issuance of letters rogatory, the already difficult process is now effectively infeasible.

This problem has been exacerbated by decisions holding that widely-used platforms which are not blatantly focused on piracy of copyrighted works are essentially immune from suit so long as they engage in the bureaucratic work of complying with Section 512. In perhaps the best-known case, the Second Circuit held that actual knowledge or "aware[ness] of facts or circumstances" of infringement required "awareness of specific infringements."[42] The court held that "facts or circumstances" is an objective test of actual knowledge, rather than more general awareness.[43] Coupled with the fact that the DMCA specifically does not require that platform operators police for infringements, the result is that slightly less than willful blindness is not just legal, it is best practices for a platform that hosts user uploads of copyrightable works.

The DMCA was drafted with the expectation that rightsholders and platforms would work together to develop STMs.[44] However, by 2020, despite substantial technological advancements, "no measures currently qualif[ied]" as STMs.[45] One of the goals of providing STMs "is to develop big tools for small creators," and without them small creators are at a profound disadvantage against giant platforms.[46] However, Google and other large stakeholders were, with some self-interest, skeptical that STMs could be developed.[47]

In 2013, it was felt that a "renewed lobbying push is almost inevitable" for copyright term extension.[48] Of course that didn't happen, and in 2024 Steamboat Willie became public domain. The complete lack of interest in term extension from the major players in the copyright sector took many by surprise, and helped to clarify that the priorities of the copyright sector lay elsewhere.[49] By contrast, when the Copyright Office requested comments on Section 512 at the end of 2015 they received over 92,000 written comments.[50] Following the Copyright Office's

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[42] Viacom Int'l, Inc. v. YouTube, Inc., 676 F.3d 19, 31 (2nd Cir. 2012).
[43] *Id.*
[44] Neil Turkewitz, *Technical Measures in the Fight Against Piracy: A Cautionary Tale*, MEDIUM (Sept. 26, 2018), https://medium.com/@nturkewitz_56674/technical-measures-in-the-fight-against-piracy-a-cautionary-tale-incentivesmatter-1fd62da1794b.
[45] U.S. COPYRIGHT OFF., SECTION 512 OF TITLE 17 176 (2020), https://www.copyright.gov/policy/section512/section-512-full-report.pdf.
[46] *Id.* at 179.
[47] *Id.* at 176-77.
[48] Timothy B. Lee, *15 years ago, Congress kept Mickey Mouse out of the public domain. Will they do it again?*, THE WASHINGTON POST (Oct. 25, 2013, 9:00 AM), https://www.washingtonpost.com/news/the-switch/wp/2013/10/25/15-years-ago-congress-kept-mickey-mouse-out-of-the-public-domain-will-they-do-it-again/.
[49] Timothy B. Lee, *Why Mickey Mouse's 1998 copyright extension probably won't happen again*, ARS TECHNICA (Jan. 8, 2018, 7:00 AM), https://arstechnica.com/tech-policy/2018/01/hollywood-says-its-not-planning-another-copyright-extension-push/.
[50] *Section 512 Study*, U.S. COPYRIGHT OFF., https://www.copyright.gov/policy/section512/ (last visited Oct. 26, 2024).

report in 2020 the Senate Judiciary Committee held a series of hearings on Section 512, and in 2022 a bill to reform Section 512 was introduced by bipartisan Senate leaders on the issue, to acclaim from copyright holders.[51] Whatever priorities were in 1998, this is where the legislative priorities of copyright industries are in 2025.

II. THE CUI BONO COPYRIGHT ACT[52]

Given the exaggeration of Disney's role in term extension, and the relative unimportance of term extension to the copyright industries since, it's worth asking who exactly there has been so much focus on Disney's role in term extension. Part of it is surely that Mickey Mouse is an iconic figure and the way Mickey and Disney as a corporation are intertwined makes for a uniquely compelling narrative about copyright. At the same time, although on the margins there are certainly successors to the Air Pirates waiting in the wings to make new and edgier parodies of Mickey Mouse, that doesn't exactly seem like a pressing social need.[53] On the other hand, the original Steamboat Willie has been freely accessible since 2009 on Disney's YouTube channel, and as of April 2024 has been watched some 14 million times.[54] While concerns about "orphan works" are serious,[55] it's difficult to imagine a less germane example of works which are difficult to enjoy or license than Steamboat Willie.

The continuing vitality of the focus on a caricature of Disney as a litigious bully emblematic of copyright stakeholders has been a useful smokescreen by which the actual copyright debates of today are obscured.[56] As such the question becomes *cui bono* – who benefits from this?

Looking at music suggests an answer – the technology sector has massively profited from copyrighted content and the stereotype of the copyright sector as being rich, litigious, and out of touch works to their benefit as big tech makes huge amounts of money. It won't be a surprise to many to hear that listening to purchased music is increasingly a thing of the past; despite developments like the

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[51] *DMCA Legislative Reform*, COPYRIGHT ALL., https://copyrightalliance.org/trending-topics/dmca-hearings-and-legislative-reform/ (last visited Oct. 26, 2024).

[52] Special thanks to Christopher Green for this section heading.

[53] Walt Disney Prods. v. Air Pirates, 581 F.2d 751, 757-58 (1978) (finding underground comic lampooning Mickey Mouse and other characters was not fair use); Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 594 (1993) (following the 2 Live Crew case, many parodies would likely pass muster under copyright law anyway).

[54] Walt Disney Animation Studios, *Walt Disney Animation Studios' Steamboat Willie*, YOUTUBE (Aug. 27, 2009), https://www.youtube.com/watch?v=BBgghnQF6E4.

[55] *Orphan Works*, U.S. COPYRIGHT OFF., https://www.copyright.gov/orphan/ (last visited Oct. 26, 2024).

[56] Gene Maddaus, *Mickey Mouse, Long a Symbol in Copyright Wars, to Enter Public Domain: 'It's Finally Happening'*, VARIETY (Dec. 23, 2023, 8:30 AM), https://variety.com/2023/biz/news/mickey-mouse-public-domain-disney-copyright-lawsuits-1235844322/ (it's worth noting that to the extent the caricature of Disney as a litigious corporate behemoth was ever accurate, Disney has been much less litigious since a peak in 2006, and "in recent years, Disney's copyright suits have slowed to a trickle.").

vinyl revival all forms of purchased music including downloads only constituted 9% of listening to music in 2023.[57] Audio streaming services – which famously pay individual creators shockingly small amounts – are about a third of music listening.[58] According to Spotify, over 98% of the artists streamed on their service gross less than $1,000 a year.[59] Of almost the same market share is so-called "video streaming," which is YouTube, TikTok, Instagram, and their sundry competitors which pay even less.[60] Radio, once used to promote record sales, is still 17% of listening, but there is no longer a record sale to promote, just fractions of pennies from a stream – at best.[61]

As of April 2024 Google's parent company Alphabet has a market capitalization of over two *trillion* dollars.[62] Amazon is similar, while Microsoft and Apple are each even larger. The market capitalization of the Walt Disney Company is just over 200 billion dollars – a lot of money to be sure, but only a tenth of any of these tech colossi – and there is no other near competitor except perhaps Netflix, which has somewhat different policy priorities. The market capitalization of Universal Music Group – the largest record company in the world – is about 54 billion dollars. Warner Music Group, the third largest, is 17 billion dollars.[63] The industry sector referred to as "big copyright" is a mere mouse compared to the technology giants.[64]

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[57] International Federation of the Phonographic Industry, Engaging with Music 6 (2023), https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf.

[58] *Id.*; Emma Duncan, *There has never been more music made — but most artists go hungry*, The Times of London (Apr. 5, 2024, 5:00 PM), https://www.thetimes.co.uk/article/there-has-never-been-more-music-made-but-most-artists-go-hungry-nx7c2vg8m.

[59] Scott Ng, *Spotify's "next wave of growth" is superfan monetization, CEO Daniel Ek shares in investor call*, MusicTech (Feb. 7, 2022), https://musictech.com/news/industry/spotifys-next-wave-of-growth-is-superfan-monetisation-ceo-daniel-ek-shares-in-investor-call/ (in late 2023 Spotify announced they would no longer pay any royalties for tracks which are listened to less than 1,000 times in a year).

[60] International Federation of the Phonographic Industry, Engaging with Music 6 (2023), https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf.

[61] *Id.*; Thania Garcia & Chris Willman, *House Judiciary Committee Approves Bill Requiring Radio Stations to Pay Royalties to Performers*, Variety (Dec. 7, 2022, 6:45 PM), https://variety.com/2022/music/news/house-committee-approves-american-music-fairness-act-radio-performance-royalties-1235453621/ (and of course, terrestrial radio is still not required to pay the sound recording rightsholder royalties for performance, although fixes have been proposed).

[62] Ryan Vlastelica, *Alphabet Joins $2 Trillion Club as Results Show AI Strength*, Bloomberg (Apr. 26, 2024, 10:53 AM), https://www.bloomberg.com/news/articles/2024-04-26/alphabet-leaps-into-2-trillion-club-as-results-show-ai-strength.

[63] The second largest is Sony Music, which is part of the massively diversified Sony Group – which even then only has a market capitalization of about 105 billion.

[64] Martin Skladany, Big Copyright Versus the People (2018).

The point of this isn't just to throw numbers around – it's that talking about Disney as a giant corporation that can throw its will around Washington deliberately ignores the reality of who the major players in commerce really are. The focus on Mickey Mouse obfuscates that even while Disney has been able to adapt and even thrive in the digital economy, that makes them unusual among companies focused on creating copyrighted work – and completely unrepresentative of typical individual creators who are no longer able to make a living. Services like TikTok, Instagram, and YouTube are in significant part platforms for exploitation of the works of these creators who are paid little or no compensation – and they are worth hundreds of billions of dollars if not more.

CONCLUSION: THE WHO OWNS THE FUTURE

The future of copyright battles seems to be artificial intelligence and generative works, and from this perspective looking at term extension seems impossibly quaint. It's not as if any of the companies using creative works for training purposes are waiting for copyright expiration. There is an intense push to consider the use of copyrighted works for training AI models to be a fair use coming from the major tech companies (among others), and if it succeeds we're once again in the incongruous place where out-of-print books from the 1950s are difficult to get at essentially no benefit to their creators, while major commercial uses of copyrightable works require no license or compensation to creators. This situation already exists on the major platforms for user-uploaded audiovisual content on the internet, but that is clearly only the beginning if AI is as revolutionary as its proponents claim it will be.

It's good to see works enter the public domain once their term expires, and it's reasonable to argue to allow for the sharing of older works before that point if they are out of print – which the CTEA explicitly included provisions for.[65] But to think that copyright duration is anything other than a footnote to what is happening to copyright in 2025 is to be lost in the fog.

[65] 17 U.S.C. § 108(h).