

What's New in the Public Domain and What it Means for You

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On Jan. 1, 2022, all works first published in 1926 and all sound recordings from before 1923 entered the public domain in the United States. This means they are no longer protected by copyright, and anyone and everyone are free to copy, publish, perform, and create derivative works of these books, plays, artworks, films, and recordings. Notable works now in the public domain include Ernest Hemingway's *The Sun Also Rises*, Franz Kafka's *The Castle*, the silent German Expressionist classic *Faust – a German Folktale*, and Buster Keaton's *Battling Butler*. This opens up new opportunities for creative reuse and commercialization of these classic works.

Most famous and successful of the works that entered the public domain this year, however, is A. A. Milne's *Winnie-the-Pooh*, the original collection of stories about Winnie-the-Pooh. Like many popular characters and works, the Bear of Little Brain is in the public domain, but not completely free for everyone to use.

Pooh the Palimpsest

The character Winnie-the-Pooh (let's call him "Pooh") first appeared in the book of the same name, and like that book, the character, as he appeared then, is in the public domain. However, that first book does not show the whole of the Pooh everyone knows today, and elements and ancillaries of the character that did not appear in the 1926 book are *not* in the public domain. For example, Pooh's famous, bouncy friend, Tigger, did not appear until the publication of *The House at Pooh Corner* in 1928. The illustrations in *Winnie-the-Pooh* were black and white line drawings, and Pooh's famous color rendering – yellow fur and red shirt – was created in 1931, when he was already on his way to becoming the first licensed merchandise juggernaut. Most significantly, the images, dialogue, and songs of the Walt Disney cartoons, starting in 1966, remain fully protected by copyright.

Pooh's situation is not unique – many fictional characters evolved and changed over the course of years or decades of publication and adaptation. As other famous characters who first appeared in the films, pulps, comics, and cartoons of the 20's and 30's continue to enter the public domain, anyone wanting to use them will have to be sure they are using the public domain version, and not infringing creative additions that remain protected by copyright.

Art and Advertising

Also importantly, while Pooh has entered the public domain as a creative work (that is, his 1926 incarnation is no longer protected by copyright), he is also used as a trademark for various products. Unlike copyrights, trademarks can last forever if they remain in use. It is well established that a company's trademark rights in a character's name or appearance cannot prevent use of a public domain work, but when it comes to merchandise, rather than simply copying a book, the boundaries between a source-identifying trademark and a decorative design can become unclear.

What It All Means

The public domain means classic works are now free for all to use and enjoy, but it doesn't necessarily allow a free-for-all. Even if you think your new creation, product, or branding is firmly in the public domain, it's always best to get an expert opinion.

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