

A TRULY KINKY SALUTE TO THE 2023 PUBLIC DOMAIN DAY

Posted on January 3, 2023 by Michael A. Kahn



Tags: [Copyright](#), [Kinky](#), [Pride and Prejudice](#), [Public DOrain](#), [Winnie-the-Pooh](#)



Last year at this time I welcomed the annual Public Domain Day with an apt quote from Winnie-the-Pooh: "It isn't much good having anything exciting, if you can't share it with somebody." [As I explained in that post](#), A.A. Milne's beloved tale of the fictional teddy bear and his pals had entered the public domain that year and thus could be shared with anybody . . . for free! Along with dozens of other books, songs, and creative works from 1926.

And this year, as we welcome to the public domain a raft of beloved works previously protected by copyright, the title of one such song entering the public domain (from the musical *Good News*) seems the perfect herald: "The Best Things in Life Are Free."

Ah, but for our dear Winnie-the-Pooh, life in the public domain has proven rather, shall we say, bizarre and embarrassing for that naïve teddy bear. But more on that later. Much more. I promise.

Why is this public-domain event happening?

The term of copyright protection in the U.S. is 95 years. And thus copyright protection for all works created in 1927 expired on New Year's Day. This bountiful Public Domain Day has been happening on January 1st of each year since 2019.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

CAPE S • SOKOL

The new public domain entries this year feature important and beloved works of fiction (including Virginia Woolf's *To The Lighthouse* and all the Sherlock Holmes stories), songs (including Irving Berlin's "Puttin' on the Ritz" and Duke Ellington's "East St. Louis Toodle-O), and movies (including the most famous of the first talkies, *The Jazz Singer*).

Why is this good for my wallet?

When a book, song, movie, or play enters the public domain, the publisher, producer, or other exploiter of that work no longer has to pay anyone royalties for that use. Moreover, everyone else is free to exploit that same work.

The resulting impact is dramatic, as you can confirm by walking down the aisle of your local bookstore or browsing through the books on Amazon. The latest John Grisham legal thriller, *The Boys from Biloxi*, is available only in hardback, only from one publisher, and at a list price of \$29.95. By contrast, Amazon has more than a dozen editions of *Pride and Prejudice* and *The Adventures of Huckleberry Finn* in hardback, paperback, and E-book ranging in price from \$5.00 on up—and for free at other websites.

A good recent example of the impact of the public domain is *The Great Gatsby*. When it entered the public domain in 2021, Scribner—which had held the exclusive rights to that novel since it was first published in 1925—no longer owned any rights in the book or owed anything to any of F. Scott Fitzgerald's heirs. The result, as reported in the *New York Times* that year under the headline "[The 'Great Gatsby' Glut](#)", was an explosion of other editions of that novel, including many far cheaper than the Scribner version sold just the prior year.

And this financial benefit goes far beyond cheaper books. If, for example, you're a young singer hoping to record your version of "Puttin' on the Ritz," you no longer have to seek one of those expensive licenses from the copyright holders. Why? Because there are no longer any copyright holders. So, too, if you're a high school drama coach hoping to have your students stage a great play without exceeding your limited budget, the public domain holds a trove of free dramatic works by Shakespeare, Oscar Wilde, Henrik Ibsen, and others.

Okay, fine, but what about that kinky stuff you mentioned?

While we don't typically think of our Founding Fathers as promoters of scandalous activities—well, perhaps with the exception of Thomas Jefferson—they recognized the importance of promoting all types of creativity when they drafted the Patent and Copyright Clause of the Constitution, which states that in order "to promote the progress of science and useful arts," Congress shall have the power to enact laws "securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries." (Article 1, Section 8, Clause 8).

In other words, give creators a financial incentive to create—namely, a monopoly for a limited time over their creations. Why a *limited* time? So that when those copyright monopolies expire and the

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

CAPEs • SOKOL

works enter the public domain, future authors and artists can legally build on the past and enrich our culture by reimagining the books and by using them as inspirations for other creations. [In this year's annual Happy Public Domain post](#), Duke Law School's Center for the Study of the of the Public Domain writes:

"Just as Shakespeare's works have given us everything from 10 Things I Hate About You and Kiss Me Kate (from The Taming of the Shrew) to West Side Story (from Romeo and Juliet), who knows what the works entering the public domain in 2023 might inspire? As with Shakespeare, the ability to freely reinvent these works may spur a range of creative, from the serious to the whimsical, and in doing so allow the original artists' legacies to endure."

Examples of public domain creations include works inspired by Mary Shelley's 1818 novel *Frankenstein*, which range from horror movies (including the 1931 *Frankenstein* starring Boris Karloff and its 1935 sequel *Bride of Frankenstein*) to the Mel Brooks comic classic, *Young Frankenstein*. So, too, the movies, cartoons, board games, videogames, toys, plays, and other creations inspired by Lewis Carroll's *Alice in Wonderland* (1865) and Bram Stoker's *Dracula* (1897) are almost too numerous to identify.

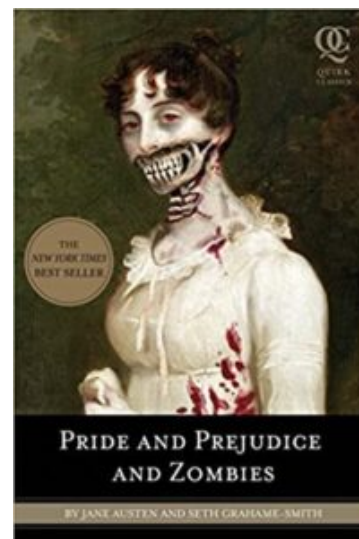
Three superb works of literature are quite literally based upon prior works in the public domain:

1. *Wide Sargasso Sea* by Jean Rhys (1966) is a feminist prequel to Charlotte Bronte's novel *Jane Eyre* (1847), told from the point-of-view of Mr. Rochester's "madwoman in the attic" Jamaican first wife.
2. *Grendel* by John Gardner (1989), is a beautiful but heart-breaking retelling of the 8th-century epic *Beowulf* from the point-of-view of the monster Grendel.
3. *Nick* by Michael Farris Smith (2021), centers on Nick Carraway, the narrator of *The Great Gatsby*, during his tumultuous years before his move to Long Island next door to the mysterious Jay Gatsby.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

CAPE S • SOKOL

None of these three novels or the *Frankenstein*, *Alice in Wonderland*, and *Dracula* examples above—all “derivative works” under copyright law-- would have been possible without the public domain.



However, dear Winnie, the public domain has appealed to a somewhat kinkier class of creators. While Jane Austen’s beloved *Pride and Prejudice* has been adapted to film or TV more than two dozen times over the years, it also inspired this 2009 “sequel.”

Which in turn became a [motion picture](#).



And, on the topic of motion pictures, our sweet Winnie-the-Pooh will no doubt be dismayed to learn of the horror movie *Winnie the Pooh: Blood and Honey*, scheduled for release later this year, featuring a somewhat less cuddly version of the title character:

Indeed, Winnie’s entry into the public domain has triggered far more knockoffs than just a horror movie, including this clever Ryan Reynolds “Winnie-the-Screwed” [YouTube commercial for Mint Mobile](#).

The choice of a lawyer is an important decision and should not be based solely upon advertisements.



So, too, L. Frank Baum's *The Wonderful Wizard of Oz*, inspired *The Wiz*, a 1975 musical retelling of the 1900 novel in the context of contemporary African-American culture—a retelling that won seven Tony Awards, including Best Musical. But, proving that no children's fantasy tale is immune to perversion, the novel also inspired "The Twisted Land of Oz," a set of truly kinky action figures from McFarlane Toys, including Dorothy and the Tin Woodman.



But these are simply examples of the diversity created by public domain. And whether your particular delight is *West Side Story* or *Young Frankenstein* or *Pride and Prejudice and Zombies*, we can tip our hat in thanks to George Washington and the others at the Constitutional Convention of 1787 for their recognition of the importance of promoting **all** types of creativity through the inclusion of the Patent and Copyright Clause in the Constitution.

The choice of a lawyer is an important decision and should not be based solely upon advertisements.