WINNIE-THE-POOH AND HEMINGWAY TOO: HAPPY PUBLIC DOMAIN DAY

Posted on January 8, 2022 by Michael A. Kahn

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"It isn't much good having anything exciting, if you can't share it with somebody."

Well, guess what, Winnie?

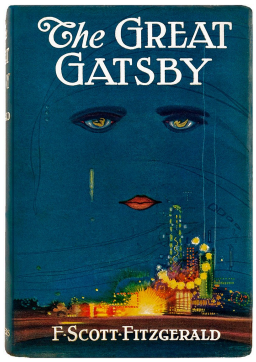
As of January 1, 2022, A.A. Milne's beloved tale of the fictional teddy bear and his pals has entered the public domain and can now be shared with anybody. For free! Along with dozens of other books (including Ernest Hemingway's *The Sun Also Rises*, Dorothy Parker's *Enough Rope* and Langston Hughes' *The Weary Blues*), motion pictures, songs, music recordings, and other creative works protected by copyright prior to 2022. You can find an extensive list of these new public domain works at the Duke Law Center for the Study of the Public Domain.

Why is this happening?

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

The term of copyright protection in the U.S. is 95 years. And thus copyright protection for works created in 1926 all expired on New Year's Day. This

delightful Public Domain Day has been happening on January 1st of each year since 2019. Last year, for example, F. Scott Fitzgerald's *The Great* Gatsby, published in 1925, entered the public domain, as did a plethora of creative works whose 95-year term expired on New Year's Day, 2021.



For a little more background on the origins of this annual event and the so-called (and much-maligned) Mickey Mouse Protection Act, you can read my prior blog post here: Now We All Can Take That Road Not Taken: The Copyright Freeze Has Melted!

Why should I care?

The significance of this public domain event is manifold, from your personal finances to your entertainment. As for your wallet, take a stroll down the fiction aisle at your local bookstore or Amazon.com and check the wide disparity of prices between great works of literature now in the public domain (such as Jane Austen's *Pride and Prejudice*, Mark Twain's *The Adventures of Huckleberry Finn*, or Henry David Thoreau's *Walden*) and the latest works by John Grisham, Nora Roberts, James Patterson, and, ahem, this guy.

Books not in the public domain are all:

- (**a**) protected by copyright,
- (**b**) available from just one publisher, and
- (**c**) priced much higher than the books in the public domain.

Most of the books in the public domain can be downloaded for free from various online repositories (which is where I obtained my free copies of *Walden*, *Moby Dick*, *Sense and Sensibility*, *Great Expectations*, and other great works).

But the benefits of the public domain go far beyond your wallet. When works are no longer restricted by copyright, contemporary artists can build on them without having to enter into expensive license agreements.

As the Duke Center for the Study of the Public Domain explained in its "Public Domain Day 2022" post:

> *"Just as Shakespeare's works have given us everything from 10 Things I Hate About You and*

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> *Kiss Me Kate (from The Timing of the Shrew) to West Side Story (from Romeo and Juliet), who knows what the works entering the public domain in 2022 might inspire?*
>
> *As with Shakespeare, the ability to freely reimagine these works may spur a range of creativity, from serious to whimsical, and in doing so allow the original artists' legacies to endure."*

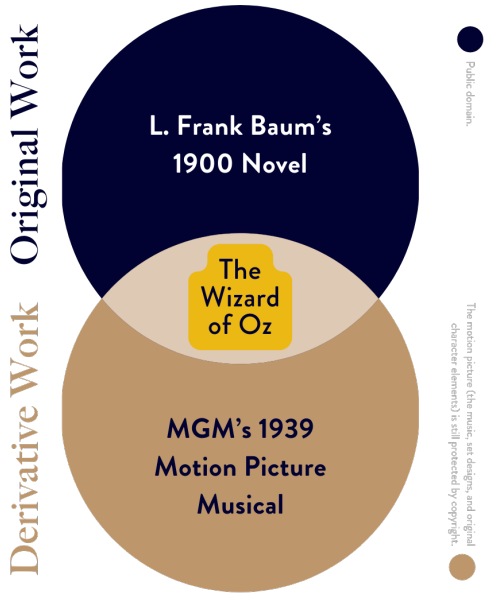
So, too, as the Smithsonian Magazine points out in its article on this year's public domain newbies,

> *"When writer Benjamin Hoff published the Tao of Pooh in 1982, using A.A. Milne's famous stories of adventurous stuffed animals to illustrate the principles of Taoism, he agreed to pay the Milne estate a third of hardcover and 40 percent of paperback profits. As of the start of 2022, any other writer wishing to reuse some of the original Pooh stories would have no need to reach that kind of deal."*

So what's the caveat, dude?

There is one key copyright distinction between the original work and a derivative work that was created at a later date. The classic example is the motion picture based upon a novel. Each has its own copyright and thus its own copyright term.

Accordingly, just because the original work—such as L. Frank Baum's 1900 novel, *The Wizard of Oz*—is now in the public domain, that doesn't mean that a derivative work based on that novel—such as MGM's 1939 motion picture musical starring Judy Garland—is also in the public domain.



No, that motion picture (including all the music, set designs, and original elements of all the characters) is still protected by copyright. Same rule governed creation of Seth Grahame-Smith's 2009 novel *Pride and Prejudice and Zombies.* He could copy whatever he wanted to copy from the Jane Austen novel but not any original material from the 2005 BBC *Pride and Prejudice* miniseries.

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Okay, so what does all this mean?

The Wizard of Oz vs. The Twisted Land of Oz

If you happened to be on the creative team at McFarlane Toys several years ago and were inspired to design a kinky horror-themed set of action figures for a series to be called "The Twisted Land of Oz," you would have needed to be careful ***not*** to include anything original from the 1939 movie that was not found in the 1900 novel. In other words, you would be free to copy from the novel but not from the movie.

And the exercise of that caution is best exemplified by one seemingly minor but important detail. In the novel, Dorothy Gale discovers a metallic man in the forest who is rusted and unable to speak or move until she uses his oil can to release him. His name: the Tin Woodman. However, in the motion picture his name has been shortened to the Tin Man.

McFarlane Toys

While that distinction may same minor, the folks at McFarlane Toys were paying attention: the name of the action figure in the Twisted Land of Oz is the **Tin Woodman**, not the Tin Man. And, as you can confirm with your own eyes, the action figure in no way resembles the charming character in the movie played by Jack Haley. (Some of the other characters in the Twisted Land of Oz, including a truly kinky Dorothy, can be viewed here.)

So, for example, if you should decide to create a knock-off of T.E. Lawrence's 1926 book *The Seven Pillars of Wisdom* (*in the public domain as of January 1, 2022*) be sure not to copy any original elements of *Lawrence of Arabia*, the Oscar-winning 1962 movie version of that book staring Peter O'Toole. Otherwise, you might receive an unpleasant letter from the lawyers for Columbia Pictures.

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