

CASE FILE #2: THE MONSTER

LEARNING AIMS

- Understand how long copyright lasts
- Be able to provide a few examples of public domain works and works that are still in copyright

KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- Do you think that copyright duration is too long, too short, or just right?
- What are the benefits of the public domain?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

DO YOU THINK THAT COPYRIGHT DURATION IS TOO LONG, TOO SHORT OR JUST RIGHT?

- See **TEXT BOX #2, #3 and #5**
- There is no right or wrong answer to this question, it is a matter of opinion. But most copyright scholars agree that copyright duration – life of the author + 70 years – is **probably too long**.

As explained in **TEXT BOX #5**, ultimately, the goal of the copyright system is the creation and dissemination of new work and new knowledge. While the production of new knowledge is encouraged by giving creators the right to control the use of their work and the ability to earn from it, the dissemination of knowledge is guaranteed by limiting those rights in several ways, including a limited time duration.

Without these limits, copyright owners would be able to create a monopoly over their work, which would create a barrier to access to information and knowledge.

- Long copyright protection may be beneficial to companies who own rights in extremely valuable and successful works such as Mickey Mouse or Harry Potter. In fact, extensions of the copyright term have traditionally been the result of strong lobbying by companies wishing to extend their ability to exploit these valuable copyright assets.

However, only a very small amount of creative works enjoy a long commercial life. In fact, less than 10% of published works remain commercially available 50 years after publication. In other words, the vast majority of published (and unpublished) works have a short or no commercial life but they remain protected for a very long period, hindering their dissemination and reuse.

WHAT ARE THE BENEFITS OF THE PUBLIC DOMAIN?

- See **TEXT BOX #5**
- The public domain offers many benefits to members of society. Creators such as writers, filmmakers, musicians, painters, illustrators and video game developers often rely on the public domain to create new work. Not only individual creators but also big creative companies benefit from the public domain.

Think of Disney: most blockbuster films that determined the huge success of the Disney corporation – including *Snow White*, *Pinocchio*, *The Little Mermaid*, and *Cinderella*, among others – were based on public domain works.

- The public domain plays a crucial role in helping us to collect, preserve and learn about our past. When works are in the public domain, libraries, museums, archives and other cultural heritage institutions can freely store, digitise and make them available online for all the world to access and use. When works are still in copyright, it is usually more complicated and more expensive to do this.
- The public domain also makes education more comprehensive and affordable. Teachers can freely use a constantly increasing amount of works in their teaching, from Homer's *Odyssey* and Dante's *Inferno* to the work of Shakespeare, Dickens, Mozart, Leonardo da Vinci, and Joyce.

Free use also means that teachers can translate, annotate, combine, adapt, or excerpt from these works to create new educational resources, and publish them online without restrictions.

SUGGESTED ACTIVITIES

Before discussing the **KEY QUESTIONS** above, you might ask the students to read **TEXT BOX #2** and 'pitch' an idea for a creative production based on public domain works. For example, a graphic novel featuring Pinocchio and Oliver Twist or a Sherlock Holmes vs Dracula video game.

Once they have pitched their ideas, discuss the **KEY QUESTIONS** above. Did the students feel limited in their choices? Can they think of famous films, video games or other productions that are based or inspired by public domain works?

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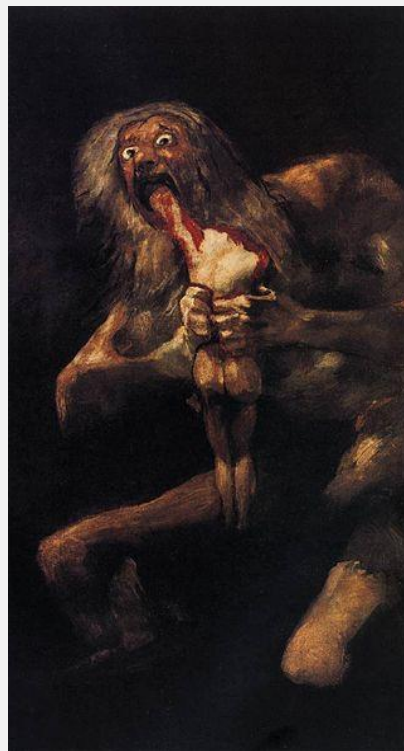
1. INTRODUCTION

One of the graffiti that scare the toymaker Joseph portrays a monster eating his 'beautiful, wonderful toy'. The image of the monster is inspired by two different artistic works: a drawing of the Green Fisherman eating Pinocchio by Carlo Chiostrì (1863 – 1939), who illustrated one of the first editions of Carlo Collodi's (1826 – 1890) *The Adventures of Pinocchio*, and the famous painting by Francisco Goya (1746 – 1828) *Saturn Devouring His Son*. In producing our graffiti of the monster, we were free to mash-up those works of art as we wished, since both works are out of copyright.

This Case File #2 considers the length of time that copyright normally lasts, and what it means when a work is in the [public domain](#).



The Green Fisherman Eating Pinocchio, 1902, Carlo Chiostrì



Saturn Devouring His Son, 1819-1823, Francisco Goya

2. COPYRIGHT DURATION: LIFETIME OF THE AUTHOR + 70 YEARS

In the UK, generally copyright lasts for the life of the author plus 70 years. After that period of time (often referred to as the 'copyright term'), copyright expires and the works of the author enter the public domain. Public domain works can be used for free by anyone for any purpose, without having to ask for permission. So in order to know if a work is in the public domain in the UK you need to identify its creators – bearing in mind that a single work can have more than one creator – and check the date of their death. If the creator(s) died more than 70 years ago the work is in the public domain and free to be used by all (at least in theory).

For example, anyone is free to create a video game based on the painting *The Starry Night* by Vincent Van Gogh (1853 – 1890) or use the *Symphony No. 9* of Ludwig van Beethoven (1770 – 1827) as part of a soundtrack to a film, since both Van Gogh and Beethoven died more than 70 years ago. The video game and the film would be protected by copyright as new, original works, whereas Van Gogh's *The Starry Night* and Beethoven's *Symphony No. 9* remain in the public domain. Indeed, an adaptation of a public domain work creates a new copyright work with a new 'copyright life'. But this has no effect on the public domain status of the underlying work: everyone remains free to make use of Van Gogh's and Beethoven's work in whatever way they want. Similarly, if you want to create a video based on *The Jungle Book*, you are free to use Kipling's stories (Rudyard Kipling, 1865 – 1936); but to use clips from Disney's movie adaptation would require permission from the rightsholders.

3. TWO IMPORTANT THINGS TO BEAR IN MIND

There are two other important things to bear in mind when dealing with public domain works:

Copyright law differs from country to country

A work that is in the public domain in the UK is not necessarily in the public domain in the US as well (and vice versa). This is because each country's copyright law is different (in legal terms: copyright law is territorial).

The difference between an original work and its reproduction

It is important to know that while an original work might be out of copyright, a later reproduction or recording of that work might be in copyright. For example, while the music for Beethoven's *Symphony No. 9* is out of copyright, a recording of that work made in 2009 by the London Philharmonic Orchestra is in copyright. So in order to use *Symphony No. 9* without the need to clear any rights at all, you should find a recording that is free to use, for example, because it is distributed under an open licence such as [Creative Commons](#). You can find classical music distributed under Creative Commons licences on [FreePD.com](#) and on Kevin MacLeod's [Incompetech.com](#).

Similarly, a photographic reproduction of a work of sculpture in the public domain, such as Michelangelo's (1475 – 1564) *David*, or the works of the 19th century Scottish sculptor John Henning (1771 – 1851), may be considered protected by copyright.

However, whether a photograph of a painting (or any other two-dimensional work of art) attracts copyright protection is a more controversial and unsettled issue. So, if you wanted to use a photograph of Van Gogh's *The Starry Night* without having to get permission, the safest thing to do would be to find one that has been distributed under an open licence. A good source for this is [Wikimedia Commons](#).

4. CURIOSITY

Although JM Barrie died in 1937, his most famous work, *Peter Pan*, is still in copyright. An amendment to the 1988 Copyright Designs and Patents Act was passed to allow the copyright for *Peter Pan* to run indefinitely in the UK; royalties are to be allocated to the trustees of the Hospital for Sick Children, Great Ormond Street, London, for as long as the hospital exists.

Also, some very old unpublished works remain in copyright until 31 December 2039, even though their authors have been dead for hundreds of years. Imagine, for example, that you discovered an unpublished manuscript by William Shakespeare. As incredible as it seems, that unpublished manuscript would still be in copyright today.

5. FOR DISCUSSION: TOO LONG, NOT LONG ENOUGH OR JUST RIGHT?

The ultimate goal of copyright is the creation and spread of knowledge. To achieve this goal, copyright needs to strike a fair balance between the interests of authors and creators, and the interests of the general public. By giving creators economic and personal rights, copyright allows them to be rewarded for their efforts, thereby promoting the creation of new work. At the same time, copyright puts some limits on those rights in order to encourage learning and access to information and knowledge. One of these limits is the copyright term explained above: after a certain period of time, copyright expires and the work can be freely enjoyed and re-used by the members of society.

What do you think? Is the current copyright term appropriate?

6. USEFUL REFERENCES

For useful information on the creative re-use of public domain works, see: www.create.ac.uk.

For a guide to the copyright term and the public domain in the US, take a look at [this useful resource](#) produced by the Cornell Copyright Information Centre.

For a resource to help you calculate whether a work is in the public domain in the UK or other EU Member States, see www.outofcopyright.eu.

For further information about the copyright status of Peter Pan, see www.gosh.org.

For further information on the odd situation of unpublished works, see www.gov.uk.