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**COPYRIGHTS AND CREATIVITY:
THE AFFECTS OF COPYRIGHT LAW ON FAIRY TALES**

DINA AROURI

A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR THE REQUIREMENTS OF
GRADUATION WITH AN HONORS DEGREE FROM ROLLINS COLLEGE OF ARTS AND
SCIENCES

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ACKNOWLEDGEMENTS

I would like to thank my thesis advisor for being so patient and helpful during this process. Furthermore, I would like to acknowledge the examining committee members for their presence and commitment to this project. Finally, I would like to express gratitude to my friends and family for being unconditionally supportive over the course of this project period.

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INTRODUCTION

Once upon a time, in a land far, far away, a poor writer lived on the remote island of Great Britain, where creativity was celebrated for its inherent value rather than its monetary potential. Unfortunately for the poor writer, there was little incentive to develop innovative literature. Luckily, in 1709 the Queen of the Land established the Statute of Anne.¹ While the Statute of Anne offered protection for publishers of written works, the policy also commoditized creative works and left the authors at the mercy of publishers.² And thus, the phenomenon of copyright law was born.

Upon inception, the implementation of copyright laws notably affected the creative domain. The evolution of copyright laws in history has directly affected the emergence and implications of contemporary fairy tales by enabling the original tales to develop in variant adaptations under different publishers. In the early stages of copyright laws, these adaptations were easily facilitated, considering there was no universal policy to regulate alterations. As such, works published in nations other than the original place of publication were treated as public domain, allowing them to be reproduced, altered and adapted without the author's approval.

As copyright laws strengthened in scope and scale, the ability to create derivative works and variations of text became more challenging. As intellectual property was considered in the same sphere as tangible property, the legality regarding copies became increasingly more stringent. Since fairy tales have reflected the morality of a society in the past, copyright laws may have unintended consequences. Whereas copyright policies

¹ "Statute of Anne: Great Britain (1710)," Encyclopedia Britannica Online, accessed

² Ibid.

emerged in an attempt to protect the rights of authors, it did so in a way that simultaneously affected the nature of the stories they told by encouraging authors to modify previously published works just enough to qualify them as original. Tales that existed in the public domain were altered to fit the market demands of society, copyrighted, and then reintroduced into popular culture in a fixed expression. The reintroduction of these works had a symbiotic affect on the moral parameters of society; that of society's reaction to the newly addressed message, and that of the message reinforcing society's preexisting values.

Authors like Hans Christian Andersen and the Brothers Grimm created cultural representations that have resonated for centuries; *Little Red Riding Hood*, *Snow White*, *Hansel and Gretel*, *Rapunzel* and *The Snow Queen*: classic works that have elevated to prominent literary status and infiltrated contemporary culture. Taking into consideration social, cultural, and political factors, which carry a distinct influence on stories that rose to eminence, this research focuses on specific literary works and the changes made to them from their original publication to popular, contemporary renditions known today. In this research, I discuss the effect of major milestones in international copyright law, such as the Statute of Anne's effect on the public domain. Moreover, I explore the effect on stories released in the United States upon the ratification of the Berne Convention on Copyright Law in 1989. When the United States finally implemented the Berne Convention in 1989, only works published during or after 1989 fell under the policy's protection. Foreign works published before the implementation of the treaty remained unprotected until another amendment forced the United States to retroactively acknowledge the protection of foreign works. Furthermore, works considered public

domain in the U.S. and works that no longer had active copyright, did not fall under the international provisions of the Berne Convention.”

Although one of the main intended consequences of the Berne Convention was a universal copyright regime, which allowed authors to benefit financially, it also incentivized the commercialization of works previously existing in the public domain and contributed to the current cultural norm of consumption. Furthermore, I argue that copyright laws have allowed the systematic adaptation of fairytales differently than if they were to evolve from their oral or traditional knowledge origins. I explore the contribution of copyright law as a piece of the creative process that has changed how fairy tales are altered and adapted, and how they are reintroduced into popular culture. The commercialization of fairy tales has inadvertently shifted the message of the story, thus compromising the tale’s artistic integrity. By modifying stories in the public domain, these works transitioned from holding inherent cultural significance to holding economic value, as well.

These unintended consequences are not only limited to the artistic integrity of folkloric and traditional works, but also extend further into even more profound works protected under copyright law. University of Oxford scholar Leslie Kim Treigar-Bar-Am argues that modifications often alter the original expression of an author, thus violating both the author’s property and personal rights as a creator.³ She references renowned and influential works, which have, arguably, violated the rights of which she speaks. For instance, who could argue that Marcel Duchamp’s modified version of Da Vinci’s *Mona*

³ Leslie Kim Treigar-Bar-Am, "Adaptations with Integrity." In *In Copyright and Other Fairy Tales: Hans Christian Andersen and the Commodification of Creativity*, ed. Helle Porsdam, (Cheltenham: Edward Elgar, 2006), 64.

Lisa with a moustache does justice to the integrity of the original?⁴ If a work of literature is considered fine art of the same stature as *Mona Lisa*, it follows that reforming literature is equally as poignant as mutilating art that hangs in The Louvre.

The term “fairy tales” evokes a sense of nostalgia, namely childhood memories, bedtime stories, Disney cartoons, princesses, and happy endings. Although the term “fairy tale” generally covers a broad scope of children’s stories, for the purpose of this research, I will narrowly define fairy tales as both the stories written by Hans Christian Andersen during the time period 1830 and 1875, and the stories written by Brother’s Grimm during the time period 1806 and 1850, as well as the modified versions of stories thereof.

My purpose of studying the evolution of fairy tales is to highlight unintended consequences of copyright law on cultural legacies by analyzing shifts in moral messages fairy tales were intended to evoke, and how these shifts were reintroduced into society, reflecting the dynamic and unfixed nature of culture. Copyright laws are an integral piece of the American education, music and literary culture.⁵ Renowned authors Mark Twain and Zora Neale Hurston have advocated for author’s rights in relation to preserving culture through oral and literary tradition.⁶ Issues of author’s rights emerged far before Twain and Hurston, as far back as Hans Christian Andersen, who fought for monetary compensation for his efforts. What Andersen could not have foreseen, however, is that

⁴ Kim Treigar-Bar-Am, “Adaptations with Integrity,” 63.

⁵ Siva Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*, (New York: New York University Press, 2001),15.

⁶ Vaidhyanathan, *Copyrights and Copywrongs*, 12.

his works would be earning billions of dollars in revenue for an international conglomerate.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) was established in 1945 in an effort to reinforce a lasting paradigm of peace through intellectual and cultural solidarity.⁷ According to UNESCO's Group of Experts on the Protection of Folklore by Intellectual Property, folklore is:

*"A group oriented and tradition-based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity; its standards are transmitted orally, by imitation or other means; its rituals, customs, handicrafts, architecture and other arts."*⁸

"Traditional knowledge" represents "a body of knowledge built by a group of people through generations living in close contact with nature."⁹ Quite simply, traditional knowledge is holistic folklore that serves to aid in the physical survival and cultural expression of its people.¹⁰ To fully appreciate the significance of traditional knowledge, one must recognize that fairytales originally evolved from folklore. By the definition provided by UNESCO, folklore is encompassed under the umbrella of traditional knowledge, as it constitutes orally transmitted art—the art of story telling.

⁷ "Mission Statement: United Nations Educational, Scientific and Cultural Organization." November 4, 1946. Accessed December 3, 2014.

⁸ Helle Porsdam, "Introduction: Hans Christian Andersen, best of story tellers." In *In Copyright and Other Fairy Tales: Hans Christian Andersen and the Commodification of Creativity*, ed. Helle Porsdam, (Cheltenham: Edward Elgar, 2006), 110.

⁹ Tzen Wong and Claudia Fernandini, "Traditional cultural expressions: Preservation and innovation." In *Intellectual Property and Human Development: Current Trends and Future Scenarios*, ed. Tzen Wong, (New York: Cambridge University Press, 2010), 140.

Oral traditions are the oldest form of cultural expression. Through oral tradition, histories were recorded before the written word; through oral tradition people conveyed rituals; through oral tradition society established cultural norms and taught morality. After the development of writing, stories that were once passed orally were recorded, and preserved generationally. Oral traditions are what we now know to be stories of folklore, from which many modern fairy tales have evolved. For this reason, traditional knowledge plays a key role in the analysis of the relationship between copyright and its relationship to the perpetual evolution of fairy tales and their role in contemporary American culture.

In his argument for the protection of traditional cultural expression in the realm of intellectual property, co-director of the Queen Mary Intellectual Property Research Institute Michael Blakeney claims that the importance of implementing an effective copyright regime in developing countries is recognized by international organizations, namely UNESCO, as a priority in order to establish appropriate mechanisms to monitor the commercialism of indigenous cultural properties.¹¹ As I will demonstrate, multiple cultural expressions have transformed into commodities. To illustrate how this point relates to traditional knowledge and folklore in the realm of intellectual property and copyrights, I present the works of Hans Christian Andersen. In his autobiography, Andersen details how he learned Danish folktales from the old women he met at the

¹¹ Michael Blakeney, "Hans Christian Andersen and the protection of traditional cultural expressions," In *In Copyright and Other Fairy Tales: Hans Christian Andersen and the Commodification of Creativity*, ed. Helle Porsdam, (Cheltenham: Edward Elgar, 2006), 108.

insane asylum his grandmother was employed by. It is clear that his earliest stories, published in 1835, were borrowed from Danish folklore.¹²

Paradoxically, the types of stories on which this research focuses, such as those published by Hans Christen Andersen in the 19th century, were borrowed and altered before their original publication and continue to be altered in succeeding works. The irony lies in the nature of the argument of this thesis: whereas copyright has allowed classic works by Andersen to be altered and commoditized, many of the works published by Andersen were stories adapted from folklore, and thus should have been considered derivatives from works in the existing public domain. Although Andersen's publications were adapted from Danish folklore, the stories to which he is attributed were never published prior to his penmanship. Moreover, Andersen's works were not published solely for economic gain, unlike the adapted versions that have been franchised by conglomerations such as Disney.

The stories on which this thesis focuses are works of traditional knowledge--reworked, rewritten and revamped into a new and attractive package under the title and care of Hans Christian Andersen, The Brother's Grimm, and eventually, Disney. Copyright has not only facilitated changes within the cultural expressions themselves, but also facilitated cultural expressions to convey a completely different message, thus reflecting changes in moral parameters of society, including an emphasis on capitalistic growth. Although cultural expressions continuously evolve by nature, copyright law has codified these changes, not only ingraining changes into our culture, but also legally binding and qualifying them.

¹² Blakeney, "The Protection of Cultural Expressions," 108.

The preservation and protection of traditional knowledge is a precarious topic of discussion, considering the ephemeral nature of intangible property. For this reason, I focus on artistic integrity as it relates to cultural expression, rather than the ownership, and how that is deeply connected to copyright law. The most problematic example of changes in literary integrity is found in the most widely read book of all—the Bible. Whereas cultural borrowing and changes in texts are issues in the realm of intellectual property, the transposition of sacred texts into profane contexts threatens the integrity of the original work, thereof.¹³ In his book *Copyrights and Copywrongs*, Siva Vaidhyanathan exemplifies the alarming erosion of meaning in the context of this holy text in two specific and striking examples. First, Vaidhyanathan discusses the following sample of scripture:

“And he said, Take now thine son, thine only son Isaac, whom thou lovest, and get thee to the land of Moriah; and offer him there for a burnt offering upon one of the mountains which I will tell thee of.”¹⁴

Cleverly, Vaidhyanathan quotes Bob Dylan:

“Oh, God said to Abraham kill me a son. Abe said ‘man you must be putting me on.’”¹⁵

As Vaidhyanathan demonstrates, paraphrasing not only risks compromising the integrity of a work, but also has the potential to alter the intended message completely.

He asks the reader to consider another piece of the Old Testament:

¹³ Blakeney, *The Protection of Cultural Expressions*, 115.

¹⁴ Vaidhyanathan, *Copyrights and Copywrongs*, 28.

¹⁵ Ibid.

“And Cain talked with Abel his brother: and it came to pass, when they were in the field, that Cain rose up against Abel his brother, and slew him.”¹⁶

Here, Vaidhyathan points out that this passage can be simplified into various phrases including “Cain killed Abel,” “Abel was killed by Cain,” or even “Cain choked Abel until he died.”¹⁷ The trouble with the last sentence is that it can be misunderstood as Cain’s death, which resulted from choking Abel until his own demise, thus changing the intended meaning dramatically, and compromising the integrity of the work.¹⁸

As demonstrated in the example above, even sacred texts are susceptible to change by virtue of decades past, mistranslations, and different publishers. These changes have the propensity to be of dire consequence in translating the intended message, twisting themes of morality and ingraining them into cultural norms.

As the stories’ messages alter, so does the moral code. In conjunction with religion, fairy tales serve as a universal transmitter of moral message and teachers of wisdom. As Vaidhyathan demonstrated with the shifts in language in the story of Cain and Abel, even the Bible is not exempt from shifts in language that affect the intended message. Throughout this work, I demonstrate how copyright laws have facilitated a systematic perversion of characters within fairy tales into sex symbols and warped moral compasses, profoundly infiltrating contemporary culture. Ironically, a pamphlet geared toward authors and publishers of 19th century Britain explaining the philosophy of copyright law explicitly asserts:

¹⁶ Vaidhyathan, *Copyrights and Copywrongs*, 30.

¹⁷ Ibid.

¹⁸ Ibid.

“In all religious, metaphysical, moral and imaginative works, the republishers are obliged to give exact copies, or the books would not sell, and the mutilators would lose their customers.”¹⁹

Although copyright laws do not overtly have negative ramifications, their effects have undoubtedly changed the inherent value and framework of these works from their original moral parables to a consumerist parallel of contemporary society.

¹⁹ Phillip H. Nicklin, "Remarks on Literary Property, " *HathiTrust Digital Library* , January 1838. Accessed February 2, 2015.

FOUNDATIONS

This paper does not mean to serve as an admonition against copyright law, nor offer the impression that literary purism is the definitive solution to preserving artistic integrity. Rather, this paper means to serve as an insight to the reader of the inevitable evolution of culture, and recognize the increasing institutionalization of cultural representation. I am conducting this research in an effort to emphasize how changes in copyright law can and will affect contemporary culture by virtue of the public domain and the implications of works that exist in said domain. I will do this by demonstrating that changes have already infiltrated our culture, and have the propensity to continue to do so. By proxy, cultural images shift with the times, keeping with societal norms, values, advances in technology and evolving language. The purpose of this paper is to illustrate these changes through the perspective of copyright law, specifically in the realm of how these changes are reflected through the modifications of fairy tales.

Before presenting my argument further, I will first lay a terminological foundation, explaining vocabulary used throughout this discussion. The terms provided are legal definitions, working definitions, and general concepts that will be further expounded upon throughout this essay. After establishing working definitions relevant to this argument, I will provide the reader with a historical review of the copyright law and the institutions related to its existence. The precursors of contemporary legal practices will be explained and analyzed in terms of their enduring legacies. After presenting my full argument, I will conclude this thesis paper with a final assessment regarding the effects of copyright law on fairy tales, and how those laws have notably affected the cultural domain in terms of morality in current and future generations.

This research heavily utilizes discipline-specific terminology, which is essential to understanding the scope of the argument at hand. In order to alleviate any confusion, I will supply a list of working definitions as well as explain how these working definitions will be used in context.

Burton's legal thesaurus defines property as, "anything that is owned by a person or entity."²⁰ The difficulty with intellectual property is its intangibility. Further complicating the matter, the term "intellectual property" itself is a relatively new notion. In an effort to explain the ethereal rights of human thought and creation, the term "intellectual property" was coined in conjunction with the 1967 establishment of the United Nations' World Intellectual Property Organization (WIPO).²¹ Like UNESCO, the WIPO is a specialized agency of the United Nations (UN). According to article 1 of the agreement between the UN and the WIPO, the WIPO is responsible:

*"For promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations Development Programme and the United Nations Industrial Development Organization, as well as of the United Nations Educational, Scientific and Cultural Organization and of other agencies within the United Nations system."*²²

²⁰ "Property." *Legal-Dictionary.TheFreeDictionary.com*. January 1, 2003. Accessed November 10, 2014.

²¹ Vaidhyanathan, *Copyrights and Copywrongs*, 12.

²² "Agreement between the United Nations and the World Intellectual Property

The institution of intellectual property, although abstract, is inarguably de facto and no less prominent than palpable property rights. Intellectual property is primarily comprised of three branches: patent, trademark, and copyright law. Patent law grants temporary monopoly over inventions and processes, and thus exists to encourage monetary incentive for technological innovation.²³ Trademarks, however, only incentivize effective branding of a company or product, and allow companies to enjoy a distinct reputation in the marketplace.²⁴ Copyrights authorize the owner to reproduce copies of the work to which they own the right.

Patents grant exclusive rights to the inventors of innovative techniques or products, which enables the inventor to exclude others from making, using or selling his or her invention in that country during the life of the patent.²⁵ Patents are highly beneficial to economic incentivization of scientific innovation, and have been argued to be critical to the development and research of future products, scientific advances, and counters to disease.²⁶

Trademarks allow consumers to recognize the brands they are used to purchasing, and therefore trust. For example, one who travels from Sweden to the United States will recognize the Ikea brand, and know exactly what to expect upon their entrance to the store. Trademarks are a large component of the globalized world. Due to increasing communication internationally, brands are transcending borders and promoting the

Organization,” *World Intellectual Property Organization*, (Brussels: 1975).

²³ Vaidhyanathan, *Copyrights and Copywrongs*, 18.

²⁴ *Ibid*, 19.

²⁵ "Copyright Law of the United States,” *U.S. Copyright Office*. Accessed March 12, 2015.<http://copyright.gov/title17/>

²⁶ *Ibid*.

importance of strong product representation. Trademark law, which allows the company to maintain a stable reputation, protects brands and enables consumers to make informed buying choices.²⁷

Of the three main branches of intellectual property, however, my research exclusively focuses on copyright. Although what copyright entails has fluctuated over time from issues of censorship to rights of reproduction, the contemporary definition is “the exclusive right to copy, sell, and perform a work of original authorship that has been fixed in a tangible medium.”²⁸ In this context, a copyrightable “work” is a fixed, or tangible, medium of expression that has been prepared with the intent of being displayed to an audience.²⁹ Through this definition, the significance of original works how they link to creativity is clearly paramount to the very purpose of copyright law. A copyright owner’s rights include the right to distribute said works, to reproduce copies of the work in its entirety, to derive other works based on the original, and to display or perform the work publicly.³⁰

In addition to a basic introduction to working terminology, I offer a basic framework of historical context before delving more deeply into relevant narratives. Stories that originated in European countries like Denmark and Germany eventually traveled to the United States. In this research, I analyze the effect of major milestones in international copyright law, such as the Berne Convention on Copyright Law, which was the official law in Europe implemented in 1886, its evolution, and its effect on stories

²⁷ Ibid.

²⁸ Vaidhyanathan, *Copyrights and Copywrongs*, 20.

²⁹ "Copyright Law of the United States." *U.S. Copyright Office*. Accessed March 12, 2015. <http://copyright.gov/title17/>

³⁰ Ibid.

released in the United States upon Berne's ratification in 1989. In simple terms, the Berne Convention permitted a universal copyright regime by mandating that each signatory recognize the copyright law of the country the work exists in. For example, take the popular children's book series *Harry Potter*. Despite the country of origin, which in this case is Great Britain, any *Harry Potter* books published in the United States are subject to the contemporary domestic copyright regime under the United States' copyright office.³¹

Works that exist in the "public domain" no longer have copyright restrictions on them. After a copyright has expired, anyone may use works of literature; music or other previously copyrighted materials as they see fit. In some cases, when the owner of the copyright is unknown, the general rule is to wait 50 years after the death of the author for his or her works to be eligible to enter the public domain. Thus, the works of William Shakespeare Mark Twain, and Charles Dickens have entered the public domain and may be published by anyone without any sort of compensation to the author or owner of copyright.³²

By definition, any work not registered as copyrighted exists within the realm of the public domain. Certain works automatically enter the public domain upon creation, because they are not copyrightable. Works that are ineligible for copyright registry are:

"Titles, names, short phrases and slogans, familiar symbols, numbers, ideas and facts (e.g., the date of the Gettysburg Address), processes and systems, government works and documents, works that have been assigned to the public

³¹ "Treaties and Contracting Parties: Berne Convention." *World Intellectual Property Organization*. September 9, 1886. Accessed November 3, 2015.

³² Public-domain." *Legal-Dictionary.TheFreeDictionary.com*. Accessed November 10, 2014.

*domain by their creators, works that have entered the public domain because the copyright on them has expired, all works published in the U.S. before 1923, all works published with a copyright notice from 1923 through 1963 without copyright renewal, all works published without a copyright notice from 1923 through 1977, all works published without a copyright notice from 1978 through March 1, 1989, and without subsequent registration within 5 years.”*³³

Since the implementation of copyright law, Congress passed numerous laws lengthening the term of copyright, and the terms of renewal. Currently, the default term for the duration of a copyright is 70 years after the author has passed.³⁴

Scholar and lawyer Lawrence Lessig argues that the overarching domain of copyright law has significantly constrained creativity, as copyright laws are outdated in the new era, transfixed by technological advancement.³⁵ Lessig argues that creativity is inherently linked to the concept of “remixing.” Although the modern connotation of remixes involves music, or technologically synthesized mixed media, Lessig argues that remixing is an innate part of our culture, which creativity is perpetually linked to.³⁶ Lessig believes the introduction of the Internet has provoked a dramatic shift in cultural remixing.³⁷ Nevertheless, the idea of remixing preexisting works is not a newfangled

³³ "Copyright Law of the United States." *U.S. Copyright Office*. Accessed March 12, 2015. <http://copyright.gov/title17/>

³⁴ "Copyright Term and the Public Domain in the United States", Copyright Term and the Public Domain in the United States," January 3, 2015. Accessed January 29, 2015.

³⁵ Porsdam, *Copyright and other Fairy Tales*, 20.

³⁶ *Ibid*, 16.

³⁷ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin Press, 2004), 7.

phenomenon. Specifically, Lessig uses the example of The Brother's Grimm and their "remixed" variations of Andersen's folk tales.³⁸

In a more recent, relatable example of how stories have been "remixed," Lessig briefly discusses how Disney has taken the liberty of remixing several stories. Hans Christian Andersen's *The Little Mermaid* was adapted by Disney in the 1930s and released in 1989.³⁹ According to Lessig, Disney's success can be attributed not to his own innovations, but to those of his predecessors. In his book, *Free Culture*, Lessig criticizes:

*"Disney was a remixer, taking the creativity of others and producing it, updating it, translating it into creativity that his culture could, a culture of his age, could accept."*⁴⁰

Finally, I use the terms "modifications" and "changes" to describe the effects of copyright laws on literature relevant to this argument. Although the literary realm used the term "modification" to represent various levels and types of alterations to an original work, the definition in this context is most similar to that of "distortion" in that the original work has been misrepresented. In this discussion, I use the terms "modification," "alternation" or "changes" interchangeably. In this research, I argue that copyright law, especially the international policies enforced under the Berne Convention; hold a consequential role in the evolution of fairy tales throughout their rich histories. As such, it is critical that the reader understand the contemporary context and vocabulary of this particular research. Furthermore, the capacity for this research to contribute any insight to

³⁸ Porsdam, *Copyright and other Fairy Tales*, 16.

³⁹ "The Little Mermaid." *IMDb*. Accessed January 16, 2015.
<http://www.imdb.com/title/tt0097757/>.

⁴⁰ Lessig, *Free Culture*, 10.

the consequences of copyright law is contingent on the historical context preceding applicable copyright policies that are currently enforced. The following section outlines the relevant histories of copyright law, and the current standing of intellectual property in an international, globalizing world.

ONCE UPON A TIME

Contemporary American copyright law encourages creators to distribute new works by granting them exclusive rights to copy, sell and perform their own works.⁴¹ By extension, the copyright owner has the authority to distribute the work as he pleases, and even grant permission to another person to use aforementioned work. The journey of copyright, as a facet of intellectual property, is historically far more complex.

The Statute of Anne is credited as being the first instance of a legal movement in favor of copyrights. Its full title, “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies,” demonstrates the emphasis on copies of works and relationship of said works to the author.⁴² Prior to the Statute of Anne, authority over the printing and publication in England belonged exclusively to the Stationer’s Guild. From the guild’s original chartering in 1557 to the implementation of the Statute of Anne in 1710, the guild oversaw the reproduction of printed works. Once the Statute of Anne acquired authority on printed works, copyright policies changed, and treatment regarding author’s artistic integrity shifted.

To credit the Statute of Anne as the first instance in which copyrights were considered is entirely inaccurate.⁴³ In fact, the earliest instance of copyright law is actually the establishment of the Stationer’s Guild in 1403.⁴⁴ When the Stationers’ Guild

⁴¹ Vaidhyanathan, *Copyrights and Copywrongs* 20.

⁴² "Statute of Anne: Great Britain [1710]." *Encyclopedia Britannica Online*. Accessed November 5, 2014.

⁴³ Vaidhyanathan, *Copyrights and Copywrongs*, 37,

⁴⁴ "Stationers' Company," In *Dictionary of British History*, (Aylesbury: Market House Books Ltd., 2002).

was issued a charter in 1557, the guild acquired control of printing and publishing in England. All printing by non-members was legally condemned unless authorized by the guild. Most importantly, books authorized and printed by the guild were required to have been pre-approved by the monarchy.⁴⁵ Since the Stationers' Guild held the exclusive right to printing copies, they held an economical monopoly, while the monarchy maintained control over what works were publishable.⁴⁶

The Stationers' Guild differs from its successors in that it only held the right to printing, and left all authority of authorship to the actual writers. In fact, any changes to the text or any precarious misrepresentation of the original author was preemptively avoided by asking the writer to endorse any proposed changes.

When the Statute of Anne was implemented, the authors' rights changed radically. Due to the promise of fair compensation, authors were granted an incentive for writing, and thusly, poor writers were no longer subjected to unfair treatment. Works copyrighted under the Statute of Anne regime were protected for a term of fourteen years; with the potential to extend the copyright period for an additional fourteen years provided the author was alive at the expiration of the first term.⁴⁷ Because each work could only be copyrighted for a maximum of twenty-eight years, the Statute of Anne established the methodization of the public domain.

Obviously, the Stationer's Guild was responsible for all publications prior to the

⁴⁵ Vaidhyathan, *Copyrights and Copywrongs*, 37.

⁴⁶ *Ibid*, 38.

⁴⁷ "Copyright Term and the Public Domain in the United States", Copyright Term and the Public Domain in the United States," January 3, 2015. Accessed January 29, 2015.

implementation of the Statute of Anne; therefore, there was an overarching policy for all books published under the Stationer's Guild. Those publications under the jurisdiction of the former structure continued to be protected under their previous contracts for twenty-one more years before they expired permanently, entering the newly established public domain by default.

While the implementation of the Statute of Anne was indisputably ill received by publishers, it is unclear whether or not the legislature was passed to intentionally overthrow the economic monopoly held by the Stationers' Guild and its members. The Stationers' Guild fought valiantly against the Statute of Anne, as it threatened their success and undermined their monopoly entirely. The Stationers' Guild was not only dethroned as the sole publishing company, but also disbanded as a monopolizing union of literary distribution.⁴⁸

The history of the Statute of Anne's original intention is a topic of heated debate among scholars. Scholars of law Lyman Patterson, Ronan Deazley, and John Feather provide some of the leading theories of this debate.⁴⁹ Lyman Patterson, American law and copyright scholar and historian, argues in his article and book, *Copyright in Historical Perspective*, the Statute is a direct assault on the Stationer's Company monopolizing the reproduction of books.⁵⁰ Patterson outlines objectively, but accurately,

⁴⁸ Tyler Ochoa, "The Legacy of the Statute of Anne," *Copyright & New Media Law Newsletter* 14, no. 1, (2010): 5.

⁴⁹ Oren Bracha, "The Adventures of the Statute of Anne in the Land of Unlimited Possibilities: The Life of a Legal Transplant," (*Berkeley Technology Law Journal* 25, 2010): 1427.

⁵⁰ Bracha, "The Adventures of Anne, 1430.

the history of copyright law as it applies to legal history.⁵¹ Prior to 1710, all members of the book trade in England, including printers, bookbinders, and sellers, fell under the authority of Stationer's Company, which held a monopoly as a private guild without the jurisdiction of common law.⁵² The key point that Patterson highlights is that under copyright through the Stationer's guild, copyright owners only held the right to distribute reproductions of the work, but not to make any sort of fundamental alterations. Unlike contemporary copyright law, due to this restricted scope, the laws pre-1710 were of no consequence to the integrity of the author's original work.⁵³ In fact, Patterson uses the register of the Stationers' Company to demonstrate the authors were largely cooperative with the Stationers' because their financial incentive was reasonable.⁵⁴ Authors had no role in shaping the stationer's copyright, which suggests that there was no concept of author's rights at all.⁵⁵

Patterson clarifies where the Stationers' Company customarily respected the property rights of the authors, the personal rights of the authors as creators equally were respected.⁵⁶ Based on his research of documents representing various contracts under the Stationers' Company, Patterson concludes, "the author retained sufficient control over his work to make additions, corrections and amendments..."⁵⁷ Patterson's overall argument, therefore, supports the argument of this paper: "The effect of change of copyright from a

⁵¹Ronald Deazley, "Copyright in Historical Perspective (Book Review)." *College & Research Libraries* 30, no. 2, (March 1969): 172.

⁵² Lyman Ray Patterson, "Copyright and author's rights: A look at history," *Harvard Library Bulletin* 16, no. 4 (1968): 371.

⁵³ Patterson, "Copyright and author's rights," 372.

⁵⁴ *Ibid*, 373.

⁵⁵ *Ibid*.

⁵⁶ *Ibid*, 376.

⁵⁷ *Ibid*, 381.

publisher's right to an author's right has been more significant than generally recognized."⁵⁸

Legal scholar Roan Deazley, similarly, believes the intention of the Statute of Anne was a reaction to the monopolized book trade.⁵⁹ Unlike Patterson, however, Deazley argues that the Crown's desire to control the book trade was rooted in economic incentive rather than an effort to censor publications.⁶⁰ Deazley vehemently disagrees with the central idea that the Statute of Anne aimed not only to protect the rights of reproduction, but also to regulate content of printed work.⁶¹ Deazley begins his argument with a reference to a quote by French philosopher Michel Foucault. Foucault parallels the purpose of authorship to a nation-state link of penal appropriation to authorial property.⁶² This point highlights the power and significance of the law in terms of punitive procedures in reaction to infringing upon intellectual property.

Contrary to Patterson and Deazley, author John Feather does not believe the motivations are reactionary against the Stationer's Company.⁶³ Rather, he is convinced the Statute of Anne is an effort by the Stationer's Company to retain power over the publishing domain. Feather argues the main motive to write is the intent to be read.⁶⁴ Given the process of book distribution, which flows as follows, it is in the best interest of

⁵⁸ Patterson, "Copyright and author's rights," 383.

⁵⁹ Bracha, "The Adventures of Anne, 1428.

⁶⁰ Ronald Deazley, "Trouble with *The Trouble with Ownership*," *The Journal of Legal History* Vol. 27, No. 1, (2006): 84.

⁶¹ Deazley, "Trouble with *The Trouble with Ownership*", 83.

⁶² *Ibid*, 81.

⁶³ Bracha, "The Adventures of Anne, 1428.

⁶⁴ John Feather, Feather, John. "The commerce of letters: The study of the eighteenth-century book trade." *Eighteenth-Century Studies* 17, No. 4 (1984): 405.

author's to have strong relationships with booksellers. As such, the Statute of Anne served as a mutually beneficial agreement to the publishers and the authors.

In response to the threat of the Statute of Anne, the Stationers' Guild appealed to the Parliament, claiming the implementation of the Statute of Anne would be detrimental to the economic welfare of authors.⁶⁵ Although the argument regarding the original intent of the Statute of Anne is important, it is likely the Statute's original intention is multi-faceted compilation. The most pressing issue regarding the Statute is its effects on the publishing domain and the shift in policy. Following the Statute of Anne, the most significant piece of legislation, is the Berne convention, which marked a new regime of copyright that is relevant to this discussion.

⁶⁵ Ochoa, "The Legacy of the Statute of Anne," 7.

THE KINGDOM DIVIDED

Although there is no single piece of international legislation that can be administered as the absolute authority over copyright law, the Berne Copyright Convention is the closest legal document that could qualify as the universal rule of international copyright. With one hundred and fifty-seven signatory countries and a history expanding as far back as 1886, Berne is currently the most inclusive copyright policy.

Under the Berne Convention, once a work has been copyrighted within its own country, the copyright automatically transfers to all other signatory countries. Said work will remain copyrighted in the one hundred fifty-six other member countries of the Berne Convention under one copyright regime: that of the country it was published in. To clarify, copyright lawyer Lesley Ellen Harris, editor of Copyright & New Media Law Newsletter: For Libraries, Archives & Musuems, explains:

“If you photocopy an article in the U.S., you apply U.S. copyright law. If you photocopy an article in Canada, you apply Canadian copyright law. If you photocopy an article in France, you apply French copyright law.”

The Berne Convention entitled monetary compensation for works published outside the realm of the original country. Before Berne, works published in foreign countries afforded little or no royalties to the author. In addition to allowing authors to profit from the geographic diffusion of their creativity, the Berne Convention was a milestone in international cooperation. In fact, the economic outcomes of this organization are arguably a preliminary factor in the establishment of the European Economic Community.

Provided that the initial intent of the European Economic Community was to strengthen economies of the individual member states, the efficacy of this international cooperation may have contributed to the future economic alliance of European countries, which evolved into the modern day European Union. Prior to the Berne Convention, the domestic book market of the countries suffered due to liberal publishing restrictions. Because of a lack of copyright policy, works of literature that travelled to neighboring countries were sold extremely cheaply. Imported stories were priced low due to the lack of compulsory royalties owed to the author, thus making the cost minimal for booksellers, as they only had to pay the price to the publishing company to pay for the manufactured product. Books written by authors who lived domestically, however, were marked at higher prices to cover not only the cost of the manufactured product and profit to the bookseller, but also to contribute royalties to which the author is entitled. By engaging in the Berne Convention, authors of member states remained under the protection of the state in which the work was initially published, even if that work was published in a separate state. Therefore, authors were granted economic compensation for each book purchased in the form of royalties.

Andersen's original works, first written and published in Denmark, could be translated and reproduced outside of Denmark without any permission of the author and without paying any sort of royalties.⁶⁶ Between 1868 and 1875, Andersen's profits from his published works in the United States amounted to a mere \$2,200.⁶⁷ From England, Andersen received a dismal £368 for his labors, which can be directly attributed to the

⁶⁶ Porsdam, *Copyright and other Fairy Tales*, 7.

⁶⁷ Ibid.

lack of any sort of international copyright agreement.⁶⁸ 1886, Andersen wrote regretfully to his friend:

*“Unfortunately, I belong to such a small nation that though my work is among some of the most well-read of works, it will hardly be able to feed me.”*⁶⁹

In 1891, the United States entered the International Copyright Treaty.⁷⁰ Because the United States did not enter the Berne Convention until 1989, the International Copyright Treaty served as a push toward international cooperation. During the 1880s, since American copyright law only applied to American authors, this treaty was a means to move toward price fixing to ensure publications would profit, regardless of the status of the literary market. Price fixing eventually led to an increase in the economic welfare of European authors who were making no money on the works they created published in the United States.⁷¹

Before the ratification of the Berne Convention in Great Britain, the provisions of authors’ rights designated by copyright law resembled that of contemporary copyright law in that it guaranteed the right of the author to earn royalties for each reproduction of the work, and save it from any sort of modifications before its timely entrance into the public domain. Much like contemporary ideology of copyrights, British Common Law during 1881 defined copyright law as:

“The sole and exclusive right of multiplying copies of an original work after it has

⁶⁸ Porsdam, *Copyright and other Fairy Tales*, 7.

⁶⁹ *Ibid.*

⁷⁰ “International copyright treaties approved,” *World Intellectual Property Organization: The Seybold Report on Internet Publishing* 1, no. 5 (1997), 37.

⁷¹ “International copyright treaties approved,” *World Intellectual Property Organization*, 37.

*been published.*⁷²”

A major difference between British copyright law in 1881 and contemporary law however, is that entrance into the public domain was automatic. British common law enabled a work before publication to be considered private.⁷³ Rather than innate protection of the work for a set period of time, upon publication, if the work was not preemptively protected, it was susceptible to free use unless the creator filed a copyright. Furthermore, not all copyrights were created equal; a creator had the choice of how stringent the protection of the work could be. For example, an artist could request that a limited number of reproductions be made of a specific work, thus enabling a certain balance of freedom and privacy. Furthermore, Routh discusses the integrity of a work in conjunction with the idea that an author reserves a right to maintain this integrity. Given the extensive discussion found in this and other documents pertaining to intellectual property laws of the 19th century, the issue of copyright was not only that of issuing monetary imbursements, but also of maintaining artistic veracity in published, and future works of ingenuity.

Therefore, Great Britain’s policy on international intellectual property law mirrored that of its domestic policy by extending protection of a work not only to benefit the author in the form of royalties, but also to maintain the integrity of the original work. British economic concerns resonated in the international law; the official decree, as follows, offers a provision requiring that any works published in foreign states must

⁷² Routh, John M. *The Law of Artistic Copyright. A Handy Book for the Use of Artists, Publishers, and Photographers (With Explanatory Dialogues)*, (London: Remington and Co. :1881), 170.

⁷³ Routh, *The Law of Artistic Copyright*, 172.

register with the domestic government before disbursement. This registration requirement guarantees the author royalties as well as the publisher and the bookseller, thus benefiting the British economy and protecting the publishing industry:

“Her Majesty may, by Order in Council, direct that the authors of any works of art, being first published in such foreign country, shall have copyright therein under the Engraving, Sculpture, and Fine Arts Acts, but no author of any such foreign work of art is entitled to any benefit under the provisions of the International Copyright Act, unless the work is registered at Stationers' Hall. A foreign print or engraving must have the name of the proprietor and date of first publication engraved on the plate and printed on each print.”⁷⁴

Furthermore, in a foreshadowing policy to encourage reciprocity, all foreign works in the United Kingdom were granted equal royalty rights.⁷⁵

Regrettably, relations with the United States were less than cordial. Of the attempts at including Americans in cooperative negotiations, Routh discusses:

“Notwithstanding great exertions that have from time to time been made, it has hitherto been found impracticable to arrange any terms of reciprocal protection with the American people, the result being, that an English artist, or publisher, has no remedy whatever against the piracy of his works in the United States. The works of British authors and painters may be.”⁷⁶

Routh continues with bitter accusations of American inequity in terms of an unequal international policy in which American authors continue to reap the benefits of

⁷⁴ Routh, *The Law of Artistic Copyright*, 175.

⁷⁵ Ibid, 176.

⁷⁶ Ibid.

Britain's International Copyright Act by collecting royalties on works distributed internationally. Most disturbingly, Routh claims the lack of cooperation from the United States was an intentional ploy to exploit foreign copyright policies while maintaining a protection of national works.⁷⁷ Routh claims that the failure of achieving a suitable compromise on behalf of the United States was "deplorable" and even discusses the possibility of retaliation by exempting American authors from the cooperation except in extenuating circumstances.⁷⁸

Whether it be because Europe was closer and easier to access in proximity, it appears as though negotiations with European countries were much more successful:

*"Copyright conventions have been arranged with most of the nations of the European Continent, whereby reciprocal protection has been secured for the authors of those countries and for British subjects."*⁷⁹

Specifically, Great Britain engaged in a treaty with France providing rights of Englishmen in France full protection of English copyright law, as well as the same provision for Frenchmen who produced works while residing in England. Arguably, the alliance between French and English authors and their respective publishing companies served as a precursor to the Berne Convention. Due to a lack of international copyright regime, the alliance between France and Britain prevented copyright infringement between the two nations, thus preventing any compromising of the integrity of works as well as granting authors the royalties to which they were obliged. Otherwise, the freedom to use, reproduce and modify works travelling between the two countries would have

⁷⁷ Routh, *The Law of Artistic Copyright*, 175.

⁷⁸ Ibid, 177.

⁷⁹ Ibid, 176.

been absolute, negatively impacting both economies and trade relations between the two nations. Given the success of the alliance between France and England, the Berne Convention's success and eventual expansion into a stricter trade-related regime is unsurprising.

THE KINGDOM UNITED

Prior to the Berne Convention there was no enforceable international copyright agreement; copyrights became irrelevant once they transcended the national boundaries of the country in which the author resided. In particular, French lawyer Alfred Villefort criticized the lack of an all-encompassing rule as it applied to the United States:

*“A curious provision of this law declares with the greatest clarity that one may import from abroad any kind of work of authorship without exception. One could not have made a more welcoming appeal to infringement. The supply was work the demand: piracy has flooded America with its products.”*⁸⁰

To further extrapolate on the economic significance of copyright law, Villefort conducted a research study on the consumption of literature between Belgium and France. Villefort discovered that, in 1847, France exported 175,000 books to Belgium, whereas Belgium exported 195,000.⁸¹ The purpose of the figures above is to demonstrate the outreach of international literature, and further exemplify why the need for an international copyright regime was deemed necessary.

In 1883, during the early stages of drafting the Berne Convention, the writers had two main concepts for the ultimate copyright reform. One established an overarching concept of copyright to be used in all member states, which would supersede all domestic policies related to copyrights. The second paradigm allowed the work to remain under the policies of the sovereign nation from which it originated. Clearly, the Berne Convention ultimately combined the two concepts, prioritizing national treatment, but also

⁸⁰ Ginsburg, “Berne without Borders”, 113

⁸¹ Ibid.

implementing overarching standards of protection to ensure a minimum standard throughout Berne Union member states.⁸² On December 5, 1887, the Berne Convention was ratified in Australia, Belgium, Canada, France, Germany, Haiti, India, Italy, Liberia, Monaco, New Zealand, Spain, Sweden, Switzerland, Tunisia and the United Kingdom.

The agreement has been revised multiple times since its implementation, each time further extending the length of the term of the copyright.⁸³ In 1908, member states drafted an amendment to Berne known as “The Berlin Act.” This revision extended the duration of copyright from that of the individual countries the life of the author plus 50 years.⁸⁴ Implementing the Berlin Act was not mandatory; in fact, member countries with shorter terms were allowed to retain their existing terms. Member countries Belgium, Denmark, France, Germany, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Spain, Sweden, Switzerland, Tunisia and the United Kingdom, signed the Berlin Act on November 13, 1908.⁸⁵ In the 1948 revisions to Berne, known as the Brussels Act, the mandatory minimum for the protection of copyrighted works became the life of the author plus 50 years. Currently, 35 countries require a minimum term of life plus 70 years including the US, UK, Germany, France, Italy, Switzerland, Mexico and Guatemala.

Provided that the Berne Convention validates all intellectual property, Contemporary copyright law in Denmark sets the duration of a copyright to include the entire life of the creator, plus fifty posthumous years. In the case of several creators, the

⁸² Ginsburg, “Berne without Borders”, 114.

⁸³ “Copyright Laws and Treaties of the World: Berne Copyright,” *Union United Nations Educational & The Bureau of National Affairs*, (1992).

⁸⁴ Ibid.

⁸⁵ Ibid.

copyright endures fifty years after both creators have passed. For anonymous works, copyrights remain active until fifty years following the first publication of the work.⁸⁶ The 1928 revision of the Berne Convention, known as the Rome Act, offered authors the option to object to modifications to original works in the case that the author feels it will negatively impact the work in a way that may be harmful to the author's reputation.⁸⁷

The Berne Convention was not ratified in the United States until the year 1989, when President Ronald Reagan finally signed the Berne Implementation Act. In his official statement, President Reagan explains the cultural and economic significance of becoming a member state:

“Our membership will automatically grant the United States copyright relations with 24 new countries and will secure the highest available level of international copyright protection for U.S. artists, authors, and copyright authors. This is especially significant because American works protected by copyright—books, recordings, movies, computer software prominent among them—have been at risk because of the differences between the U.S. law and the Berne Convention. The cost to Americans has been substantial not only in terms of the violation of the property rights of Americans, but in terms of our trade balance as well. We’ve been running a trade surplus of over \$1 billion annually in copyrighted goods, and it would have been much larger had it not been for the pirating of American copyright. In 1986 alone, the entertainment industry may have lost more than \$2

⁸⁶ "National IP Policy ." IP Law & Policy. Accessed April 9, 2015.
<http://www.dkpto.org/ip-law--policy.aspx>.

⁸⁷ International copyright treaties approved,” *World Intellectual Property Organization*, 37.

*billion in potential revenue, and our computer and software industries more than \$4 billion in potential revenue.”*⁸⁸

Despite the provisions of the Berne Convention, its implementation did not relieve all of the confusion caused by international cleavages in copyright law. In a unique case presented to the U.S. Court of Appeals for the Third Circuit, a U.S. company was charged with infringing upon Section 104A of the Copyright Act. In this case, the plaintiff, Dam Things from Denmark (DTFD), sued the American company Russ Berrie and Company, Inc. (Russ Berrie) for producing and distributing a doll whose design originated in Denmark.⁸⁹ Although the copyright of the doll had expired, by virtue of the “rule of retroactivity” provided in the Berne Convention protected rights to the troll doll provided it met one or more of the following criteria:⁹⁰

1. *The work was not in the public domain in its source country*
2. *The work was in the public domain as a result of non-compliance of the United States before the ratification of the Berne Convention.*
3. *The work has at least one author/creator who is a national of a country eligible for copyright.*

Given that the DTFD met, not only one, but all of the requirements listed above, it was clear that Russ Berrie infringed upon international copyright. Although this particular example applies to the toy industry, the laws and copyrights that were infringed

⁸⁸ “Copyright Laws and Treaties of the World: Berne Copyright,” *Union United Nations Educational & The Bureau of National Affairs*, (1992).

⁸⁸ Ibid.

⁸⁹ Eileen McDermott, "US Supreme Court: Copyright can apply to the Public Domain," *Managing Intellectual Property* (2012).

⁹⁰ Ibid.

parallel those of the publishing industry, and therefore serves to demonstrate the economic and cultural significance of copyright law, as well as the gravity of any breach of this international policy.

Following the Berne Convention, the World Trade Organization (WTO) administered a new, more comprehensive international agreement to address intellectual property law. This agreement, *The Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS), provided additional cohesion in terms of international trade policy in relation to intellectual property, including copyrights, patents and trademarks. Some newly addressed provisions of the TRIPS agreement included: extension of copyright to at least 20 years, automatic implementation of copyright law, application of copyright law to computer programs, and fair use provisions. Rather than replace the Berne Convention, TRIPS served to strengthen and expand upon the provisions of the agreement. Considering the Berne Convention, Article 9 of TRIPS provides:

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, and methods of operation or mathematical concepts as such.⁹¹

Although the Berne Convention addressed international copyright provisions, TRIPS directly linked intellectual property law with international trade, thus

⁹¹ "WTO: Intellectual Property (TRIPS) - Agreement Text – Contents," *World Trade Organization*, (1996).

strengthening the institution of copyright policy by establishing rules of enforcement and dispute settlement. As a whole, the objective of the TRIPS agreement reads as follows:

These objectives include the reduction of distortions and impediments to international trade, promotion of effective and adequate protection of intellectual property rights, and ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

As made clear by this objective, the international agreement expanded the provisions of the Berne Convention by specifically relating intellectual property as real property, and implementing set punitive measures against copyright infringement, addressing the potential ramifications that result in filing a suit claiming a breach in international policy.

Increasingly, intellectual property's parallel to tangible property seems more apparent in recent history. In 1998, Congress passed The Copyright Extension Act, also known as the Sonny Bono Act or, mockingly, the Mickey Mouse Protection Act. Following the passing of the Statute of Anne copyrights endured for a mere fourteen years. In the United States, copyright laws began with a 14-year term, which extended to a 28-year term and an optional 14-year renewal, and finally, a 28-year term with a 28-year renewal.⁹² At the time of the Sonny Bono Act, Disney's copyright on Steamboat Willie, a precursor to Mickey Mouse, appeared to be rapidly approaching the end of its term. For fear of losing their economic influence, Disney lobbied in favor of The

⁹² Lolly Gassaway, "When Works Pass into the Public Domain," *When Works Pass into the Public Domain*, Accessed April 3, 2015. <http://www.unc.edu/~uncInlg/public-d.htm>.

Copyright Extension Act, which extend the copyright on our beloved mouse friend.⁹³

The provisions of The Copyright Extension Act prolonged the term of copyrights works created on or after January 1, 1978 from 28-years with a 28-renewal to the life of the author plus 70 years. In the case of a corporation, however, copyrights remain active for 95 years after publication, or 120 years after the work is created. Steamboat Willie, who was first released in 1928, is approaching his copyright expiration date. The inevitable expiration date, 2023, raises a critical question: What's going to happen to Mickey Mouse?

⁹³ Lolly Gassaway, "When Works Pass into the Public Domain."

LOST IN TRANSLATION

That which was once organic has become regulated. Tales passed on through oral tradition continuously evolve by nature; it is nearly impossible to retell a tale in the exact manner, tone, and in as meticulously detailed as the previous orator. Even when simply transmitting information to a friend, the original message will be different than the actual conversation. As demonstrated by Hans Christian Andersen's adaptation of folk tales his grandmother's friends would share, the stories would gradually shift, depending on the storyteller.

These shifts are completely expected in the growth and development of a culture. Take, for example, the beloved patriotic jingle "Yankee-Doodle." The original lyrics, recorded as early as 1755 during the Seven Years' War was as follows:

*Brother Ephraim sold his Cow
And bought him a Commission;
And then he went to Canada
To fight for the Nation;
But when Ephraim he came home
He proved an arrant Coward,
He wouldn't fight the Frenchmen there
For fear of being devoured.*⁹⁴

The average American may be able to hear the familiar Yankee Doodle tune as they read:

Yankee Doodle went to town

⁹⁴ Carola, Chris. "Wish 'Yankee Doodle' a happy 250th, birthday. Maybe." *Atlanta Journal-Constitution*: July 5, 2008. Newspaper.

*A-riding on a pony,
Stuck a feather in his cap
And called it macaroni.
Yankee Doodle, keep it up,
Yankee Doodle, dandy
Mind the music and the step,
And with the girls be handy.*

Through the decades, and by the nature of oral tradition, the original 1755 version of Yankee Doodle, which was sung with the intention of mocking the colonialists, naturally transformed into a patriotic fight song.⁹⁵ As exemplified, the process of modification is a natural cultural phenomenon. The implementation of copyright law, however, stifled these organic changes by codifying their development.

In order to fit the moral and practicing standing of the Victorian era, many translators neglected to translate the full framework of the stories, thus altering their implications and the structure by which it was intended to be published and distributed, thus compromising the integrity of the work, and altering the intended moral message.⁹⁶ During this time, however, there was a set canon for the written word as was perceived appropriate. This meant that books written for children were limited in theme, as there could be no reference or even inclination toward violence, sexual overtones, or frightening motifs.⁹⁷

⁹⁵ Sonneck, O. G., *Report on the Star-spangled Banner, Hail Columbia, America, Yankee Doodle*, (New York: Dover Publications, 1972).

⁹⁶ Porsdam, *Copyright and other Fairy Tales*, 4.

⁹⁷ *Ibid.*

As such, it is inevitable that different translators would conclude each fairy tale differently.⁹⁸ Although there is no blame to be assigned as a result of translators who simply mistranslated a word, which eventually became an integral part of the story. For example, Andersen's Danish description of the queen in *The Tinderbox* is as follows:

"She could do more than just ride in a coach."

While Andersen's intent in this statement was to provide insight into the queen's character, as a woman who was practical and strong-willed, the translated version has perverted an independent woman into what can be presumed to evolve into the prototype for the evil queen. The mistranslated version of this statement has been misconstrued to derive that the queen does not merely ride in a coach, but appears "grand and condescending" as she does so, which fundamentally changed the character's role from a logical, reasonable queen to a harsh, fear-inciting monarch.⁹⁹

Undoubtedly, mistranslations have the propensity to alter the intended meaning of an original work and induce inadvertent connotations imbedded in the text. While unintentional, subtle changes, such as in the description of self-sufficient woman, transform into archetypes such as the "evil queen," fundamentally shifting character roles within their respective narratives.

⁹⁸ Porsdam, *Copyright and other Fairy Tales*, 5.

⁹⁹ *Ibid*, 4.

UNDER DA “SEE”

One prominent fairy tale that has notably altered throughout the decades is none other than the popular Disney princess, Ariel, from the classic animated film *The Little Mermaid*. Upon superficial examination, *The Little Mermaid* is a benign cartoon whose target demographic, young children, is reached through the embodiment of a mythical creature, characterization of sea creatures, and catchy musical numbers. Upon further criticism, scholars have argued that *The Little Mermaid* is masochistic propaganda urging young girls to change their appearances to please their male counterparts, and encourages open defiance of parental authority. Through their defiance, girls are encouraged to earn their independence and the right to run off with the boys who do not accept their genuine bodies, thus forcing them to artificially change.

The original publication of Hans Christian Andersen’s *The Little Mermaid* in 1837 did not have the same happily ever after ending as that of the contemporary popular rendition of the story. *The Little Mermaid* was initially published in 1837. Given that the maximum number of years a work can be protected under any copyright regime is 100 years, our mermaid princess’ story was well within the realm for Disney to animatedly rejuvenate by 1937.

In the original story written by Hans Christian Andersen, a mermaid princess exchanges her tongue for the ability to live on land after falling in love with a young prince she rescued from a shipwreck. In this story, merpeople do not have souls. Instead of having their souls released from their bodies upon death, their essence becomes part of the sea foam. Contingent upon falling in love and marrying each other, the prince and princess would hypothetically become one; through the union the princess will acquire a

soul. If, however, the prince does not marry her, the princess faces imminent, and painful death. Unfortunately, the mermaid's prince falls in love with a princess from a neighboring kingdom and unwittingly leaving the little mermaid to die. Given the opportunity to slay the prince in exchange for the chance to live her full life as a mermaid again, our heroine chooses instead to sacrifice herself. In doing so, the Little Mermaid was rewarded with an immortal soul.¹⁰⁰

In Andersen's version of *The Little Mermaid*, the merprincess exhibits amiable characteristics such as generosity, loyalty, and independence. The merging of souls as a consequence of marriage is a touching insinuation of everlasting love and loyalty between two beings, solidifying the institution of marriage as a symbol of love. Although the union does not transpire, everlasting love and loyalty remains present, as demonstrated by the princess' sisters finding a cure for the misfortunes of love lost. Nevertheless, the mermaid cannot take the life of the man she once loved, and in her generosity, sacrifices her life in exchange for what she believe to be a painful transition to oblivion. The mermaid's transformation to a spirit represents the reward one receives when exhibiting selflessness and faithfully acting morally.

Moreover, although the story alludes to darker themes of pain, loss, and death, the story's solemn end assures the reader that despite life's adversities, it goes on. The mermaid's painful transformation reflects the results of struggling through adversity and the reward of perseverance. The princess experiences the ultimate loss—that of love. The princess is forced to watch as her prince marries a woman he mistakenly believes rescued

¹⁰⁰ Andersen, H. C. *The Little Mermaid*. Champaign, Ill.: Project Gutenberg, (1837).

him from drowning, when in reality it was the mute mermaid princess, unable to correct the error. The mermaid's death, which she dreaded and feared, turned out to be rejuvenation. However melancholy death may be, the mermaid's transition represents the natural course of life, and presents a positive alternative theory for the afterlife in lieu of the painful separation of loved ones. Through the pain, loss, and even death, the outcome of the mermaid's adventure was her elevation to the status of "daughter of the air," becoming an independent spirit instead of being dependent on the soul of a human man. Her transformation from mermaid, to human, to spirit parallels the stages of birth, life, and afterlife. Throughout these stages, the princess experiences certain rites of passage, and reacts with reasonable morality.

In the Disney version of *The Little Mermaid*, the message does not mirror the original works' themes of self-sacrifice, familial loyalty, and generosity. Rather than sacrificing herself to allow her prince happily ever after, Walt Disney's rendition of *The Little Mermaid* ends with our heroine's triumph, which she earns through engaging in a violent altercation with the sea-witch. The sea-witch takes advantage of Ariel's naivety, and attempts to overthrow Ariel's father, King Triton, as monarch of the sea. After making a deal with Ariel in which Ariel exchanges her voice for the ability to walk, the sea-witch attempts to sabotage Ariel's happiness by stealing her prince's heart, forcing King Triton to come to his daughter's rescue. Ultimately, Ariel defeats her, and lives happily ever after with the prince and the life she always dreamed of.

At the time of Ariel's rerelease in 1989, television was quickly becoming the main occupation of children. As a result, youngsters were overwhelmingly exposed to films, and the consumption of the cultural indicators thereof. Young girls were suddenly

exposed to a well-developed, voluptuous 16-year-old cartoon mermaid, wearing a shell bikini top, on a mission to make her prince fall in love with her—without the ability to speak. When Ariel begins to question how she is to make a man fall in love her without speaking to him, she is sharply interrupted by Ursula’s advice:

“You’ll have your looks! Your pretty face! And don’t underestimate the importance of body language! Ha!”

In fact, when the prince first finds Ariel, she is virtually naked and unconscious on the beach. The prince’s initial attraction is based solely on her appearance as a young damsel in distress. Ariel, unable to speak or interpret the use of everyday objects, like forks, wins Prince Eric’s affection through her looks, charming confusion and perceived innocence. In the beginning of the film, Ariel gets into an argument with her father for her consistent disobedience. In her reprise, she breaks into song about how certain she is that life on land would be so much better, singing:

*“Betcha’ on land, they’d understand;
Bet they don’t reprimand their daughters.”¹⁰¹*

In addition to confirming children’s attitudes toward defying their parents, Ariel’s song comments on America’s obsession with consumerism:

*“I’ve got gadgets and gizmos a plenty
I’ve got whozits and whatzits galore
You want thingamabobs? I’ve got twenty!
But who cares? No big deal,
I want more...”¹⁰²*

¹⁰¹ *The Little Mermaid*. Walt Disney Pictures, 1989. Film.

In this musical number alone, *The Little Mermaid* appropriates stereotypes of teenage angst, American materialism, and falling in love based on superficial factors. Ultimately, Disney used its freedom of modifying works in the public domain to convert a fable of sacrifice, true love, and ephemerality to that of a patriarchal oversexualization of teen love. As demonstrated by the transformation of *The Little Mermaid*, shifts in society are reflected in changes of fairy tales, as are shifts in morality. For many children, fairy tales serve as teachers of the moral parameters of society. Is the freedom to modify classic works in the public domain a good thing? It is entirely possible that society's perception of morality today is linked to a shift in the methodology of ethical teachings, which were once transmitted through children's tales.

It is also possible, however, that fairy tales and morality have a symbiotic relationship. Whereas fairy tales often serve as the guidelines for children's perceptions of good and evil, the transformation of fairy tales as contemporary cultural expressions has reversed the roles of parables and their effects on morality. As fairy tales evolve to meet market demand, the messages they evoke simultaneously reinforce the market's demands and qualify consumerist notions, desires and habits. Rather than blaming *The Little Mermaid* for teaching little girls to be materialistic and shallow, the blame should be targeted at society. Society's values have shifted; those values are expressed in the modification of *The Little Mermaid*.

While this film was undisputedly well distributed and consumed by thousands of children, I am not suggesting that it is necessarily the case that the influence of *The Little Mermaid* alone shifted American parameters of morality. In the simplest of terms, for this

¹⁰² *The Little Mermaid*. Walt Disney Pictures, 1989. Film.

argument, economics is the social science of the workings of the capitalist market. By this definition, one can interpret that the higher the demand of a certain product, the higher the price. This is especially true in the case of limited resources. When demand of a resource is high and the supply of said resource is low, the price of said resource will be high. Essentially, supply and demand rule the workings of the market place.

By virtue of this simple theory, economic supply and demand is equally applicable to the workings of cultural expression. Traditional knowledge is bequeathed through the generations in an effort to pass on wisdom and cultural practices of medicine, cooking, and marriage. Therefore, cultural expression is transmitted due necessity, or demand, for knowledge of survival and reproduction. Cultural expressions shifted with regards to achieving the needs of society. Consequently, if a film about a privileged mermaid princess' love life sells tickets due to demand, that film will undoubtedly be produced, marketed, sold as a commodity, and of course, copyrighted and trademarked with mouse ears. Consumerism is not a result of Ariel's obsession with "whozits, whatzits and thingamabobs;" it is a reflection of it. By appropriating this theory to that of the Disney's adaptation of *The Little Mermaid*, the reason behind these fundamental contextual changes becomes clear.

Ariel's obsession with objects from the surface reflects on American materialism, and serves to provide significant social commentary about overconsumption and greediness.¹⁰³ It appears as though the writers, or, more accurately, modifiers, of Disney's *The Little Mermaid* intentionally chose to represent Ariel as a materialistic,

¹⁰³ Anna Altmann and Gail Vos. *Tales, Then and Now More Folktales as Literary Fictions for Young Adults*, (Englewood, Colo.: Libraries Unlimited, 2001).

over-sexualized teenager in an effort to reflect the values they perceived to be prominent in contemporary society, and would be most well-received by the market. Because her story was in the public domain, any alterations or variations made to Ariel's character were perfectly legal. Therefore, copyright law allowed for these modifications, which clearly compromised the integrity of the original work.

Given that Andersen is no longer here to protest against such prominent modifications of his work, one can only theorize what he might say. In 1837, Andersen wrote, "A great poet in this world and an even greater one in the next, that's what I dream of being."¹⁰⁴ Based on recurring themes of the stories he wrote, such as *The Princess and the Pea* and *The Swineherd*, which heavily alluded to themes of genuineness and originality, it seems likely that Andersen's reaction to the perversion of his self-sacrificing mythological princess would be overwhelmingly negative, once again demonstrating how copyright laws and the public domain have threatened artistic integrity.¹⁰⁵

Andersen's rights, however, have been long lost in the realm of intellectual property law. As previously addressed, *The Little Mermaid's* copyright had already expired years before the time of Disney's remix of the tale. Now that Disney has modified it, however, it now owns the rights of any Ariel related merchandise, theme, idea or catchy title. Disney's corporate office takes its property very seriously, relating:

The Walt Disney Company and its subsidiaries own the intellectual property rights to the characters, brands, titles and properties popularly associated with

¹⁰⁴ Porsdam, *Copyright and other Fairy Tales*, 84.

¹⁰⁵ *Ibid*, 24.

*the Disney name and with Disney's affiliates. This includes a large number of titles, characters and other elements from Disney's television programs, feature-length motion pictures, animated productions, publications, games and music. Disney takes the enforcement of these rights very seriously. We protect these rights so that we can continue to provide quality entertainment that measures up to the standards that our audience has come to love and expect.*¹⁰⁶

These statements are rather ironic, considering they come from a company that was build on remixing the intellectual property of others. Now that Disney owns the copyright to that specific rendition of *The Little Mermaid*, there can be no further derivatives similar to, or variations of the Disney-fied tale.

¹⁰⁶ "Disney Antipiracy," The Walt Disney Company.

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The Little Mermaid is not the sole example of serious modifications in meaning and mistranslations of morality. Following Disney's 1950 release of the animated film, when one mentioned Cinderella, the immediate indication would be of the classic story of the orphaned stepdaughter and her glass slipper. Today, when one refers to Cinderella, the image of Helena Bonham Carter as fairy godmother has replaced that of the beloved "bibbidi-bobbidi boo." Here, there is a clear example of contemporary culture using intellectual property to adapt to a shifting culture and appealing to specific audience demographic with monetary incentive and economic gain are the main motivators.

The earliest version of Cinderella is traced as early as the seventeenth century. Throughout the years, Cinderella has transcended cultures and transformed into hundreds of variants. In fact, according to Folklorist Marian Roalfe Cox, there are over three hundred forty-five variants of our beloved princess. In 1893, The Folklore Society of Britain commissioned Cox to write a study of Cinderella variants, identifying the different "Cinderella types."¹⁰⁷ Given Cinderella's debut in the 1600s, her story was well established in the public domain. The now copyrighted and franchised version of *Cinderella* has, similar to *The Little Mermaid*, transformed a moral tale of adversity and overcoming challenges to that of materialism.

The Grimm Brothers' rendition of Cinderella, written in German, relays a somber tale of child abuse, neglect and self-mutilation.¹⁰⁸ Following his wife's death, wealthy

¹⁰⁷ Marian Roalfe Cox, *Cinderella; Three Hundred and Forty-five Variants of Cinderella, Catskin, and Cap O'Rushes*, (London: Folk-lore Society, 1893), 57.

¹⁰⁸ Jacob Grimm, and Wilhelm Grimm, *Household Tales by the Brothers Grimm*, (Auckland: Floating Press, 1812).

father and widower married his second wife, a woman with two cruel and wicked daughters. The stepsisters treated the widower's daughters maliciously, stealing the girl's belongings and forcing her to perform the foulest chores. Worst of all, the girl's stepsisters knighted her with the nickname "Aschenputtel" ("Ashfool"). When the king decided to give a festival so that the prince could select a bride, Aschenputtel begged her stepmother to allow her to attend the ball. The wicked stepmother threw a dish of lentils for the girl to clean up, promising the girl that she could attend the ball if she accomplished the task. Meanwhile, the stepmother hastened away with them to the ball and left the crying stepdaughter behind.

The girl consulted her mother's grave and was greeted by a dove, which dropped a white gown and silk shoes. Aschenputtel proceeded to go to the ball, aware that she must return before the clock struck midnight. Over the next three nights, Aschenputtel appeared at the ball in elaborate dresses, and the prince fell in love with her. On the last night, Aschenputtel lost track of time, and upon leaving the ball, lost her golden slipper. The prince proclaimed that he would marry the maiden whose foot would fit the golden slipper. The next morning, the prince searched for the mysterious owner of the slipper. After being fooled twice by Aschenputtel's stepsisters, who physically cut parts of their feet off to make the slipper fit, the prince finally discovers the owner of the slipper. During Aschenputtel's wedding, white doves flew down and struck the two, striking the eyes of the two evil sisters blind, a punishment they had to endure for the rest of their lives.

Disney's 1950 adaptation of the well-worn tale was much cheerier than the

German rendition, with its child-friendly soundtrack and the main character's affiliation with the animals of the manner.¹⁰⁹ At this point in the evolution of the parable, "Aschenputtel" became "Cinderella." Just as in the original tale, Cinderella's father marries a wealthy aristocrat, Lady Tremaine, and introduced two stepdaughters into the family. Rather than characterize Cinderella's father as an abusive, negligent old man, Disney fixes the discrepancy by having Cinderella's father die unexpectedly. Without the objections of her father, Cinderella's stepmother treats her as a scullery maid. Despite this abuse, Cinderella grows into a kind and gentle young woman, befriending the animals in the barn. Meanwhile, at the royal palace, the King and the Grand Duke organize a ball in an effort to find a suitable wife for The Prince. Cinderella asks her stepmother if she can attend, as the invitation says "every eligible maiden" is to attend. Lady Tremaine agrees, provided that Cinderella finishes her chores and finds a nice dress to wear. Cinderella's animal friends, led by Jaq, Gus and the other mice, fix up a gown that belonged to Cinderella's mother using beads and a sash thrown out by Drizella and Anastasia. When Cinderella comes down wearing her new dress, Lady Tremaine compliments the gown, pointing out the beads and the sash. Angered by the apparent theft of their discarded items, the stepsisters destroy the gown.

Just as Cinderella is about to give up hope, her Fairy Godmother appears and turns the remains of Cinderella's dress into a new ball gown with glass slippers. To ensure that Cinderella arrives to ball in style and with a posse, her Fairy Godmother transforms a pumpkin into a carriage; the mice into horses, her horse Major into a coachman, and her dog into a footman. Cinderella's godmother warns her that the spell

¹⁰⁹ *Cinderella*. Walt Disney Productions, 1950. Film.

will break at the stroke of midnight. At the ball, the Prince rejects every girl until he sees Cinderella. The two fall strongly in love and dance alone throughout the castle grounds until the clock starts to chime midnight. Cinderella flees to her coach and away from the castle, dropping one of her glass slippers by accident. After her gown turns back into rags, the mice point out that the other slipper is still on her foot. The next morning, the King proclaims that the Grand Duke will visit every house in the kingdom to find the girl whose foot fits the glass slipper. When news reaches Cinderella's household, her stepmother and stepsisters prepare for the Duke's arrival. Realizing that Cinderella was the girl who danced with the Prince, Lady Tremaine locks her in the attic.

When the Duke arrives, Jaq and Gus steal the key to Cinderella's room, but Lucifer ambushes them before they can free her. With the help of the other animals and Bruno, they chase him out the window and Cinderella is freed. As the Duke prepares to leave after the stepsisters have tried to shove their enormous feet into the slipper, Cinderella appears and requests to try it on. Knowing the slipper will fit, Lady Tremaine trips the footman, causing him to drop the slipper, which shatters on the floor. Cinderella then produces the other glass slipper, much to her stepmother's horror. Cinderella and the Prince celebrate their wedding and live happily ever after.

Noticeably, Disney distinctly modified features of the tale into harmless, somber or even humorous anecdotes to mask more morbid, mature themes prominent in the original tale. Rather than have children question why Cinderella's father allowed her to be treated so cruelly, Disney eliminated him from the picture entirely. Similarly, although Disney kept the scene in which the wicked stepsisters attempt to undermine Cinderella by claiming the slippers as their own respectively, the animated feature attributes the size of

the shoe fitting only because the sisters forcibly inserted their feet into it, morphing their feet temporarily, but not mutilating it violently, permanently or bloodily. Furthermore, although the both Aschenputtel and Cinderella are supported by a guardian angel figure, the distinction between Aschenputtel's communication with her deceased mother and Cinderella's discovery of a fairy godmother allude to a similar thematic teaching that general kindness eventually pays off, the transmission of the message is done so differently, it could almost take on its own tangent.

Whereas the modifications of the Cinderella Story are significant, it is more relevant to discuss the effects of the modified tale. Today, Cinderella has her own franchise, her own hit album, and her own "look" worth bibbidi-bobbidi billions of dollars.¹¹⁰ Aschenputtel, on the other hand, receives little attention in popular culture. By copyrighting the animated version of Cinderella, Disney has monopolized the story, and all affiliated cultural icons.

Sex sells: little girls from around the world beg their parents to take them to Walt Disney World to go to the "Bibbidi-Bobbidi Boutique," where for the reasonable price range of \$60-\$200, the girls can be transformed by "Fairy God-Mothers In-Training" into the ball-ready princesses of their dreams. Of course, Disney wouldn't dare to exclude little boys from this experience. According to the website:

"And boys can join in on the fun too, as our Fairy Godmothers-in-training transform them into heroic knights!"

¹¹⁰ "How Disney Princesses Became a Multi Billion Dollar Brand," *MCNG Marketing*. March 18, 2013. Accessed March 5, 2015. Website.

By including a gender-inclusive, but not gender neutral, environment in which little girls are made up with glitter and little boys are taught they need to be strong to rescue the damsel in distress, Disney is commercializing gender normativity in addition to perpetuating stereotypes of how boys and girls should or should not be expected to behave. Cinderella, it seems, has been portrayed as a simplistic ideal of the perfect woman just as Prince Charming has been appropriated as the ideal male archetype that little boys need to look up to.

BREAKING THE ICE

So far, I have addresses the reciprocal nature of copyright law as it relates to changes in morality of fairy tale texts, notably the oversexualization of *The Little Mermaid's* princess Ariel and the commercialization of *Cinderella's* wedding to a man she had only just met. Modifications of texts to reflect cultural changes, however, are not limited to changes of morality and values, but also a reflection of the societal norms and, most recently, social justice. On November 27, 2013, Disney released what is considered its “most progressive” children’s feature film: *Frozen*. As with *Cinderella*, and *The Little Mermaid*, *Frozen* is based on a tale written by Hans Christian Andersen.

Andersen’s *The Snow Queen* begins with an evil troll, who has constructed a magic mirror, which reflects depraved versions of anything reflected by it. The cursed mirror shatters and enters people's hearts, distorting the perception of those affected. Childhood friends Gerda and Kai enjoy a beautiful summer day when splinters of the troll-mirror blow into Kai's heart and eyes. Kai becomes cruel and aggressive, destroys the toys he once enjoyed, and forgets about his friendship with Gerda. One day, the Snow Queen reveals herself to Kai and kisses him twice: once to numb him from the cold, and a second time to make him forget about his past life. She kidnaps Kai in her sleigh and takes him to her palace. Upon his disappearance, the people of the city conclude that Kai was drowned. Gerda, heartbroken and in denial, searches for him and questions everyone Kai's whereabouts. Finally, Gerda meets a prince and princess, who direct her to the Snow Queen’s palace. Gerda learns that she alone has the ability to save her friend from the Snow Queen’s curse. Although she does not know it, Gerda's unique power to save Kai is in her heart:

“I can give her no greater power than she has already,” said the woman; “don't you see how strong that is? How men and animals are obliged to serve her, and how well she has got through the world, barefooted as she is. She cannot receive any power from me greater than she now has, which consists in her own purity and innocence of heart. If she cannot herself obtain access to the Snow Queen, and remove the glass fragments from little Kai, we can do nothing to help her...”¹¹¹”

When Gerda finds Kai, he is alone and trapped by the Snow Queen's curse. Gerda runs up to Kai and kisses him, saving him by the power of her love: Gerda cries warm tears, melting his heart and burning away the cursed troll-mirror splinter. The curse breaks and, as a result, Kai bursts into tears as he recognizes Gerda.

This tale is one of innocence, friendship, and perspective. The troll-mirror is an allegory for negative attitudes and the ice represents the transition of those attitudes. When Kai is infected with the troll-mirror's curse, his outlook on life twists what he once thought was beautiful into foul representations, thus demonstrating how perception can shift individual realities, as well as signify Kai's loss of innocence. Despite Kai's grotesque perceptions and undesirable actions, Gerda refuses to believe her childhood friend is lost and will not allow him to slip into the darkness of the icy dimension he is trapped in. Despite rumors of Kai's death, Gerda will not renounce her friend, and continues to relentlessly search for him through the cold. Her loyalty and perseverance reflect support when all is perceived hopeless. Upon their reunion, Gerda's pure

¹¹¹ H.C. Andersen, *The Snow Queen*, Champaign, Ill.: Project Gutenberg, (1845).

intentions and unconditional love for Kai break the curse by demonstrating that when all appears hopeless, persevering will ultimately be worthwhile.

While maintaining similar central themes, Disney's adaptation of *The Snow Queen* is a clear attempt to catch up with the norms, and reinforce positive, progressive culture. In the Kingdom of Arendelle, Princess Elsa has been isolated from society since an incident during which she lost control of her powers to manipulate snow and ice, accidentally injuring her sister, Princess Anna. Upon her coming of age, Elsa prepares to take the crown to replace her deceased parents as monarch. During the reception, Anna betroths a Prince of a neighboring kingdom, whom she met during the coronation. Elsa forbids her sister from marrying a man she met so suddenly, and an argument ensues in which Elsa once again loses control of her powers, and accidentally reveals her secret to the entire kingdom. Elsa escapes into the nearby mountains, and Anna sets out determined to return her to Arendelle and mend their relationship. During her journey, she befriends Kristoff, his reindeer Sven, and the snowman Olaf, who join her in her mission to find Elsa. Upon their reunion, Elsa's agitation causes her to accidentally strike Anna in the heart, subsequently causing Anna to freeze unless she experiences an act of true love. Presuming that an act of true love can only be met with true love's kiss from Anna's fiancé, Hans, Kristoff races to return Anna to Arendelle and save her life. Hans, however, refuses to kiss Anna and leaves her to die. Realizing that Hans is about to assassinate Elsa, Anna throws herself between the two just as the curse climaxes, and she freezes, blocking Hans' attack. Anna's sacrifice constitutes an "act of true love," and she begins to thaw. Overjoyed, Anna and Kristoff share a kiss, and Anna ends up marrying

him rather than Hans, who only pretended to love her for the sake of accessing control of Arendelle.

Frozen promotes a message very different than that of previous Disney princesses and reflects changes in societal values. Unlike other princesses, like Ariel's marriage to a prince she fell in love with when rescued from death and Cinderella's love at first sight of her prince, Anna is berated for her sudden infatuation. Eventually, Anna realizes Elsa's opposition to Anna's engagement to Hans is justified by his confession:

As thirteenth in line in my own kingdom, I didn't stand a chance. I knew I'd have to marry into the throne somewhere. As heir, Elsa was preferable, of course, but no one was getting anywhere with her. But you... You were so desperate for love, you were willing to marry me just like that. I figured after we married, I'd have to stage a little accident for Elsa. But then she doomed herself, and you were dumb enough to go after her.¹¹²

In fact, Anna ends up with a man who slowly fell in love with her quirks and goes to great lengths to save her. Despite finding her actual "true love," it is not true love's kiss that saves Anna from freezing to death, but rather her sacrifice to save her sister. The prophecy made early in the movie, "True love can thaw a frozen heart," was misconstrued by the film's characters to mean romantic love. Anna's sacrifice to save her sister, however, constituted a love so true that she was saved herself instead of depending on a male character to rescue her from distress.

Although the parallels between *The Snow Queen* and *Frozen* are undeniable, the modifications made to derive the storyline for *Frozen* significantly alters the moral

¹¹² *Frozen*. Walt Disney Pictures, 2013. Film.

message of the story in a way conducive to pleasing the audience for whom it was created. Compared to the characters of *The Snow Queen*, Anna and Elsa's roles in the narrative transcend between those of Gerda and Kai. Although Gerda sets out to find Kai, just as Anna sets out to find Elsa, Anna is the one who cursed with what is meant to represent the troll-mirror's effects and is saved by true love. Whereas *The Snow Queen's* narrative concentrates on faith-based morality, *Frozen's* protagonist, Anna, takes fate into her own hands as she sets out to find her sister. Conforming to modern feminist ideals, *Frozen's* princesses are mostly self-sufficient, as demonstrated by Elsa's lack of a romantic partner throughout the film, and Anna overcoming her role as a damsel in distress to save herself from a curse. Just as in previous films adapted from fairy tales, *Frozen's* modifications reflect contemporary, progressive societal norms.

AND THEY ALL LIVED HAPPILY EVER AFTER...

While there are limitations to theorizing about any cultural inflection, I have sufficiently demonstrated thematic shifts in literary works in the public domain, and thus claim a correlative relationship between the adaptation of these tales and copyright law. As Siva Vaidhyathan said in his book *Copyrights and Copywrongs*, “I have too many assumptions and too little knowledge.”¹¹³ Like Vaidhyathan, I originally approached this topic as a legal history. I quickly realized, however, that I was studying a cultural reaction to an event in legal history, as well as countless other reactionary factors. As the stories travel from country to country, transcend languages, and cross cultures, identifying each influential event that correlates to any sort of textual change in said story becomes virtually impossible. Therefore, any attempt to establish a standard to be used in the assessment of the level of modifications of works remains equally futile.

In addition to limitations within this particular research, studying intellectual property, especially copyright law, encompasses inherent limitations due to recent technological advancements. When the Berne Convention was first implemented, regulating copyright law according to the “country of origin” seemed logical, as copies would presumably be made in said country, and exported. Since the emergence of the Internet, the “country of origin,” designating to which copyright regime the work should adhere to, became ambiguous.¹¹⁴

The Internet complicates the definitions of “publication” and “copies.” Normally, while browsing the Internet, computers temporarily copy programs and other copyrighted

¹¹³ Vaidhyathan, *Copyrights and Copywrongs*, 16.

¹¹⁴ Ginsburg, “Berne without Borders”, 116.

material to their random access memory (RAM). By making a temporary copy, some scholars argue the person whose Internet search resulted in the temporary copy has infringed upon the copyright.¹¹⁵ According to the RAM copying theory, if “copies” also includes coded reproductions that are used in a computer’s temporary memory, then posting works online automatically reproduces copies that can be accessed internationally, by anyone who owns a computer.¹¹⁶ Furthermore, if a “publication” is anything available for download or anything posted and can be accessed by the public, the standing of the work under the Berne Convention is unclear.¹¹⁷

As such, the inherent problems of studying copyright law continue to grow more complicated. In the preceding summit to the Berne Convention in 1884, the distinguished Swiss delegate Numa Droz stated, “limits to absolute protection are rightly set by the public interest.”¹¹⁸ The larger public interest remains a driving force in terms of later revisions of the Berne Convention. Maintaining the original protective purpose while simultaneously offering reasonable usage rights has proved to be a precarious task in the digital age. As a response to this challenge, the WIPO created the WIPO Copyright Treaty (WCT). The preamble of the treaty explicitly states its purpose in prolonging the efficacy of the Berne Convention:

“Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to

¹¹⁵ Jonathan Band and Jenny Marcinko, "A New Perspective on Temporary Copies: The Fourth Opinion *Costar v. Loopnet*," *Stanford Technology Law Review* 1, (2005): 6.

¹¹⁶ Ginsburg, “Berne without Borders”, 117.

¹¹⁷ *Ibid.*

¹¹⁸ “Actes de la Conférence internationale pour la protection des droits d’auteur réunie.” *Berne Bureau de l’Union internationale littéraire et artistique*. Berne, 1884.

information as reflected by the Berne Convention.”¹¹⁹

Article 10 of the emphasizes the recognition of new policies to coincide with new and developing technologies:

*“It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit the contracting parties to be understood and to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.”*¹²⁰

Further limitations of this study consist of the ambiguous nature concerning a discernible difference between two texts. When studying social science, the complexity of variables hinder the ability to make a full assessment of what may or may not be substantial evidence to a theory. By virtue of the institution of intellectual property and its relation to cultural exchange and evolution, the limitations of copyright complicates this study. Although leaders have attempted to alleviate the discrepancies between the Berne Convention, WIPO and TRIPS as early as the 1970s, it remains clear that globalization will continue to facilitate international communications, and by association, complicate any sort of study discussing the morality of copyright law.

I uphold that Disney modifies stories in an effort to keep up with its target audience. Recently, Disney debuted their first same-sex couple on its children’s channel,

¹¹⁹Herman Jehoram Cohen, "Restrictions on Copyright and Their Abuse," *European Intellectual Property Review* 27, no. 10 (2005): 362.

¹²⁰ *Ibid*, 363.

The Disney Channel. Disney's sitcom "Good Luck Charlie" featured two moms who appeared on the January 26, 2015 episode of the show. In the show, the couple arrives at the Duncan family's household to pick up their daughter from a play-date. "This particular storyline was developed under the consultancy of child development experts and community advisors," according to a Disney Channel spokesperson. "Like all Disney Channel programming, it was developed to be relevant to kids and families around the world and to reflect themes of diversity and inclusiveness."¹²¹ Although this anecdote does not make any reference to infringements of copyright, the point remains relevant: Disney will alter messages to please their audience.

Protecting the intellectual property rights that originated from works in the public domain, such as the case with Disney channel, is an issue that transcends popular culture and other media brands. In fact, Disney and Warner Brothers recently engaged in a legal disagreement over the intellectual property rights of yet another work that had previously been taken from the public domain and reworked into an derivative: Frank Baum's *The Wizard of Oz*. Although the book was published in 1899, and clearly a part of the public domain, Warner Brothers recently filed for "character protection," thus preventing any other companies from producing merchandise directly related to the film. Precariously, Disney filed for a copyright trademark of "Oz, The Great and Powerful," obviously leading to a debate centered on intellectual property. The issue, however, is that Disney is basing their derivative off of the 1899 book, not the 1939 movie, therefore invalidating

¹²¹ Michael Schneider, "Exclusive: Disney Channel Breaks New Ground with Good Luck Charlie Episode," *TV Guide: Today's News*. June 20, 2013. Website. Accessed April 3, 2015.

any arguments made by Warner Brothers. Warner Brothers spokesperson Paul McGuire claims, "This is not about fighting Disney's film. We have merely filed applications to protect the trademarks we use for merchandise relating to our film, the 1939 *Wizard of Oz*."¹²²

It appears as though McGuire is telling the truth based on Warner Brothers' attitudes toward other Oz-related registrations pending. Attorney Bruce Clark is defending copyright applicants who are attempting to register the names of restaurants, wine, and other products inspired by themes from the book. He says:

*"Nearly all of Applicant's wines and labels reference characters, themes, concepts, drawings taken directly from the book, which is, published in 1899, is in the public domain and out of copyright and a very public story, not created by Opposer."*¹²³

Warner Brothers' argument against Disney and other similar appropriators are irrelevant to this argument, considering the appropriations and reedits are based entirely off of the book and not the 1939 movie. Clark further explains:

"The book issues are significant to several issues, including association and sponsorship issues relating to the mark, whether Opposer's protection is to the movie script, photos, actors (Judy Garland), or to all things Oz. It is relevant not just to issues as to source and origin, it is relevant as to intent, even to the extent

¹²² Eriq Gardner, "Disney, Warner Bros. Fighting Over 'Wizard of Oz' Trademarks (Exclusive)," *The Hollywood Reporter*. February 13, 2012. Website. Accessed April 3, 2015.

¹²³ Ibid.

or even existence to any damages Opposer claims it will suffer."¹²⁴

However, issues of ownership continue to be prevalent in the materialistic paradigm to which society now abides. Lawrence Lessig offers an alternative to this consumerist culture, which he references as "Read-Only" culture. In his book, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, Lessig offers two paradigms: one of Read-Only culture, in which we currently reside, and one of Read/Write culture, which he proposes society shift toward. Read-Only culture, by Lessig's definition, describes society's tendency to consume a work of literature, and idea, or a product, and then move on rather than building upon the ideas and promoting a unique sort of creativity. The counterpart he proposes, Read/Write culture, encourages readers to appropriate popular culture, modify it, and create something innovative, much like what Disney has done with *The Little Mermaid*, *Cinderella*, and *Frozen*.

Lessig contends that copyright policies are entirely too structured, and have effectively compromised the value of creativity that builds on already created works. As a solution to this issue, Lessig offers an alternative:

*"Let's alter the mix of rights so that people are free to build upon our culture. Free to add or mix as they see fit."*¹²⁵

Rather than rejecting the law completely and expressing free creative reign, Lessig suggests the Creative Commons as the replacement of contemporary copyright law.¹²⁶

The Creative Commons is a non-profit organization run by Lessig which offers creators

¹²⁴ Eriq Gardner, "Disney, Warner Bros. Fighting Over 'Wizard of Oz' Trademarks (Exclusive)."

¹²⁵ Ibid.

¹²⁶ Porsdam, *Copyright and other Fairy Tales*, 20.

the opportunity to apply copyright as strictly or as leniently as they desire rather than having it under the complete jurisdiction of federal copyright law, or completely in the realm of the public domain. Lessig believes that “remixing” will fuel creativity, cultural inception, and promote the symbiotic relationship between the values and morality of a culture by adapting to new standards and norms. Adaptations of creative works, such as fairy tales, are made possible by copyright law and the existence of an institutionalized public domain.

Arguing from the perspective of Lessig, the Sonny Bono Act extends copyright protection unreasonably long. By virtue of the Sonny Bono Act, in the United States, works published after January 1, 1978 owned by corporations are protected by copyright for 120 years after creation. As such, Disney’s version of *The Little Mermaid* is not due to pass into the public domain until the year 2109. Essentially, any merchandise, apparel, music, or even references to the 1989 film are protected by Disney’s copyright. As aforementioned, the term protecting Mickey Mouse from copyright infringement is approaching its end. Does this mean the end of Disney’s multi-billion dollar monopoly?

Vaidhyathan argues that “American culture and politics would function better under a system that guarantees just enough protection to encourage creativity, yet limited so that emerging artists, scholars, writers and students can enjoy a rich public domain and broad ‘fair use’ of copyrighted materials.”¹²⁷ As society continues to progress, the intent of copyright law seems to contradict itself by simultaneously violating the artistic integrity of a writer and protecting the artistic integrity of another. Moreover, it is unclear whether the negative ramifications brought about by copyright laws outweigh the positive

¹²⁷ Vaidhyathan, *Copyrights and Copywrongs*, 16.

ones, or the reverse. As a society, stories are the histories that will be left behind, what the future will reflect. Given the phenomenon of continuously remixing classic works and stifling artistic merit, it appears as though contemporary society is not leaving behind a legacy that reflects our morality, but rather leaving behind something that is restricted by copyright laws to such an extent that we are unable to express ourselves effectively.

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