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REWRITING HISTORY: COPYRIGHT, FREE SPEECH,
AND REIMAGINING CLASSIC WORKS

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ABSTRACT

On February 17, 2023, news broke that Puffin Books, a subsidiary of Penguin Random House and publisher of Roald Dahl's books, had edited at least ten of Dahl's classic children's books to "make them less offensive and more inclusive." These edits included changing words related to characters' appearances, race, gender, weight, and mental health, such as removing descriptions of children as "fat," women as "ugly," and people as "crazy," replacing phrases like "the old hag" with "the old crow," and updating "weird African language" so it was not "weird." The public backlash to the news was significant and attracted criticism from several high-profile public figures. But, despite the significant media coverage and public discussion of those announcements, little attention has been paid to any actual *legal* implications of revising classic books.

This Article offers a comprehensive examination of the copyright and free speech implications of revising classic works, including books, films, and dramatic works. Through extensive research, including primary materials and resources outside the legal literature, this Article surveys the history of revising classic children's books, films, and dramatic works to remove offensive content and make them palatable to modern audiences. It then explores three questions: Do edits to classic children's works advance social justice, or do they rewrite history? Do they censor speech, or do they promote copyright's purpose of encouraging free expression? How do these edits to classic works implicate copyright doctrines of infringement, fair use, and derivative rights? By answering these questions, this Article uncovers

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potential conflicts between copyright policy, free speech, and social policy, and reimagines copyright's role in serving the diverse interests of society.

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INTRODUCTION

ON February 17, 2023, news broke that Puffin Books, a subsidiary of Penguin Random House and publisher of Roald Dahl's books, had edited at least ten of Dahl's classic children's books to "make them less offensive and more inclusive."¹ Those edits included changing words related to characters' appearances, race, gender, weight, and mental health, such as removing descriptions of children as "fat," women as "ugly," and people as "crazy," replacing phrases like "the old hag" with "the old crow," and updating "weird African language" so it was not "weird."² The public backlash to the news was significant and attracted criticism from several high-profile public figures. Some called it "absurd censorship."³ Others labeled it "corporate safetyism."⁴ It was criticized as "cultural vandalism"⁵ and even "the woke's war against culture."⁶ Renowned authors Salman Rushdie and Philip Pullman weighed in on the debate.⁷ The U.K. Prime Minister Rishi Sunak criticized the updates as "gobblefunk[ing] around with words."⁸ Even Camilla, Queen Consort of the U.K., appeared to comment on the controversy when she urged a group of authors to "remain true to your calling" and not "curb the freedom of your expression."⁹ Shortly

1. Derrick Bryson Taylor, *Roald Dahl's Books Are Rewritten to Cut Potentially Offensive Language*, N.Y. TIMES (Feb. 20, 2023), <https://www.nytimes.com/2023/02/20/books/roald-dahl-books-changes.html> [<https://perma.cc/7RF7-CTER>]; Ed Cumming, Abigail Buchanan, Genevieve Holl-Allen & Benedict Smith, *The Rewriting of Roald Dahl*, TELEGRAPH (Feb. 24, 2023, 4:20 PM), <https://www.telegraph.co.uk/news/2023/02/17/roald-dahl-books-rewritten-offensive-matilda-witches-twits/> [<https://perma.cc/MDM5-J237>].

2. Cumming, Buchanan, Holl-Allen & Smith, *supra* note 1.

3. Salman Rushdie (@SalmanRushdie), TWITTER (Feb. 18, 2023, 5:41 PM), <https://twitter.com/SalmanRushdie/status/1627075835525210113> [<https://perma.cc/PZ4P-M7WN>].

4. Helen Lewis, *Roald Dahl Can Never Be Made Nice*, ATLANTIC (Feb. 21, 2023), <https://www.theatlantic.com/ideas/archive/2023/02/without-nastiness-roald-dahl-isnt-roald-dahl/673141/> [<https://perma.cc/UT72-ADRK>].

5. Brendan O'Neill, *The Rewriting of Roald Dahl Is an Act of Cultural Vandalism*, SPECTATOR (Feb. 19, 2023, 10:57 AM), <https://www.spectator.co.uk/article/the-rewriting-of-roald-dahl-is-an-act-of-cultural-vandalism/> [<https://perma.cc/76WY-7VM5>].

6. Sky News Australia, *'Vandalism': Roald Dahl the 'Latest Victim' of the Woke's War Against Culture*, YOUTUBE (Feb. 20, 2023), <https://www.youtube.com/watch?v=K7crIMcZ3qM> [<https://perma.cc/BJ4F-HD35>].

7. Nancy Tartaglione, *UK PM Sunak, Salman Rushdie & More Join Criticism of Changes to Roald Dahl Books*, DEADLINE (Feb. 21, 2023, 2:34 AM), <https://deadline.com/2023/02/roald-dahl-book-changes-criticism-salman-rushdie-rishi-sunak-1235266055/> [<https://perma.cc/G3NG-Z4VJ>].

8. William James, *UK PM Sunak Condemns 'Gobblefunk' Changes to Roald Dahl's Books*, REUTERS (Feb. 20, 2023, 10:25 AM), <https://www.reuters.com/lifestyle/uk-pm-sunak-condemns-gobblefunk-changes-roald-dahls-books-2023-02-20/> [perma link unavailable].

9. Jane Dalton, *Queen Consort Attacks Censorship of Authors as Roald Dahl Row Rages*, INDEPENDENT (Feb. 23, 2023, 5:49 PM), <https://www.independent.co.uk/life-style/royal-family/camilla-queen-roald-dahl-censorship-b2288196.html> [<https://perma.cc/8Q7U-Q898>].

after, the media reported that Scholastic Corporation had similarly revised R.L. Stine's popular *Goosebumps* series,¹⁰ and publishers were planning to update classic works by popular authors Agatha Christie and Ian Fleming,¹¹ causing further public uproar and scrutiny. In spite of the significant media coverage and public discussion of those announcements, little attention has been paid to any actual *legal* implications of revising classic works. This Article offers a comprehensive examination of the copyright and free speech implications of revising classic books, films, and dramatic works.

As the public becomes more aware of racial, gender, and other problematic stereotypes in classic books and films, copyright holders are scrutinizing their portfolio of works—especially children's works—for content that may offend readers and audiences. Some copyright owners have simply ceased publishing or licensing certain offensive works.¹² Dr. Seuss Enterprises announced in March 2021 that it would no longer publish or license six of Dr. Seuss's classic children's books due to racial stereotypes in those books.¹³ Other copyright owners have chosen to attach content warnings to their works. At the start of some of its classic animation films, such as *Dumbo*, *Peter Pan*, and *The Aristocats*, Disney+ includes a warning that “[t]his program includes negative depictions and/or mistreatment of people or cultures These stereotypes were wrong then and are wrong now.”¹⁴

This Article focuses on a more controversial approach that authors, copyright owners, and publishers have taken to deal with these problematic¹⁵ children's works: editing and rewriting them to remove offensive content and make them more racially and culturally inclusive. Through extensive research of primary materials, secondary sources, and other

10. Raina Raskin, ‘Goosebumps’ Author Accuses Publisher of Unsanctioned Edits to His Beloved Children’s Series, N.Y. SUN (Mar. 8, 2023, 5:20 PM), <https://www.nysun.com/article/goosebumps-author-accuses-publisher-of-unsanctioned-edits-to-his-beloved-childrens-series> [<https://perma.cc/S58V-LP5P>].

11. Rachel Hall, *Agatha Christie Novels Reworked to Remove Potentially Offensive Language*, GUARDIAN (Mar. 26, 2023, 9:36 AM), <https://www.theguardian.com/books/2023/mar/26/agatha-christie-novels-reworked-to-remove-potentially-offensive-language> [<https://perma.cc/V6YP-976E>].

12. For an examination of the copyright law and policy issues of copyright owners ceasing to publish classic works, see Cathay Y. N. Smith, *©cancelling Dr. Seuss*, 26 VAND. J. ENT. & TECH. L. 73 (2023).

13. *Statement from Dr. Seuss Enterprises*, DR. SEUSS ENTS. (Mar. 2, 2021), <https://www.seussville.com/statement-from-dr-seuss-enterprises/> [<https://perma.cc/M7BG-FCQS>].

14. Reese Oxner, *Disney Warns Viewers of Racism in Some Classic Movies with Strengthened Label*, NPR (Oct. 16, 2020, 2:52 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/10/16/924540535/Disney-warns-viewers-of-racism-in-some-classic-movies-with-strengthened-label> [<https://perma.cc/EDR8-QJ87>]. See generally *Stories Matter*, WALT DISNEY CO., <https://storiesmatter.thewaltdisneycompany.com/> [<https://perma.cc/L8LW-TQQ3>] (last visited May 21, 2024).

15. This Article uses the term “problematic” to broadly describe works that include racial and gender stereotypes and other potentially offensive, hurtful, or socially and culturally insensitive content.

resources outside of the legal literature, this Article surveys the history of revising classic children's books, films, and dramatic works, and examines the copyright and free speech implications of those actions. It addresses three questions: Do edits to classic children's works advance social justice or do they rewrite history? Do they censor speech or do they promote copyright's purpose of encouraging free expression? How do edits to classic children's works implicate copyright doctrines of infringement, moral rights, fair use, and derivative rights?

This Article proceeds as follows: Part I surveys revisions that authors, copyright owners, and publishers have made to remove problematic content in classic children's literature, films, and dramatic works. While efforts to sanitize classic works seem to have increased over the past few years with more publishers employing sensitivity readers to spot problematic content, there is a decades-long history of editing children's books and films to make them more palatable to modern audiences. Part II explains why revising classic works is controversial and examines whether edits to classic children's works advance social justice by removing offensive content from books and films, or whether they serve as attempts to rewrite history and whitewash the cultural records of authors. Part III explores copyright implications when authors, copyright owners, and publishers update and edit-out problematic content from classic works, including when and whether those actions might be copyright infringement or fair use, create copyrightable derivative works, or violate integrity rights. Finally, Part IV addresses accusations that editing classic works to remove racism, sexism, and other offensive content is "censorship" or cultural vandalism. Ultimately, this Article uncovers potential conflicts between copyright policy, free speech, and social policy, and reimagines copyright's role in serving the diverse interests of society.

I. BRIEF HISTORY OF EDITING CLASSIC WORKS

Today, most people are aware that racial and gender stereotypes can appear in popular works of literature, films, and other expressive works. In an opinion for the U.S. Court of Appeals for the Ninth Circuit, Judge Reinhardt acknowledged that,

[i]t is now uncontroversial to observe that some of the most lauded works of literature convey, explicitly or in a more subtle manner, messages of racism and sexism, or other ideas that if accepted blindly would serve to maintain or promote the invidious inequalities that exist in our world today.¹⁶

These messages can also appear in classic children's works. In fact, some children's literature experts have noted that children's culture has a "special ability to preserve (even as it distorts) and transmit (even as it

16. *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1031 (9th Cir. 1998).

fragments) the blackface mask and styles of movement” in some of the most famous classic children’s characters.¹⁷

But what should be done with these works? On the one hand, they are “classics” that have delighted generations of readers and audiences, and inspired future derivative works of art and creativity. To completely trash them would be throwing away a piece of historical record and wasting a valuable cultural resource. On the other hand, classic works that include racial, gender, and other problematic stereotypes are no longer tolerated by modern readers and audiences, and have significantly decreased popularity and appeal. To compromise, some authors, copyright owners, and publishers have chosen to edit those works. Some of those edits are minor—omitting a few words or sentences from a book or cutting a scene or song from a film. Other edits are more substantial, including replacing a plot line in a classic story, rechoreographing a dance in a classic ballet, or entirely rewriting a story. This Part surveys popular classic children’s works and the ways that they have been modernized to remove problematic content.

A. *Literature*

Books play a crucial role in shaping children’s understanding about race, culture, gender, and class.¹⁸ “[C]hildren’s books offer a window into society’ and are encoded with racialized, gendered, and classed meanings, shaped by larger sociopolitical structures that exist within our world.”¹⁹ Yet, historically, there has been “almost a complete omission” of people of color from children’s books published in the United States.²⁰ While in recent years there has been an increase in books published about or by people of color,²¹ most of those books are too new to be labeled as “classics.”²² Books that are often considered “classics” tend to be older books that have “been around for many decades, that have had an impact on many generations of readers.”²³ This also means that they tend not to feature characters of color or, when they do, they are more likely to rely on racial and gender stereotypes to portray those characters.²⁴

17. ROBIN BERNSTEIN, *RACIAL INNOCENCE: PERFORMING AMERICAN CHILDHOOD FROM SLAVERY TO CIVIL RIGHTS* 19 (2011).

18. Lindsay Pérez Huber, Lorena Camargo Gonzalez & Daniel G. Solórzano, *Theorizing a Critical Race Content Analysis for Children’s Literature About People of Color*, 58 URB. EDUC. 1, 3 (2020).

19. *Id.* (quoting MARIA JOSÉ BOTELHO & MASHA KABAKOW RUDMAN, *CRITICAL MULTICULTURAL ANALYSIS OF CHILDREN’S LITERATURE: MIRRORS, WINDOWS, AND DOORS* 17 (2009)).

20. *Id.* at 2 (quoting Nancy Larrick, *The All White World of Children’s Books*, *SUNDAY REV.*, Sept. 11, 1965, at 63).

21. *Id.* at 3.

22. See Rose Clark, *What Makes a Book a Classic?*, *GUARDIAN* (Apr. 17, 2012), <https://www.theguardian.com/childrens-books-site/2012/apr/17/what-makes-a-classic> [<https://perma.cc/WWC4-EPHY>].

23. *Id.*

24. See Huber, Gonzalez & Solórzano, *supra* note 18, at 2.

For instance, Dr. Seuss's first children's book published in 1937, *And to Think That I Saw It on Mulberry Street*, featured a boy named Marco imagining what he saw walking home from school on Mulberry Street. Marco saw an Asian man which Dr. Seuss portrayed in the book as holding chopsticks and a bowl of rice, wearing a robe, triangular hat, and sandals with elevated wood-base (resembling traditional Japanese "geta" footwear). In the original edition of the book, the man appeared with bright yellow skin, exaggerated slanted eyes, and a long black "cue" braid.²⁵ The original text under this image read, "[a] Chinaman [w]ho eats with sticks."²⁶ In response to criticism, Dr. Seuss revised the book's 1978 edition to remove the character's bright yellow skin color and braid, and edited the text to read "[a] Chinese man [w]ho eats with sticks."²⁷ In 2021, Dr. Seuss Enterprises announced that it would no longer publish this book along with five other children's titles, because they "portray people in ways that are hurtful and wrong."²⁸

Long before the controversies over recent edits to Roald Dahl's books, Dahl himself made edits to his popular 1964 *Charlie and the Chocolate Factory*. In *Charlie*, Charlie Bucket, an underprivileged boy, finds a Golden Ticket in a chocolate bar that allowed him and his grandfather, along with four other lucky children and their parents, to tour Willy Wonka's exclusive chocolate factory.²⁹ During the tour of the chocolate factory, the children met the Oompa-Loompas who helped Wonka run the factory.³⁰ In the original 1964 version of the book, the Oompa-Loompas were described as African pygmies that Wonka found "in the very deepest and darkest part of the African jungle where no white man had ever been before,"³¹ and smuggled to England in large packing cases to work for him in the chocolate factory.³²

When it was announced in 1971 that *Charlie* would be turned into a movie, the NAACP objected to the depiction of the Oompa-Loompas as "clearly . . . reinforc[ing] a stereotype of slavery that American blacks

25. Katie Ishizuka & Ramón Stephens, *The Cat Is Out of the Bag: Orientalism, Anti-Blackness, and White Supremacy in Dr. Seuss's Children's Books*, 1 *RSCH. ON DIVERSITY YOUTH LITERATURE* 1, 15 (2019). See generally DR. SEUSS, *AND TO THINK THAT I SAW IT ON MULBERRY STREET* (1937).

26. DR. SEUSS, *supra* note 25, at 26; Ishizuka & Stephens, *supra* note 25, at 15.

27. DR. SEUSS, *AND TO THINK THAT I SAW IT ON MULBERRY STREET* 26 (rev. ed. 1978); Ishizuka & Stephens, *supra* note 25, at 15; Rebecca Onion, *How Dr. Seuss Responded to Critics Who Called Out His Racism*, *SLATE* (Mar. 3, 2021, 6:06 PM), <https://slate.com/culture/2021/03/dr-seuss-racist-books-mulberry-street-interview.html> [<https://perma.cc/W6Y4-RWTN>] (interviewing Philip Nel).

28. *Statement from Dr. Seuss Enterprises*, *supra* note 13.

29. See generally ROALD DAHL, *CHARLIE AND THE CHOCOLATE FACTORY* (1964).

30. *Id.* at 60.

31. *Id.* at 61; Livia Gershon, *Roald Dahl's Anti-Black Racism*, *JSTOR DAILY* (Dec. 10, 2020), <https://daily.jstor.org/roald-dahls-anti-black-racism/> [<https://perma.cc/6FYN-CLHE>].

32. DAHL, *supra* note 29, at 62; Gershon, *supra* note 31; Chryl Corbin, *Deconstructing Willy Wonka's Chocolate Factory: Race, Labor, and the Changing Depictions of the Oompa-Loompas*, 19 *BERKELEY MCNAIR RSCH. J.* 47, 53 (2012).

were trying to overcome.”³³ Others described the Oompa-Loompas in the original version of the book as “wildly colonialist stereotyping”³⁴ that took on “the characteristic of the Trans Atlantic Slave Trade.”³⁵ In response to the criticism, for the screenplay for the 1971 movie, Dahl changed the Oompa-Loompas so they were no longer African pygmies but instead depicted them with orange skin and straight green hair.³⁶ Dahl also revised the Oompa-Loompas in the 1973 edition of the book to resemble “dwarfish hippies” instead of African pygmies.³⁷ In February 2023, thirty-two years after Dahl’s death, Puffin Books announced that it had further updated *Charlie and the Chocolate Factory* and nine other of Dahl’s books to make them more culturally inclusive. The immediate furor over that announcement, including from public figures in the United Kingdom, prompted Puffin to reconsider its decision and to announce that it would continue to publish both versions of those books.³⁸

Richard Scarry also updated his popular book, *Richard Scarry’s Best Word Book Ever*, to better reflect changing gender and cultural norms.³⁹ *Scarry’s Word Book* was first published in 1963 and included 1400 illustrated images labeled by Scarry to teach children common English words.⁴⁰ The words in the book ranged from items like sink, kitchen, lawn, paddle, and canoe, to careers such as teacher, soldier, dentist, and reporter. The *Word Book* was extremely popular and sold millions of copies.⁴¹ Around 1980, Scarry had begun to replace and add illustrations for some of the words in his book. Some of these changes included re-illustrating scenes, such as when Scarry recreated the cover of the *Word Book* to include father bunny in the kitchen making food with mother bunny. Scarry also changed words like “policeman” to “police officer,” added a skirt to the image of the officer, and changed the image of a mother figure pushing a

33. DONALD STURROCK, *STORYTELLER: THE AUTHORIZED BIOGRAPHY OF ROALD DAHL* 493 (2010).

34. Gershon, *supra* note 31.

35. Corbin, *supra* note 32, at 53.

36. Ty Burr, *The Seuss Controversy Isn’t ‘Cancel Culture.’ It’s About Recognizing Changing Attitudes*, BOS. GLOBE (Mar. 3, 2021, 3:26 PM), <https://www.bostonglobe.com/2021/03/03/arts/dr-is-still/> [perma link unavailable]; Corbin, *supra* note 32, at 55.

37. Burr, *supra* note 36; *see also* Corbin, *supra* note 32, at 56; Gershon, *supra* note 31.

38. Arjun Neil Alim, *Puffin to Publish Original Versions of Roald Dahl Books After Censorship Spat*, FIN. TIMES (Feb. 24, 2023), <https://www.ft.com/content/fb4c7ca3-965a-4f75-8d7f-4bb46186a838> [https://perma.cc/DB8R-DY8U].

39. Laura Willard, *8 Changes That Were Made to a Classic Richard Scarry Book to Keep Up with the Times*, UPWORTHY (Mar. 7, 2024), <https://www.upworthy.com/8-changes-that-were-made-to-a-classic-richard-scarry-book-to-keep-up-with-the-times-progress> [https://perma.cc/2GXH-4QD6].

40. *See generally* RICHARD SCARRY, *BEST WORD BOOK EVER* (1963).

41. M.A. Jackson, *Richard Scarry’s Busytown*, CARNEGIE MAG. (2002), <https://carnegiemuseums.org/magazine-archive/2002/mayjun/csc1.htm> [https://perma.cc/5V5A-3HNM].

baby carriage to a father figure pushing the carriage.⁴² Smaller edits also appeared throughout the book, including text changes from “pretty stewardess” to “flight attendant,” “baggage man” to “baggage handler,” and “handsome pilot” to “pilot.”⁴³ He rewrote descriptions in the *Word Book*, such as Kenny Bear who used to “come[] promptly when he is called to breakfast,” now “goes to the kitchen to eat his breakfast,” and swapped out some of the gendered careers (e.g., teacher, dental hygienist, police officer) and children’s activities.⁴⁴ In addition to making updates to reflect changing gender norms, Scarry made edits to his book to reflect growing social and cultural awareness. For instance, he added an image of a menorah to the page that depicted holidays.⁴⁵ He also removed the stereotypical Native American outfits and feather headdresses that some of the characters wore in the book.⁴⁶

The edits described above were all made by the authors themselves, which may appear less controversial. It is common for authors to assert editorial control over their works, and copyright generally grants them that right. However, if an author is no longer alive or no longer owns the copyright to their own books, changes to children’s books can be undertaken by the author’s heirs, copyright owners, or publishers of classic children’s books. This practice can appear more controversial, given that it has the potential to rupture the artistic integrity of the work and disrupt the meaning and original intent of the author.

For instance, in 1988, Hugh Lofting’s son Christopher authorized and published a new and updated edition of *The Story of Doctor Dolittle*. Hugh Lofting’s 1920 *Doctor Dolittle* has been referred to as a “classic”⁴⁷ and “a work of genius.”⁴⁸ It is the first book in Hugh Lofting’s popular *Doctor Dolittle* children’s series about an English doctor who spoke to animals and preferred them to human patients.⁴⁹ In one chapter of *Doctor Dolittle*, Dolittle and his crew ended up captured in the Kingdom of Jolliginki in Africa where they escaped the King and Queen of Jolliginki and their son, Prince Bumpo, by fooling them.⁵⁰ Lofting’s treatment of

42. RICHARD SCARRY, *BEST WORD BOOK EVER* 42 (rev. ed. 1980); Sophie Verass, *Iconic Richard Scarry Books Now Reflect Contemporary Social Values*, SBS (June 27, 2016, 1:34 PM), <https://web.archive.org/web/20210305035210/https://www.sbs.com.au/topics/voices/family/article/2016/06/27/iconic-richard-scarry-books-now-reflect-contemporary-social-values> [perma link unavailable].

43. SCARRY, *supra* note 42, at 18–19.

44. *Id.* at 6, 42; Verass, *supra* note 42.

45. SCARRY, *supra* note 42, at 37; Verass, *supra* note 42.

46. SCARRY, *supra* note 42, at 2; Verass, *supra* note 42; *see also* Debbie Reese, *Richard Scarry’s Indians*, AM. INDIANS CHILD.’S LITERATURE (Mar. 7, 2009), <https://american-indiansinchildrensliterature.blogspot.com/2009/03/richard-scarrys-indians.html> [https://perma.cc/QTM7-5EUB].

47. *See, e.g.*, Dewey W. Chambers, *How Now, Dr. Dolittle?*, 45 *ELEMENTARY ENG.* 437, 439 (1968).

48. Hugh Walpole, *Introduction to the Tenth Printing to HUGH LOFTING, THE STORY OF DOCTOR DOLITTLE* (Red Fox ed. 1991) (1920).

49. *See generally* HUGH LOFTING, *THE STORY OF DOCTOR DOOLITTLE* (1920).

50. *Id.* at 90–110.

the King and Queen has been described as “sheer burlesque” without any character development except for making them appear “pompous, stupid, and really on the whole laughably inadequate.”⁵¹ The book’s description of Prince Bumpo has been described as “one of the cruelest stereotypes in the realm of children’s literature.”⁵² In the book, Prince Bumpo is illustrated as a “fat, thick lipped, loin cloth wearing . . . most unattractive fellow.”⁵³ He was a dreamer who loved European fairytales, and in chapters eleven and twelve of the book, Prince Bumpo described a dream where he found Sleeping Beauty and kissed her awake, only to have her wake up in shock and yell, “Oh, he’s black,” and run away.⁵⁴ He asked Dolittle to bleach his skin and make him a “white prince.”⁵⁵ In response, Dolittle concocted a cream that would cover Prince Bumpo’s face to fool him into thinking he had become white so that he would help Dolittle and his crew escape.⁵⁶

In 1988, Hugh Lofting’s son Christopher authorized changes to *Doctor Dolittle*. Those changes included removing the offensive illustrations of Prince Bumpo and his parents and rewriting the plot of chapters eleven and twelve. In the edited story, Dolittle and his crew escape through an act of hypnotism instead of exploiting Prince Bumpo’s wish to become white.⁵⁷ Christopher Lofting explained his considerations when deciding to edit his father’s books:

Publishers rightfully believe that it is their job to publish a writer’s work, not to act as censors. Because the author is no longer living, it was impossible to obtain his permission to make changes. The *Doctor Dolittle* stories are, moreover, classics of children’s literature, and on principle one can make a strong argument that one should not tamper with the classics.

Yet times have changed. Is it appropriate to reissue the *Doctor Dolittle* books exactly as written and stand on principle at the expense of our obligation to respect the feelings of others? Should future generations of children be denied the opportunity to read the *Doctor Dolittle* stories because of a few minor references in one or two of the books that were never intended by the author to comment on any ethnic group, particularly when the references are not an integral or important part of the story?

51. Chambers, *supra* note 47, at 437.

52. *Id.* at 438.

53. *Id.*

54. LOFTING, *supra* note 49, at 101.

55. *Id.*

56. *Id.* at 101–02; *see also* Chambers, *supra* note 47, at 438.

57. HUGH LOFTING, *THE STORY OF DOCTOR DOOLITTLE* 100–10 (Centenary ed. 1988) (1920).

... These were the difficulties we faced when trying to decide ... whether or not it was appropriate to make changes in the original versions.⁵⁸

The *Nancy Drew Mystery Series* was a popular series of short novels about a “girl detective” who solved mysteries in the fictional community of River Heights.⁵⁹ Since the series was first published beginning in 1930, more than 200 million *Nancy Drew* books have been sold in the United States.⁶⁰ Sometimes described as a “feminist icon,” *Nancy Drew* inspired many young girls because of her “independent, smart, and confident” manner and her efforts to “step outside [of] traditional gender roles.”⁶¹ At the same time, however, the earlier books in the series frequently portrayed characters using racial and ethnic stereotypes.⁶² The criminals in the first books, for instance, were frequently described as “darker-complexioned and lower class.”⁶³ In the very first book of the series, *The Secret of the Old Clock*, Black caretaker Jeff Tucker was portrayed as an unintelligent, lying drunk who spoke in “[d]ouble negatives, slang, and slurred or dropped endings.”⁶⁴ Racial profiling also played a part in *Nancy Drew*’s success at solving mysteries. For instance, in *The Mystery at Lilac Inn*, Nancy solved the mystery by noticing a “dark-complexioned” girl in a high-end store, thinking that “[s]urely, a girl in her circumstances can’t afford to buy dresses at such a place as this.”⁶⁵ Similar racist stereotypes pervaded the first books of the popular series until they were revised and republished

58. Christopher Lofting, *Afterword* to THE STORY OF DOCTOR DOLITTLE, *supra* note 57, at 151, 152–53.

59. Marjorie Ingall, *Nancy Drew and the Case of the Politically Incorrect Children’s Books*, TABLET MAG. (Dec. 17, 2013), <https://www.tabletmag.com/sections/community/articles/nancy-drew> [<https://perma.cc/BN9B-ZNLR>].

60. *Id.*

61. Elizabeth J. Farren, *Nancy Drew: A Feminist Icon or a Problematic Figure of the Patriarchy and White Privilege*, 3 WRIT: J. FIRST-YEAR WRITING 1, 1 (2020).

62. *Id.* at 5. The “boy detective” equivalent series, *Hardy Boys*, faced similar issues and have also been revised over the years. See Brandon Tensley, *The Knotty Nostalgia of the Hardy Boys Series*, ATLANTIC (Jan. 27, 2019), <https://www.theatlantic.com/entertainment/archive/2019/01/reading-hardy-boys-nostalgia-disappointment-racism/581071/> [<https://perma.cc/3UGE-2MUB>].

63. Ingall, *supra* note 59.

64. James P. Jones, *Negro Stereotypes in Children’s Literature: The Case of Nancy Drew*, 40 J. NEGRO EDUC. 121, 123–24 (1971); see also Andrea Ruggirello, *The Not-So-Hidden Racism of Nancy Drew*, ELEC. LITERATURE (Sept. 6, 2018), <https://electricliterature.com/the-not-so-hidden-racism-of-nancy-drew/> [<https://perma.cc/8H4Y-MR5X>]; Farren, *supra* note 61, at 5 (sharing an example of Tucker’s dialect from the original version of the story: “I was just all fed up bein’ a caih-taker. It ain’t such an excitin’ life, Miss, and while I’s done sowed all my wild oats, I still sows a little rye now an then.” (quoting Donnarae MacCann, *Nancy Drew and the Myth of White Supremacy*, in REDISCOVERING NANCY DREW 129, 133 (Carolyn Stewart Dyer & Nancy Tillman Romalov eds., 1995))).

65. CAROLYN KEENE, THE MYSTERY AT LILAC INN 18, 77 (1930); Kelly Robinson, *Dr Seuss ‘Cancelled’? There’s Nothing New About Cutting Racism from Children’s Books*, GUARDIAN (Mar. 9, 2021), <https://www.theguardian.com/books/2021/mar/09/dr-seuss-cancelled-theres-nothing-new-about-cutting-racism-from-childrens-books> [<https://perma.cc/3UGE-2MUB>].

by Grosset & Dunlap beginning in 1959.⁶⁶ In the revised versions, Jeff Tucker and other similar characters were rewritten as white characters, and the revised series generally “excluded all people of color from the novel, favoring whitewashing.”⁶⁷ As one commenter described the edited versions: “River Heights became less overtly racist but also more white.”⁶⁸

A survey of racially controversial children’s literature would not be complete without mentioning one of the more analyzed and litigated books, Mark Twain’s *Adventures of Huckleberry Finn*. Even though *Huckleberry Finn* has been in the public domain for decades, it has been referred to by some as “sacrosanct intellectual property.”⁶⁹ *Huckleberry Finn*, written by Samuel Clemens (under the penname Mark Twain) and first published in 1884, detailed the story of the titular character Huck Finn and fugitive-from-slavery Jim, and their adventures that took place in the 1830s or 40s as they escaped their personal predicaments rafting down the Mississippi River.⁷⁰ Recent criticisms of the book have focused on the use of “the most noxious racial epithet in the contemporary American lexicon” over 200 times throughout the book, the plot’s treatment of Jim, its Black character, including its portrayal of Jim through the use of blackface minstrelsy.⁷¹

The controversy surrounding *Huckleberry Finn* pervades even the legal sphere.⁷² For instance, in 1998, a parent sued the Temple Union High School District in Arizona for violating her daughter’s rights under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 when the school district required her Black daughter’s freshman English class to read *Huckleberry Finn*.⁷³ In the parent’s complaint, she alleged that her daughter and other Black students “suffered psychological injuries and lost educational opportunities due to the required reading of the [book]” and that such assignment “‘created and contributed to a racially hostile educational environment,’ including increased racial harassment by other students.”⁷⁴ While the Ninth Circuit dismissed the parent’s complaint on First Amendment

66. Ruggirello, *supra* note 64.

67. Farren, *supra* note 61, at 5; Ruggirello, *supra* note 64.

68. Ruggirello, *supra* note 64.

69. Michiko Kakutani, *Light Out, Huck, They Still Want to Sivilize You*, N.Y. TIMES (Jan. 6, 2011), <https://www.nytimes.com/2011/01/07/books/07huck.html> [<https://perma.cc/XL7S-PFQW>].

70. See generally MARK TWAIN, *ADVENTURES OF HUCKLEBERRY FINN* (1885).

71. *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998); MATTHEW FELLION & KATHERINE INGLIS, *CENSORED: A LITERARY HISTORY OF SUBVERSION & CONTROL* 120 (2017).

72. See, e.g., Peaches Henry, *The Struggle for Tolerance: Race and Censorship in Huckleberry Finn, in SATIRE OR EVASION? BLACK PERSPECTIVES ON HUCKLEBERRY FINN* 25, 26–27 (James S. Leonard, Thomas A. Tenney & Thadious M. Davis eds., 1992).

73. *Monteiro*, 158 F.3d at 1023.

74. *Id.* at 1024. Monteiro was not seeking the removal of *Huckleberry Finn* from the school library, voluntary reading lists, or from classroom discussions where Black students “[are] not held as a captive student audience.” *Id.* (alteration in original) (emphasis omitted).

grounds,⁷⁵ it did not dismiss the negative impact of racial slurs and racist stereotypes on children's development. Specifically, the court recognized that, "words can hurt, particularly in the case of children, and that words of a racist nature can hurt especially severely."⁷⁶ The court added, "the younger a person is, the more likely it is that those messages [of racism and sexism] will help form that person's thinking."⁷⁷

Owing in part to the novel's enduring popularity, but also in recognition of its controversial content, a number of publishers have published expurgated editions of *Huckleberry Finn*.⁷⁸ For instance, even as early as 1931, Twain's publisher, Harper and Brothers, produced an edited edition of *Huckleberry Finn* for use in junior high schools.⁷⁹ In 1963, the Philadelphia Board of Education replaced the original version of *Huckleberry Finn* with one that "tone[d] down the violence, simplifie[d] the Southern dialect, and delete[d] all derogatory references to Negroes."⁸⁰ In 1984, John Wallace, a vocal critic of *Huckleberry Finn*, "authored" and published an adapted version of the book.⁸¹ More recently, in 2011, NewSouth Publishing published an edited version of *Huckleberry Finn*, eliminating the 228 racial epithets by changing them to "slave," removing the word "Injun," and changing "half-breed" to "half-blood."⁸² The purpose of this edited version, according to its publisher, was to give the book "a wider readership than they can currently enjoy" rather than limit access to the originals.⁸³

75. *Id.* at 1029 (finding that "a student's First Amendment rights are infringed when books that have been determined by the school district to have legitimate educational value are removed from a mandatory reading list because of threats . . . and [such action would] significantly interfere with the [School] District's discretion to determine the composition of its curriculum").

76. *Id.* at 1027.

77. *Id.* at 1031. The court also acknowledged that "we have all too often failed to afford our African-American citizens the equal treatment that the Fourteenth Amendment requires, particularly in the area of public education." *Id.*

78. See FELLION & INGLIS, *supra* note 71, at 123. In addition to expurgated versions of *Huckleberry Finn*, Percival Everett recently published a retelling of the book from the point of view of Jim, Huck's enslaved companion, and made Jim the narrator. Carole V. Bell, *James' Revisits Huck Finn's Traveling Companion, Giving Rise to a New Classic*, NPR (Mar. 18, 2014), <https://www.npr.org/2024/03/18/1238251709/percival-everett-james-reimagines-jim-in-mark-twain-huckleberry-finn> [https://perma.cc/X477-XUJD].

79. JONATHAN ARAC, *HUCKLEBERRY FINN AS IDOL AND TARGET: THE FUNCTIONS OF CRITICISM IN OUR TIME* 64 (1997).

80. Henry, *supra* note 72, at 26 (alterations in original) (quoting *Schools in Philadelphia Edit 'Huckleberry Finn'*, N.Y. TIMES, Apr. 17, 1963, at 44).

81. *Id.* at 27 (citing JOHN WALLACE, *THE ADVENTURES OF HUCKLEBERRY FINN ADAPTED* (Chicago: Wallace ed., 1984)). Wallace called *Huckleberry Finn* "racist trash," and appeared on ABC's Nightline and CNN's Freeman Reports to explain how the legitimization of racist slurs in public schools can embarrass and humiliate Black children. *Id.*

82. FELLION & INGLIS, *supra* note 71, at 123.

83. *Id.* (quoting Alan Gribben, *Editor's Introduction: Reuniting Two Companion Books*, in *ADVENTURES OF TOM SAWYER AND HUCKLEBERRY FINN* 7, 9 (Alan Gribben ed., NewSouth ed. 2011)).

Finally, one classic children's book has been described as "racist beyond repair": Helen Bannerman's 1899 *The Story of Little Black Sambo*.⁸⁴ In the original story of *Little Black Sambo*, a young boy lived with his parents, Black Jumbo and Black Mumbo.⁸⁵ While out walking in the jungle, Sambo encountered four hungry tigers. To save himself from being eaten, Sambo gave them his new clothing—a beautiful red coat, blue trousers, green umbrella, and purple, crimson shoes. The book has faced intense criticism over its offensive illustrations⁸⁶ and demeaning names of its main characters.⁸⁷ In Bannerman's original illustrations, for instance, Sambo and his mother are both portrayed in racially stereotypical ways. Sambo appears as "a crudely drawn golliwog: very dark skin, wild curly hair, red lips, and bright and colorful clothing."⁸⁸ Mumbo is illustrated with very dark skin, thick red lips, bright white teeth, with a heavier set frame and kerchief on her head, evoking the stereotypical Black "[m]ammy caricature."⁸⁹ *Little Black Sambo* has appeared in over 400 new editions and is considered one of the most adapted children's books of all time.⁹⁰ Early adaptations of the book continued to depict Sambo in ways that perpetuated racial stereotypes.⁹¹ In those earlier adaptations, it appeared that some reinforced the racist illustrations of Sambo and his mother.⁹² In other adaptations, illustrators appeared to create "'Indian-ized' versions [that gave] the characters stereotypical (and

84. Linton Weeks, *Taking a Tiger by the Tail: Little Black Sambo Loses Racist Elements in Two Retellings*, WASH. POST (Sept. 17, 1996, 1:00 AM), <https://www.washingtonpost.com/archive/lifestyle/1996/09/17/taking-a-tiger-by-the-tale-little-black-sambo-loses-racist-elements-in-two-retellings/3793375b-797e-422e-80cb-dbbc1e9cae72/> [<https://perma.cc/Z7D8-DN8K>]; Duane Noriyuki, *New Takes on an Old Story*, L.A. TIMES (Sept. 8, 1996, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1996-09-08-la-41654-story.html> [<https://perma.cc/754U-R7MR>].

85. See generally HELEN BANNERMAN, *THE STORY OF LITTLE BLACK SAMBO* 3–4 (1899).

86. Robin Bernstein described the illustration of Sambo as "pickaninny," which she characterizes as "an imagined, subhuman black juvenile who was typically depicted outdoors, merrily accepting (or even inviting) violence." See Dashini Jeyathurai, *The Complicated Racial Politics of Little Black Sambo*, S. ASIAN AM. DIGIT. ARCHIVE (Apr. 4, 2012) (quoting BERNSTEIN, *supra* note 17, at 34), <https://www.saada.org/tides/article/little-black-sambo> [<https://perma.cc/4Y27-CYBA>].

87. Weeks, *supra* note 84.

88. *Little Black Sambo and the JCM – January 2008*, JIM CROWE MUSEUM, <https://jimcrowmuseum.ferris.edu/question/2008/january.htm> [<https://perma.cc/KM5D-V7MQ>] (last visited Apr. 29, 2024); see also BANNERMAN, *supra* note 85, at 8, 14.

89. See *Little Black Sambo and the JCM – January 2008*, *supra* note 88; see also David Pilgrim, *The Mammy Caricature*, JIM CROWE MUSEUM, <https://www.ferris.edu/HTMLS/news/jimcrow/mammies/homepage.htm> [<https://perma.cc/Z44S-KBQF>] (last visited Apr. 29, 2024); BANNERMAN, *supra* note 85, at 8, 52.

90. Brandon Murakami & Brianna Anderson, *Mgambo, Sam, and the Tigers: Restoring Little Black Sambo Adaptions of the 1990s*, 54 CHILD.'S LITERATURE EDUC. 500, 501 (2022).

91. See, e.g., HELEN BANNERMAN, *THE STORY OF LITTLE BLACK SAMBO* (rev. ed. 1922) (illustrated by Florence White Williams); Murakami & Anderson, *supra* note 90, at 501.

92. *Little Black Sambo and the JCM – January 2008*, *supra* note 88 (describing some of the adaptations of the book); BANNERMAN, *supra* note 91.

often non-sensical) Orientalized names and portray[ed] them wearing turbans and saris, ignoring India's caste system and different religions."⁹³

But in the 1990s, *Little Black Sambo* inspired retellings that attempted to remove the racial stereotypes in the original work. In 1996, Dial Press published Julius Lester and Jerry Pinkney's book, *Sam and the Tigers: A New Telling of Little Black Sambo*.⁹⁴ The *New Telling* has been described as a "lively Southern black voice" to retell the story of Sam, a "savvy, comically streetwise hero," who lived in Sam-sam-sa-mara and outwitted hungry tigers.⁹⁵ It changed the names of the characters, the language used in the story, and the illustrations in order to "offer[] readers a distinctively African-American hero."⁹⁶ Finally, in 1991, Fred Crump wrote and published *Mgambo and the Tigers*, a retold story featuring Mgambo Makoko, a young boy who was sent to the village to purchase butter for his birthday dinner, but ended up outwitting hungry tigers when he took a shortcut through the forbidden forest.⁹⁷ *Mgambo* was described as an "emancipatory retelling" of Bannerman's *Little Black Sambo* that "blend[ed] a romanticized, though not stereotyped, African setting with signifiers of American boyhood" and portrayed its "Black characters as a relatable, loving family, a refreshing change from earlier versions that frequently depict them as dehumanized racial caricatures."⁹⁸

B. *Film*

Like children's books, classic children's films and cartoons have been accused of including racially offensive content. "Cartoons have always played to our most unfiltered, primal selves. 'We're prone to cartoon stereotyping because that's how we think, how we hold images in our heads' 'It's preliterate thinking.'⁹⁹ Researchers understand that children form their self-images and gather cultural information about others and group membership through visual images in picture books, magazines, television, and films.¹⁰⁰ Those images, "and the relative value

93. Murakami & Anderson, *supra* note 90, at 501.

94. JULIUS LESTER, *SAM AND THE TIGERS: A NEW TELLING OF LITTLE BLACK SAMBO* (1996); Weeks, *supra* note 84.

95. *Sam and the Tigers: A New Telling of Little Black Sambo*, PUBLISHERS WKLY., <https://www.publishersweekly.com/978-0-8037-2028-2> [<https://perma.cc/Y9N4-W64T>] (last visited Apr. 29, 2024).

96. Murakami & Anderson, *supra* note 90, at 503 (quoting MICHELLE H. MARTIN, *BROWN GOLD: MILESTONES OF AFRICAN AMERICAN CHILDREN'S PICTURE BOOKS, 1845-2002*, at 16 (2004)).

97. FRED CRUMP, *MGAMBO AND THE TIGERS* (1991); Murakami & Anderson, *supra* note 90, at 509.

98. Murakami & Anderson, *supra* note 90, at 510.

99. John Leland, *Ideas & Trends; Rascal or Racist? Censoring a Rabbit*, N.Y. TIMES (June 3, 2001), <https://www.nytimes.com/2001/06/03/weekinreview/ideas-trends-rascal-or-racist-censoring-a-rabbit.html> [<https://perma.cc/9KA5-473T>] (quoting comic artist Art Spiegelman).

100. Dorothy L. Hurley, *Seeing White: Children of Color and the Disney Fairy Tale Princess*, 74 J. NEGRO EDUC. 221, 221-22 (2005).

of group membership associated with the images are then translated into beliefs children hold about status in particular group membership, in relation to notions of good, bad, pretty, and ugly as reflected in the films."¹⁰¹ Children's films, as such, "hold[] an enormous stake in the cultural capital of the nation—our children."¹⁰²

Disney Enterprises is one "global[] dominant producer of" children's films and their attendant "cultural constructs related to gender, race, ethnicity, class and sexuality."¹⁰³ One of Disney's early "masterpiece[s]" was its 1940 animated musical-anthology, *Fantasia*.¹⁰⁴ *Fantasia* featured eight animated segments set to famous works of classical music.¹⁰⁵ The segment set to Beethoven's *Pastoral Symphony* featured animated, mythological creatures such as centaurs (and their "delicate female version . . . 'centaurettes'"), cupids, fauns, and the gods Bacchus and Zeus.¹⁰⁶ In the story, the centaurettes get dressed up to meet with a group of male centaurs in preparation for a celebration with Bacchus.¹⁰⁷ In a handful of scenes in the original film, a subservient Black centaurette, Sunflower, helped a white centaurette prepare for the celebration by polishing her nails, brushing her hair, and placing flowers in her mane.¹⁰⁸ In addition to being portrayed in a subservient role, Sunflower's character was illustrated in a "pickaninny" style "stereotypical caricature of an African American female child of the time," with thick lips, gold hoop earrings, and hair separated by hair-bands into multiple stiff, spike-like bunches.¹⁰⁹ During the 1969 theater rerelease of *Fantasia*, the four scenes with Sunflower were cut entirely out of the film, but the 1990s remastered version that was released on video removed Sunflower through editing techniques such as zooming, reframing, or replacing the original scenes in which she was featured.¹¹⁰

101. *Id.* at 222.

102. Katherine van Wormer & Cindy Jubly, *Cultural Representations in Walt Disney Films: Implications for Social Work Education*, 16 J. SOC. WORK 578, 583 (2016).

103. Neal A. Lester, *Disney's The Princess and the Frog: The Pride, the Pressure, and the Politics of Being a First*, 33 J. AM. CULTURE 294, 294 (2010).

104. Steve Daly, *Changes in the Restored Version of "Fantasia"*, ENT. WKLY. (Nov. 29, 1991, 5:00 AM), <https://ew.com/article/1991/11/29/changes-restored-version-fantasia/> [<https://perma.cc/5V6B-J58U>].

105. Sofia Rizzi, *Fantasia – All the Classical Music Used in the Disney Film*, CLASSIC FM (Nov. 17, 2018), <https://www.classicfm.com/discover-music/periods-genres/film-tv/fantasia-disney-music/> [<https://perma.cc/AQJ4-4RUH>]; Craig Smith, *Fantasia*, DISNEYNEWS.US (Jan. 20, 2024), <https://disneynews.us/movie/fantasia/> [<https://perma.cc/DP24-KFV4>].

106. Jim Korkis, *Lost "Fantasia": The Disappearance of Sunflower*, CARTOON RSCH. (Mar. 7, 2020), <https://cartoonresearch.com/index.php/lost-fantasia-the-disappearance-of-sunflower/> [<https://perma.cc/5PEW-W58F>].

107. *See id.*

108. *Id.*

109. *Id.*

110. FANTASIA (Walt Disney Studios Motion Pictures 1990); Korkis, *supra* note 106; *see also* Daly, *supra* note 104.

In 2014, a Swedish national broadcaster “hit a nerve” when it aired an edited version of the 1969 *Pippi Longstocking* television series.¹¹¹ The *Pippi Longstocking* television series was based on the popular books by Astrid Lindgren, who began publishing those books between 1945 and 1948.¹¹² The stories were about a nine-year-old girl, Pippi, who lived alone with her animals in Villa Villekulla.¹¹³ Pippi’s mother was dead and her father, Captain Ephraim Longstocking, was lost on an island in the South Sea where he had been crowned the “[K]ing of the Negroes.”¹¹⁴ Many of the stories in the series involved Pippi’s unconventional ways of thwarting efforts by teachers or other village authorities to make her conform to social expectations.¹¹⁵ In February 1969, the most popular television adaptation of *Pippi Longstocking* debuted in Sweden and was broadcasted for thirteen weeks.¹¹⁶ The series became a wildly popular instant classic, with three million viewers tuning in to watch the show during its broadcast.¹¹⁷

In 2014, it was announced that the series would be rebroadcasted and released on DVD, but with two edits.¹¹⁸ The first edited scene changed Pippi’s description of her father from “[my] father is [the] ‘king of the Negroes,’” a word that had become an offensive racial slur in Sweden, to “[m]y father is the king!”¹¹⁹ The second cut scene from the original version is where Pippi pulled her eyelids upward to pretend to be Asian while singing “a mock Chinese song.”¹²⁰ Lindgren died in 2002, but her heirs defended those changes in the film as “respect[ing] the spirit of the author.”¹²¹

111. Rachel Donadio, *Sweden’s Storybook Heroine Ignites a Debate on Race*, N.Y. TIMES (Dec. 2, 2014), <https://www.nytimes.com/2014/12/03/arts/television/pippi-longstockings-words-to-be-modified-for-tv.html> [<https://perma.cc/67T3-5Y69>].

112. *Id.*

113. ASTRID LINDGREN, *PIPPY LONGSTOCKING* 1, 4–5 (1945).

114. Vibeke Sofie Sandager Rønnedal, *Racism in Classic Pieces of Nordic Children’s Literature*, NORDICS INFO (Dec. 17, 2020), <https://nordics.info/show/artikel/racism-in-nordic-childrens-literature> [<https://perma.cc/TGZ5-QEW3>]; Donadio, *supra* note 111 (“Since the 1950s, the United States edition has called Pippi’s father ‘king of the cannibals,’ on a South Sea island.”).

115. *See generally* LINDGREN, *supra* note 113; ASTRID LINDGREN, *PIPPY GOES ON BOARD* (1946); ASTRID LINDGREN, *PIPPY IN THE SOUTH SEAS* (1948).

116. Olle Hellbom, *Pippi Longstocking (TV-Series)*, ASTRID LINDGREN CO., <https://web.archive.org/web/20230609143806/https://www.astridlindgren.com/en/movie/pippi-longstocking-tv> [perma link unavailable] (last visited May 24, 2024).

117. *Id.*

118. Donadio, *supra* note 111.

119. *Id.*

120. *Id.*

121. *Id.*

C. *Ballet and Musical Theater*

“Since black-face minstrelsy, musical theatre has had a fraught history with race.”¹²² It is not surprising, then, that ballet and musical theater have also faced accusations of perpetuating racial stereotypes in their performative works. As one former dancer-turned-author expressed, “there’s something particularly egregious about stereotypes that not only perpetuate a strictly limited racial vision, but that are actually acted out on stage, with children as their intended audience.”¹²³ While ballet and musical theater may not have the reputation as very progressive artforms, this section describes recent changes to two classic children’s works, George Balanchine’s *The Nutcracker* and Andrew Lloyd Webber’s *Cats*.

The Nutcracker is, for most American children, an entry point into dance.¹²⁴ It has been described as a “gateway ballet” because it typically attracts the most first-time ballet attendees.¹²⁵ George Balanchine’s 1954 choreography¹²⁶ of *The Nutcracker* ballet is the most widely known and popular version of this traditional holiday classic.¹²⁷ In Act I of the ballet, a young girl receives a handsome, wooden Nutcracker from her grandfather as a holiday gift. The girl falls asleep with her Nutcracker and is dreamily transported into a magical realm where she fights and defeats the Mouse King alongside her Nutcracker and his soldiers, after which the Nutcracker turns into a handsome prince. In Act II of the ballet, the young girl and her prince arrive in the Land of Sweets where they are greeted by the Sugarplum Fairy. They are regaled by dances in the realm, including Hot Chocolate from Spain, the Chinese Tea dance, the Arabian Coffee dance, the Candy Cane, and the Walz of the Flowers.¹²⁸

122. Jennifer Daniel, *Cats: A Box Office Bomb, but Has Anyone Noticed the Ethnic Stereotyping?*, CONVERSATION (Jan. 17, 2020, 11:30 AM), <https://theconversation.com/cats-a-box-office-bomb-but-has-anyone-noticed-the-ethnic-stereotyping-130069> [https://perma.cc/EQ2S-734J].

123. Alice Robb, *Sorry, ‘The Nutcracker’ Is Racist*, NEW REPUBLIC (Dec. 24, 2014), <https://newrepublic.com/article/120640/nutcracker-racist-chinese-tea-arabian-coffee> [https://perma.cc/976P-JXP6].

124. Britt Stigler, *Can Lessons Learned at ‘The Nutcracker’ Change the Face of Ballet?*, ALL ARTS (Dec. 24, 2019), <https://www.allarts.org/2019/12/the-nutcracker-final-bow-for-yellowface/> [perma link unavailable].

125. Kristin Schwab, *Ballet’s Biggest Production Changes How It Depicts Asians*, MARKETPLACE (Dec. 10, 2021), <https://www.marketplace.org/2021/12/10/ballets-biggest-production-changes-how-it-depicts-asians/> [https://perma.cc/F4W5-N5FL].

126. Choreography was not protected under U.S. copyright law until 1978; therefore, Balanchine did not register his choreography with the U.S. Copyright Office until 1981. For more information on Balanchine’s copyright in *The Nutcracker*, see *Horgan v. Macmillan, Inc.*, 789 F.2d 157, 159 (2d Cir. 1986); Maria Lathouris, *How the Nutcracker Came Alive: Choreography, Copyright and a Christmas Classic*, FORDHAM INTELL. PROP. MEDIA & ENT. L.J. BLOG (Oct. 30, 2018), <http://www.fordhamiplj.org/2018/10/30/how-the-nutcracker-came-alive-choreography-copyright-and-a-christmas-classic/> [https://perma.cc/R8DE-VH2M].

127. Robb, *supra* note 123; Lathouris, *supra* note 126.

128. *George Balanchine’s The Nutcracker*®, N.Y.C. BALLET, <https://www.nycballet.com/discover/ballet-repertory/george-balanchines-the-nutcracker/> [https://perma.cc/5399-XZL6] (last visited Apr. 30, 2024).

Two of those dances, the Chinese Tea and the Arabian Coffee, have come under scrutiny. According to one ballet critic, “[i]n an era of increasing sensitivity to cultural stereotypes, the Chinese Tea segment—with its pointy finger movements, rice-paddy hats and a Fu Manchu-type mustache for the male dancer—had begun to seem offensive.”¹²⁹ The original dance included “bobbing, subservient ‘kowitz’ steps . . . and . . . the often-used saffron-tinged makeup, widely known as ‘yellowface.’”¹³⁰ In the Arabian Coffee dance, “a dancer “slinks around the stage in a belly shirt, [with] bells attached to her ankles.”¹³¹

Over the past few years, several dance companies have made creative changes to the choreography of the Chinese Tea and the Arabian Coffee dances, including replacing the Tea dance with a dragon dance,¹³² changing the main male character into an auspicious cricket,¹³³ swapping the Tea dance with traditional Chinese ribbon dancing,¹³⁴ or eliminating caricatures such as head-bobbing, ponytails, and yellowface.¹³⁵ In 2018, the Balanchine Trust, which owned the copyright to Balanchine’s *The Nutcracker*, approved changes to the choreography to allow ballet companies to tone down the racial caricatures in *The Nutcracker*, especially in the Chinese Tea dance. The Trust’s statement recognized that: “There is a different sensibility with regard to these issues, so we wanted to respond We are not demanding that companies do this; we’re making them aware that these are concerns.”¹³⁶

129. Robin Pogrebin, *Toning Down Asian Stereotypes to Make ‘The Nutcracker’ Fit the Times*, N.Y. TIMES (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/arts/dance/nutcracker-chinese-tea-stereotypes.html> [<https://perma.cc/3MVU-4UDB>].

130. Jennifer Fisher, Opinion, ‘Yellowface’ in ‘The Nutcracker’ Isn’t a Benign Ballet Tradition, It’s Racist Stereotyping, L.A. TIMES (Dec. 11, 2018, 3:05 AM), <https://www.latimes.com/opinion/op-ed/la-oe-fisher-nutcracker-chinese-dance-revisionism-20181211-story.html> [<https://perma.cc/57TH-G2V9>]; see also Doug Fullington & Phil Chan, *Choreography: Origins of The Nutcracker*, YELLOWFACE.ORG, <https://www.yellowface.org/nutchoreography> [<https://perma.cc/Z8C2-H223>] (last visited Apr. 30, 2024).

131. Robb, *supra* note 123.

132. See, e.g., Pogrebin, *supra* note 129 (The San Francisco Ballet).

133. See, e.g., Grace Madigan, *New Character Takes Racist Imagery Out of Pacific Northwest Ballet’s ‘The Nutcracker’*, KNKX PUB. RADIO (Dec. 23, 2021, 11:26 AM), <https://www.knkx.org/arts-culture/2021-12-23/pacific-northwest-ballets-the-nutcracker-has-a-new-character> [<https://perma.cc/X7ZS-AD5K>] (The Pacific Northwest Ballet).

134. See, e.g., Javier C. Hernández, *As ‘Nutcracker’ Returns, Companies Rethink Depictions of Asians*, N.Y. TIMES (Nov. 29, 2021), <https://www.nytimes.com/2021/11/29/arts/dance/nutcracker-asian-stereotypes-rethinking.html> [<https://perma.cc/W84M-KTFM>] (The Boston Ballet).

135. See *id.* (The Scottish Ballet); see also Brian Ferguson, *Scottish Ballet to Make ‘Important’ Changes to The Nutcracker After Anti-Racism Review*, SCOTSMAN (Nov. 4, 2021, 6:57 PM), <https://www.scotsman.com/whats-on/arts-and-entertainment/scottish-ballet-to-make-important-changes-to-the-nutcracker-after-anti-racism-review-3445761> [<https://perma.cc/WT4H-AMAL>].

136. Pogrebin, *supra* note 129 (quoting Ellen Sorrin, the Trust’s director). Special thanks to my former student McKenna Ford for bringing revisions to *The Nutcracker* to my attention.

In addition to ballet, musical theater has also experienced change. Andrew Lloyd Webber's 1981 Broadway musical production *Cats* was one of the longest running musicals. It was a commercial success and won numerous awards.¹³⁷ The sung-through musical, based loosely on T.S. Eliot's 1939 *Old Possum's Book of Practical Cats* poetry collection, was about a tribe of cats attending a ball to decide which one of them would ascend to the Heaviside Layer and be reborn into a new life.¹³⁸ *Cats* featured different cats singing songs to introduce themselves or other cats in the tribe.¹³⁹

One of the songs, "Growltiger's Last Stand," was removed from the Broadway production of *Cats* in 2016, signifying "one of the most notable changes in the new production and shows how much attitudes have changed since [*Cats*] first opened in 1981."¹⁴⁰ "Growltiger's Last Stand" featured Gus the Theatre Cat singing about one of his past roles as an actor.¹⁴¹ The actor used stereotyped Asian accents to recount the Siamese cats' invasion of his barge.¹⁴² Lyrics in the original musical included: "But most to cats of foreign race his hatred had been vowed. To cats of foreign name and race no quarter was allowed. The Persian and the Siamese regarded him with fear. Because it was a Siamese that mauled his missing ear," and "[t]hen Genghis gave the signal to his fierce Mongolian horde, With a frightful burst of fireworks, the Chinks they swarmed aboard."¹⁴³ While at some point the offensive word "Chinks" was changed to "Siamese," in 2016, the entire song was removed from the Broadway production of the musical, and the song did not appear in the 2019 box office adapted film.¹⁴⁴

The approaches to updating problematic classic children's works can range from editing and removing content within the work, recreating and replacing plots, scenes, illustrations, or dances in a work, to the entire retelling or *restorying* of a work. The term "restorying," used in this

137. Daniel, *supra* note 122.

138. *The Story of Cats*, CATS THE MUSICAL, <https://www.catsthemusical.com/about-the-show/the-story-of-cats/> [<https://perma.cc/22T7-DSFS>] (last visited Apr. 30, 2024).

139. *Id.*

140. Dan Wootton, *Kitty Controversy: Broadway Production of Cats Starring Leona Lewis Cuts 'Racist' Song*, SUN (Aug. 2, 2016), <https://www.thesun.co.uk/tvandshowbiz/1536826/broadway-production-of-cats-starring-leona-lewis-cuts-racist-song/> [<https://perma.cc/W74U-UZ66>]; see also Clarisse Loughrey, *Broadway's Cats Drops 'Racist' Song for Leona Lewis Production*, INDEPENDENT (Aug. 3, 2016), <https://www.independent.co.uk/arts-entertainment/films/news/broadway-s-cats-drops-racist-song-for-leona-lewis-production-a7169511.html> [<https://perma.cc/M6AX-TK65>].

141. ANDREW LLOYD WEBBER, *Growltiger's Last Stand*, in CATS (1981); Mikayla Kwan, *Cats Is Racist. Here's Why.*, MEDIUM (July 2, 2021), <https://mkwan0.medium.com/cats-is-racist-heres-why-103ee6caaf08> [<https://perma.cc/M4CZ-W4FZ>].

142. Loughrey, *supra* note 140.

143. WEBBER, *supra* note 141; Kwan, *supra* note 141.

144. Daniel, *supra* note 122; Loughrey, *supra* note 140.

Article, is the “transgressive act . . . [that] enables people with marginalized identities—both creators and audience members—‘to collectively reimag[e] time, place, identity, perspective, mode, and metanarratives through retold stories.’”¹⁴⁵

In some instances, authors, copyright owners, and publishers find updating those works to be an easy and obvious choice. They “recogniz[e] and reject[] aspects of a writer’s work that are out of step with current social and cultural values,”¹⁴⁶ and understand that editing a work could diversify its readership and audience, and increase access to the work and willingness of parents and teachers to continue recommending these works to children. For instance, concerns that stereotypes in the original choreography would “put off newer and younger audiences” from ballet, especially because *The Nutcracker* was both “the industry’s cash cow [and] . . . the gateway ballet,” motivated ballet companies to update *The Nutcracker*.¹⁴⁷

Others struggle with their decisions on how to approach classic but problematic children’s works. They are concerned that editing works would invoke concerns of censorship, but they are also concerned that not editing those works could lead to children being denied access to classic works merely because of a few isolated references in those works.¹⁴⁸ Nevertheless, editors often justify those changes by referring to the values or commitment of the original author. For instance, Lindgren’s heirs were certain that the author would have authorized and even embraced the changes to the *Pippi Longstocking* television series.¹⁴⁹ Similarly, regarding the decision to edit his father’s *Doctor Dolittle* books, Christopher Lofting explained that he strongly believed his father “would have been the first to have made the changes himself.”¹⁵⁰

Any choice that authors, copyright owners, and publishers ultimately make about whether to edit problematic content in classic children’s works will raise complicated and sensitive questions. Is society better off for having erased this content in children’s works? Or is this simply an attempt to rewrite history and erase harsh historic realities? Part II below discusses these normative questions.

II. DO EDITS ADVANCE SOCIAL JUSTICE OR REWRITE HISTORY?

While revising classic works and hiring sensitivity readers appear to be growing trends today, not everyone agrees with these changes.

145. Murakami & Anderson, *supra* note 90, at 503–04 (third alteration in original) (quoting EBONY ELIZABETH THOMAS, *THE DARK FANTASTIC: RACE AND THE IMAGINATION FROM HARRY POTTER TO THE HUNGER GAMES* 155 (2019)).

146. Alexandra Alter & Elizabeth A. Harris, *Dr. Seuss Books Are Pulled, and a ‘Cancel Culture’ Controversy Erupts*, N.Y. TIMES (Oct. 20, 2021), <https://www.nytimes.com/2021/03/04/books/dr-seuss-books.html> [<https://perma.cc/VL7B-A9ZW>].

147. Schwab, *supra* note 125.

148. Lofting, *supra* note 58, at 152–53.

149. See Donadio, *supra* note 111.

150. Lofting, *supra* note 58, at 153.

Proponents of these edits believe that changes are necessary to build a more just and inclusive society and are especially concerned with problematic content in *children's* works. Opponents argue that editing classic works is merely an attempt to rewrite history instead of facing the harsh historic realities of our nation's troubled past. Both sides of this argument have merit.

Experts recognize that children learn about their society, their culture, and their world from the books that they read or the films they watch. Literature and other expressive works can affirm historically entrenched ideologies of race, which can have especially profound effects on children, their self-esteem, and self-image.¹⁵¹ In *Monteiro v. Tempe Union High School District*,¹⁵² the Ninth Circuit recognized "that the younger a person is, the more likely it is that those messages will help form that person's thinking, and that the feelings of minority students, especially younger ones, are extremely vulnerable when it comes to books that are racist or have racist overtones."¹⁵³ Similarly, researchers Katie Ishizuka and Ramon Stephens explained:

Children's books provide impressions and messages that can last a lifetime, and shape how children see and understand themselves, their homes, communities, and world. A long history of research shows that text accompanied with imagery, such as books with pictures, shapes children's racial attitudes. When children's books center Whiteness, erase people of color and other oppressed groups, or present people of color in stereotypical, dehumanizing, or subordinate ways, they both ingrain and reinforce internalized racism and White supremacy.¹⁵⁴

For instance, writers and critics have argued that "fictional representations of [characters such as] Charlie Chan, Fu Manchu, and Madama Butterfly / Miss Saigon do have discriminatory effects on Asian Americans . . . fictional representations circulate through and beyond any attempts to cordon literature off from our everyday lives."¹⁵⁵ But when children are exposed to positive images of people of color, they are less likely to maintain negative attitudes on the basis of race.¹⁵⁶ These argu-

151. Candace Fujikane, *Sweeping Racism Under the Rug of "Censorship": The Controversy over Lois-Ann Yamanaka's Blu's Hanging*, 26 AMERASIA J. 158, 173 (2000) ("Throughout my days at elementary school . . . Filipinos were labeled as being stupid, backwards, and capable of only the most menial jobs available. . . . These images and stereotypes persisted in the consciousness of the student body for so long that I began to look at being Filipino as a curse. It embarrassed me that I should be a part of a race so disregarded and dehumanized by society." (first alteration in original) (quoting Linda A. Revilla, *Our History, Our Future*, AAAS Newsletter 8 (May 1998))).

152. 158 F.3d 1022 (9th Cir. 1998).

153. *Id.* at 1031.

154. Ishizuka & Stephens, *supra* note 25, at 6 (citation omitted).

155. Fujikane, *supra* note 151, at 162.

156. See, e.g., Arianna Braga, *The Importance of Children's Representation in Literature and Media*, HUMANIUM (Mar. 22, 2022), <https://www.humanium.org/en/the-importance-of-childrens-representation-in-literature-and-media/> [<https://perma.cc/>

ments support editing expressive works, especially children's works, that contain offensive stereotypes.

On the other hand, editing may in fact counterintuitively prove more culturally troubling. For instance, critical race experts argue that by “airbrushing out racist monikers of the past” we could “lose the contextual understanding of the work and an understanding of the period.”¹⁵⁷ They argue that suppressing or redacting children's works “is a form of denial: shutting the door on harsh historical realities—whitewashing them or pretending they do not exist.”¹⁵⁸ For instance, in response to the 2011 edits to *Huckleberry Finn*, one journalist argued that replacing the offensive African-American racial slur with the word “slave” throughout the book “ignor[es] our failures” and “doesn't change anything”:

It doesn't provide racial enlightenment, or justice, and it won't shield anyone from the legacy of slavery and racial discrimination. All it does is feed the American aversion to history and reflection. Which is a shame. If there's anything great about this country, it's in our ability to account for and overcome our mistakes. Peddling whitewashed ignorance diminishes America as much as it does our intellect.¹⁵⁹

Still, others argue that copyright owners or publishers with the right to remove should not engage in any process of post-publication editing. One such perspective is that editing works allows authors to omit aspects of their work: “The public has a right to know what is out there even—perhaps especially—if the copyright owner now wants to pretend it never existed.”¹⁶⁰ Some writers criticized changes to classic children's works as “cultural and historical vandalism” and “a baffling act of destruction.”¹⁶¹ They also worry about how children's classic works are being changed. For instance, in order to remove racial stereotypes in the *Nancy Drew Mystery Series*, the updated versions made all of the characters white instead of attempting to embrace diversity in a more than one-dimensional form. These arguments would support keeping these works in their original

R2DT-BPJC]. See generally Huber, Gonzalez, & Solórzano, *supra* note 18; Larrick, *supra* note 20.

157. Kunle Olulode, *Airbrushing Racism: Why Racist Words Shouldn't Be Edited from History*, 44 INDEX ON CENSORSHIP 34, 34 (2015).

158. Kakutani, *supra* note 69.

159. Jamelle Bouie, *Taking the History Out of 'Huck Finn'*, ATLANTIC (Jan. 4, 2011), <https://www.theatlantic.com/entertainment/archive/2011/01/taking-the-history-out-of-huck-finn/68870/> [<https://perma.cc/3GWF-XU4S>].

160. Mark A. Lemley, *Disappearing Content*, 101 B.U. L. REV. 1255, 1277 (2021).

161. Christopher Stewardson, *The Theatrical Star Wars Trilogy Hasn't Just Been Replaced, It's Being Destroyed*, OURCULTURE (Nov. 26, 2021), <https://ourculturemag.com/2021/11/26/the-theatrical-star-wars-trilogy-hasnt-just-been-replaced-its-being-destroyed/> [<https://perma.cc/6VHC-546H>].

form and allowing market forces to dictate their popularity and longevity.¹⁶²

How should moral debates and normative arguments influence the right of an author, copyright owner, or publisher to edit classic works? Copyright is generally concerned with providing economic incentives for authors to create works. In the U.S., especially, copyright is not concerned with the social value of the underlying work, the evolving needs of cultural values, or preserving history or the authenticity of literary heritage. Copyright generally protects immoral, harmful, or even racist texts to the same extent that it would protect great literary works of art. Nevertheless, some scholars argue that the directive of copyright “to promote the Progress of Science” should be interpreted to contemplate an assessment of social values and encompass a consideration of general social welfare.¹⁶³ Other scholars have similarly argued that copyright can and should serve functions other than economic incentives and that “the IP Clause of the Constitution is open to a range of normative values whose advancement would constitute Progress.”¹⁶⁴ Part III below examines the copyright implications of revising classic children’s works to remove problematic content and how the law may be influenced by increasing considerations of evolving moral values and respecting artistic integrity.

III. HOW DO EDITS TO CLASSIC WORKS IMPLICATE COPYRIGHT?

Edited classic works can trigger certain legal complications, especially under copyright law. Those complications can depend on the status of the work, such as whether that work is in the public domain or still protected by copyright. The legal complications of editing classic works can depend on the status of their editor, including whether the author, the copyright owner, or the publisher made the edits. They can also depend on the extensiveness of the changes made to a work, such as whether the changes were minor and insignificant or substantial and potentially transformative. These different scenarios highlight complicated issues of editorial control, copyright infringement, fair use, integrity rights, and derivative rights. The following sections explore those legal issues and their possible implications.

162. See Annabel Nugent, *Philip Pullman Suggests Roald Dahl Books Should Go ‘Out of Print’ Amid Edits Controversy*, INDEPENDENT (Feb. 20, 2023), <https://www.independent.co.uk/arts-entertainment/books/news/roald-dahl-philip-pullman-edits-b2285643.html> [<https://perma.cc/PU3T-95HN>].

163. NED SNOW, *INTELLECTUAL PROPERTY AND IMMORALITY: AGAINST PROTECTING HARMFUL CREATIONS OF THE MIND* 192–93 (2022).

164. Brett Frischmann & Mark P. McKenna, *Intergenerational Progress*, 2011 WIS. L. REV. 123, 125. See generally Margaret Chon, *Copyright’s Other Functions*, 15 CHI.-KENT J. INTELL. PROP. 364 (2016).

A. *The Right to Edit and Exclude*

In some of the instances discussed in Part I, authors edited their own works to remove racially insensitive or gendered narratives. Some authors may have been pressured by public opinion. Roald Dahl, for instance, changed the Oompa-Loompas in *Charlie and the Chocolate Factory* in response to pressure from the NAACP and other creators. Other authors may have intuited changing social attitudes and cultural values to make updates to their works themselves, such as Richard Scarry's changes to gendered references and images in his *Best Word Book Ever*. An author's right to make edits to their own works may seem irrefutable. Authors should have control over their works and be able to make edits or changes to their works for artistic reasons, economic reasons, to increase popularity or appeal, or perhaps for any reason at all.

Asserting editorial control over works is not uncommon. For instance, years after its original release, George Lucas updated his popular *Star Wars: A New Hope* film to include improved computer-generated imagery (CGI) sequences and streamline the cohesiveness among the films in the trilogies.¹⁶⁵ Filmmakers frequently authorize edits to their films to suit audiences in different countries or cultures.¹⁶⁶ The recent film release of *Barbie* was delayed in Saudi Arabia and other territories awaiting edits.¹⁶⁷ Creators and copyright owners may edit works for economic reasons, such as Simon & Schuster asking authors to shorten already-published books to save on printing costs.¹⁶⁸ Filmmakers also make changes to their works to address audience sensitivities based on current events. Disney removed the "casting couch" fake blooper from its popular *Toy Story II* movie in response to Harvey Weinstein's sexual misconduct and the #MeToo movement,¹⁶⁹ and cinematographers removed scenes or references to New York's Twin Towers in the wake of the September 11th

165. Joe Bergren, 'Star Wars: Special Edition': George Lucas Explains Changes for Trilogy's 1997 Re-Release (Flashback), ET ONLINE (Jan. 31, 2022, 9:41 AM), <https://www.etonline.com/star-wars-special-edition-george-lucas-explains-changes-for-trilogys-1997-re-release-flashback> [<https://perma.cc/WC7L-TKTS>].

166. See, e.g., Deirdre Molunby, *11 Movies That Were Changed When Released in Other Countries*, ENT.IE (2022), <https://entertainment.ie/movies/movie-news/movies-changed-for-release-in-different-countries-510577/> [<https://perma.cc/ZR8G-ESQE>]; Joey Juliani, *Major Films That Were Changed for Other Countries*, LOOPER (Jan. 20, 2023, 4:19 PM), <https://www.looper.com/94806/major-films-changed-countries/> [<https://perma.cc/HTU2-LRKH>].

167. Rebecca Rubin, 'Barbie' Sets Release in Saudi Arabia and More Territories After Potential Ban in Middle East, VARIETY (Aug. 8, 2023, 7:59 AM), <https://variety.com/2023/film/news/barbie-theatrical-release-middle-east-potential-ban-1235690791/> [perma link unavailable].

168. Ingall, *supra* note 59.

169. See Stephanie Convery, *Toy Story 2 Casting Couch 'Blooper' Deleted by Disney After #MeToo Movement*, GUARDIAN (July 2, 2019), <https://www.theguardian.com/film/2019/jul/03/toy-story-2-casting-couch-blooper-deleted-by-disney-after-metoo-movement> [<https://perma.cc/7PJN-JMW2>].

attacks, such as from the opening credits of *The Sopranos*.¹⁷⁰ As long as they own the copyright to their works, authors have the legal right to edit their own works to make those works more appealing and palatable to new generations of audiences. Copyright jurisprudence should allow artists the volition to change their minds after they publish a work, to change the messages and meaning of their art, and perhaps to help preserve their legacies with future generations.

Some copyright owners and publishers might even realize financial benefits in republishing pre-edited works. While Simon & Schuster only published the edited versions of the *Nancy Drew Mystery Series*, it licensed the original, pre-edited versions for publication by another publishing company.¹⁷¹ Beginning in 1991, Applewood Books began publishing and distributing the “original” and “authentic” 1930s through 40s versions of the *Nancy Drew Mystery Series*,¹⁷² which included the original, offensive caricatures and plot lines.¹⁷³ Applewood claimed to “publish books for American cultural travelers . . . to build a picture of America through its primary sources.”¹⁷⁴ At the beginning of the reprints of the original *Nancy Drew* series, Applewood included a publisher’s note acknowledging the “racial and social stereotyping” in the stories that might make modern readers “extremely uncomfortable” and cause a “response in the modern reader that was not felt by the reader of the times.”¹⁷⁵ As some scholars have argued, the public should be able to access original, unedited works, and perhaps notices or warning labels that such works contain offensive materials could be a compromise that does not involve editing works. Of course, this approach also has its critics:

What [content warnings] fail to consider is what the modern reader of color might feel—and what readers of color felt back then. It is likely a feeling significantly more damaging and painful than extreme discomfort. . . . By ignoring the deliberate harm stereotypes were created to inflict, the publisher’s note fails to provide crucial context as well as fully acknowledge the damage . . . for readers at the time and today.¹⁷⁶

170. See Libby Torres, *13 Movies and TV Shows That Were Altered in the Wake of 9/11*, BUS. INSIDER (Sept. 10, 2019, 6:03 PM), <https://www.insider.com/movies-tv-shows-changed-edited-september-11> [<https://perma.cc/V72S-M8W8>].

171. Mona Gable, *The Way They Were: Publisher Hopes to Recapture Audience with Original Nancy Drew Books*, L.A. TIMES (Aug. 16, 1991, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1991-08-16-vw-498-story.html> [<https://perma.cc/ML3X-W9P6>].

172. *Id.*

173. *Id.*

174. *About Us*, APPLEWOOD BOOKS, <https://web.archive.org/web/20230405145633/https://www.applewoodbooks.com/AboutUs.aspx> [<https://perma.cc/332S-9YH2>] (last visited Apr. 30, 2024).

175. Ruggirello, *supra* note 64.

176. *Id.*

Others, instead of profiting from original works, may rely on copyright to decrease the public's access to those pre-edited, published versions. They may not want older versions cannibalizing the market for their updated copies. They could be concerned with pre-edited versions damaging their industry reputations.¹⁷⁷ Or they may simply want to rid the market of problematic materials and stop the mass circulation and profiting from offensive words, images, or content. Regardless of the reasons, concerns emerge when a copyright owner uses copyright to make pre-edited versions of classic works disappear. This can create conflict between an author's right to change and control the message, meaning, and artistic direction of their work with the public's right to use and access original, pre-edited works of artistic expression. The potential for pre-edited versions of classic works to disappear is not a mere hypothetical: after Puffin Books announced its edits to Dahl's books, readers in certain countries reported that their digital copies of those books automatically updated to the edited versions without their knowledge or consent.¹⁷⁸ Some readers in the U.S. also noticed changes to their e-books of R.L. Stine's works.¹⁷⁹

Mark Lemley advocates for the public to be able to maintain access to a work in its various forms. Specifically, he argues that "[t]he copyright owner is free to promote the new form and encourage people to use it. But when it substantively changes the content and withdraws the old version, the world loses something."¹⁸⁰ He argues that in cases where a copyright owner makes substantive changes to the content of a work, and makes original versions of those works unavailable, copyright fair use should permit third parties to reproduce the original work.¹⁸¹ On the one hand, copyright owners rightly have the power to edit their works to maintain the economic values of their assets. On the other hand, copyright should not be used to suppress access to pre-edited versions of classic works. However, under current fair use case law, particularly after the U.S. Supreme Court's decision in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*¹⁸² (discussed more below), courts are not likely to permit third parties to wholesale reproduce and commercially exploit

177. For instance, the U.S. publisher of Adolf Hitler's book, *Mein Kampf*, asserted copyright to prevent a journalist from publishing an "unexpurgated" translation of Hitler's book to provide a "full extent of [Hitler's] views and plans for world domination." Aaron Moss, *Is It Fair to Reproduce Out-of-Print Seuss?*, COPYRIGHT LATELY (Mar. 5, 2021), <https://copyrightlately.com/fair-use-to-reproduce-out-of-print-seuss/> [<https://perma.cc/4594-575H>]. The "official" version that Hitler had authorized for publication in the United States had removed those ideas, and the journalist "thought it was important for Americans to understand the danger posed by Hitler by using his own unedited works." *Id.*

178. Reggie Ugwu, *It's Their Content, You're Just Licensing It*, N.Y. TIMES (Apr. 4, 2023), <https://www.nytimes.com/2023/04/04/arts/dahl-christie-stine-kindle-edited.html> [<https://perma.cc/YEZ5-9EFT>].

179. *Id.*

180. Lemley, *supra* note 160, at 1276.

181. *Id.*

182. 143 S. Ct. 1258 (2023).

original, pre-edited copyrighted works under a fair use defense.¹⁸³ Nevertheless, fair use could certainly excuse the limited reproduction of portions of a pre-edited work for purpose of commentary or criticism, such as the side-by-side comparison of an updated version of a classic children's work next to its pre-edited version, for the purpose of commentary, criticism, or parody.¹⁸⁴

B. *Infringement or Fair Use*

If a work is still protected by copyright, and editors and publishers do not have the right or license to edit, publish, or create a derivative work, they are likely to face infringement claims if they revise and distribute those revised works without authorization. This is why the ballet companies that wanted to perform an updated Chinese Tea dance in Balanchine's *The Nutcracker* sought (and received) permission from the Trust. But, in the event copyright owners are unwilling to grant this right, third parties would need to rely on fair use to revise, distribute, or perform revised versions of those works.

Fair use is frequently described as the "breathing space within the confines of copyright," which excuses otherwise infringing uses for the purpose of criticism, commentary, news reporting, teaching, scholarship, research, and other socially valuable or transformative uses.¹⁸⁵ In order to determine whether a defendant's unauthorized use of a copyrighted work is fair use, courts consider four factors: (1) the purpose and character of the infringing use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used by the defendant in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.¹⁸⁶ Under factor one, the purpose and character of the unauthorized use, courts frequently focus on whether the unauthorized use *transformed* the original copyrighted work by adding new meaning, message, or purpose.¹⁸⁷ The recent U.S. Supreme Court decision in *Warhol* shifted this focus under the first factor to examine instead whether the defendant's unauthorized use "share[s] the same or highly similar purpose[]" as the original copyrighted work, and whether the unauthorized use is a transformative parody, commentary, or criticism.¹⁸⁸ Specifically, if the two works share the same or highly similar use or purpose, the first fair use

183. *See id.* at 1287.

184. *See, e.g.*, Alan Taylor, *The Best Word Book Ever, 1963 and 1991*, FLICKR.COM, <https://www.flickr.com/photos/kokogiak/albums/1425737/> [<https://perma.cc/U5HW-DJTH>] (last visited Apr. 30, 2024); Official Business, *Fantasia (1940) Sunflower Comparison*, YOUTUBE (2016), https://www.youtube.com/watch?v=7Nx4ek-J0i_w [<https://perma.cc/E5PX-RYJ9>].

185. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994).

186. *See id.* at 577 (citing 17 U.S.C. § 107 (2024)); 17 U.S.C. § 101.

187. *See, e.g.*, *Campbell*, 510 U.S. at 579.

188. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 143 S. Ct. 1258, 1277 (2023).

factor is more likely to weigh against fair use, unless the defendant's use is a transformative parody, commentary, or criticism.¹⁸⁹

A court is unlikely to consider a third party's act of deleting or omitting racist words or depictions from a copyrighted work as fair use. In *Clean Flicks of Colorado, LLC v. Soderbergh*,¹⁹⁰ the court held that Clean Flicks's public distribution of films that they edited to remove "sex, nudity, profanity and gory violence" was not copyright fair use.¹⁹¹ Clean Flicks and other entities obtained or purchased original copies of films and made digital copies of them. They then edited those digital copies to remove profanity, nudity, strong graphic violence, and sexual content or innuendos.¹⁹²

The movie studios whose works Clean Flicks edited filed a claim for copyright infringement against Clean Flicks and other entities. Clean Flicks claimed fair use, focusing primarily on the first and fourth factors of fair use. Under the first factor of fair use, which examines a defendant's purpose and character of the unauthorized use, Clean Flicks argued that the purpose of their edits, "[to] provid[e] more socially acceptable alternatives to enable families to view the films together," should tip towards fair use under factor one.¹⁹³ The court disagreed, clarifying that it was "not free to determine the social value of copyrighted works. What is protected are the creator's rights to protect its creation in the form in which it was created."¹⁹⁴ The court also found the changes to the films to be non-transformative because Clean Flicks added nothing to the films and only deleted explicit content.¹⁹⁵ Under factor four of fair use, the effect of the use on the potential market for the copyrighted work, Clean Flicks argued that there was no adverse effect on the market. They claimed that "the consumers of the edited versions would not have . . . purchased the authorized versions because of the objectionable content."¹⁹⁶ The court again dismissed this argument, finding that it

ignores the intrinsic value of the right to control the content of the copyrighted work which is the essence of the law of copyright. Whether these films should be edited in a manner that would make them acceptable to more of the public . . . is a question of what audience the copyright owner wants to reach.¹⁹⁷

Under similar facts, the defendant's fair use argument in *Disney Enterprises v. VidAngel, Inc.*¹⁹⁸ also failed. *VidAngel* was another case involving

189. *Id.*

190. 433 F. Supp. 2d 1236 (D. Colo. 2006).

191. *Id.* at 1238.

192. *Id.*

193. *Id.* at 1240.

194. *Id.*

195. *Id.* at 1241.

196. *Id.* at 1242.

197. *Id.*

198. 869 F.3d 848 (9th Cir. 2017).

unauthorized editing of explicit content and public distribution of edited films. VidAngel argued under the first fair use factor that its filtering of objectionable content from Disney films was “‘profoundly transformative’ because ‘omissions can transform a work,’ affirming ‘[r]eligious convictions [against controversial content] and parental views.’”¹⁹⁹ The court in *VidAngel* disagreed, finding that VidAngel’s service did not alter the meaning or message of the films, it “‘simply omit[ted] portions that viewers find objectionable’ and transmit[ted] them for the ‘same intrinsic entertainment value’ as the originals.”²⁰⁰ Under factor four of the fair use analysis, the court found VidAngel’s films to be market substitutes for the original Disney films.²⁰¹ The court held that VidAngel’s unauthorized use of Disney’s works was not fair use—“*Star Wars* is still *Star Wars*, even without Princess Leia’s bikini scene.”²⁰²

Based on these decisions, editors and publishers who—without authorization—edit, publish, and disseminate edited versions of copyrighted classic works may not be able to rely on a fair use defense. This is especially true for editors and publishers whose only changes are the deletion of words, scenes, or dialogues. Edits—such as removing “Growltiger’s Last Stand” from the musical *Cats*, cutting scenes from *Pippi Longstocking*, replacing a racial slur with “slave” in *Huckleberry Finn*, or reframing an image in *Fantasia*—had they been made to copyrighted works without authorization, would have been considered infringement. These limited changes, according to *Clean Flicks* and *VidAngel*, add nothing to the work and would not be considered transformative uses excused under copyright fair use.

But what about publishers who, in addition to deleting content, also create new content such as new storylines or illustrations like the new storyline in *Doctor Dolittle* or the new fictional characters in the *Nancy Drew* books? Based on existing case law, those additions also would not likely be excused under fair use because they would violate the original copyright owner’s right to create derivatives.²⁰³ Copyright owners have the exclusive right to create and authorize the creation of derivatives from their copyrighted works. Derivative works are defined as “work[s] consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship.”²⁰⁴ Recho-reographing two dances to insert into a copyrighted choreographical work, or creating a new story, plot, or character to add into a preexisting

199. *Id.* at 861 (first alteration in original).

200. *Id.* (quoting *Disney Enters., Inc. v. VidAngel, Inc.*, 224 F. Supp. 3d 957, 972–73 (C.D. Cal. 2016)).

201. *Id.*

202. *Id.*

203. See generally *Anderson v. Stallone*, No. 87-0592 WDKGX, 1989 WL 206431 (C.D. Cal. Apr. 25, 1989).

204. 17 U.S.C. § 101 (2024); *Clean Flicks of Colo., LLC v. Soderbergh*, 433 F. Supp. 2d 1236, 1240–41 (D. Colo. 2006).

copyrighted book, are actions likely to violate the derivative work right of the original copyright owner.

The restoring of a classic work, however, could be fair use if the secondary work is a commentary, criticism, or parody of the original and significantly transforms the original copyrighted work.²⁰⁵ The 2001 case *Suntrust Bank v. Houghton Mifflin Co.*²⁰⁶ concerned whether author Alice Randall's book *The Wind Done Gone*, a restoring of Margaret Mitchell's 1936 classic novel *Gone with the Wind*, infringed *Gone with the Wind*.²⁰⁷ *Gone with the Wind* is a historic romance novel about plantation owner Scarlett O'Hara and her efforts to succeed during and after the American Civil War. The book was a commercial success that won the Pulitzer Prize and was adapted into a popular movie in 1939.²⁰⁸ At the same time, the book has long been criticized for its stereotypical and derogatory portrayal of African-Americans and for plots that romanticize the antebellum South.²⁰⁹ Randall's restoring in *The Wind Done Gone* sought "to rebut and destroy the perspective, judgments, and mythology of [*Gone with the Wind*]. Randall's literary goal [was] to explode the romantic, idealized portrait of the antebellum South during and after the Civil War."²¹⁰ The copyright owner sued Randall for infringement, but the *Suntrust Bank* court found Randall to be entitled to a fair use defense because her restoring was a "transformative use" of the copyrighted elements from *Gone with the Wind*.²¹¹ In cases where the restoring of a copyrighted work is clearly transformative and comments on, criticizes, or parodies the original classic work, its unauthorized reproduction could be excused under copyright fair use.

C. Moral Rights

In March 2023, after media noted that Scholastic Publishing had edited R.L. Stine's *Goosebumps* series books with more inclusive language, angry Twitter users accused Stine of "support[ing] censorship and the alteration of works of art."²¹² In response, Stine defended himself on

205. See *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 143 S. Ct. 1258, 1277 (2023).

206. 268 F.3d 1257 (11th Cir. 2001).

207. *Id.* at 1259.

208. Pat Bauer, *Gone with the Wind: Film by Fleming [1939]*, BRITANNICA, <https://www.britannica.com/topic/Scarlett-OHara> [<https://perma.cc/QA69-RKCE>] (last visited May 21, 2024).

209. *Suntrust Bank*, 268 F.3d at 1270.

210. *Id.*

211. *Id.* at 1272.

212. Lindsey the Cynical Geek (@CynicalLindsey), TWITTER (Mar. 6, 2023, 1:41 PM), <https://twitter.com/CynicalLindsey/status/1632813759378096128> [<https://perma.cc/Z3NL-8BZC>]; Armando Tinoco, *Author R.L. Stine Responds to Reports 'Goosebumps' Is Getting Edited with Inclusive Language – Update*, DEADLINE (Mar. 4, 2023, 4:01 PM), <https://deadline.com/2023/03/goosebumps-author-rl-stine-edits-book-series-changes-mental-health-weight-ethnicity-references-1235279014/> [<https://perma.cc/FB2G-EHFE>].

Twitter, claiming that he “never changed a word in *Goosebumps*,” and that he was neither aware of nor approved any edits to his books.²¹³ While Stine no longer owns the copyright in the *Goosebumps* series²¹⁴ and therefore does not control the editing of his books, those books—including the edited versions—are still attributed to “R.L. Stine” as the author.

Many international jurisdictions recognize an author’s moral rights in their works, including the rights of integrity and attribution. Under the integrity theory, authors that create expressive works are able to control the message and meaning of their works, and editing them without the author’s permission may harm their reputations and violate their right of integrity in their works—especially where edited works remain attributed to an author. Roald Dahl’s books, for instance, were well known for their intentional “nastiness” and “cold, unsettling spikiness.”²¹⁵ If Dahl were alive today, he may charge that the most recent changes to his classic books, which made the stories “nicer,” are contrary to the spirit of his works and violated his moral right of integrity. Additionally, Dahl might argue that promoting those edited books as authored by Roald Dahl could imply that he sponsored or approved of the edited versions.

The United States, however, only recognizes narrow moral rights in works of visual art. Specifically, while U.S. copyright law does recognize moral rights of integrity and attribution under the federal Visual Artists Rights Act (VARA), the rights are limited to creators of “works of visual art,” which excludes literary, dramatic, musical, and audiovisual works, and any reproductions of works.²¹⁶ Therefore, under U.S. copyright law, none of the children’s works described in this Article would be protected under VARA, and the editing and dissemination of edited books, films, or dramatic works are not likely to violate an author’s moral rights in their works.

Outside of copyright law, there has been prior case law protecting integrity-like attribution interests under the Lanham Act’s Section 43(a) false designation of origin.²¹⁷ In *Gilliam v. American Broadcasting Cos.*,²¹⁸ ABC broadcasted edited versions of three Monty Python films.²¹⁹ In one film, ABC edited out twenty-four minutes from the original ninety-minute recording to make time for commercials and to remove “offensive or obscene matter” from the program.²²⁰ According to the court, the

213. R.L. Stine (@RL_Stine), TWITTER (Mar. 6, 2023, 1:56 PM), https://twitter.com/RL_Stine/status/1632817346803904513 [<https://perma.cc/ZW3C-MTZX>].

214. Jim Milliot, *Scholastic Reaches ‘Goosebumps’ Accord with Parachute, PUBLISHERS WKLY.* (Jan. 27, 2003), <https://www.publishersweekly.com/pw/print/20030127/23027-scholastic-reaches-goosebumps-accord-with-parachute.html> [<https://perma.cc/4HUU-D44X>].

215. See Lewis, *supra* note 4.

216. 17 U.S.C. § 106A(a) (2024); *id.* § 101.

217. See, e.g., *Gilliam v. Am. Broad. Cos.*, 538 F.2d 14 (2d Cir. 1976); Lanham Act, 15 U.S.C. § 1125 (2024).

218. 538 F.2d 14 (2d Cir. 1976).

219. *Id.* at 17.

220. *Id.* at 18.

edits “at times omitted the climax of the skits to which [Monty Python’s] rare brand of humor was leading and at other times deleted essential elements in the schematic development of a story line.”²²¹ The court found that those changes “impaired the integrity of [Monty Python’s] work and represented to the public as the product of [Monty Python] what was actually a mere caricature of their talents.”²²² According to the court, editing a work without the author’s consent, then presenting the distorted version of the work as having originated from the author, violated Section 43(a) of the Lanham Act.²²³ This claim would appear especially relevant for situations where a creator’s work was edited without their permission and distributed under the creator’s name, such as the situation described above involving R.L. Stine’s *Goosebumps* series.²²⁴ Nevertheless, the *Gilliam* decision and the Lanham Act’s ability to protect creators’ moral rights-like interests were significantly narrowed by later case law, including the U.S. Supreme Court’s decision in *Dastar Corp. v. Twentieth Century Fox Film Corp.*,²²⁵ which broadly held that all issues related to attribution of creative works should be governed solely by copyright law and VARA.²²⁶

D. Copyrightable Derivative Works

The unauthorized editing of a copyrighted children’s work could infringe copyright, including violating a copyright owner’s exclusive right to create derivatives. However, if the copyright owner authorizes the edits, or if the original classic works are in the public domain, the editing would not be considered infringement but could create new, albeit thinner, copyright protection for those edits. Some editors of

221. *Id.* at 25.

222. *Id.*

223. *Id.* at 24–25.

224. See, e.g., Ben Ellery, *Goosebumps Books ‘Sanitised Without RL Stine’s Permission’*, *TIMES* (Mar. 7, 2023, 9:00 AM), <https://www.thetimes.co.uk/article/goosebumps-books-sanitised-without-rl-stines-permission-8qvwf7d5d> [<https://perma.cc/52D7-LS33>].

225. 539 U.S. 23 (2003).

226. *Id.* at 37 (holding that the Lanham Act cannot be read to require attribution of uncopyrighted materials or to create a cause of action for “plagiarism”); Michael Landau, *Dastar v. Twentieth Century Fox: The Need for Stronger Protection of Attribution Rights in the United States*, 61 *N.Y.U. ANN. SURV. AM. L.* 273, 291–303 (2005); see also Cheryl Teh, *An Artist Is Stripping JK Rowling’s Name Off Harry Potter Books and Reselling Them to Fans Who Oppose the Author’s Vocal Anti-Trans Rhetoric. A Legal Expert Says It’s Not Copyright Infringement*, *BUS. INSIDER* (Jan. 12, 2023, 12:11 AM), <https://www.insider.com/jk-rowling-harry-potter-artist-strips-name-re-sells-books-2023-1> [<https://perma.cc/TXW6-PAPG>]. But see U.S. COPYRIGHT OFF., *AUTHORS, ATTRIBUTION, AND INTEGRITY: EXAMINING MORAL RIGHTS IN THE UNITED STATES* 40–58 (2019), <https://www.copyright.gov/policy/moralrights/full-report.pdf> [perma link unavailable] (suggesting that not all moral rights claims under the Lanham Act have been completely foreclosed and should not be wholly ignored in these contexts); Rick Mortensen, *D.I.Y. After Dastar: Protecting Creators’ Moral Rights Through Creative Lawyering, Individual Contracts and Collectively Bargained Agreements*, 8 *VAND. J. ENT. & TECH. L.* 335, 349–53 (2006).

classic books, described in Part I above, have claimed a copyright in the newly edited editions of classic works. For instance, Richard Scarry claimed copyright in the illustrations he added to his *Best Word Book Ever*, Christopher Lofting claimed copyright to the 1988 updated edition of his father's *Dr. Dolittle* book, and the editor and publisher of the 2011 edition of *Huckleberry Finn* claimed copyright in their expurgated version of Mark Twain's public domain book.

When a follow-on author changes a work by adding "incremental additions of originality"²²⁷ or "nontrivial 'distinguishable variation[s]'" to an underlying work, they can create a separately copyrightable derivative work.²²⁸ An author can create derivative works from works already in the public domain, such as when a creator re-illustrated all of the images for *Little Black Sambo*. They can also be created from works that copyright still protects, when copyright owners or their authorized editors add incremental additions of originality to the copyrighted works, such as Christopher Lofting's new storyline in *Doctor Dolittle*, ballet companies' authorized new choreographed Chinese Tea dance in Balanchine's *The Nutcracker*, or Richard Scarry's updated illustrations in his *Best Word Book Ever*.

For a work to qualify as a derivative work protected under copyright, it must consist of a nontrivial variation from the preexisting work that sufficiently distinguishes the two.²²⁹ Since this nontrivial variation "does not require a 'high degree of [incremental] originality,'"²³⁰ the copyright in a derivative work only protects "the incremental original expression contributed by the author of the derivative work."²³¹ This means that derivative works do not extend the duration, enlarge the scope, or otherwise affect the copyright protection in the original, pre-existing material.²³²

In *Klinger v. Conan Doyle Estate, Ltd.*,²³³ the court clarified that once a work was in the public domain, any story elements, such as "characters covered by the expired copyright," can be included in an author's follow-on works or works that build upon the original source material.²³⁴ However, the original copyright owner could claim certain *features* of those characters "depicted in the late[r] stories that are not found in the early ones" to be protected by the unexpired copyrights on the later editions.²³⁵ In other words, the nontrivial additions, edits, or variations added to an underlying work could be protected under copyright law in

227. *Klinger v. Conan Doyle Est., Ltd.*, 755 F.3d 496, 501 (7th Cir. 2014).

228. *Schrock v. Learning Curve Int'l, Inc.*, 586 F.3d 513, 520–21 (7th Cir. 2009).

229. *Id.* at 520.

230. *Id.* at 521 (alteration in original) (quoting *Bucklew v. Hawkins, Ash, Baptie & Co.*, 329 F.3d 923, 929 (7th Cir. 2003)).

231. *Id.*; *see also* 17 U.S.C. § 103(b) (2024).

232. 17 U.S.C. § 103(b).

233. 755 F.3d 496 (7th Cir. 2014).

234. *Id.* at 500.

235. *Id.* at 502.

the newly created derivative work. This could have legal implications for—and create new rights in—follow-on authors and publishers who edit, update, replace, or recreate original children’s works.

Simply cutting words from a book, omitting songs from a musical, or cutting scenes from a film does not meet the incremental originality needed to create a copyrightable derivative, nor should it. The court in *Clean Flicks*, discussed above, held that removing offensive words or scenes from a film did not create a derivative work.²³⁶ Even instances where a work replaces (rather than just removes) words is insufficient to create derivative work in the expurgated version of the work. Nevertheless, sometimes editors can attempt to overclaim copyright in expurgated works, such as when the editor and publisher of the 2011 edition of *Huckleberry Finn* included a copyright notice in their book that read: “Copyright © 2011 by NewSouth Books. Introduction, notes, and texts copyright © 2011 by Alan Gribben. Reproduction of any part without explicit written permission from the editor and publisher is strictly forbidden.”²³⁷ As described in Part I, the only discernable edits the publishers made in their 2011 edition were to swap out certain offensive slurs from the original and replace them with less offensive words. These edits were hardly “nontrivial.”

More extensive edits to prior works could, however, legitimately create protectable derivative works. In Richard Scarry’s new *Word Book* illustrations, Scarry re-illustrated scenes within the book to reflect changing gender norms. These new images are likely protectable on their own as original works of authorship and, in the copyright notice for the 2013 edition, Scarry claimed a 1980 copyright to those new illustrations in his book.²³⁸ Similarly, the new choreographed dance segments added to Balanchine’s *The Nutcracker* could potentially be protected as new expression added to create a derivative work. The *Doctor Dolittle* storyline may also be sufficiently original under copyright law to warrant protection, and Christopher Lofting did, in fact, claim copyright to the 1988 revised edition of the book.²³⁹ Finally, the restorying of classic works is likely the most accessible example of creating a derivative work. The retelling of *Little Black Sambo* requires significant creativity and, like many current works or animation films based on folklore or classic fairy tales, its additions to the original story would create a copyrightable derivative work.

236. *Clean Flicks of Colo., LLC v. Soderbergh*, 433 F. Supp. 2d 1236, 1242 (D. Colo. 2006).

237. Gribben, *supra* note 83 (copyright notice). In a separate instance, a copyright officer at Nova Southeastern University noted that the Mark Twain Project asserted copyright to its 2003 edition of the *Adventures of Huckleberry Finn*. Stephen Carlisle, *Claiming Copyright in Public Domain Works: It’s Time to Put an End to Publishing Sleight of Hand*, NOVA SE. UNIV. FL. (Aug. 27, 2014), <http://copyright.nova.edu/claiming-copyright-public-domain/> [perma link unavailable].

238. See RICHARD SCARRY, *BEST WORD BOOK EVER* (HarperCollins Children’s Books ed. 2013) (copyright notice).

239. Lofting, *supra* note 58 (copyright notice); see *supra* Section I.A.

On the one hand, granting copyright to follow-on authors who recreate classic stories or substantially update works could incentivize creativity and progress. Authors, copyright owners, and publishers might be encouraged to find creative ways to remove problematic content from classic children's works without disrupting the artistic integrity of those classic works. This could allow classic works and stories to evolve and reach new audiences. On the other hand, granting derivative rights to editors who claim copyright in trivial, non-original revisions to classic works, such as NewSouth Book's claims in their 2011 expurgated version of *Huckleberry Finn*, can be problematic. This could sow confusion and uncertainty for follow-on creators who may not know which elements of an original work are in the public domain and which elements are updated and protected by copyright law,²⁴⁰ especially if authors, copyright owners, and publishers have chosen to render their original, pre-edited works scarce.²⁴¹ But in the case of classic children's works, should society bear the cost of potential extended exclusive rights if it means classic books get updated in socially beneficial ways?²⁴²

The copyright implications of editing classic works appear to strike balance between recognizing the rights of authors, copyright owners, and publishers, with acknowledging the public's interests in accessing knowledge, preserving history, and promoting social welfare.

As discussed above, authors and copyright owners generally retain the right to edit and update already published works, including replacing portions of their prior works. This gives them the power to update their works in socially beneficial ways to help them maintain and gain readership and preserve the economic value of their copyrighted works. If their original works are still protected by copyright, they usually can exclude the commercial exploitation of their pre-edited works. At the same time, they have the right to exclude third parties from editing their

240. For instance, in the copyright infringement suit filed by Conan Doyle's estate against author Nancy Springer (and Netflix) for their production of the first Enola Holmes movie, the Estate admitted that Sherlock Holmes's character was in the public domain free for the world to use and adapt, but claimed certain key attributes of Holmes were still protected by copyright because they were developed in later (still protected) stories. Complaint for Injunction and Damages at 6–7, *Conan Doyle Est. Ltd. v. Springer*, No. 20-cv-00610 (D.N.M. June 23, 2020). These new character traits included developing Holmes “into a character with a heart. Holmes became warmer. He became capable of friendship. He could express emotion. He began to respect women.” *Id.* at 7; see also Aaron Moss, “Enola Holmes” and the Case of the Overreaching Copyright Owner, COPYRIGHT LATELY (Sept. 1, 2020), <https://copyrightlately.com/enola-holmes-copyright-infringement-case/> [<https://perma.cc/9TSH-N2DL>] (quoting the complaint in *Conan Doyle Estate*).

241. See *supra* Section III.A.

242. For a detailed examination of this question, and further discussion on editors claiming and creating copyrightable derivative works in edited versions of classic books, see Cathay Y. N. Smith, *Editing Classic Books: A Threat to the Public Domain?*, 110 VA. L. REV. ONLINE 1 (2024).

copyrighted works or creating derivatives of their works, even when those edits remove or update problematic content.

In all situations, however, the copyright owner's control over their works and exclusionary right must give way to fair use. Fair use in these cases can range from permitting the side-by-side reproduction of relevant, pre-edited and updated portions of copyrighted works for comparison and commentary²⁴³ to the entire transformative restorying of a classic children's work.²⁴⁴ This allows copyright owners to maintain control over the commercial exploitation of their works, but does not grant them the power to rewrite history, whitewash authors' legacies, or prevent transformative restoryings or critical parodies of outdated classic works.

Furthermore, given the ability to create new copyrightable derivative works from classic works, copyright owners or follow-on authors may be encouraged to find creative ways to edit or change classic works to bring those works up to date to suit current social attitudes and reach a wider readership. This can foster creativity and dissemination of culture and knowledge, breathe new life into outdated works, and allow original beloved stories and classic works to reach new audiences.

IV. DO EDITS CENSOR SPEECH OR ENCOURAGE EXPRESSION?

While the legal issues discussed above may appear to strike balance under copyright law and social policy, there remain accusations that the assertion of copyright to edit classic works is "censorship" and cultural vandalism.

Some scholars describe censorship as the suppression of ideas or words that "threaten[] the political, social, or moral order' . . . [or] because it could harm or offend readers or third parties."²⁴⁵ Even though, in the instances described in this Article, the content being removed or edited may be considered racist, sexist, and hurtful to their intended audience, censorship can still be a legitimate concern:

It's risky to assume that institutional authorities can be empowered to suppress the expression of odious views on issues such as race and gender, without that license someday being used to stamp out the views of those advocating social justice, challenging officialdom or demanding reform.

. . . [I]f authorities are at liberty to punish expression—they will, on balance, deploy that prerogative self-servingly to suppress critics.²⁴⁶

243. See *supra* note 184 (videos comparing original versus updated *Fantasia* film and Flickr page comparing 1963 versus 1991 *Best Word Book Ever*).

244. See *supra* Section III.B. (describing restorying as possible fair use).

245. FELLION & INGLIS, *supra* note 71, at 17.

246. Suzanne Nossel, 'Cancel Culture' Censorship Can Be Most Dangerous for Those Who Promote Social Justice, NBC NEWS (Aug. 4, 2020, 2:07 PM), <https://www.nbcnews.com>.

At the same time, First Amendment scholars have noted the divergent treatment of free speech principles that protect “speech . . . that actively denigrates, vilifies or dehumanizes other groups of people,” and those that fail to protect against the silencing of women and minorities when they call for fair and equal treatment.²⁴⁷ Mary Ann Franks calls this phenomenon “First Amendment fundamentalism.”²⁴⁸ Specifically, she explains:

In the First Amendment fundamentalist view, the harm inflicted by racist or sexist speech pales in comparison to the harm of restricting racist or sexist speech. In this view, the most extreme speech merely causes offense, whereas even the most modest attempts to restrict that speech causes irreparable harm.²⁴⁹

Perhaps the “censorship” accusations against copyright owners who edited works to remove racial, gender, and other problematic stereotypes in classic works could be attributed to First Amendment fundamentalism. Regardless of its labeling, the U.S. Supreme Court is clear that the freedom of thought and expression “includes both the right to speak freely and the right to refrain from speaking at all.”²⁵⁰ In other words, authors, copyright owners, and publishers have the freedom to publish and not publish any expression that they disagree with, and have the right to publish edited versions of classic works that better express their opinions. An author’s or copyright owner’s decision to exercise their copyright to edit their *own* words, expression, or works is distinguishable from governmental censorship of a work.

Furthermore, while editing classic works to remove problematic content could be seen as a form of self-censorship, none of the edits discussed in this Article were made in fear of reprisal from government or institutional authorities. Robert Sedler, for instance, divides self-censorship into “self-censorship bad,” when speakers self-censor based on fear of government repercussion,²⁵¹ and “self-censorship good,” when “the media is itself making the decision not to publish and, in doing so, it has concluded that under the circumstances, other values outweigh the public’s interest in obtaining that information.”²⁵² When Richard Scarry or Christopher Lofting decide to update their works to reflect changing social values or to protect their legacies and, in turn, the economic

com/think/opinion/cancel-culture-censorship-can-be-most-dangerous-those-who-promote-ncna1235671 [https://perma.cc/FD8L-7NWL].

247. Mary Anne Franks, *Beyond “Free Speech for the White Man”: Feminism and the First Amendment*, in RESEARCH HANDBOOK ON FEMINIST JURISPRUDENCE 366, 367 (Robin West & Cynthia Grant Bowman eds., 2019).

248. *Id.*

249. *Id.* at 368.

250. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 559–60 (1985) (quoting *Wooley*, 430 U.S. at 714).

251. Robert A. Sedler, *Self-Censorship and the First Amendment*, 25 NOTRE DAME J.L., ETHICS & PUB. POL’Y 13, 14–15 (2011).

252. *Id.* at 25.

value of their copyrighted work, they appear to be making the decision that those values outweigh other interests—such as the interest in further publishing, promoting, or profiting from racial stereotypes in children’s works.

In fact, an author, copyright owner, or publisher’s act of revising works to remove stereotypes or make a story more socially and culturally inclusive can, itself, be seen as an exercise of thought, expression, and speech. At a minimum, their edits to works express their thoughts and commentary on racial and gender stereotypes, and the new plots, characters, or stories they create to add to the classic works are themselves examples of creative input that copyright encourages. As discussed above, those edits and added expression may even be protected as copyrightable expression under copyright’s derivative work doctrine.

Some have accused editors of “cultural vandalism” when they edit classic works. Classic children’s works are frequently venerated as works of art, making their preservation feel vital to the very existence of a society’s shared heritage. Because of this, any suggestion of removing or changing a classic work can feel like an attack on culture itself. Of course, *whose* heritage and *whose* culture these classic works represent are certainly up for debate, especially when original versions of those works included portrayals of people of color in hurtful or stereotypical ways. While there are many reasons to protect history and heritage,²⁵³ there has also been increasing support for the removal or recontextualization of cultural artifacts such as monuments, sculptures, and public art that celebrate white supremacy or commemorate destructive historic legacies.²⁵⁴ If a classic children’s book, film, or dramatic work reinforces white supremacy or ceases to represent current social and cultural values, is it better off altered? Just as labeling a Confederate monument as “heritage” no longer justifies its continued preservation, perhaps labeling a problematic work as a “classic” should also not justify its continued unaltered publication without regard to the message, meaning, or harm it might cause.

CONCLUSION

Over the years, authors, copyright owners, and publishers have revised classic children’s works to address racial, gender, and other problematic stereotypes. Most of these changes did not receive the same amount of public scrutiny as the 2023 controversy over revisions to Roald Dahl’s classic books. Nevertheless, as explored in this Article, all these changes raise important and complicated normative and legal issues. At

253. See generally John Henry Merryman, *The Public Interest in Cultural Property*, 77 CALIF. L. REV. 339 (1989).

254. See, e.g., *How Statues Are Falling Around the World*, N.Y. TIMES (Sept. 12, 2020), <https://www.nytimes.com/2020/06/24/us/confederate-statues-photos.html> [<https://perma.cc/52TL-QEWC>]; Zofia Stemplowska, *The Rhodes Statue: Honour, Shame and Responsibility*, 92 POL. Q. 629 (2021).

times, these changes challenge conflicting views of racial literacy, rewriting history, and preserving cultural legacies. They push the boundaries of copyright law's fair use, integrity, derivative works, and other doctrines. They also challenge copyright policy's attempts to strike balance between free speech and censorship. Ultimately, the discussions in this Article serve to explore changes to classic works, examine the moral, legal, and policy implications of those changes, and understand what can be done with classic works and how copyright could—in these instances—serve the diverse interests of the public.

