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Marc Siegel

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Disney and Nintendo Make the "Ultimate" Team in Bringing Sora to Super Smash Bros.

By: Marc Siegel



For years, fans of the video-game franchise “Super Smash Bros.” have begged Japanese developing-company Nintendo to include their favorite characters in the record-breaking fighting game. The franchise’s most recent iteration, “Super Smash Bros. Ultimate” (“SSBU”), has become the largest crossover event in video game history.[1] The popularity of the franchise, as well as the impeccable attention to detail given to each character, has convinced several third-party developers to grant Nintendo licensing rights to include their own mascots as playable characters in SSBU. Nintendo icons such as Mario, Pikachu, and Link, can now face off against characters such as Sega’s Sonic the Hedgehog, Capcom’s Mega Man, and Konami’s Solid Snake, to name a few.[2] However, fans believed that there was one character that Nintendo would never be able to include in Smash Bros . . . until now.

On October 5th, Masahiro Sakurai, Director of SSBU, revealed that Sora from *Kingdom Hearts* would be the final downloadable character for SSBU.[3] *Kingdom Hearts* is a Disney-licensed video game franchise developed by Square Enix; in the franchise, Sora—an original character created specifically for *Kingdom Hearts*—adventures beyond his childhood home and quickly becomes a key figure in the fight to save the world from dark forces. Throughout his journey, Sora encounters numerous Disney icons such as Mickey Mouse, Donald Duck, and Goofy and characters from Square Enix’s *Final Fantasy* series, such as Cloud Strife and Sephiroth (both of whom are also playable in SSBU.)[4]

The Walt Disney Company is notoriously protective of its intellectual property. In 1998, Disney successfully lobbied Congress[5] for the Copyright Term Extension Act (“CTEA”).[6] Before the CTEA, copyright would last for the life of the author and 50 years, or 75

years for a work made for hire.[7] Following the passage of the CTEA, “. . . copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication” [8] Accordingly, the original iteration of Mickey Mouse—“Steamboat Willie”—a 1928[9] creation of the then-young Walt Disney Company—which would’ve entered the public domain in 2003—will now enter the public domain in 2023, while later iterations (e.g., “King Mickey” from 2002’s *Kingdom Hearts*)[10] will still enjoy copyright protection.

Outside of their lobbying efforts, Disney is infamous for suing anyone who infringes on their intellectual property. For example, in 2016, Disney successfully sued Chinese film production company Bluemtv and distributor G-Point in Shanghai Pudong New Area People’s Court. Disney demonstrated that Bluemtv and G-Point’s animated film, “The Autobots,” infringed upon Disney-Pixar’s copyright protections for their *Cars* character, Lightning McQueen.[11] Disney even went as far as to charge an elementary school parent-teacher association a \$250 licensing fee. The PTA charged tickets to a fundraising event where students could watch the 2019 live-action remake of *The Lion King*. [12] When the PTA attempted to crowdfund the \$250 fee online, Disney faced severe public backlash, prompting a tweet from then-Disney CEO Bob Iger, who apologized for the incident and personally promised to donate to the PTA’s fundraising.[13]

Nintendo is no stranger to such lawsuits. In 2010, an Australian man illegally uploaded *New Super Mario Bros. Wii* onto the internet for free download. Nintendo Australia sued and ultimately won a settlement of 2.025 million AUD, plus attorney’s fees.[14] In 2017, Nintendo Co. Ltd. filed a lawsuit against Marika Co., a Tokyo-based go-kart company for infringing upon Nintendo’s *Mario Kart* franchise. Marika’s customers would be given costumes of characters from *Mario Kart*, and Marika would use videos of drivers in-costume as part of the virtual marketing and advertising campaign. Marika would later be ordered to pay Nintendo ¥10 million by the Tokyo District Court.[15]

Given Disney and Nintendo’s litigious histories, fans of the Smash Bros. franchise believed it would not be possible for Sora to join the brawl. However, in October 2015, fans of Smash Bros. completed an open-ended poll where they could request any character—regardless of their franchise—to be added to as a playable fighter. Nintendo had never revealed the results of this poll until Mr. Sakurai’s October 5th presentation earlier this year, where Sora was revealed to be the most requested character.

For the fighters at the top of the list, we thought that some people might demand them from the respective game companies . . . [w]e believed that this would cause some inconvenience to many parties . . . [w]e’re sorry that we were not able to reveal the results . . . [b]ut now, after a long time, we were able to connect it to the result we have today.[16]

Disney’s cooperation with Nintendo was a pleasant surprise to fans of both companies. However, fans were quick to observe some restrictions placed on Nintendo to effectuate this licensing agreement. For context, when a third-party developer granted a license to Nintendo to include a character as a playable fighter in Smash Bros., that developer often allowed secondary characters to be included in supplementary content. An example of this would be when Bandai Namco licensed *Tekken* character, Kazuya Mishima, as a playable fighter. They also allowed other prominent *Tekken* characters such as Jin and Heichachi to be used as “Spirits,” a type of in-game collectible.[17] By comparison, only characters specifically developed for *Kingdom Hearts*—like Sora himself—are featured in SSBU as Spirits. In fact, it appears that no other type of Disney character appears in SSBU in any capacity; the closest reference to a non-*Kingdom Hearts* Disney character is a charm attached to Sora’s Keyblade (sword) in the shape of Mickey Mouse.[18]

While it’s extremely doubtful SSBU fans will be able to see the match-up between Disney’s Pluto and Nintendo’s Bowser, fans and copyright lawyers alike see Sora’s inclusion in SSBU as a sign that both entertainment powerhouses are becoming more amenable to sharing and licensing their intellectual property. And while Sora will be the final playable character added to SSBU, one can only hope that this is the first of many licensing deals between Nintendo and Disney.

Marc Siegel is a Staff Editor on the *Cardozo International and Comparative Law Review*. Prior to attending Cardozo, Marc attended Brandeis University, where he double-majored in Business and Politics, and double-minored in Economics and Legal Studies. As a child, Marc dreamed of becoming a video-game developer.

[1] Video: Super Smash Bros. Ultimate – Battling with Sora (Nintendo Switch) (Oct. 5, 2021, at 36:33).

[2] Nintendo, *Fighters, Super Smash Bros. Ultimate for the Nintendo Switch System*, https://www.smashbros.com/en_US/fighter/ (last visited Oct. 14, 2021).

- [3] Battling with Sora, *supra* note 1, at 04:05.
- [4] Battling with Sora, *supra* note 1, at 06:50.
- [5] For an in-depth analysis of Disney's methods and motivations behind its aggressive lobbying efforts, see Nick H. Kamboj, *Disney's Influence on the Enactment of the Copyright Term Extension Act ("CTEA"), as Well as the CTEA's Retrospective and Prospective Impact* (2018) (Master's thesis, Harvard Extension School), <http://nrs.harvard.edu/urn-3:HUL.InstRepos:42004051>.
- [6] See Sonny Bono Copyright Term Extension Act, Pub. L. 105-298, 112. Stat. 2827 (1998); Fairness In Musical Licensing Act of 1998, Pub. L. 105-298, 112. Stat. 2827 (1998).
- [7] *Id.* Tit. I § 102(b).
- [8] U.S. Copyright Office, *How Long Does Copyright Protection Last?*, <https://copyright.gov/help/faq/faq-duration.html#duration> (last visited Nov. 10, 2021).
- [9] Dave Smith, *Steamboat Willie*, Library of Cong., https://www.loc.gov/static/programs/national-film-preservation-board/documents/steamboat_willie.pdf (last visited Nov. 11, 2021).
- [10] Jonathan Lochiatto, *Every Disney Character & Property in Kingdom Hearts*, CBR (Oct. 9, 2021), <https://www.cbr.com/kingdom-hearts-final-fantasy-characters-2/>.
- [11] Adam Jourdan, *Cars vs. Autobots: Disney Sues China Firms in Copyright Dispute*, Reuters (June 22, 2016), <https://www.reuters.com/article/us-disney-china-copyright/cars-vs-autobots-disney-sues-china-firms-in-copyright-dispute-idUSKCN0Z80JG>.
- [12] Christine Hauser, *Disney C.E.O. Apologizes to P.T.A. Asked to Pay After 'Lion King' Screening*, N.Y Times (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/us/lion-king-berkeley-movie-licensing.html>.
- [13] Robert Iger (@RobertIger), Twitter (Feb. 6, 2020, 11:00 AM) <https://twitter.com/robertiger/status/1225449142140301313?lang=en>.
- [14] Asher Moses, *Nintendo Pirate Just a Shy Gamer: Dad*, Sydney Morning Herald (Feb. 10, 2010), <https://www.smh.com.au/technology/nintendo-pirate-just-a-shy-gamer-dad-20100210-nrlr.html>.
- [15] Matt Wales, *Nintendo Wins Lawsuit Against Company Running Unofficial Real-life Mario Karting Events*, Eurogamer (Sept. 28, 2018), <https://www.eurogamer.net/articles/2018-09-27-nintendo-wins-lawsuit-against-company-running-unofficial-real-life-mario-karting-events>.
- [16] Battling with Sora, *supra* note 1, at 07:45-08:30.
- [17] Video: Super Smash Bros. Ultimate – Mr. Sakurai Presents "Kazuya," June 28, 2021 at 36:05.
- [18] Battling with Sora, *supra* note 1, at 05:28.