

CONCERNING © COPYRIGHT #3

PUBLIC DOMAIN

According to the U.S. Copyright Office, a work of authorship (e.g. book, music, video, website) “is in the ‘public domain’ if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection.” Thus “works in the public domain may be used freely without the permission of the former copyright owner.” In other words, this means when “using public domain materials, you can borrow all or part of a work – print or nonprint, fiction or nonfiction – and not worry about copyright infringement,” says Rebecca Butler, author of *Copyright for Academic Librarians and Professionals*. “The idea behind public domain is that the copyright owner has given up, to the public at large, all of his or her original rights to the work” granted by U.S. copyright laws (17 U.S.C. 106).

PUBLIC DOMAIN WORKS

Whether an original work of authorship is in the public domain depends on factors, such as 1) the nature of the work, 2) who created the work, 3) the purpose of the copyright owner, and 3) the year in which the work was published.

■ **The Nature of the Work:** Some information or content by its very nature cannot be copyrighted and is automatically in the public domain. This includes things like persons’ names, official titles, basic facts, or ideas and concepts.

■ **Who Created the Work:** While many works of authorship like books and websites are copyrighted and not in the public domain, most content published by the federal government is freely available for the public to use as it wishes.

■ **The Copyright Owner’s Purpose:** Often copyright owners intentionally surrender some or all of their exclusive rights to their works and purposefully place them in the public domain. For example, a photographer might share his or her pictures under the terms of a Creative Commons license.

■ **The Year a Work is Published:** Usually, the year in which a work was published or created is the most significant factor in determining whether it is in the public domain. For a work of authorship that is copyrighted, the term or duration of the copyright is established by U.S. copyright law. When the term expires, the work subsequently enters the public domain.

It is important to note that because a work of authorship is in the public domain, this does not mean it can by no means be sold to the public. For instance, a book publisher can compile federal government statistics or documents into a volume and sell them, even though they are not themselves copyrighted. Further, an author can enhance or embellish a work that is in the public domain and thereby create a derivative of the work that can be sold to the public. In fact, if the new work involves a minimal degree of creativity, the author could copyright the derivative while the original work stays in the public domain. For example, an annotated *Holy Bible* can be copyrighted.

PUBLIC DOMAIN GUIDELINES

Determining whether a particular work of authorship is in the public domain can sometimes be difficult, especially when the work in question has no copyright symbol (©) affixed to it. So as a rule of thumb, the following guidelines, which are based on the copyright terms established by U.S. law, are helpful for identifying works that are currently in the public domain:

- 1 Works published before 1923.
- 2 Works published between 1923 and 1963 with a copyright notice but no renewal of copyright.
- 3 Works published between 1923 and 1977 with no copyright notice.
- 4 Works published between 1979 and March 1, 1989 with no copyright notice and no copyright registration.
- 5 Works for which the copyright owner has surrendered all copyrights.

PUBLIC DOMAIN TOOLS

■ **Public Domain Slider** – a tool developed by the American Library Association, the Public Domain Slider helps determine the copyright of a work first published in the U.S. It enables a user to figure out whether a work is copyright protected or in the public domain based on date of first publication and other factors like the copyright notice, registration, or renewal. For each date and circumstance of a work selected, the slider will display the copyright term or status of the work and whether the copyright owner’s permission is needed to use the work.

■ **Copyright Public Records Catalog** – a tool maintained by the U.S. Copyright Office, the Public Records Catalog allows a user to search the federal government’s copyright records for information about works published since 1978. The types of searches available are title, name, and keyword searches among others. For each copyright record, the catalog shows the type of work, bibliographic information (i.e. title, author, publisher, etc.), date of creation, date of publication, copyright claimant, registration number, and registration date.

■ **Virtual Card Catalog** – a tool under development by the U.S. Copyright Office, the Virtual Card Catalog allows a user to search images of the actual Copyright Card Catalog that is onsite at the Library of Congress and includes the copyright registration for works published from 1870 through 1970. For each copyright record, the image displays the bibliographic information (i.e. title, author, publisher, etc.), copyright holder, registration number, and registration date.

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