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## Features

### Library Digitization Projects and Copyright

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**Editors' Note (SP): This article is divided into six parts. You may link directly to each one of these parts using the chart directly below. In addition, for your reference, the article's complete Table of Contents appears in [section one](#) of the article.**

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## II. Expiration of Works into the Public Domain

What are the dates that works expire into the public domain? Is there a formula? It may be helpful to print this chart showing when works expire into the public domain. The chart may look boring and

straightforward, but it has more twists and turns than Lombard Street in San Francisco.

This section will help explain some of the oddities that may make you think I was tipsy (I wasn't) when I made it.



### A. Published v. Unpublished

An eyeball's glance at an old local newspaper, an advertisement, a baseball card reveals that these works are published. Another eyeball notices that a

handwritten letter by the madam at the local bordello last century is unpublished.

Does it make a difference if an item is published or unpublished? Yes. That's because before the enactment of the 1976 Copyright Act, a dual system of copyright protection existed in the United States. A system of common law copyright administered under state law was given to unpublished works. These works had **perpetual copyright protection**.

Published works, on the other hand, were governed by federal statute. They had to comply with certain formalities, such as displaying a proper copyright notice (© Author 1926), filing timely renewals or be **injected** into the public domain.

Accordingly, the definition of publication is especially important for older works. Under the 1909 Act, "general publication" occurred when, with the consent of the copyright owner, the work was sold or otherwise made available to the public. An offer for sale, lease, loan, etc. also constituted publication. With publication came a limited term of exclusive copyright rights.

In contrast, if distribution was made only to a definitely selected group for a limited purpose, without the right of further reproduction or distribution, the common law doctrine of "limited publication" allowed the author to retain the perpetual copyright.<sup>2</sup>

The definition of publication applied to works created since the 1976 Copyright Law went into effect is:

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

[17 U.S.C. §101](#)

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## **B. Published and Registered Works**

### **1. The 95 Year Rule and the Frozen Years**

# Library of Congress Frozen 20 Years



Let's take a look at published works in a library's special collection. Maybe there are some special local newspaper issues, like these ones published in 1912 after the sinking of the Titanic. Is this in the public domain?

Look at the [Public Domain Chart](#). The basic rule for works published before 1978 is that copyright lasts for 95 years past the date of publication.

CURRENT YEAR	PUBLISHED OR REGISTERED BEFORE 1978
Rules	Publication or Reg. Date + 95 yrs

You would think that you could logically add 1912 + 95 and calculate a term lasting through the end of 2007<sup>3</sup>. But you would be wrong. Copyright terms have some irregularities. If you look more closely at the chart, you'll see that throughout this year of 2002, the public domain consists of works published on or before the year 1922. But wait -- either I fell asleep at the keyboard in a drunken stupor, or something very odd happened. The year 1922 is repeated until 2019!!

Rules	Publication or Reg. date + 95 yrs
2002	1922
2003	1922
2004	1922
2005	1922
...	1922
2018	1922
2019	1923



What happened? The Sonny Bono Copyright Term Extension Act FROZE Twenty years of works out of the public domain.<sup>4</sup> The Act was passed in 1998 and went into effect immediately that year. Works published in 1923, 24, 25, had been due to enter the public domain

in the years 1998, 1999, 2000. And so forth. This Act extended the terms for these works from 75 years to 95 years. The works that had already safely made it to the public domain **remain in the public domain.**

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The 1912 newspaper on the Titanic entered the public domain after 75 years. Copyright terms last until the end of a calendar year. Thus this paper joined the public domain on January 1, 1988, and remains in the public domain.

But get this: No more published works will enter the public domain until the year 2019, when works published in 1923 finally thaw out. Only then will we regain a schedule of one year's work expiring into the public domain each year. For a list of important works that are frozen, see the Subverted Public Domain List.<sup>5</sup>

<b>1923</b>	<b>1930</b>	<b>1937</b>
<b>1924</b>	<b>1931</b>	<b>1938</b>
<b>1925</b>	<b>1932</b>	<b>1939</b>
<b>1926</b>	<b>1933</b>	<b>1940</b>
<b>1927</b>	<b>1934</b>	<b>1941</b>
<b>1928</b>	<b>1935</b>	<b>1942</b>
<b>1929</b>	<b>1936</b>	

## 2. Giant Exceptions to the 95 Year Rule for Published Works

**a) Published in the U.S. before 1978 with No Copyright Notice = PUBLIC DOMAIN**

Here is a baseball card showing two of Jim Thorpe's teammates on the New York Giants. This is not a giant exception for baseball cards per se, but let's use it as an example of a works that have fallen into the public domain.<sup>6</sup>



The Copyright Law today is a patchwork of old laws and new. Works published in the United States before January 1, 1978 are required to have a proper [copyright notice](#).<sup>7</sup> If the notice was not given (or improperly given), all copyright protection for that work was permanently lost in the United States.

**Example: © Hypothetical Baseball Card Company 1933**

If the baseball card (or any other U.S. published work in your library) has no copyright notice on it, it's in the **PUBLIC DOMAIN**.

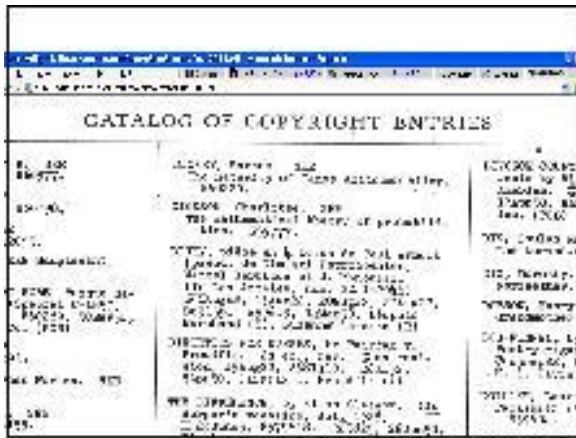
**b) Published in the U.S. before 1964 without Renewal =PUBLIC DOMAIN**



Published works today need no renewals to enjoy a 95 year term. But they used to. If they weren't renewed properly, they fell into the public domain, never to return to copyrighted status. Owners didn't bother to keep track of works that lost commercial value. To renew, they had to keep track of the work and renew it in its 28th year. Works with a limited time of commercial value (such as some baseball cards) may not have been renewed. A study by the U.S. Copyright Office in 1961 showed that less than 10% of all copyrights were renewed and fewer than 5% of copyrighted books and pamphlets were renewed, and thus fell into the public domain.<sup>8</sup>

Unfortunately, unlike a missing Copyright Notice on a work, it's not a simple matter to figure out if a work was properly renewed. In fact it's a bear to figure out. The Copyright Office offers guidance on [How to Investigate the Copyright Status of a Work](#) <http://www.copyright.gov/circs/circ22.pdf>.<sup>9</sup>

Read what Old Fulton NY post Cards does when a Newspaper was correctly Copyrighted at publication but suspects that it is now is in the public domain.....



It's not pretty. Essentially, you need to take a trip to Washington D.C. and search the Copyright Office's files. Or you could pay the Copyright Office or hire someone else to do the search.<sup>10</sup> Or you could find a large library such as the Los Angeles Public Library or the San Francisco Public Library, and look through the Catalog of Copyright Entries, a book version of the

Copyright Office files.

You will be researching the way your grandmother did, looking volume by volume, pausing for cross-references, and possibly losing track of what you've checked. The good news is that you no longer need airfare and a hotel room. The [Online Books Page](#) an enterprising project supported by the Universal Library Project at Carnegie Mellon has *scanned in* the volumes of the Catalog of Copyright Entries so that you can search these books from anywhere. The bad news is that this is not a database that allows you to search with elegance and speed, (anyone have some grant money lying around?) but an exact replication of the real thing. See also a work-in-progress transcribing the Catalog of Copyright Entries at [kingkong.demon.co.uk](#).

### 3. Rule of Thumb: Sail the Ocean Blue through 1922



So what do libraries do? Many go with the safe rule of thumb for **published works: Sail the ocean blue through 1922**. Note that you don't need to update that rhyme until the year 2019, because 1922 is going to be with us a long, long time.

1922



Is that what I advocate? No. Remember that a vast majority of the older published items in your old collection has probably fallen into the public domain. Do I understand it when libraries use the simple 1922 rule? Of course. Some libraries have to use staff time and money to actually keep the doors open.

But if there is a little staff (or volunteer) time, check to see if there's a proper copyright notice on works **published** before 1978. Remember, if not, it's in the public domain.

If you have some time and money, investigate the items published before 1964 that have a copyright notice on them, to see if they were renewed. Designate a staff member to learn how to check the renewal records. If they weren't renewed properly, they're in the public domain.

Remember, anything in the public domain can be digitized and flung onto the web without copyright worries (don't forget there could be other restrictions like privacy and publicity concerns).

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## 4. Rocks at the Edges



The clear sailing rule is pretty secure, but I wouldn't be a lawyer if I could give you a bright-line rule without some rocks at the edges. There are only a few, but if one of them applies directly to you, you should probably know about them.

### a) Don't Use Newer Versions of Expired Works

This may be obvious, but stick with the work that actually expired. That is, if you want to use Peter Pan, use a version by J.M. Barrie (he wrote

## b) Don't Use Trademarks: Like Diamonds, Trademarks Last Forever

Trademarks can last forever, unlike the limited terms of copyright. Although you can digitize a book on Peter Pan, published by 1922, you can't digitize the Peter Pan image that's on the peanut butter jars. To figure out if it's a [trademark](#), see Nolo's online encyclopedia. If you're interested in understanding the double copyright and trademark protection sometimes given to graphic characters, see [The Publishing Law Center](#).

Is it a trademark infringement when you digitize the logo as part of the New York Times 1912 edition? Not likely. The Times would have to show that the library's use of the logo is **likely to cause customer confusion**, the basis of a trademark infringement suit.<sup>11</sup> Alternatively, if the mark is a famous mark, it would have to show the library "diluted" the trademark's distinctive quality.<sup>12</sup> The logo would be seen in its exactly correct context, making such a case extremely difficult to make.<sup>13</sup>

Is it a trademark infringement if your library uses the Times' stylized lettering (from the 1912 issue of the paper) to put out its own newspaper, called The New York Library Times? If the logo in use then has not been abandoned (is still used today), the Times could make a case that library users be confused. Library users might think the New York Times owned or endorsed the library's paper, for example. In this case, the library could expect a lawsuit.<sup>14</sup>

## c) Special Concerns about Digitizing Foreign Works

First, you may have noticed that Peter Pan is a foreign work, written by a Scottish author. That doesn't mean you can't digitize it, and in fact Project Gutenberg project has put it on the web. You might look at the [wording](#) (under "bibliographic details") that Project Gutenberg uses with the Peter Pan text, recognizing that the laws of other nations differ from the United States.

Second, if a foreign work has fallen into the public domain in the United States, it may be clear sailing to digitize it and use it in-house. Publishing on the web is international, however, and owners of works that still enjoy copyright in another country may challenge you on their soil. These immense problems in jurisdiction and conflicts of laws are currently under discussion internationally by the Hague Special Commission.<sup>15</sup>

Third, the GIANT EXCEPTION (see II.B.2) that tells us works without proper copyright notice and renewals fell into the public domain **only applies to works published or registered in the United States**. Think of it as an All-American baseball Giant exception. It doesn't apply to works published elsewhere, and in fact some of these works that had fallen into the public

domain have since had their copyright status restored. See [Circular 38b](#), Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA). For a list of countries that the U.S. has treaties with, see [Circular 38a](#), International Copyright Relations of the United States.

Fourth, although in general you needn't worry about works published by 1922, look to be sure that is the United States publication date. If it's not, take a look at a controversial [court decision](#) that found that *Bambi's* U.S. copyright term did not commence until it was first published in the United States, even though it had been published three years earlier in Germany. It had been published in Germany without a copyright notice (required by U.S. law for copyright protection at that time), *and was in the public domain* in the United States during those three years.<sup>16</sup>

## C. Unpublished Works



Now we get to the really good stuff. The unique items in your collection that can really make a difference to the sum of human knowledge if you can share it by digitizing and putting it on the web. What about a handwritten letter from the madam of the local bordello, written in

1870? What if she turned out to later become part of the suffragette movement in Oregon and her biographer there has no idea that your library has this letter?

Is it in the public domain? Does the 95 year rule for published works also apply to unpublished works? Of course not. That would be too simple.

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### 1. General Rule

Unpublished works have different rules than published works (for works created before 1978). Take a look at the [Public Domain Chart](#). You'll notice that for the year 2002, it says that the rule for unpublished (and not registered) works is split into two categories. If it is a [work made for hire](#), such as a work by an employee, copyright lasts for 120 years after the date of creation. If it is a work by a personal author, you need to check the death records, because the term lasts for his/her lifetime plus 70 years. If the work is anonymous, or there is no record of the death date, a work by a personal author can enter the public domain after 120 years from its creation date. You can get a certified report from the Copyright Office to ensure a complete

defense to a copyright infringement suit.<sup>17</sup>

CURRENT YEAR	Unpublished (and Not Registered)	
Rules	Works Made for Hire and Anonymous Authors <b>Creation date + 120 years</b>	Personal Authors <b>Life plus 70 yrs;</b> last to die if joint author

According to the general rule, you would first determine whether the letter was written as an employee. If so, the term would last from 1870 + 120 years = Expired at end of 1990. If the letter was written as a personal effort, then find out when she died, and add 70 years. If there is no death record, you might presume she is dead after 120 years.

## 2. Today, Nothing is in the Public Domain

However, if you're reading this in 2002, look closer at the chart. The handwritten letter is not yet in the public domain.

CURRENT YEAR	Unpublished (and Not Registered)	
2002	<b>NONE</b>	<b>NONE</b>

That's right. Some of you are well aware of this. Under the common law, unpublished works had **perpetual copyright**. It never expired. The 1976 Copyright law changed that. It replaced the perpetual rule with a limited term that has since been extended to the terms listed above. The [law](#) also stated that copyright terms for works created before January 1, 1978 would, in no case, expire before December 31, 2002.<sup>18</sup>

## 3. But I know I've seen Digitized Copies of Letter and Manuscripts!

At this point, you might be wondering about the digitized copies of unpublished letters, manuscripts, or even copies of letters in books, that you might have already seen. One possibility is that the library was given the copyright to a work when the work was added to the collection. Established archives (unlike small collections of local history in public libraries) often request this transfer as a matter of course. A second possibility is that the owner granted permission to copy. Third, as you'll see from discussions below, libraries and archives may make in-house digital copies for preservation. Fourth, in some situations, libraries assert fair use.<sup>19</sup>

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## 4. New Years Day 2003: Public Domain Parties in Libraries and Archives Across the Land



Some of you have been waiting patiently over 25 years for January 1, 2003. Others of you happened to the birthday party by chance at just the right time. For the first time, the unpublished works in the U.S. will be reborn into the public domain. As you can see, all the works created in 1882 and earlier and works by authors who died in 1932 or earlier will make a grand entrance **all**

**at once.**

Unpublished (and Not Registered)	
Works Made for Hire and Anonymous Authors <b>Creation date + 120 years</b>	Personal Authors <b>Life plus 70 yrs;</b> last to die if joint author  Death Year:
NONE	NONE
1882	1932

Suddenly, untold treasures will become legally available to scholars and the public. Libraries should do everything they can to make access possible.



## 5. Tears: Twenty Years Buried



At any exciting birthday party, some tears will be shed. The Sonny Bono Copyright Extension Act added twenty years of copyright protection to unpublished works as well.



It's not a freeze, exactly. It's more like a giant windstorm dumped 20 years of sand over unpublished works, burying them considerably deeper than they already were. We can dig them up, but only one year at a time. That is, before the Bono Act passed, librarians and

archivists **had been expecting** the year 2003 to unearth works made for hire created in 1902, and personal works by authors who had died as late as 1952.

Instead we will unearth works made for hire created in 1882 and those by authors who died by 1932.

## 6. The Flip Side: Copyright Owners Rush to Publish by December 31, 2002

Another twist to the Copyright Law is a provision that allows owners of unpublished manuscripts to significantly extend copyright if they publish by December 31, 2002. Once published, copyright will extend at least through 2047.<sup>20</sup> Copyright owners' attorneys [urge](#) quick publication.<sup>21</sup>

### D. Stay Tuned: *Eldred v. Ashcroft* May Return the 20 Years

The information in this article is a snapshot of current copyright law. It may change again (well, that's almost a given). It may change as early as next fall when the United States Supreme Court will hear the most important copyright case in decades. A public domain ebook publisher, Eric Eldred, has challenged the Sonny Bono Copyright Extension Act. Eldred claims the additional 20 years oversteps the "limited times" that the Constitution allows Congress to set for copyright terms. For current status on this case, see the plaintiffs' website at [eldred.cc](#). The site also posts Amicus Briefs filed by the American Library Association and others.

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### Footnotes

<sup>2</sup>[Penguin Books v. New Christian Church of Full Endeavor](#), 60 P.T.C.J. 300

(S.D.N.Y. 2000), citing 1 Nimmer § 4.04, at 4-18 (3d ed. 1997); *American Visuals Corp. v. Holland*, 239 F.2d 740, 744 (2d Cir. 1956) (plaintiff disseminated over 200 copies of his book by placing them in hotel rooms, and distributed them in an effort to get business; such dissemination constituted a general publication, because even though the purpose of the distribution was limited, the "persons" to whom it might be given were unlimited). A "limited publication," in contrast, "communicates the contents of a [work] to a definitely selected group and for a limited purpose, and without the right of diffusion, reproduction, distribution or sale ... [and therefore] does not result in the loss of the author's common law copyright to his [work]." *White v. Kimmell*, 193 F.2d 744, 746-47 (9th Cir. 1952). <back to text>

<sup>3</sup>If you can't add, it's okay to use a calculator.

<sup>4</sup>This Act passed during the time of the Monica Lewinsky scandal, and did not get significant attention in the press [nor much debate](#) in Congress. Sonny Bono Copyright Term Extension Act. Public Law [105-298](#), 112 Stat. 2827 (1998). See also Dennis S. Karjala, Arizona State University, [Legislative History of CTEA](#) (Summary Outline) (visited May 26, 2002).

<sup>5</sup>Dennis S. Karjala, Arizona State University. [Some Famous Works and Year of First Publication \(Subverted Public Domain List\)](#). Lists works that would have entered the public domain, but for the Copyright Term Extension at <http://www.law.asu.edu/HomePages/Karjala/OpposingCopyrightExtension/publicdomain/PDlist.html> (visited May 4, 2002).

<sup>6</sup>Please grant me a little literary license here ("Giant Exception"). I'm using the card to illustrate the possibilities of works that had no copyright notice, and also of works that had a notice, but did not get renewed in their 28th year. The picture that I actually show of the New York Giants (and fans would catch this, so this footnote is really only for them) is from the year 1912, a year that is actually already safely in the public domain, even if the card had a proper notice and was renewed in a timely manner. See The Library of Congress presents America's Story from America's Library, showing Jim Thorpe's teammates on the Giants: [John "Chief" Meyers and Christy Mathewson](#) at [http://www.americaslibrary.gov/pages/jb\\_0528\\_thorpe\\_2\\_e.html](http://www.americaslibrary.gov/pages/jb_0528_thorpe_2_e.html) (visited May 19, 2002).

<sup>7</sup>For more on Copyright Notice, see United States. Copyright Office. [Circular 3](#). Copyright Notice at <http://www.loc.gov/copyright/circs/circ03.html> (visited May 19, 2002).

<sup>8</sup>Samuel Demas and Jennie L. Brogdon, Determining Copyright Status for Preservation and Access: Defining Reasonable Effort, 41 *Library Resources and Technical Services* 323-334 (October 1997), citing a study for the United States Copyright Office, James J. Guinan Jr., Duration of Copyright. In Copyright Law Revision. Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, 86th Cong., first [-second] session, 8. Washington, D.C.: U.S. Govt. Print. Off.: 1961.

<sup>9</sup>United States. Copyright Office. [Circular 22](#). How to Investigate the Copyright Status of a Work at <http://www.copyright.gov/circs/circ22.pdf>

(visited May 19, 2002). Another good source is Stephen Fishman, *The Public Domain: How to Find Copyright-Free Writings, Music, Art & More* (Nolo: 2000). Contents and a sample chapter are at [Nolo.com](http://www.nolo.com).

<sup>10</sup>The Copyright Office [charges](#) \$95 for the first hour and \$75 thereafter.

<sup>11</sup>See [15 U.S.C. § 1114](#) (2001).;

<sup>12</sup>See [15 U.S.C. 1125\(c\)](#) (2001). For example, KODAK would have a good case against a library that started a KODAK reading program, even if consumers were not confused. Dilution weakens a mark's uniqueness, even if the customers are not confused about sponsorship. (2001).

<sup>13</sup>In fact, today, the New York Times on the Web allows users to download one copy for personal, noncommercial use. Its customer service notice states: "You may not alter or remove any trademark, copyright or other [notice](#) from copies of the content" at <http://www.nytimes.com/ref/membercenter/help/copyright.html> (visited May 26, 2002).

<sup>14</sup>To see sample cease and desist letters by copyright and trademark holders, see [chillingeffects.org](http://chillingeffects.org). For specific Q&A on trademark claims, see Maya Alexandri, [Frequently Asked Questions \(and Answers\) about Trademark: What to Expect when you're Expecting to be Sued for Trademark Infringement](#).

<sup>15</sup>For discussion on what the Hague Convention means for libraries, see Miriam Nisbet, Legislative Counsel, American Library Association, ["The Draft Hague Convention on Jurisdiction and Enforcement of Judgments: What does it mean for Libraries?"](#) 67th IFLA Council and General Conference, August 16-25, 2001. Further information on the Hague Convention and Copyright can be found at the [American Library Association](#) Washington Office, and directly at [Hague Convention on International Jurisdiction](#).

<sup>16</sup>See *Twin Books v. Disney*, 83 F. 3d 1162 (9th Cir. 1996). In this case, Disney was the defendant. The book *Bambi* was first published in Germany in 1923, without a copyright notice (not required in Germany). It was not published in the United States until 1926, and had a copyright notice compliant with U.S. law at that time. The appellate decision found that although *Bambi* was in the public domain in the United States during 1923, 1924, and 1925, its copyright commenced in 1926. See also The Online Books Page, ["A Possible Exception for the Pre-1923 Public Domain Rule,"](#) at <http://onlinebooks.library.upenn.edu/c-fineprint.html> (visited June 2, 2002).

<sup>17</sup>"Presumption as to Author's Death. After a period of 95 years from the year of first publication of a work, or **a period of 120 years from the year of its creation**, whichever expires first, any person who obtains from the Copyright Office a certified report is entitled to the benefit of a presumption that the author has been dead for at least 70 years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title." 17 USC § 302 (2001).

<sup>18</sup>"Copyright in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of

copyright in such a work expire before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2047." [17 U.S.C. § 303\(a\)\(2001\)](#).

<sup>19</sup>Yet another possibility exists for copies made before January 1, 1978, when the 1976 Copyright Act went into effect. Some museums and libraries once followed the "Pushman" doctrine. Under that doctrine, authors or artists were generally presumed to transfer common law literary property rights when they sold their manuscript or work of art, unless those rights were specifically reserved. *Pushman v. New York Graphic Society*, 39 N.E.2d 249 (N.Y. 1942). However, according to House Report No. 94-1476, the 1976 Copyright Law [reversed](#) the doctrine. Today a specific written conveyance of rights is required in order for a sale of any material object to carry with it a transfer of copyright. A remnant of the doctrine survives today. A 1993 court case examined copyright ownership of some demo tapes made in 1976 by a blues and country band. The court said that unpublished sound recordings made prior to 1978 were still governed by the common law. The court gave a nod to the common law presumption that **inferred intent to transfer copyright when an unconditional sale of a manuscript or painting was made**. The court noted that the doctrine was often criticized and subject to various judicial and statutory exclusions, yet it wrote: "The difficulty for Forward is that even under the doctrine this physical transfer merely created a presumption and the ultimate question was one of intent." [Forward v. Thorogood](#), 985 F.2d 604, 605 (1st Cir. 1993).

<sup>20</sup>See fn 16. "... if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2047." [17 U.S.C. § 303\(a\)\(2001\)](#).

<sup>21</sup>See Franklin B. Molin and Jesse E. Busch, Publish or Perish: Copyright Term for Some Unpublished Works will Expire at the end of 2002, *The National Law Journal* (December 24-December 31, 2001), C1, 10-11.

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May 27, 2002; Rev. April 15, 2004

Return to [LibraryLaw.com](#)**Library Digitization Projects:****U.S. Copyrighted Works that have Expired into the Public Domain**Mary Minow, [LibraryLaw.com](#)

CURRENT YEAR	Published or Registered before 1978		Unpublished (and not Registered)	
	Publication or Reg. date + 95 yrs The dates below are conservative, representing the maximum term. Major Exceptions: - Works published before 1964 that were not renewed are in the public domain - Works published before 1978 that have no © notice are in the public domain - Works created over 120 years ago	Libraries & Archives Not Public Domain but libraries and archives may copy in final 20 years if not subject to normal commercial exploitation This exception does not apply to subsequent users	Works Made for Hire and Anonymous Authors <b>Creation date + 120 years</b>	Personal Authors <b>Life plus 70 yrs;</b> last to die if joint authors Death Year:
2002	1922	1926	NONE	NONE
2003	1922	1927	1882	1932
2004	1922	1928	1883	1933
2005	1922	1929	1884	1934
2006	1922	1930	1885	1935
2007	1922	1931	1886	1936
2008	1922	1932	1887	1937
2009	1922	1933	1888	1938
2010	1922	1934	1889	1939
2011	1922	1935	1890	1940
2012	1922	1936	1891	1941
2013	1922	1937	1892	1942
2014	1922	1938	1893	1943
2015	1922	1939	1894	1944
2016	1922	1940	1895	1945
2017	1922	1941	1896	1946
2018	1922	1942	1897	1947
2019	1923	1943	1898	1948
2020	1924	1944	1899	1949
2021	1925	1945	1900	1950
2022	1926	1946	1901	1951

2023	1927	1947	1902	1952
2024	1928	1948	1903	1953

For a detailed discussion of copyright duration, see United States. Copyright Office. [Circular 15a](http://www.copyright.gov/circs/circ15a.html). Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection (rev. August 2000) at <http://www.copyright.gov/circs/circ15a.html>.

### Charts

For readable charts that cover all years (including works published since 1978, which are not covered in this chart), see Cornell Institute for Digital Collections, [When Works Pass Into the Public Domain in the United States: Copyright Term for Archivists and Librarians](http://www.cornell.edu/training/Hirtle_Public_Domain.htm), first published in published in Peter B. Hirtle, "Recent Changes To The Copyright Law: Copyright Term Extension," *Archival Outlook*, January/February 1999, at [http://www.cornell.edu/training/Hirtle\\_Public\\_Domain.htm](http://www.cornell.edu/training/Hirtle_Public_Domain.htm). It is based in part on Laura N. Gasaway's chart, [When Works Pass into the Public Domain](http://www.unc.edu/~unclng/public-d.htm), at <http://www.unc.edu/~unclng/public-d.htm>. For a chart that looks at harmonization with the European Union, see Dennis S. Karjala's [Chart Showing Changes Made by the CTEA and the Degree of Harmonization Achieved and Disharmonization Exacerbated by the Sonny Bono Copyright Term Extension Act](http://homepages.law.asu.edu/~dkarjala/OpposingCopyrightExtension/legmats/HarmonizationChartDSK.html) at <http://homepages.law.asu.edu/~dkarjala/OpposingCopyrightExtension/legmats/HarmonizationChartDSK.html> created May 15, 2002.

### Legal Authority

[37 C.F.R. Sec. 201.39](http://www.copyright.gov/title37/201/37cfr201-39.pdf) (2001) Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price at <http://www.copyright.gov/title37/201/37cfr201-39.pdf>

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### Notes:

**1922 FREEZE:** The Sonny Bono Copyright Term Extension Act added twenty years to copyright terms. Public Law 105-298, 112 Stat. 2827 (1998). This explains why works published after 1922 are "frozen" until 2019. Works published in 1922 and earlier had already gone into the public domain at that time the law went into effect in 1998. This Act was upheld by the Supreme Court in [Eldred v Ashcroft](http://www.supremecourtus.gov/opinions/02pdf/01-618.pdf), 537 U.S. 186 (2003) at <http://www.supremecourtus.gov/opinions/02pdf/01-618.pdf>. For more information see <http://eldred.cc/>

**FOREIGN WORKS:** Although works that fall into the public domain have not had their copyrights restored by the Bono Act, it should be noted that some foreign works have had their copyrights restored under the Uruguay Round Agreements Act (URAA). Works from certain countries that did not comply with formalities of U.S. law were restored as of January 1, 1996. For more information, see United States. Copyright Office. [Circular 38b](http://www.copyright.gov/circs/circ38b.pdf), "Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA-GATT)," at <http://www.copyright.gov/circs/circ38b.pdf> Additionally, libraries in California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, Guam and the Northern Mariana Islands should note that a controversial 1996 ruling in the US Ninth Circuit may imply that certain foreign works published between July 1, 1909, and December 31, 1922, are still subject to copyright, if they had neither been published in the US, nor published with a copyright notice recognized by US law, prior to 1923. *Twin Books v. Walt Disney Co.*, 83 F. 3d 1162 (9<sup>th</sup> Cir. 1996).

**UNPUBLISHED WORKS - NONE UNTIL 2003:** An unpublished work that was not registered with the Copyright office had perpetual copyright under the common law. The Copyright Act of 1976 ended perpetual copyright and gives these works the same terms as published works since 1978. However, the Act also gave a grace period that ends December 31, 2002. This is why the chart says "NONE" before 2003. **Additionally, if an unpublished work was published by December 31, 2002, the copyright does not expire before December 31, 2047.** [17 U.S.C.](http://www4.law.cornell.edu/uscode/17/107.html)

[Sec. 303](#) (2001).

**WORKS PUBLISHED SINCE 1978:** For works published 1978 and later, the term is for the life of the author plus 70 years for natural persons. Works by corporate authors and anonymous authors remains the same: 95 years from date of publication or 120 years from date of creation (whichever is less).

**RENEWALS:** Copyright renewals were necessary for works published or registered before January 1, 1964. Works at that time had a 28 year copyright term, which could be renewed. Less than 10% of all copyrights were renewed and fewer than 5% of copyrighted books and pamphlets were renewed during that period according to a 1961 Copyright Office study. James J. Guinan Jr. Duration of copyright. In Copyright law revision. Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, 86th Congress, first [-second] session, 8. Washington, D.C.: U.S. Govt. Print. Off.: 1961, cited in Demas and Brogdon.

**RENEWAL SEARCHES:** To find out whether a particular work was renewed, see United States. Copyright Office.

[Circular 22](#). "How to Investigate the Copyright Status of a Work" (Rev. June 1999) at <http://www.loc.gov/copyright/circs/circ22.html>. Also see [Circular 15](#). "Renewal of Copyright." (Rev. June 1999) at <http://www.copyright.gov/circs/circ15.html>. For works registered since 1978, an [online search site](#) is available at the United States Copyright Office at <http://www.loc.gov/copyright/rb.html/>. A good description of this involved process is given in Demas and Brogdon. For a helpful personal description of the process, plus a link to personally scanned in copyright renewal records, see John Mark Ockerbloom, The Online Books Page [FAQ](#) at <http://digital.library.upenn.edu/books/renewals.html>.

**LIBRARY EXCEPTION:** First, note that this exception does not apply to musical works, pictorial, graphic or sculptural works, nor to motion pictures or other audiovisual works other than audiovisual works dealing with news. The exception reads:

"(h) (1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if -

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

(i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e)." [17 USC Sec. 108](#)

See also [37 C.F.R. Sec. 201.39](#) Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price, and United States. Copyright Office. [Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price.](#) at <http://www.loc.gov/copyright/docs/nla.html>.

**WORKS MADE FOR HIRE:** Works Made for Hire are works (1) prepared by an employee within the scope of his or her employment; or (2) specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written

instrument signed by them that the work shall be considered a work made for hire. For more detail, see United States. Copyright Office. [Circular 9](http://www.copyright.gov/circs/circ9.html), "Works Made for Hire under the 1976 Copyright Act," at <http://www.copyright.gov/circs/circ9.html>.

**AUTHOR'S DEATH UNKNOWN:** Presumption as to Author's Death. After a period of 95 years from the year of first publication of a work, or a period of 120 years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report is entitled to the benefit of a presumption that the author has been dead for at least 70 years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title. [17 USC Sec. 302\(e\)](#) (2001).

**TERMS END DECEMBER 31 EACH YEAR:** Copyright terms expire at the end of the calendar year in which they are due to expire. Thus a copyright actually can last, for example, 95 years and 5 months. [17 U.S.C. Sec. 305](#) (2001).

**FOR WORKS STILL UNDER COPYRIGHT- GET PERMISSION.** If you can track down the copyright owner (see United States. Copyright Office. [Circular 22](http://www.loc.gov/copyright/circs/circ22.html). "How to Investigate the Copyright Status of a Work" (Rev. June 1999) at <http://www.loc.gov/copyright/circs/circ22.html>), get permission. See Georgia Harper, University of Texas. Copyright Crash Course. [Getting Permission](http://www.utsystem.edu/ogc/intellectualproperty/permisn.htm) <http://www.utsystem.edu/ogc/intellectualproperty/permisn.htm>  
See also

Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status for Preservation and Access: Defining Reasonable Effort," *Library Resources and Technical Services* 41:4 (October 1997): 323-334. (not posted to the Web).

Peter Hirtle, "[Unpublished Materials, New Technologies, and Copyright: Facilitating Scholarly Use](#)," Interdisciplinary Conference on the Impact of Technological Change on the Creation, Dissemination, and Protections of Intellectual Property," The Ohio State University College of Law, Columbus, OH. March 8-10, 2001. [http://cidc.library.cornell.edu/Pub\\_files/Hirtle\\_OSU\\_paper.pdf](http://cidc.library.cornell.edu/Pub_files/Hirtle_OSU_paper.pdf) Cited with permission by the author.

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# WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN

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**Definition:** A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include:

(1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years <sup>1</sup> (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation <sup>2</sup> )
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice <sup>3</sup>	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater

<b>Created before 1-1-78 but published between then and 12-31-2002</b>	<b>1-1-78, the effective date of the 1976 Act which eliminated common law copyright</b>	<b>Life + 70 years or 12-31-2047 whichever is greater</b>
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- 1 Term of joint works is measured by life of the longest-lived author.
- 2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302 (c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway)

**LOLLY GASAWAY** Last updated 11-04-03

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