Digital Projects

Copyright and the Public Domain

What You Need to Know

Creating New Digital Projects

In 2002, The University of Arizona Library Digital Library Initiatives Group (DLIG) created “A checklist for librarians and staff involved in creating new digital projects”

http://digital.library.arizona.edu/documents/

The Checklist covers rights, non-duplication, value, enhancement of intellectual access, demand, cross-collection collaboration, preservation, intellectual control, and technical feasibility.
Creating New Digital Projects

- Under 'Rights' the first question is: Are rights and permissions for electronic distribution secured or easily securable? The choices are:
  - source materials are in public domain,
  - owned by UA or ABOR,
  - copyright holder willing to confer distribution rights,
  - co-creators of project are UA members and rights would be owned by UA
Creating New Digital Projects

- The first place to start may be to see if the material in question is in the Public Domain.
- This presentation covers what you need to know to find out if something is in the Public Domain.

Warning: There will be a group test at the end!

Good news: The answers are in here!

Warning: You have to know a little about Copyright Law!

Good news: You don’t have to memorize it!
What is Meant by Public Domain?

- All entities, information, and creative works that are available for use by anyone, for any reason, without restriction.
What is in the Public Domain?

- A work published before there was copyright law, and
- A work for which:
  - Copyright protection expired or was not renewed
  - Copyright protection was lost or never acquired
  - The copyright owner dedicated the work to the public domain, or
  - Copyright protection was not appropriate
Why Do We Have a Public Domain?

- Copyright laws encourage the creation of new works by offering:
  - A monopoly over use of the work, and
  - Economic incentives to control the sale of the work
Why Do We Have a Public Domain?

But the primary goal of copyright law is to foster the creation of new works that will one day enter the public domain where they can be freely used.

That is why there are limitations on copyright protection for authors.
How Do You Know if a Work is in the Public Domain?

*YOU* have to determine if the work is in the public domain by understanding and applying some basic copyright rules.
U.S. Copyright

- Copyright © is an ‘unregistered right’ of authors that protects:
  - original literary, dramatic, musical, and artistic works, films and broadcasts, editions and recordings from reproduction without permission.
U.S. Copyright

Copyright protects works of authorship including:
- Writings
- Musical works, including lyrics
- Plays
- Photographs
- Databases
- Maps
- Art work, sculpture & graphics
- Movies & videos
- Computer software
- Sound recordings
- Pantomimes and choreographic works
- Architectural drawings and blueprints
- Boat hull designs
U.S. Copyright

- The three requirements for copyright are:
  - Fixation
    - “In a tangible medium of expression”
  - Originality
    - This includes any ‘new work’ (and only the ‘new work’) added to a work in the public domain
  - Minimal creativity
    - Transposing a musical work in the public domain from one key to another is not considered minimally creative
Before March 1, 1989, all published works had to contain a copyright notice to be protected. Since 1989, the use of copyright notices is optional. Works published before March 1, 1989, without a valid copyright notice are now in the public domain—unless corrective measures were taken to register copyright. If registered, these works are now protected for 70 years after the author’s death, or if work is of corporate authorship, the shorter of 95 years from publication, or 120 years from creation.
U.S. Copyright

- Note: the penalties for placing a copyright notice on a work in the public domain are small—but it can happen.
- Note: You can register a work with the Copyright Office but it is no longer mandatory.

Copyright protects both drafts and completed works, and both published and unpublished works.
No Copyright

- Copyright does not protect ideas. It protects the way the idea is expressed in a piece of work.
No Copyright

Items thought to intrinsically belong to everyone can't be copyrighted.

Included in this category are entities such as:

- facts, numbers, ideas, short phrases, blank forms, processes, and titles.
No Copyright

❖ As a matter of public policy, works produced by the Federal government or its agents are not copyrighted and are in the public domain, which is why we can use federal documents without restriction.
U.S. Copyright Law

17 U.S.C.

United States Code: Title 17 - Copyrights

http://caselaw.lp.findlaw.com/casec
U.S. Copyright Law

• Copyright act of 1909

• Before 1978, copyright was secured either on the date a work was published with a copyright notice, or on the date of registration if the work was registered in unpublished form.

• In either case, the copyright endured for a first term of 28 years from the date it was secured.
U.S. Copyright Law

- Copyright Act of 1976
- Became effective 1/1/1978
- Extended the renewal term from 28 to 47 years for works published before 1/1/1978.
- After 1/1/1978 new terms initiated based on Life of Author+70yrs.
U.S. Copyright Law Amended

Public Law 102-307, enacted on June 26, 1992, amended the 1976 Copyright Act to provide for ‘automatic’ renewal of the term of copyrights secured between January 1, 1964, and December 31, 1977. The 75yr. renewal term became ‘automatic,’ but the Copyright Office did not issue a renewal certificate for these works unless a renewal application and fee were received and registered in the Copyright Office.
U.S. Copyright Law Amended

- Public Law 105-298, enacted on October 27, 1998, further extended the renewal term of copyrights still subsisting on that date by an additional 20 years, providing for a renewal term of 67 years and a total term of protection of 95 years.
U.S. Copyright Law

❖ U.S. works in the public domain on 1/1/1978, (for example, works published without satisfying all conditions for securing federal copyright under the Copyright Act of 1909) remain in the public domain under the 1976 Copyright Act.
Copyright and Public Domain

- When do copyrighted works move into the public domain?
- When can I use a work without permission?
- How do I apply the copyright laws to the publications I need to use?
What You Need to Know

- Anything published before 1923 is in the public domain whether it was renewed or not.

  If renewed, the copyright expired by 1998 at the latest.

- So, for items published before 1923, there are NO restrictions on use!
What You Need to Know

❖ For works published 1923-1963, the copyright expired in 1991, if copyright was *not renewed* in the 28th year after publication. (Copyright runs on a calendar year.)

❖ With the exception of maps, music & movies, only about 15% of works published 1923-1963 were renewed.
What you Need to Know
Researching for Copyright Renewal

- Only works published 1923-1963 need to be researched to see if the copyright has been renewed!
- If the copyright has *not* been renewed, the work is in the public domain.
What You Need to Know

- There is no need to research materials for works published after 1963.
- All works published 1964-1977 receive an automatic 95-year copyright term.
- Works published in 1978 and later never have to be renewed because copyright lasts for the life of the author plus 70 years after the author’s death.
Researching Works Published 1923-1963

- Ask the U.S. Copyright Office to conduct a search for you @ $65/hr.
- Hire a private copyright research firm like Thomson & Thomson to do a search: http://www.thomson-thomson.com @ $75
- Or, better yet, Conduct the search yourself!
Researching Works Published 1923-1963

❖ Your goal is to find out if a work published from 1923 through 1963 was renewed on the 28th year after publication
Researching Works Published
1923-1963

❖ Go to the U.S. Copyright Office website at:
http://www.loc.gov/copyright/

❖ Click on Registration & Documents
http://www.copyright.gov/records/
Researching Works Published 1923-1963

- You can search by author or title (among other ways).
- You are looking for a Renewal Date, or an “Effective Registration Date” in addition to the Original Registration Date
Example: **Lolita**

- Search for **Lolita** by Vladimir Nabokov
- Click on: ‘Books, Music, etc.’
  - Search by author or title.
  - Select and display appropriate record.

**Note:** “Original Registration Date” is: 15Sep55

**Note:** Renewal or “Effective Registration Date” is: 8Apr83
Example: Lolita

- From the record you can tell that Lolita was originally published on September 15, 1955 and renewed on April 8, 1983.
- The copyright renewal will last for 95 years, or until the end of 2050.
What the Law Says

- When published from 1923-63 (and renewed: protected 95 yrs)
- First protected when published with © notice for 28yrs (i.e. up to 1991)
- © Renewable for 47yrs (up to 2038); now extended by 20yrs for a total renewal of 67yrs (up to 2058)
- When published w/o © notice = public domain
What the Law Says

- When published from 1964-77 (protected 95yrs)
- First protected when published with © notice for 28yrs (up to 2005); now automatic extension of 67yrs (up to 2072)
- When published w/o © notice = public domain
What the Law Says

- Created before 1/1/78 but *not published*
- Life of the Author+70yrs or 12/31/2002, whichever is greater

1/1/78 is the effective date of the 1976 Act which eliminated common law copyright
What the Law Says

- Created before 1/1/78 but *published between then and 12/31/2002*
- Life of the Author+70yrs or 12/21/2047, whichever is greater

1/1/78, is the effective date of the 1976 Act which eliminated common law copyright
What the Law Says

- Created 1/1/78 or after, and
- When the work is fixed in a tangible medium of expression
  - Life + 70 yrs (or for corporate authorship, the shorter of 95 yrs from publication or 120 yrs from creation)
What if I Use Something Without Permission that is not in the Public Domain?

- No one can sue you if you use a work unless they know about it.

However, remember that publication on the Internet has made ‘discovery of use’ easier.
So Please Do The Research First

- If you find the work is in the public domain—you can use it!
- If the work is still protected by copyright, you will have to get permission from the copyright owner (and probably have to pay) to use it.
In Conclusion: A Group Test

- Works published before 1923 are in the **P_____ D_____** because the copyright has **e________**.

- For works published 1923-1963, the copyright expired in 1991, but must be researched to see if they are in the **P_____ D_____** or if copyright has been **r_____**.

  Works published from 1964-1977 have an automatic __-year copyright term.

  Works published from 1978 on are protected for **L____ of the A_______ + __ years**, with some variations.
In Conclusion: A Group Test/Answers

- Works published before 1923 are in the Public Domain because the copyright has expired.

- For works published 1923-1963, the copyright expired in 1991, but must be researched to see if they are in the Public Domain or if copyright has been renewed.

  Works published from 1964-1977 have an automatic 95-year copyright term.

  Works published from 1978 on are protected for Life of the Author + 70 years, with some variations.
Short Reference for U.S. Material

- Published before 1923: Public Domain
- Published 1923-1963 & not renewed: Public Domain
- Published 1923-1963 & renewed: 95 years from the date of first publication
- Published between 1964-1977: 95 years from the date of first publication (renewal term automatic)
- Created 1978 or later (whether published or not): Single term of life+70 yrs. (but if a work is made for hire or anonymous or pseudonymous—95 yrs. from the date of publication or 120 yrs. from the date of creation, whichever ends first)
- Created, but not published or registered before 1978: Single term of life+70 yrs., but cannot expire before Dec. 31, 2002 (if work remains unpublished) or Dec. 31, 2047 (if work is published before Jan. 1, 2003)
Digital Projects

Copyright and the Public Domain Resources

- For information in this presentation & more, see:
  - Cornell Institute for Digital Collections: (Chart)
    http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm
  - DLIG checklist: http://digital.library.arizona.edu/documents/
  - Gasaway, Lolly. “When Works Pass into the Public Domain” (Chart)
    http://www.unc.edu/~unclng/public-d.htm
  - Minow, Mary. “Library Digitization Projects and Copyright:”
    http://www.llrx.com/features/digitization2.htm
  - U.S. Copyright Law:
  - U.S. Copyright Office: http://www.loc.gov/copyright/
  - U.S. Copyright Office Records: http://www.copyright.gov/records/
  - U.S. Copyright Research Services: http://www.thomson-thomson.com