

Copyright Term and the Public Domain in the United States: 1 January 2010¹

NEVER PUBLISHED, NEVER REGISTERED WORKS²

<i>Type of Work</i>	<i>Copyright Term</i>	<i>What was in the public domain in the U.S. as of 1 January 2010³</i>
Unpublished works	Life of the author + 70 years	Works from authors who died before 1940
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1890
Unpublished works created before 1978 that were published after 1977 but before 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the works can enter the public domain is 1 January 2048
Unpublished works created before 1978 that were published after 2002	Life of the author + 70 years	Works of authors who died before 1940
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ⁵	Works created before 1890 ⁵

WORKS PUBLISHED IN THE U.S. (For works published both inside and outside the U.S. by foreign authors, see next section)

<i>Date of Publication⁶</i>	<i>Conditions⁷</i>	<i>Copyright Term³</i>
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration within 5 years	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration within 5 years	70 years after death of author, or if work of corporate authorship, 95 years from publication ³
1923 through 1963	Published with notice but copyright was not renewed ⁸	In the public domain
1923 through 1963	Published with notice and the copyright was renewed ⁸	95 years after publication date
1964 through 1977	Published with notice	95 years after publication date
1978 to 1 March 1989	Created after 1977 and published with notice	70 years after death of author, or if work of corporate authorship, 95 years from publication
1978 to 1 March 1989	Created before 1978 and first published with notice in this period	The greater of the term specified in the previous entry or 31 December 2047
From 1 March 1989 through 2002	Created after 1977	70 years after death of author, or if work of corporate authorship, 95 years from publication
From 1 March 1989 through 2002	Created before 1978 and first published in this period	The greater of the term specified in the previous entry or 31 December 2047
After 2002	None	70 years after death of author, or if work of corporate authorship, 95 years from publication

WORKS PUBLISHED OUTSIDE THE U.S. BY FOREIGN NATIONALS OR U.S. CITIZENS LIVING ABROAD⁹

(Includes works published both in the U.S. and abroad by foreign authors)

<i>Date of Publication</i>	<i>Conditions</i>	<i>Copyright Term in the U.S.</i>
Before 1923	None	In the public domain
Works Published Abroad Before 1978¹⁰		
1923 through 1977	Published in compliance with all U.S. formalities (i.e., notice, renewal) ¹¹	95 years after publication date
1923 through 1977	Published without compliance with U.S. formalities, and in the public domain in its home country as of 1 Jan. 1996	In the public domain
1923 through 1977	Solely published abroad, without compliance with U.S. formalities or republication in the U.S., and not in the public domain in its home country as of 1 Jan. 1996	95 years after publication date
1923 through 1977	Published in the U.S. less than 30 days after publication abroad	Use the U.S. publication chart to determine duration
1923 through 1977	Published in the U.S. more than 30 days after publication abroad, without compliance with U.S. formalities, and not in public domain in its home country as of 1 Jan. 1996	95 years after publication date

Works Published Abroad After 1 January 1978

After 1 January 1978	Published without copyright notice, and in the public domain in its home country as of 1 January 1996	In the public domain
After 1 January 1978	Published with or without copyright notice, and not in the public domain in its home country as of 1 Jan. 1996	70 years after death of author, or if work of corporate authorship, 95 years from publication

Special Cases

1 July 1909 through 1978	In Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands ONLY. Published in a language other than English, and without subsequent republication with a copyright notice ¹²	The same as for an unpublished work
Anytime	Created by a resident of Afghanistan, Eritrea, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries ¹³	Not protected by U.S. copyright law because they are not party to international copyright agreements
Anytime	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of 1 January 1996, be owned by a government ¹⁴	Not protected by U.S. copyright law

SOUND RECORDINGS

(Note: The following information applies only to the sound recording itself, and not to any copyrights in underlying compositions or texts.)

<i>Date of Fixation/Publication</i>	<i>Conditions</i>	<i>What was in the public domain in the U.S. as of 1 January 2010</i> ³
-------------------------------------	-------------------	--

Unpublished Sound Recordings, Domestic and Foreign

Prior to 15 February 1972	Indeterminate	Subject to state common law protection. Enters the public domain on 15 February 2067
After 15 February 1972	Life of author + 70 years. For unpublished anonymous and pseudonymous works and works made for hire (corporate authorship), 120 years from date of fixation	Nothing. The soonest anything enters the public domain is 15 February 2067

Sound Recordings Published in the United States

Fixed prior to 15 February 1972	None	Subject to state statutory and/or common law protection. Fully enters the public domain on 15 February 2067
15 February 1972 to 1978	Published without notice (i.e., ©, year of publication, and name of copyright owner) ¹⁵	In the public domain
15 February 1972 to 1978	Published with notice	95 years from publication. 2068 at the earliest
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation. 2049 at the earliest
After 1 March 1989	None	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation. 2049 at the earliest

Sound Recordings Published Outside the United States

Prior to 1923	None	Subject to state statutory and/or common law protection. Fully enters the public domain on 15 February 2067
1923 to 1 March 1989	In the public domain in its home country as of 1 January 1996 or there was U.S. publication within 30 days of the foreign publication	Subject to state common law protection. Enters the public domain on 15 February 2067

(continued on next page)

Sound Recordings Published Outside the United States (continued)

1923 to 15 February 1972	Not in the public domain in its home country as of 1 January 1996. At least one author of the work was not a U.S. citizen or was living abroad, and there was no U.S. publication within 30 days of the foreign publication	Enters the public domain on 15 February 2067
15 February 1972 to 1978	Not in the public domain in its home country as of 1 January 1996. At least one author of the work was not a U.S. citizen or was living abroad, and there was no U.S. publication within 30 days of the foreign publication	95 years from date of publication. 2068 at the earliest
1978 to 1 March 1989	Not in the public domain in its home country as of 1 January 1996. At least one author of the work was not a U.S. citizen or was living abroad, and there was no U.S. publication within 30 days of the foreign publication	70 years after the death of the author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation
After 1 March 1989	None	70 years after the death of the author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation
Special Cases		
Fixed at any time	Created by a resident of Afghanistan, Eritrea, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries ¹³	Not protected by U.S. copyright law because they are not party to international copyright agreements
Fixed prior to 1996	Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of 1 January 1996 be owned by a government ¹⁴	Not protected by U.S. copyright law

ARCHITECTURAL WORKS¹⁶ (Note: Architectural plans and drawings may also be protected as textual/graphics works)

Date of Design	Date of Construction	Copyright Status
Prior to 1 December 1990	Not constructed by 31 December 2002	Protected only as plans or drawings
Prior to 1 December 1990	Constructed by 1 December 1990	Protected only as plans or drawings
Prior to 1 December 1990	Constructed between 30 November 1990 and 31 December 2002	Building is protected for 70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ¹⁷
From 1 December 1990	Immaterial	Building is protected for 70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation



Notes

1. This chart was first published in Peter B. Hirtle, "Recent Changes to the Copyright Law: Copyright Term Extension," *Archival Outlook*, January/February 1999. This version is current as of 1 January 2008. The most recent version is found at www.copyright.cornell.edu/public_domain/. The chart is based in part on Laura N. Gasaway's chart, "When Works Pass Into the Public Domain," at www.unc.edu/~unc/ncng/public-d.htm, and similar charts found in Marie C. Malaro, *A Legal Primer on Managing Museum Collections* (Washington, D.C.: Smithsonian Institution Press, 1998): 155-156. A useful copyright duration chart by Mary Minow, organized by year, is found at www.librarylaw.com/DigitizationTable.htm. A "flow chart" for copyright duration is found at www.bromsun.com/practices/copyright-portfolio-development/flowchart.htm. See also Library of Congress Copyright Office. Circular 15a, *Duration of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection* (Washington, D.C.: Library of Congress, 2004) www.copyright.gov/circs/circ15a.pdf.
2. Treat unpublished works registered for copyright prior to 1978 as if they had been published in the U.S. (though note that the only formality that applied was the requirement to renew copyright after 28 years). Unpublished works registered for copyright since 1978 can be considered as if they were an "Unpublished, Unregistered Work."
3. All terms of copyright run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 15 March 1923 will enter the public domain on 1 January 2019, not 16 March 2018 (1923+95=2018).
4. Unpublished works when the death date of the author is not known may still be copyrighted after 120 years, but certification from the Copyright Office that it has no record to indicate whether the person is living or died less than 70 years before is a complete defense to any action for infringement. See 17 U.S.C. § 302(e).
5. Presumption as to the author's death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.
6. "Publication" was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority.

(continued on back)

Notes, continued:

6. "Publication" was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority.

7. Not all published works are copyrighted. Works prepared by an officer or employee of the United States Government as part of that person's official duties receive no copyright protection in the U.S. For much of the 20th century, certain formalities had to be followed to secure copyright protection. For example, some books had to be printed in the U.S. to receive copyright protection, and failure to deposit copies of works with the Register of Copyright could result in the loss of copyright. The requirements that copies include a formal notice of copyright and that the copyright be renewed after 28 years were the most common conditions, and are specified in the chart.

8. A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For books, the figure was even lower: 7%. See Barbara Ringer, "Study No. 31: Renewal of Copyright" (1960), reprinted in Library of Congress Copyright Office. *Copyright law revision: Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, Eighty-sixth Congress, first [-second] session.* (Washington: U. S. Govt. Print. Off., 1961), p. 220. A good guide to investigating the copyright and renewal status of published work is 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. See also Library of Congress Copyright Office, *How to investigate the copyright status of a work.* Circular 22. [Washington, D.C.: Library of Congress, Copyright Office, 2004]. The Online Books Page FAQ, especially "How Can I Tell Whether a Book Can Go Online?" and "How Can I Tell Whether a Copyright Was Renewed?", is also very helpful.

9. The following section on foreign publications draws extensively on Stephen Fishman, *The Public Domain: How to Find Copyright-free Writings, Music, Art & More.* (Berkeley: Nolo.com, 2004). It applies to works first published abroad and not subsequently published in the U.S. within 30 days of the original foreign publication. Works that were simultaneously published abroad and in the U.S. are treated as if they are American publications.

10. Foreign works published after 1923 are likely to be still under copyright in the U.S. because of the Uruguay Round Agreements Act (URAA) modifying the General Agreement on Tariffs and Trade (GATT). The URAA restored copyright in foreign works that as of 1 January 1996 had fallen into the public domain in the U.S. because of a failure to comply with U.S. formalities. One of the authors of the work had to be a non-U.S. citizen or resident, the work could not have been published in the U.S. within 30 days after its publication abroad, and the work needed to still be in copyright in the country of publication. Such works have a copyright term equivalent to that of an American work that had followed all of the formalities. For more information, see Library of Congress Copyright Office, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA).* Circular 38b. [Washington, D.C.: Library of Congress, Copyright Office, 2004].

11. U.S. formalities include the requirement that a formal notice of copyright be included in the work; registration, renewal, and deposit of copies in the Copyright Office; and the manufacture of the work in the U.S.

12. The differing dates is a product of the question of controversial *Twin Books v. Walt Disney Co.* decision by the 9th Circuit Court of Appeals in 1996. The question at issue is the copyright status of a work only published in a foreign language outside of the U.S. and without a copyright notice. It had long been assumed that failure to comply with U.S. formalities placed these works in the public domain in the U.S. and, as such, were subject to copyright restoration under URAA (see note 10). The court in *Twin Books*, however, concluded "publication without a copyright notice in a foreign country did not put the work in the public domain in the United States." According to the court, these foreign publications were in effect "unpublished" in the U.S., and hence have the same copyright term as unpublished works. The decision has been harshly criticized in *Nimmer on Copyright*, the leading treatise on copyright, as being incompatible with previous decisions and the intent of Congress when it restored foreign copyrights. The Copyright Office as well ignores the *Twin Books* decision in its circular on restored copyrights. Nevertheless, the decision is currently applicable in all of the 9th Judicial Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam and the Northern Mariana Islands), and it may apply in the rest of the country.

13. See Library of Congress Copyright Office, *International Copyright Relations of the United States.* Circular 38a. [Washington, D.C.: Lib. of Congress, Copyright Office, 2004].

14. See 63 Fed. Reg. 19,287 (1998), Library of Congress Copyright Office, *Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent to Enforce Restored Copyrights Were Filed in the Copyright Office.*

15. Copyright notice requirements for sound recordings are spelled out in the Copyright Office's Circular 3, "Copyright Notice," available at www.copyright.gov/circs/circ03.html. Here is the exact text: The copyright notice for phonorecords embodying a sound recording is different from that for other works. Sound recordings are defined as "works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work." Copyright in a sound recording protects the particular series of sounds fixed in the recording against unauthorized reproduction, revision, and distribution. This copyright is distinct from copyright of the musical, literary, or dramatic work that may be recorded on the phonorecord. Phonorecords may be records (such as LPs and 45s), audio tapes, cassettes, or disks. The notice should contain the following three elements appearing together on the phonorecord: **1)** The symbol ©; and **2)** The year of first publication of the sound recording; and **3)** The name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner. If the producer of the sound recording is named on the phonorecord label or container and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice. **Example:** 2004 X.Y.Z. Records, Inc.

16. Architectural works are defined as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features." Architectural works were expressly included in copyright by Title VII of Pub. L. 101-650.

17. What constitutes "publication" of a building is a very interesting question. As the Copyright Office has noted, "A work is considered published when underlying copies of the building design are distributed or made available to the public by sale or other transfer of ownership, or by rental. Construction of a building does not itself constitute publication registration, unless multiple copies are constructed." See its Circular 41, "Copyright Claims in Architectural Works," available at www.copyright.gov/circs/circ41.html.

