

BZ/Brief

PUBLIC DOMAIN

This BZ/ Brief applies only to the use of public domain works in the U. S. and only to works originally copyrighted under the Copyright Law of the United States. Other countries have different rules about public domain.

MATERIAL USABLE WITHOUT PERMISSION, WITHOUT A FEE, IN ANY WAY YOU WISH.

"Public Domain" (PD, for short) means that particular works — music, literature, films, TV shows, photographs, works of art, cartoons — are no longer covered by copyright, no longer owned by anyone. Copyright law determines when (or if) a work has this PD status.

Public Domain does not apply to the personal rights of celebrities or anything that is a registered trademark.

Public Domain Under U.S. Copyright Law

This country's rules governing public domain are the same for all copyrightable works, except sound recordings published before February 15, 1972 (see below).

IN OCTOBER, 1998, THE SONNY BONO COPYRIGHT TERM EXTENSION ACT WAS PASSED, EXTENDING THE TERMS OF ALL WORKS THEN UNDER COPYRIGHT BY 20 YEARS. ALL WORKS THAT WERE ALREADY IN THE PUBLIC DOMAIN IN 1998 STAY THERE, BUT NOTHING ELSE WILL BECOME PD BEFORE JANUARY 1, 2019 (20 YEARS AFTER 1998).

There are two major copyright acts that affect public domain status , what we call the Old Law (which covered works published before 1978) and what we call the New Law, which came into effect on January 1, 1978 and covered works published thereafter. Here is how these two laws are affected by the 1998 Extension:

The New Law

Under the New Copyright Law that took effect on January 1, 1978, U.S. rules were changed to be based on the lifetimes of creators plus a specified number of years. All works created from that date forward will become PD 70 years after the year the creator (author, composer, photographer) dies, entering the public domain on January 1 of the 71st year. (Before the 1998 Extension, the rule was life plus 50 years.) If there is more than one creator (as in a collaboration), the work becomes PD in the 71st year after the last creator dies. The earliest any such work can become PD is Jan. 1, 2049 (1978 plus 71 years).

Anything that is a work-for-hire or owned by a corporation (such as most recordings, motion pictures and TV shows) or an anonymous or pseudonymous work will become PD 96 years after its publication (95 years after

publication, entering the public domain on Jan. 1 of the 96th year) or 120 years from creation, whichever is longer. Again, before the 1998 extension the term was 75/100 years. Thus, no works-for-hire can become PD earlier than January 1, 2074 (1978 plus 96 years).

Nothing created after 1978 was due to come into the public domain for a long time anyway.

All works that are now PD are those published under the Old Copyright Law in effect before 1978.

The Old Law's 75-Year Rule Is Now a 95-Year Rule

The material copyrighted under this Old Law was the material that was moving into the public domain each year. The 1998 Extension has effectively stopped that movement. For the next twenty years nothing will enter the Public Domain in the United States.

Now, under the old law, works first published in this country will be covered by copyright for 95 years in the United States. These works will become PD on Jan. 1 of the 96th year after the year of their first publication.

A great deal of important material had entered the public domain under this Old Law rule by 1998. In literature for example, some major Frost and Sandburg poems have entered the public domain. In songs, "I'm Forever Blowing Bubbles" became PD in 1995; "Take Me Out to the Ball Game" and "Jingle Bells" (to name two more) were PD earlier than that. Most classical music is PD. Characters like Sherlock Holmes and Dracula are PD. So even though properties have ceased going into the public domain, there's a lot of great material in there already which you can freely use.

Under both the old and new laws the rules for unpublished work are different.

A Special Rule for Sound Recordings

The "New" law of 1978, extended to all records made before February 15, 1972 a special "grandfather" copyright protection that now ends on January 1, 2067 (the date was 2047 but it too was extended for 20 years). Before then, sound recordings were governed by a chaos of state copyright protections.

After that 1972 date, sound recording copyrights -- which are usually owned by corporations, are usually registered as works-for-hire. Some are registered by individuals. The term will follow the rules of the old or new law depending on what year the recording was copyrighted.

U.S. Government Works are PD

Any work entirely created by employees for an agency of the U. S. Government has always been and remains PD under both the new and old copyright laws. It is important to check with the agencies to make sure the work you are interested in is indeed theirs.

Technical Loss of Copyright Protection

The old law also set up some major technical standards for getting and keeping copyright protection (most importantly, copyright notice and proper copyright renewal). Some works lost copyright protection by failing to meet these and other technical requirements. Copyright renewal became automatic in 1964. A copyright search can determine the status of any work important enough to the user to justify the cost.

NAFTA, GATT and Copyright Restoration

Over the years, many foreign works lost copyright protection in this country because of U.S. technicalities. During these trade negotiations, the U.S. agreed to restore foreign copyrights lost for such reasons. These were the first copyright restorations ever made under U.S. law.

NAFTA, the first of these new agreements, provided U.S. copyright restoration to certain Mexican and Canadian motion pictures if applied for by a definite date. The list of titles involved was published in the Federal Register in February of 1995. The effect of the NAFTA agreement is minor.

The GATT treaty restores technically-lost U.S. copyrights to works first published in foreign countries which are still copyrighted in their source country but have fallen into the public domain in the United States for reasons other than the expiration of our full copyright term. In checking to see if a particular work entered the public domain, GATT has made it important to note whether the work is of foreign origin.

International Implications

The 1998 copyright term extension made the U.S. copyright term the same as that adopted by the European Union (EU) to become the standard for all its member nations. This is a good place to note that as of this writing Canada still has a term of 50 years after the creator dies, which will probably change to 70 years eventually.

A Public Domain Resource

A subsidiary, BZ/ Rights Stuff, Inc., has published *The Mini-Encyclopedia of Public Domain Songs*. It contains the best-known songs in the Public Domain in the United States today (over 800 titles of well-known, well-loved songs).

The 1998 Extension in brief:

- ◆ Material *published prior* to 1923 is now in the Public Domain in the United States.
- ◆ Material published from 1923 to 1977 is covered by the old law and has a copyright term of 95 years, coming out of copyright on Jan. 1 of the 96th year.
- ◆ Material published from 1978 forward comes under the new law and has a copyright term of death of the creator plus 70 years, coming out of copyright on Jan. 1, of the 71st year

Public Domain is an area riddled with complexities. If you are doing something public, check with an attorney.

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