

Copyright Term and the Public Domain in the United States 1 January 2005		
UNPUBLISHED WORKS		
<i>Copyright Term</i>	<i>What was in the public domain in the U.S. as of 1 January 2005²</i>	
Life of the author + 70 years	Works from authors who died before 1935.	
120 years from date of creation	Works created before 1885.	
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	
Life of the author + 70 years	Works of authors who died before 1935.	
120 years from date of creation ⁴	Works created before 1885. ⁴	
WORKS PUBLISHED IN THE US		
<i>Conditions⁶</i>	<i>Copyright Term²</i>	
None	In the public domain	
Published without a copyright notice	In the public domain	
Published without notice, and without subsequent registration	In the public domain	

8 to 1 March 1989	Published without notice, but with subsequent registration	70 years after the death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²	
3 through 1963	Published with notice but copyright was not renewed ⁷	In the public domain	
3 through 1963	Published with notice and the copyright was renewed ⁷	95 years after publication date ²	
4 through 1977	Published with notice	95 years after publication date ²	
8 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 ²	
r 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 ²	
WORKS PUBLISHED OUTSIDE THE US⁹			
Year of Publication	Conditions	Copyright Term in the United States	
ore 1 July 1909	None	In the public domain	
Works Published Abroad Before 1978 in Compliance with US Formalities⁸			
ly 1909 through 2	Published in compliance with US formalities	In the public domain	

1903 through 1977	Published with notice, and still in copyright in its home country as of 1 January 1996	95 years after publication date ⁹	
Works Published Abroad Before 1978 Without Compliance with US Formalities¹⁰			
1909 through 1922	Published in a language other than English and without subsequent republication with a copyright notice	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be in the public domain ¹¹	
1903 through 1977	In the public domain in its home country as of 1 January 1996	In the public domain	
1903 through 1977	Published in a language other than English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	In the 9 th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be 95 years after publication date ¹¹	
1903 through 1977	Published in English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996	95 years after publication date ⁹	
Works Published Abroad After 1 January 1978			
after 1 January 1978	Copyright in the work in its home country has not expired by 1 January 1996	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation	
Special Cases			

January 1 July 1909

<p>Created by a resident of Afghanistan, Bhutan, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries¹²</p>	<p>Not protected by US copyright law because they are not party to international copyright agreements</p>	
<p>Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government¹³</p>	<p>Not protected by US copyright law</p>	

This chart was first published in 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 January 2005. The most recent version is found at http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm.

This chart is based in part on Laura N. Gasaway's chart, "When Works Enter the Public Domain," at <http://www.unc.edu/~uncclng/public-d>, 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 Jeffrey Minow, organized by year, is found at <http://www.librarylaw.com/DurationTable.htm>. A "flow chart" for copyright duration is found at http://www.bromsun.com/practice/copyrights/copyright_durations. See also Library of Congress Copyright Office. Circular 15a, *Clarification of Copyright: Provisions of the Law Dealing with the Length of Copyright Protection* (Washington, D.C.: Library of Congress, 2004) <http://www.copyright.gov/circs/circ15a.pdf>.

Copyright 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).

unpublished works when the death date of the author is not known will still be copyrighted, but certification from the Copyright Office that there is 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\(e\)](#).

A 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.

"Publication" was not explicitly defined in the Copyright Law before 1909, 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."

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 US. For much of the twentieth century, certain formalities had to be followed to secure copyright protection. For example, some books had to be printed in the United States 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 twenty-eight years were the most common conditions, and are specified in the Copyright Act.

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 starting point to investigating the copyright and renewal status of published works 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 Project FAQ, especially "[How Can I Tell Whether a Book Can Go Online?](#)" and "[How Can I Tell Whether a Copyright Was Renewed?](#)",

so very helpful.

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

Foreign works published after 1923 are likely to be still under copyright in the US 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 January 1, 1996 had fallen into the public domain in the US because of a failure to comply with US formalities. One of the authors of the work must be a non-US citizen or resident, the work could not have been published in the US 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 Restorations Contained in the Uruguay Round Agreements Act \(URAA\). Circular 38b](#). [Washington, D.C.: Library of Congress, Copyright Office, 2004].

US 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 US.

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 United States and without a copyright notice. It had long been assumed that failure to comply with US formalities placed these works in the public domain in the US and, as such, were subject to copyright restoration under the URAA (see note 9). The court in *Twin Books*, however, concluded that 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 US and hence have the same copyright term as unpublished works. This decision has been harshly criticized in *Nimmer on Copyright*, the leading treatise on copyright, as being incompatible with previous

visions 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.

See Library of Congress Copyright Office, [International Copyright Restorations of the United States. Circular 38a](#). [Washington, D.C.: Library of Congress, Copyright Office, 2004].

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](#).



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