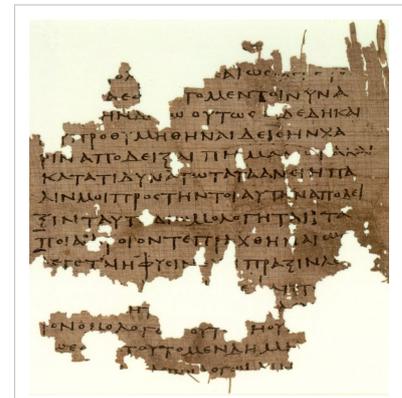




abandoned.<sup>[5]</sup> Copyright law was created by statute and all works created and published before copyright law was first established are in the public domain. In this historical context Paul Torremans describes copyright as a "little coral reef of private right jutting up from the ocean of the public domain."<sup>[6]</sup> Because copyright law is different from country to country, Pamela Samuelson has described the public domain as being "different sizes at different times in different countries".<sup>[7]</sup>

Definitions of the boundaries of the public domain in relation to copyright, or intellectual property more generally, regard the public domain as a negative space, that is, it consists of works that are no longer in copyright term or were never protected by copyright law. More subtle definitions of the public domain move beyond those works that no longer receive legal protection under intellectual property law and incorporates all aspects of works which are not covered by the intellectual property doctrine, such as insubstantial parts of a copyrighted work or the statutory defined permitted acts and exceptions to copyright. A less legalistic definition of the public domain comes from Lange, who focused on what the public domain should be: "it should be a place of sanctuary for individual creative expression, a sanctuary conferring affirmative protection against the forces of private appropriation that threatened such expression".<sup>[8]</sup> Patterson and Lindberg described the public domain not as a "territory", but rather as a concept: "There are certain materials - the air we breathe, sunlight, rain, space, life, creations, thoughts, feelings, ideas, words, numbers - not subject to private ownership. The materials that compose our cultural heritage must be free for all to use no less than matter necessary for biological survival."<sup>[9]</sup> The term public domain may also be interchangeably used with other imprecise and/or undefined terms such as the "public sphere" or "commons", including concepts such as "commons of the mind", the "intellectual commons", and the "information commons".<sup>[5]</sup>



*Papyrus Oxyrhynchus, with fragment of Plato's The Republic*



Buddhist monk Geshe Konchog Wangdu reads Mahayana sutras from an old woodblock copy of the Tibetan Kanjur.

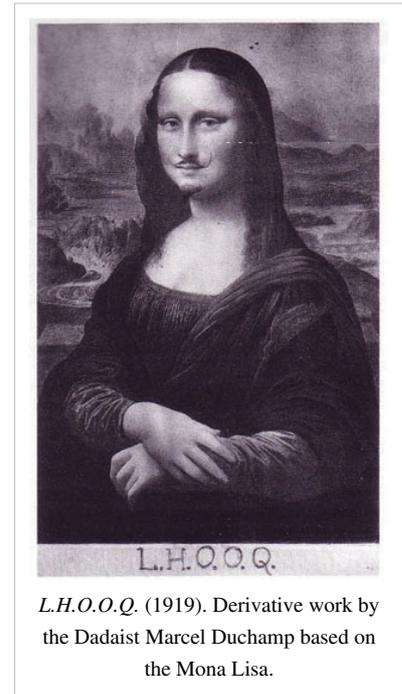
## Value of the public domain

In attempting to map the public domain Pamela Samuelson has identified eight "values" that can arise from information and works in the public domain,<sup>[10]</sup> though not every idea or work that is in the public domain necessarily has a value.<sup>[11]</sup> Possible values include:

- Building blocks for the creation of new knowledge, examples include data, facts, ideas, theories, and scientific principle.
- Access to cultural heritage through information resources such as ancient Greek texts and Mozart's symphonies.
- Promoting education, through the spread of information, ideas, and scientific principles.
- Enabling follow-on innovation, through for example expired patents and copyright.
- Enabling low cost access to information without the need to locate the owner or negotiate rights clearance and pay royalties, through for example expired copyrighted works or patents, and non-original data compilation.
- Promoting public health and safety, through information and scientific principles.
- Promoting the democratic process and values, through news, laws, regulation, and judicial opinion.
- Enabling competitive imitation, through for example expired patents and copyright, or publicly disclosed technologies that do not qualify for patent protection.<sup>[10]</sup>

## The public domain and derivative works

Derivative works include translations, musical arrangements, and dramatizations of a work, as well as other forms of transformation or adaptation.<sup>[12]</sup> Copyrighted works may not be used for derivative works without permission from the copyright owner,<sup>[13]</sup> while public domain works can be freely used for derivative works without permission.<sup>[14]</sup> <sup>[15]</sup> Artworks that are public domain may also be reproduced photographically or artistically or used as the basis of new, interpretive works.<sup>[16]</sup> Once works enter into the public domain, derivative works such as adaptations in book and film may increase noticeably, as happened with Frances Hodgson Burnett's novel *The Secret Garden*, which became public domain in 1987.<sup>[17]</sup> As of 1999, the plays of Shakespeare, all public domain, had been used in more than 420 feature-length films.<sup>[18]</sup> In addition to straightforward adaptation, they have been used as the launching point for transformative retellings such as Tom Stoppard's *Rosencrantz and Guildenstern Are Dead* and Troma Entertainment's *Tromeo and Juliet*.<sup>[19]</sup> <sup>[20]</sup> <sup>[21]</sup> Marcel Duchamp's *L.H.O.O.Q.* is a derivative of Leonardo Da Vinci's *Mona Lisa*, one of thousands of derivative works based on the public domain painting.<sup>[14]</sup>



## The public domain in the Information Society

According to Bernt Hugenholtz and Lucie Guibault, the public domain is under pressure from the "commodification of information" as items of information that previously had little or no economic value have acquired independent economic value in the information age, such as factual data, personal data, genetic information, and pure ideas. The commodification of information is taking place through intellectual property law, contract law, as well as broadcasting and telecommunications law.<sup>[22]</sup> The undermining of the public domain, and in particular limitations and exceptions to copyright by contract law is also an issue frequently raised by libraries, and library groups such as International Federation of Library Associations and Institutions.

## Perpetual copyright

Some works may never fully lapse into the public domain. A perpetual crown copyright is held for the Authorized King James Version of the Bible in the UK.<sup>[23]</sup> While the copyright of the play *Peter Pan, or the Boy Who Wouldn't Grow Up* by J. M. Barrie has expired in the United Kingdom, it was granted a special exception under the Copyright, Designs, and Patents Act 1988 (Schedule 6)<sup>[24]</sup><sup>[25]</sup> that requires royalties to be paid for performances within the UK, so long as Great Ormond Street Hospital (to whom Barrie gave the rights) continues to exist.

## Public domain in copyrightable works

### Works not covered by copyright law

The underlying idea that is expressed or manifested in the creation of a work generally cannot be the subject of copyright law (see idea-expression divide). Mathematical formulae will therefore generally form part of the public domain, to the extent that their expression in the form of software is not covered by copyright.

Works created before the existence of copyright and patent laws also form part of the public domain. For example, the Bible and the inventions of Archimedes are in the public domain, but copyright may exist in translations or new formulations of these works.

### Expiration of copyright

The expiration of a copyright is more complex than that of a patent. Historically the United States has specified terms of a number of years following creation or publication; this number has been increased several times. Most other countries specify terms of a number of years following the death of the last surviving creator; this number varies from one country to another (50 years and 70 years are the most common), and has also been increased in many of them. See List of countries' copyright length. Legal traditions differ on whether a work in the public domain can have its copyright restored. Term extensions by the U.S. and Australia generally have not removed works from the public domain, but rather delayed the addition of works to it. By contrast, a European Union directive harmonizing the term of copyright protection was applied retroactively, restoring and extending the terms of copyright on material previously in the public domain.

### Government work

Works of the United States Government and various other governments are excluded from copyright law and may therefore be considered to be in the public domain in their respective countries.<sup>[26]</sup> In the United States, when copyrighted material is enacted into the law, it enters the public domain. Thus, the building codes, when enacted, are in the public domain.<sup>[27]</sup> They may also be in the public domain in other countries as well. "It is axiomatic that material in the public domain is not protected by copyright, even when incorporated into a copyrighted work."<sup>[28]</sup>

### Definition

The definition of public domain is not uniform and may not only include completed works, but also permitted uses of works still covered by intellectual property rights, such as for example the right to excerpt short quotations in a review. This definition divides areas of private property from areas of the public domain. For example, Mozart's music is public property, and Britney Spears' music is private property.<sup>[1]</sup>

## Public domain in patents

In most countries the term for patents is 20 years, after which the invention becomes part of the public domain.

## Public domain in trademarks

A trademark registration may remain in force indefinitely, or expire without specific regard to its age. For a trademark registration to remain valid, the owner must continue to use it. In some circumstances, such as disuse, failure to assert trademark rights, or common usage by the public without regard for its intended use, it could become generic, and therefore part of the public domain.

Because trademarks are registered with governments, some countries or trademark registries may recognize a mark, while others may have determined that it is generic and not allowable as a trademark in that registry. For example, the drug "acetylsalicylic acid" (2-acetoxybenzoic acid) is better known as *aspirin* in the United States—a generic term. In Canada, however, "aspirin" is still a trademark of the German company Bayer. Bayer lost the trademark after World War I, when the mark was sold to an American firm. So many copy-cat products entered the marketplace during the war that it was deemed generic just three years later.<sup>[29]</sup>

## Generic trademarks

Although Hormel resigned itself to genericide,<sup>[30]</sup> it has fought attempts by other companies to register "spam" as a trademark in relation to computer products.<sup>[31]</sup>

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## External links

- Flowchart to determine Public Domain status of a work in the U.S. (<http://www.bromsun.com/practices/copyright-portfolio-development/flowchart.htm>)
  - Stanford Copyright Renewal Database (<http://collections.stanford.edu/copyrightrenewals/bin/page?forward=home>)
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- OutOfCopyright.eu: Public Domain Calculation (<http://www.outofcopyright.eu/>) for Europe, by Europeana
- Public Domain Day (<http://www.publicdomainday.org>): with many links to useful tools to find and determine PD works
- Public Domain Manifesto (<http://publicdomainmanifesto.org>)
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