



How to Determine Whether a Work is in the Public Domain

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For any work published prior to 1978 (with proper copyright (©) notice), copyright lasted for an initial term of 28 years, renewable in the 28th year at first for an additional 28 years, then (with the 1976 Copyright Act) for an additional 47 years, and finally (with the Sonny Bono Copyright Term Extension Act of 1998) for an additional 67 years. If a work published prior to 1964 was not formally renewed, it entered the public domain when the initial 28-year term expired. (For works published after 1963, renewal became automatic in 1992.) If the copyright was renewed, the term was thus 75 years from the year of publication (expiring on Dec. 31 of the 75th year following the initial publication) until the Sonny Bono act extended this to 95 years.

Thus, if a work was published in 1922 or earlier, it is now in the public domain. Works that were published between 1923 and 1963 have a 95-year term, provided the copyright was formally renewed in the 28th year. Works published between 1964 and 1977 have a flat 95-year term. Works by individual authors created (not merely published) after 1977 have a term of the author's life + 70 years. Works by corporate authors ("works made for hire") created after 1977 have a term of 95 years. (The combination of the automatic renewal legislation in 1992 and the Sony Bono term extension legislation in 1998 has the effect that **virtually nothing** will enter the public domain for a full 20 years, at which time we can expect the same folks, or their successors, to be back in Congress begging for yet another extension!)

So, how does one determine when a work was first published? If a copy is available with a copyright notice, the notice should contain the year of first publication. Of course, new editions (derivative works) often contain notices with the year of first publication of the derivative work and not the original, but if the date is prior to 1923, you can be confident that that particular work, and all predecessors, are in the public domain. In other cases, a more tedious process is necessary.

Every year the Copyright Office publishes a *Catalog of Copyright Entries*. This is in hard copy form for the years up to 1982 and solely in electronic form since then. The *Catalog* is on-line for entries since 1978, but that does not help much for the older works that are the primary focus of copyright term extension and our opposition to it. If you are near a library that has the *Catalog* (or can visit the Copyright Office) you can try looking through it to find the work in which you are interested. (Harvard and Minnesota are two libraries that I am told have complete collections. The Arizona State University library, unfortunately, only has the *Catalog* since 1944.) The thing to remember is that even if a work was first published between 1923 and 1963, and so was potentially saved by the Sonny Bono Copyright Term Extension Act, it is nevertheless in the public domain unless a timely renewal application was filed with the copyright office. (Works first published between 1964 and 1977 must be

assumed to be under copyright for the full 95-year period.) Consequently, it is probably best to check the renewal entries in the *Catalog* for the years that are 27-28 years after the suspected year of first publication. If the year of first publication is not known, you simply must check the renewal entries for all years that are conceivably in the 27-28 year range after first publication.

The [On-Line Books Page](#) contains an excellent, and more thorough, explanation of the search process, and their site is worth a visit. They also explain how to do an on-line search at the Copyright Office for *Catalog* entries after 1977. This can be useful in determining whether the copyright in a work published between 1950 and 1963 was renewed.

I have made a short list of [Subverted PD Works](#) that I will be enlarging with time as new items come to my attention. I call it "subverted" because the works there listed should be either now or in the next few years in the public domain, but their passing to that status was subverted by this special-interest giveaway known as the Sonny Bono Copyright Term Extension Act.

An invaluable contribution to the resolution of some of these problems may be found at the [US Catalog of Copyright Entries \(Renewals\)](#), maintained at a web site in England. The creator of this table has gone through the *Catalog* renewal entries for 1950-51 and lists all renewals in those years for books, periodicals, and plays first published in 1923--the year that already should be in the public domain. It contains a partial list of such works for 1924 as well, and later years are in the works. We should all feel most grateful that someone has taken it upon him- or herself to get this material on line.

Another potentially valuable source in this endeavor is [The On-Line Books Page](#). This site has complete scans of the *Catalog* for renewal entries made in [1950](#) (renewals of works first published in 1922-23), [1951](#) (1923-24), and [1952](#) (1924-25). It is incomplete for the years [1953](#) (1925-26) and [1954](#) (1926-27). These are actual images in GIF format of the pages of the *Catalog*. They are especially useful in searching by the name of the author of the original work, because the entries are in alphabetical order by author names.