
U.S. Copyright: Numerous Works Enter Public Domain for First Time in Over Two Decades

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The cause for the 21-year drought can be traced to changes in the copyright term. The U.S. Constitution gives Congress the right to bestow exclusive rights on the creator of an original work for "limited times." Under the first Copyright Act of 1790, copyrights lasted 14 years with the option of an additional 14-year renewal term. In 1909, both terms were doubled to 28 years, allowing for up to 56 years of copyright protection.

The law changed significantly under the Copyright Act of 1976, which initially provided for a copyright term equal to an author's life plus 50 years, or for works made for hire, a term of 75 years from publication. In 1998, Congress passed the Sonny Bono Copyright Term Extension Act ("CTEA"), which extended the 50 years of protection after death to 70 years, and the term for works made for hire to 95 years.

The grant of retroactive extensions to existing copyrights effected by the 1976 and 1998 laws resulted in numerous works moving into the public domain in 1998 and then again in 2019, but not in the interim. When the 1976 law was implemented in 1978, the earliest works still to have copyright

protection were registered or first published with a copyright notice (“copyrighted”) in 1922. The renewal copyright term for these works (and those copyrighted between 1922 and 1977) was extended from 28 years to 47 years, yielding a total term of protection of 75 years. As a result, the final year of protection for many works copyrighted in 1922 was 1997 (i.e., 1922 + 75), meaning they moved into the public domain in 1998.

Works that had retained copyright protection since 1923 were set to move into the public domain in 1999, but the CTEA extended the renewal term of pre-1978 subsisting copyrights by another 20 years. As a result, works copyrighted in 1923 entered the public domain in 2019—hence the 21-year gap between works from 1922 and works from 1923 entering the public domain.

Going forward, a new wave of works will enter the public domain on January 1 each year. So while it was once safe to assume that anything copyrighted before 1923 is in the public domain, the cutoff year will now need to be adjusted each year.