

Licensing and Public Domain Materials

Copyright Town Hall
Rice University, Houston, Texas

Coe F. Miles, Ph.D., J.D.
Associate General Counsel
Questia Media America, Inc.

Agenda

- About Questia
- Public Domain Basics (U.S.)
- Public Domain and GATT (Restoration)
- Questions

Questia Overview

- **Online Digital Library**

- Complete text of more than 35,000+ scholarly works
- Currently provide access to books and journals (periodicals coming)
- Goal is to grow to more than 250,000 in next few years
- Focused on humanities and social sciences
- Retrospective collection

- **Research Tools**

- Encyclopedia, Dictionary & Thesaurus
- Advanced search capabilities
- Citation assistant
- Bibliography builder
- Highlighter, margin notes & bookmark features
- Personal work space

- **Individual Subscription-Based Business Model**

- www.questia.com

Collection Development

- **Title Selection**

- Analysis of academic library collections
- Analysis of undergraduate courses
- Professor and librarian recommendations
- Other
 - Citation analysis
 - Awards
 - Reviews

- **Retrospective Collection**

- Goal is to create a balanced collection for academic use
- All years
- All sources
 - More than 200 publishers
 - More than 1,000 authors

Basic Research/Acquisition Process

- Select Titles
- Identify Locus of Copyright Control
- Secure Electronic Rights
- Acquire Copy of Text
- Digitize Text
- Tag Text
- Associate Additional Information with Text
- Place Text into Service

Public Domain Milestones

(U.S. Works)

- **Works Published Before 1923**

- *Public Domain*

- **Works Published Between 1923 & 1963**

- First term of 28 years (*with notice*)
- Renewal term of 67 years (*affirmative renewal required*)

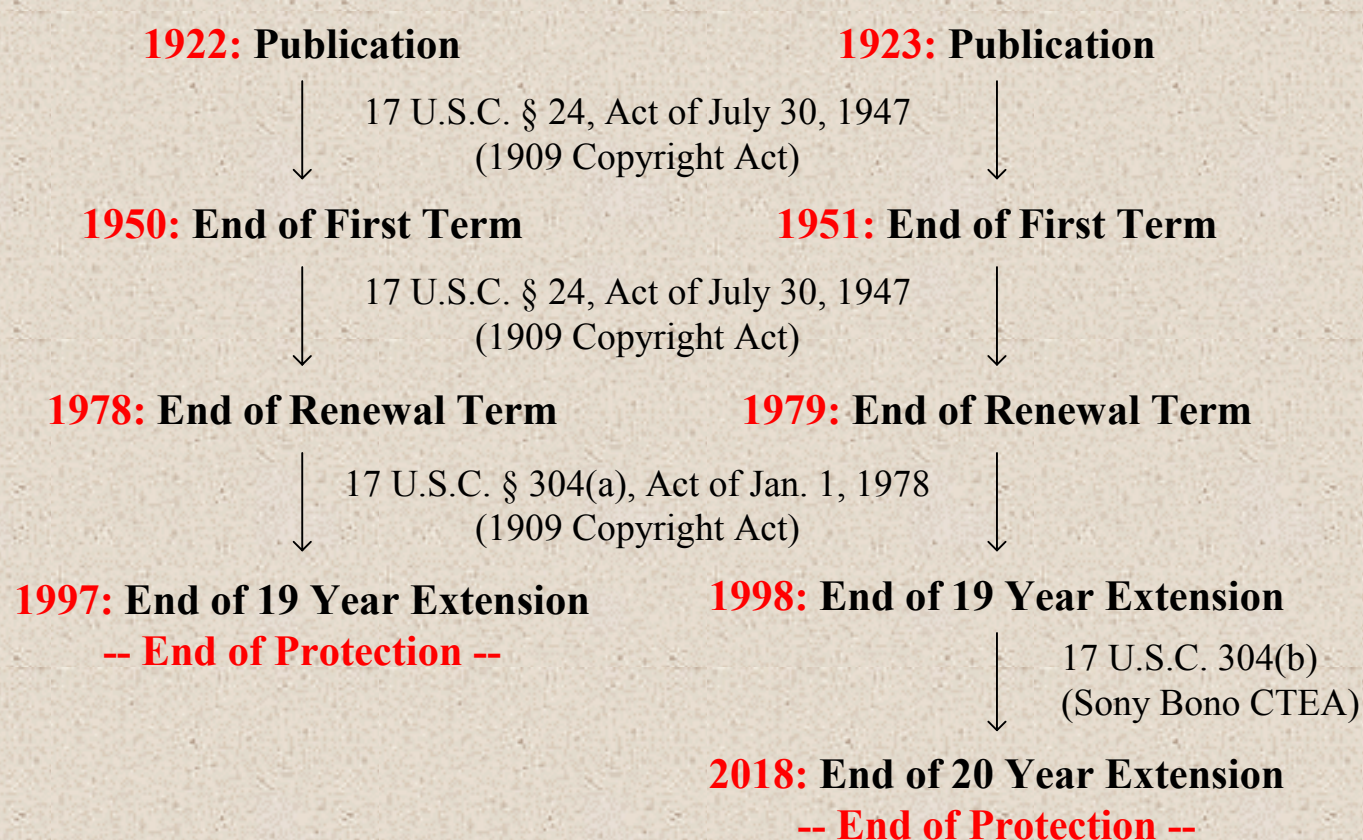
- **Works Published Between 1964 & 1977**

- First term of 28 years (*with notice*)
- Renewal term of 67 years (*automatic*)

- **Works Published After 1977**

- Unitary term of Life plus 70 years
- Registration not required for protection
- Notice not required

What a Difference a Year Makes



Public Domain Milestones

(U.S. Works)

- **Works Published Before 1923**
 - *Public Domain*
- **Works Published Between 1923 & 1963**
 - First term of 28 years (*with notice*)
 - Renewal term of 67 years (*affirmative renewal required*)
- **Works Published Between 1964 & 1977**
 - First term of 28 years (*with notice*)
 - Renewal term of 67 years (*automatic*)
- **Works Published After 1977**
 - Unitary term of Life plus 70 years
 - Registration not required for protection
 - Notice not required

Public Domain Classification

(U.S. Works)

- **Works Published Before 1923**
 - Easy
- **Works Published Between 1923 & 1963**
 - Review Copyright Office records for renewal notices
 - Renewal notices for works published in 1923 dated 1951
 - Renewal notices for works published in 1963 dated 1991
- **Works Published After 1963 Assumed to be Under Copyright**
 - Who controls the electronic rights, publisher or author?
 - Contract types
 - Assignments
 - Licenses
 - Auto-reversion
 - Demand reversion
 - No reversion

Restoration

- Congress Automatically Restored Copyright in Public Domain Works *If*:

- Work is not a U.S. work,
- Work is not in the public domain in the country of origin, and
- Work is in the public domain in the U.S. for:
 - noncompliance with U.S. formalities;
 - lack of national origin; or
 - lack of subject matter protection for sound recordings made before February 15, 1972.

- **Effective January 1, 1996**

- General Agreement on Tariffs and Trade (GATT) as implemented under the Uruguay Round Agreements Act (URAA) & Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreements
- Term for works published between 1923 and 1977 is generally 95 years
- Term for works published after 1977 is life plus 70 years

Public Domain Analysis & Restoration

- **No Longer Possible to Definitively Determine the Public Domain Status of Any Work**
 - A bone fide U.S. work
 - Simultaneous publication overseas and in the U.S.
- **Difficult to Even Determine If a Work Is Eligible for Restoration**
- **Proof Often Available Only to Foreign Rights Holder**
- **What is an Organization to Do?**

Questia's Approach to Restoration

- **Perform all Research Possible**
 - Copyright Office records (renewal notices)
 - Global books in print data
- **If Work Appears to be Public Domain Classify it as Such**
 - Track usage
 - Respond promptly and openly to all inquiries
 - License when possible, remove when not possible
- **Make Only Reasonable Requests for Proof**
 - Proof of authority
 - Proof of foreign copyright
 - Good faith statement as to work's non-U.S. status

Licensing and Copyright Misuse

- **Copyright Misuse**

- Common law defense to infringement that derives from the equitable doctrine of "unclean hands"
- Legal foundations:
 - Antitrust law
 - Public Policy

- **Consequences**

- Bars copyright owner from asserting copyright until offending conduct is "purged"

- **Situations**

- **Tying**
- Anticompetitive clauses in contracts and licensing agreements
- Mandatory blanket licenses
- Refusal to license competitors