Licensing and Public Domain Materials

Copyright Town Hall
Rice University, Houston, Texas

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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

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>End of 19 Year Extension</td>
<td>17 U.S.C. 304(b) (Sony Bono CTEA)</td>
</tr>
<tr>
<td>2018</td>
<td>End of 20 Year Extension</td>
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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

• 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