

Is It Really Public Domain?

A Guide for Writers

A work in the public domain is not protected by copyright. It can generally be copied, quoted, adapted, translated, republished, and used commercially without permission from a former copyright owner.

The difficult part is determining whether the exact material you want to use is truly in the public domain where you intend to use it.

“Old,” “free,” and “available online” are not synonyms for public domain—no matter how convincingly the website behaves as though they are.

How a Work Enters the Public Domain

A work may be in the public domain because:

- Its copyright term expired
- It was never eligible for copyright protection
- The law excludes it from copyright
- The copyright owner relinquished the rights through CC0 or another legally effective dedication

Copyright does not protect general ideas, facts, methods, systems, titles, names, or short phrases. However, the original way those things are selected, arranged, explained, illustrated, or expressed may be protected.

What Does Not Put a Work in the Public Domain

A work is not necessarily in the public domain simply because it is:

- Available free of charge
- Posted online
- Out of print
- Unregistered
- Published without a copyright notice
- Published anonymously or under a pseudonym
- Held by a library, museum, or archive
- Difficult to trace to an owner
- Described as royalty-free
- Used frequently by other people
- Old enough to look harmless

Copyright usually arises automatically and can survive changes in ownership, publication status, technology, and fashion. An abandoned-looking website may still contain protected work.

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Public Domain Where?

Copyright status is territorial. A work may be in the public domain in one country while remaining protected in another.

The answer may depend on:

- The country where the work originated
- The author's nationality or residence
- Where the work was first published
- Where the material will be reproduced
- Where the new work will be published or distributed

A work that can lawfully be reproduced in Canada may still create problems when the resulting book is sold in the United States, the United Kingdom, or another country.

Use the **International Copyright Expiry Durations** guide to identify the general term in each relevant country. When the work is old, anonymous, unpublished, posthumously published, created by a government, or governed by earlier legislation, the general term may not be enough.

Identify the Exact Material

A single book, image, song, or recording can contain several copyright works with different owners and expiry dates.

What You Find	What May Be Separately Protected
Classic novel	Introduction, annotations, cover, illustrations, and edition layout
Foreign-language classic	Modern translation
Public-domain poem	Editorial notes, artwork, and typographical arrangement
Historic photograph	Restoration, colourization, caption, or compilation
Traditional song	Modern arrangement or sound recording
Folk tale or myth	Modern retelling, translation, artwork, or adaptation
Historic speech	Recording, transcript, commentary, or edited version
Public-domain painting	Photograph, digital reproduction, restoration, or accompanying text
Old map	Modern annotations, colouring, corrections, or digital enhancements

The underlying work may be public domain while the version in front of you is not.

Modern Editions

A new edition does not bring an expired copyright back to life. A publisher cannot claim ownership of Jane Austen's original words merely by placing them between new covers. However, the publisher may own copyright in material added to that edition, including:

- A new introduction

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- Annotations and footnotes
- A new translation
- Illustrations
- Maps
- Photographs
- Editorial commentary
- Original selection or arrangement
- The typographical layout

If you want to republish a public-domain text, use a reliable copy of the original work rather than copying a modern edition wholesale.

Translations

A translation is a separate creative work. The original text may be public domain while a recent translation remains protected.

For example, a nineteenth-century novel may be free to use in its original language, but a translation published in 2022 almost certainly is not. You can locate an older public-domain translation, obtain permission, or create a new translation without copying the protected one.

Music and Recordings

A musical composition and a recording of that composition are separate works.

The melody and lyrics of an old song may be public domain while:

- A modern arrangement remains protected
- A performer owns or controls rights in a recorded performance
- A record company controls the sound recording
- New lyrics or instrumentation receive separate protection

Public-domain sheet music does not automatically make a modern recording free to use.

Artwork and Photographs

A painting may be public domain while the photograph or digital image used to reproduce it raises separate questions. The answer can depend on the originality of the reproduction and the law of the relevant country.

Museums and archives may also impose contractual conditions on access to or downloading of high-resolution images. Those conditions are separate from copyright and may affect the copy you obtained from them.

Use the rights statement attached to the individual image. Do not assume that one policy applies to an institution's entire collection.

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Government Material

Government works are treated differently from country to country.

United States

Works created by U.S. federal government employees as part of their official duties are generally not protected by U.S. copyright.

However, not everything displayed on a federal website is a federal government work. A government site may contain photographs, illustrations, reports, maps, or other material supplied by contractors or third parties.

The rule also does not automatically apply to works created by state or local governments. Those works may be protected.

Federal trademarks, agency seals, logos, privacy rights, publicity rights, and restrictions against implying government endorsement may still apply.

Official information: [USA.gov—Copyright and Federal Government Materials](#)

Canada and Other Crown-Copyright Countries

Canadian government works may be protected by Crown copyright. Commercial reproduction, adaptation, revision, or translation may require permission even when non-commercial reproduction is permitted.

Other countries, including the United Kingdom, Australia, and New Zealand, also have rules governing Crown or government copyright.

Always check the copyright or reuse terms published by the department responsible for the material.

Official information: [Government of Canada—Crown Copyright Clearance](#)

CC0 and the Public Domain Mark

Creative Commons provides two tools associated with the public domain, but they do different things.

CC0

CC0 is used by a copyright owner who wants to waive copyright and related rights to the fullest extent permitted by law.

Material released under CC0 can generally be copied, adapted, redistributed, and used commercially without permission or attribution. Other rights, including trademark, privacy, and publicity rights, may still apply.

The person applying CC0 must own the rights or have the legal authority to relinquish them.

Public Domain Mark

The Public Domain Mark identifies material believed to be free of known copyright restrictions.

Unlike CC0, the mark does not change the legal status of a work. It is a label, not a licence or waiver. Its reliability depends on the accuracy of the person or institution applying it.

Is It Really Public Domain?

Official information: [Creative Commons—CC0 and the Public Domain Mark](#)

Orphan Works

An orphan work is protected material whose copyright owner cannot be identified or located after a reasonable search.

It is not public domain.

An absent owner, unanswered enquiry, missing copyright notice, or unsuccessful search does not end copyright protection. Nor does offering to pay if the owner eventually appears.

Some countries have limited systems for licensing orphan works. The United Kingdom, for example, operates a licensing scheme for certain commercial and non-commercial uses after a diligent search. A licence granted under a national scheme may apply only within that country.

Official information: [UK Intellectual Property Office—Orphan Works Licensing](#)

Where no applicable licensing system exists, the practical options are to remove or replace the material, obtain legal advice, or proceed only after consciously assessing the risk.

Other Rights May Still Apply

Public-domain status resolves copyright. It does not necessarily resolve every other legal or ethical issue.

Other considerations may include:

- Trademark rights
- Privacy rights
- Publicity or personality rights
- Moral rights
- Contractual restrictions
- Archive or collection access terms
- Ownership of the physical object
- Cultural or community protocols
- Restrictions on government seals and insignia
- Defamation or false endorsement

A public-domain photograph of a living person can still raise privacy or publicity concerns. A public-domain government image cannot necessarily be used to imply official endorsement. A traditional cultural work may be legally available while remaining subject to community expectations or protocols.

“Public domain” means free of copyright restrictions. It does not mean free of every possible responsibility.

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Finding Public-Domain Material

Several reputable institutions provide access to material identified as public domain or released for broad reuse:

- [Library of Congress Digital Collections](#)
- [Smithsonian Open Access](#)
- [New York Public Library Digital Collections](#)
- [Project Gutenberg](#)
- [Internet Archive](#)
- [Wikimedia Commons](#)
- National libraries, archives, and museum open-access collections

These repositories contain enormous amounts of useful material, but not every item they host is public domain.

Project Gutenberg's copyright determinations are primarily based on U.S. law. Internet Archive contains public-domain material alongside copyrighted books available through controlled lending or other arrangements. Wikimedia Commons relies on individual rights information that should be reviewed rather than accepted from a search-result thumbnail.

Open the record for the specific item and read its rights statement, source information, creator details, and reuse terms.

Establishing Public-Domain Status

A sound determination connects four things:

The creator

Who made the original work? Is the identity known?

The date

When was it created, published, or made available? When did the author die?

The version

Are you using the original or a later translation, adaptation, edition, recording, restoration, or reproduction?

The country

Where is the material being used, published, and distributed?

Keep a record of the sources used to establish public-domain status. Save relevant catalogue entries, rights statements, publication information, death dates, statutory guidance, and copies of webpages consulted.

A public-domain determination does not need to resemble a court brief, but it should be based on more than "someone on Pinterest said it was vintage."

Is It Really Public Domain?

The Guiding Principle

Public-domain status belongs to a particular work or element—not automatically to every version, edition, recording, or reproduction of it.

Before using material, identify:

- What it is
- Who created it
- When it was created or published
- Which version you have
- Which country's law matters
- Whether newer protected material has been added

If one of those answers is missing, “it looks old enough” is not a reliable substitute.