

Literature in the Public Domain

US Copyright Law has been in the news recently, especially with the implementation of the CASE Act and another round of cases to watch.¹ Interesting high-profile copyright news include a suit over a tattoo design and another for the famous “banana taped to wall” artwork.² Other noteworthy cases that may have more immediate significance to libraries include the Internet Archive seeking summary judgement over a controlled digital lending suit, and a Supreme Court review of the fair use defense for an Andy Warhol print.³ However, there is also continuing positive news in copyright-land because each year, more literature that librarians love is added to the public domain.

The purpose of copyright in the United States is stated clearly in Article I Section 8 of the Constitution: “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The first



Internet Archive Logo



Andy Warhol. Attribution: Bruno Ehrns, CC BY-SA 3.0, via Wikimedia Commons

US Copyright Act, in 1790, provided for a term of 14 years, with a 14-year renewal available, and at various times those terms have gotten longer, to 28 years with renewal, and after the US determined to join the Berne Convention, copyright term changed from a specific number of years to the number of years after the death of the author. Today’s US copyright term for works that are not “works for hire” is “life of the author + 70 years,” a term that was codified in the Sonny Bono Copyright Term Extension Act in 1998.⁴ In part because of these changes in US law, knowing when a work enters the public domain can be confusing. The Digital Copyright Slider is one tool that can help.⁵

Although the duration of the “limited times” keeps getting extended, eventually those times expire, and with them, the limitations on reuse that copyright law requires. The expiration of copyright protection means that the work has become part of the “public domain,” of works that can

¹ “Copyright Small Claims and the Copyright Claims Board,” U. S. Copyright Office, <https://www.copyright.gov/about/small-claims/>.

² Setty, Riddhi. 2022. “Miles Davis Photographer’s Suit Against Tattoo Artist Von D to Test Copyright ‘Fair Use.’” Bloomberg.Com, June 17, 2022. <https://www.bloomberg.com/news/articles/2022-06-17/miles-davis-tattoo-suit-pits-copyright-against-body-autonomy>. “Artist Can Take Maurizio Cattelan to Court over Banana Work, Says Florida Judge.” 2022. The Art Newspaper - International Art News and Events. July 11, 2022. <https://www.theartnewspaper.com/2022/07/11/artist-can-take-maurizio-cattelan-to-court-over-banana-work-says-florida-judge>.

³ “Internet Archive Seeks Summary Judgment in Federal Lawsuit Filed By Publishing Companies.” 2022. Electronic Frontier Foundation. July 8, 2022. <https://www.eff.org/press/releases/internet-archive-seeks-summary-judgment-federal-lawsuit-filed-publishing-companies>. Jahner, Kyle. 2022. “Warhol-Prince Photo Case Brings Fair Use Fight to High Court.” Bloomberg Law. March 28, 2022. <https://news.bloomberglaw.com/ip-law/warhol-prince-photo-case-brings-fair-use-debate-to-high-court>.

⁴ Bulgrien, Amy. n.d. “Copyright Timeline: A History of Copyright in the United States.” Association of Research Libraries (blog). Accessed July 11, 2022. <https://www.arl.org/copyright-timeline/>.

⁵ Brewer, Michael. 2022. “Digital Copyright Slider.” ALA Office for Information Technology Policy. Accessed July 12, 2022. <https://librarycopyright.net/resources/digitalslider/index.html>.

be used and reused in any way without requiring permission from the copyright holder. Works may also be dedicated to the public domain by their creators—for instance, through a [CCO license](#)—or they may not qualify for copyright protection for some reason, such as works created by US government employees in the course of their employment.

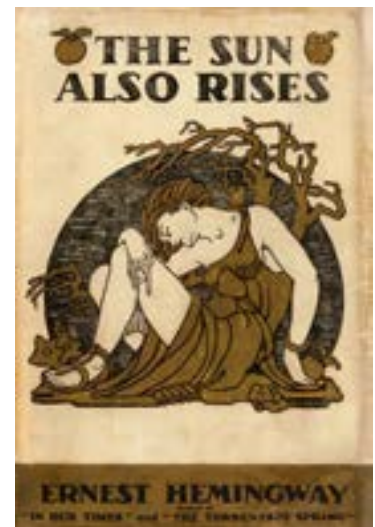
Public Domain Day celebrates works whose copyright protections have expired. For calendar year 2022, this includes published works from 1926 from the United States, works created by people who died in 1951 (in countries like the UK, Russia, and many countries in the European Union and South America, that have a copyright term of “life of author + 70 years”), and works created by people who died in 1971 (in countries like Canada, New Zealand, and many countries in Africa and Asia, that have a “life of author + 50 years” copyright term).⁶

A monumental addition—possibly 400,000 items large—to public domain this year were pre-1923 sound recordings. This addition is possible because of the 2018 Music Modernization Act, which passed Congress in 2018 and helped resolve a discrepancy in copyright protections between music and other types of works that had existed since the Sound Recordings Act of 1971.⁷ One of the most exciting collections now available is the Library of Congress’s National Jukebox, which contains “more than 10,000 recordings made by the Victor Talking Machine Company be-

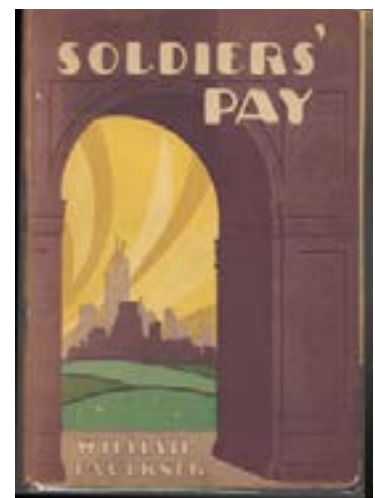
tween 1901 and 1925 (now owned by Sony Music Entertainment)...”⁸ Early jazz, blues, and ragtime were developed and are represented in these years, and these recordings may now be downloaded and used without restriction.

The most recent Public Domain Day, in January 2022, celebrates some well-known novels, including Hemingway’s *The Sun Also Rises* and Faulkner’s *Soldier’s Pay*. Notable films entering the public domain include works by significant Black filmmaker Oscar Micheaux, the silent *Faust*, directed by F. W. Murnau, and Lillian Gish’s lead role in *The Scarlet Letter*. Zora Neale Hurston’s *Color Struck* and Bertolt Brecht’s *Man Equals Man* were weighty plays now available. Works by Yeats, D. H. Lawrence, and Agatha Christie fell into the public domain as well, but perhaps the most entertaining for children at heart are Salten’s *Bambi* and the lovable *Winnie the Pooh*.

Although Lawrence Lessig mentioned Public Domain Day in 2004, online notice did not really begin taking off until 2011, when Project Gutenberg and Creative Commons began publicizing it. That was also the year that the Open Knowledge Project began the Public Domain Review. However, 2019 was when excitement truly began building in the United States, as pre-1923 works first entered the public domain. Notable authors included Robert Frost, Edith Wharton, Agatha Christie, and ee cummings, along with music by Irving Berlin and George Gershwin, and



Hemingway, *The Sun Also Rises*, Scribner, 1926.



Faulkner, *Soldiers' Pay*, Boni & Liveright 1926



Milne and Shepard, *Winnie the Pooh*, Methuen 1926

⁶ “Happy Public Domain Day 2022!” n.d. The Public Domain Review. Accessed July 11, 2022. <https://publicdomainreview.org/blog/2022/01/public-domain-day-2022/>.

⁷ “All Sound Recordings Prior to 1923 Will Enter the US Public Domain in 2022.” n.d. The Public Domain Review. Accessed July 11, 2022. <https://publicdomainreview.org/blog/2021/12/all-sound-recordings-prior-to-1923-will-enter-the-us-public-domain-in-2022/>.

⁸ “Happy Public Domain Day 2022!” Ibid.

films starring Buster Keaton and Charlie Chaplin.⁹ Each year since then, more of the literature and music that shaped the 20th Century is freed.

The purpose of Public Domain Day is to generate positive support for the expiration of copyright terms. Duke Law School's Center for the Study of the Public Domain also speaks glowingly in favor of the benefits of the public domain, describing it as a "wellspring for creativity," and

a means of enabling "access to cultural materials that might otherwise be lost to history." Perhaps Jenkins's strongest case for support of the public domain comes from the concrete examples that she provides: "Community theaters can screen the films. Youth orchestras can perform the music publicly, without paying licensing fees. Online repositories such as the Internet Archive, HathiTrust, and Google Books can make works fully available online."¹⁰

Find these public domain books and more on Goodreads' Public Domain Shelf or Project Gutenberg.¹¹ Download the pre-1923 sound recordings at the National Jukebox or the Internet Archive. Public domain and other open access books are also available at the Internet Archive's Open Library and the Palace Project's Open Bookshelf.¹² Join me, and Read Open!

⁹ "Public Domain Day." 2022. In Wikipedia. https://en.wikipedia.org/w/index.php?title=Public_Domain_Day&oldid=1093026451.

¹⁰ Jenkins, Jennifer. n.d. "Public Domain Day 2022." Center for the Study of the Public Domain. Accessed July 11, 2022. <https://web.law.duke.edu/cspd/publicdomainday/2022/>.

¹¹ "Public Domain Books." n.d. Goodreads. Accessed July 11, 2022. <https://www.goodreads.com/shelf/show/public-domain>. "Project Gutenberg." n.d. Project Gutenberg. Accessed July 11, 2022. <https://www.gutenberg.org/>.

¹² "Open Library." n.d. Internet Archive. Accessed July 11, 2022. <https://openlibrary.org/>. "Open Bookshelf." n.d. Palace Project. Digital Public Library of America. Accessed July 11, 2022. <https://freebooks.dp.la/collection/groups>.

