Legal Definition of Public Domain Content

“Public domain” content consists of creative works that are not subject or no longer subject to the exclusive protection of copyright. Every copyrighted work will eventually become part of the public domain based on the applicable laws governing the term of copyright protection. Under US copyright law, as of January 1, 2022, all US works from 1926 and earlier will have had their copyright term expire and therefore be in the public domain. JSTOR already makes issues from 1926 or earlier available to the public without any access barriers or paywalls as part of its Early Journal Content program.

However, under the US 1909 Copyright Act (which was in effect through 1977) there were two other ways in which a work could have become part of the public domain: i) failure to affix copyright notice and ii) if applicable, failure to renew (described in further detail below). This project was to analyze how journal issues available through JSTOR which were subject to this law (specifically US-published issues from 1927 through 1977) measured up to these criteria.

Steps and Processes Taken in Determining Issues in the Public Domain

As part of this project, JSTOR reviewed every journal issue on the JSTOR platform dated between 1927-1977 to determine the following (in order of the steps taken in the attached visual flowchart):

1. **Issue first published in the US** (Steps 1-3): We checked every journal issue for indicia of its place of publication. Where we saw indicia that the publisher was located in the US or that the journal issue was otherwise first published within the US, we recorded that data point and proceeded to the following steps. Note:

   - If the origin was unclear or if the publisher had cross-border locations and the place of original publication was not specified, we assumed the journal issue may have first been published outside the US and did not continue with the further review below.

2. **Copyright Notice Requirement** (Steps 4-5): The 1909 Copyright Act required that each visually perceptible copy of a US work affix notice of copyright, such as © Copyright [year] [rightsholder]. Any work that did not have this notice would be considered in the public domain. For journal issues determined to have been first published in the US, our next step was to review every page for copyright notice. If no copyright notice was found, we noted that and indicated the work is in the public domain. For background: https://copyright.gov/circs/circ03.pdf and https://www.copyright.gov/circs/circ22.pdf. Note:

   - We gave broad consideration to what is considered copyright notice, taking into account any statement that included the word “Copyright” or the symbol “©”.
   - In certain cases, it is clear that JSTOR’s copy of the issue does not include front matter (which is noted in our data). In the case of a journal that consistently affixed copyright notice but may have some issues missing front matter, we assumed that those issues likely also had copyright notice and proceeded to the next review step.
3. **Renewal Requirement** (Steps 6-12): Under the 1909 Copyright Act, the term of initial copyright was 28 years and rightsholders were required to file a renewal of copyright to extend the term. Under a 1992 amendment to the Copyright Act, works that were not yet due for renewal at that time were given a reprieve from this requirement, however, any works published in 1963 or earlier would have needed to renew in order to obtain a copyright term longer than 28 years. For US journal issues published between 1927 and 1963 containing copyright notice, JSTOR searched the US Copyright Office records, with a particular focus on the 26th, 27th, and 28th years following publication, to determine whether a copyright renewal was filed. If no evidence of copyright renewal was found, we marked the journal issue as in the public domain. For background: [https://www.copyright.gov/circs/circ15a.pdf](https://www.copyright.gov/circs/circ15a.pdf) and [https://www.copyright.gov/circs/circ22.pdf](https://www.copyright.gov/circs/circ22.pdf). Note:

- The Copyright Office makes their records available online. For records from 1978 and on, e.g. a 1960 journal issue due for renewal in 1988, digital records may be searched at [https://cocatalog.loc.gov](https://cocatalog.loc.gov). For records earlier than 1978, e.g. a 1930 journal issue due for renewal in 1958, scanned copies of the paper records may be searched at [https://archive.org/details/copyrightrecords](https://archive.org/details/copyrightrecords).
- John Mark Ockerbloom of the University of Pennsylvania libraries engaged in a project to create a list of renewal information for included periodical titles. We referenced this list in doing our review but we conducted Copyright Office searches ourselves as well to verify the information. See [http://onlinebooks.library.upenn.edu/cce/firstperiod.html](http://onlinebooks.library.upenn.edu/cce/firstperiod.html).

4. **Article Copyright** (Article Level Review Chart): Journal issues are regarded under US copyright law as “collective works” meaning a journal publisher may hold a copyright in the assembled issue even if an author holds a copyright in their individual contribution/article. With this in mind, once we determined a journal issue was in the public domain following the above steps for the collective work copyright, we reviewed every issue page of those issues for any copyright notice that pertained to an individual contribution, including articles. If we found a copyright notice for an article, we noted that and proceeded to follow the same review steps for the article as we had for the issue. If we determined an article or contribution with copyright notice may still be subject to copyright, we did not include the issue in our list of public domain works.
Phase I: Issue- Level Review

1. START: find the issue (1/1/1927-12/31/1977 only) in JSTOR

2. Was the issue first published in the U.S.
   - NO: 3.END. Data Entry- non U.S. publication
   - YES:

4. Does the issue have © notice?
   - NO: 5b. Data Entry- no © notice information found. Issue is in the public domain.
   - YES: 5a. Data Entry- © notice found.

5a. Data Entry- © notice found.

6. Is the “pub date” before January 1, 1964
   - NO: 7.END. Data Entry- Issue is in ©.
   - YES: 

8. Check Ockerbloom’s list for background

9. Would the renewal have occurred in 1978 or later
   - NO: 12a.END. Data Entry- Renewal information.
   - YES: 10a. Check the Copyright Office online catalog for renewal information

10a. Check the Copyright Office online catalog for renewal information

10b. Check the The Catalog of Copyright Entries for the 27th, 28th and 29th years after the pub date.

11. Did you find renewal information?
   - YES: 
   - NO: 

Foreign Works: To determine whether an issue was first published outside of the U.S. make a judgment based on what you see on the title page and verso. If you find indication on the title page/verso that the issue was first published outside of the U.S. treat it as a foreign publication.

Phase II: Article Review

12a.END. Data Entry- Renewal information.

12b. Data Entry- no renewal information found. Issue is in the public domain.
**Phase II: Article Level Review**

13. **START:** find the article in JSTOR

14. Was the article first published in the U.S.?
   - **NO**
   - 15b. END. Data Entry- no U.S. publication
   - **YES**

15a. Does the article have © notice?
   - **NO**
   - 16a. Data Entry- © notice found.
   - **YES**

16a. Data Entry- © notice found.

16b. Data Entry- no © notice information found. Article is in the public domain.

17. Is the “pub date” before January 1, 1964?
   - **NO**
   - 18. END. Data Entry- Article is in ©.
   - **YES**

19. Would the renewal have occurred in 1978 or later
   - **YES**
   - 20b. Check the The Catalog of Copyright Entries for the 27th, 28th and 29th years after the pub date.
   - 21. Did you find renewal information?
     - **YES**
     - 22a. END. Data Entry- Article is in ©. Enter renewal information.
     - **NO**
     - 22b. Data Entry- no renewal information found. Article is in the public domain.
   - **NO**
   - 20a. Check the Copyright Office online catalog for renewal information.