

White Paper

The Expiration of Copyright Protection: Survey and Analysis of U.S. Copyright Law for Identifying the Public Domain

Prepared in furtherance of the Digital Music Library Project
National Science Foundation
NSF Award No. 9909068

By Kenneth D. Crews
Professor,
Indiana University School of Law-Indianapolis
IU School of Library and Information Science
Associate Dean of the Faculties,
Indiana University Purdue University Indianapolis

Draft: 30 April 2001

I. Introduction

The expiration of copyright protection is perhaps the most important means by which a work enters the public domain. Copyright protection lasts for a designated period of years, and when the protection expires the work is said to enter the “public domain” and become available for use by the public without constraint by copyright law. A work can also be in the public domain from the outset if it never qualified for legal protection,¹ or for failure to comply with any procedures that were previously required to secure legal rights.² But under today’s copyright law, procedures or “formalities” are generally not required, and most works that are remotely “copyrightable” in fact do gain immediate copyright protection. Hence, the most significant source of “copyrightable” public-domain material is likely to encompass those works that have enjoyed the full duration of legal rights and are now without copyright protection.

The need to identify materials that are in the public domain is especially important for the development of the Digital Music Library (DML). The recent litigation involving Napster was a blunt reminder that copyright law clearly applies to the distribution of digital copies of musical works.³ While later studies in furtherance of this NSF project will examine many of the other legal issues and their possible application to the DML,⁴ this study will survey the most important means for avoiding the complex nuances of copyright law. On the other hand, this study will also demonstrate that the law of copyright duration is itself inordinately complex. Sometimes avoiding complexity and uncertainty involves application of a law that is itself burdensome and often without clear resolution.

In addition to a detailed examination of the law of copyright duration, this study will also offer guiding principles for relatively succinct application of the rules of law to many of the most common situations.

Some parameters of the study are critical. First, this project examines only United States law.⁵ The DML is based in the U.S. at Indiana University, and most of the relevant activity will occur in the U.S. On the other hand, the project is conducted in cooperation with educational institutions outside the U.S., and to take advantage of the full potential of Internet applications, the content of the DML may be made accessible from locations around the world. These uses of the DML in other countries may implicate the need to examine and analyze foreign law in future studies.

Second, this study examines only copyright law.⁶ Moreover, it examines only the rules of duration of copyright protection. Future studies will expand on this work by analyzing other aspects of copyright.⁷ Future studies may also examine other potentially relevant laws, such as the right of publicity, trademark, communication, and state-law protection for some unpublished materials⁸ and for early sound recordings.⁹

This study also assumes that the works discussed in the examples are in fact copyrightable. This is not an unrealistic assumption. Copyright law now gives automatic protection to works that are “original” and “fixed in any tangible medium of expression.”¹⁰ This rule encompasses a vast wealth of materials, from computer programs to works of fine art. While some new works fail these standards, few do.¹¹ Once the work is copyrightable, it is today copyrighted automatically.¹² Once protected, this study focuses on the question of how long that protection will last.

Finally, this study focuses on the application of the law to a given work or situation. Copyrights expire after a designated period of years by operation of law. American copyright law also includes an amorphous concept of “abandonment,” whereby a copyright owner might be deemed to have lost legal rights by virtue of not protecting them or asserting them against infringers.¹³ That doctrine is highly speculative, and courts are rarely inclined to apply it. It is even difficult to justify under today’s law, where copyrights vest automatically and are intrinsically protected under the law for the full term of years.¹⁴ A copyright owner today might be able to take concerted steps to waive any copyright claim, but that ability is also not specifically provided for in the statutes, and copyright specialists have debated the meaning and effectiveness of efforts to disclaim copyright protection and place a work voluntarily into the public domain. This study thus focuses on the operation of the law to run the full course of copyright duration and to allow the work to enter the public domain.

II. Brief Background of the Law

Congress enacted the first federal Copyright Act in 1790,¹⁵ and the rule of copyright duration remained for most of the subsequent history a fairly straightforward measure of a fixed period of years.¹⁶ The term of protection grew significantly with ensuing copyright enactments, but the term remained a standardized period of years until the latest full copyright revision took effect on 1 January 1978.¹⁷ One of the most important changes that the so-called Copyright Act of 1976 made in previous law was a transformation of the duration of copyright from a determinate number of years to a term based on the life of the author, plus fifty years.¹⁸ For the first time in American law, the length of copyright protection for a particular work would be unpredictable until the death of the author.¹⁹ Some works might last little more than fifty years, if the author died soon after creating them;²⁰ other works would enjoy many years of protection, if the author lived a long life after creating the copyrighted work.²¹

While many countries of the world had adopted a “life-plus” rule of copyright protection many decades before, the change posed especially difficult logistical problems for the United States. Existing copyrights had a fixed term and continue to have a fixed term; the law thus created a bifurcated system for copyrights before and after 1 January 1978. American law also includes a distinctive “work-made-for-hire” doctrine, under which a corporation or other entity could be an “author.”²² The notion of copyright based on the life of an entity that might never die was clearly preposterous.²³ For these works, the copyright has a fixed term. Thus, even for works created after 1 January 1978, the law provides two possible methods for measuring a copyright’s duration, depending on whether it is work for hire or not.²⁴

More recent years have brought radical changes to the law of copyright duration. Best known is the Sonny Bono Copyright Term Extension Act, under which Congress in 1998 added twenty years of protection to existing and future copyrights.²⁵ The basic rule is now life of the author, plus seventy years. Much more complex were the implications of America’s entry into the North American Free Trade Agreement in 1993²⁶ and the World Trade Organization in 1994.²⁷ Under both of these multinational agreements, the United States was obliged to grant copyright protection to many foreign works that had lost copyright protection in the United States as a result of failure to comply with certain requirements, or “formalities,” of copyright as previously required.²⁸ Before 1978, copyrights might have expired if the author published the work without a copyright notice, or the author might have lost the copyright if it were not renewed after twenty-eight years. These rules for identifying a work in the public domain continue to apply to early works, but only with respect to domestic works. Foreign works—even ones that already had entered the public domain—were recently exempted from these rules and brought back under copyright protection. The copyrights were “restored.”²⁹

This brief overview reveals that the issue of copyright duration has become extraordinarily complex, especially in recent years. The ability to determine whether a work might be under the purview of copyright or in the public domain is today far more than a matter of statutory construction and mathematical calculation. The determination of whether a work is in the public domain depends on an extensive array of facts, including the place of creation, the date of creation and publication, whether it is a work made for hire, and the date of the author’s death. Many other facts about the circumstances of publication, notice, registration, and renewal can also be determinative. Needless to say, the issue is highly complex. Moreover, many of the basic facts necessary for a final determination can be elusive, vague, and at times impossible to find with anything comparable to certainty.

III. Framework of Rules since 1978

A. Works Created on and after 1 January 1978

The basic rule today for works created since the latest full revision of the Copyright Act (effective 1 January 1978) is that copyright protection lasts for the life of the author, plus seventy years.³⁰ Because copyright protection today vests automatically, this rule has widespread application. Because the instant and automatic duration of copyright is of such extraordinary length, one can conclude with assurance that few copyrightable works created since the beginning of 1978 have entered the public domain by operation of law, and no

others can be forecasted to enter the public domain until at least the end of the year 2048. In that year, an author who died in 1978 will have been deceased for seventy years.³¹

This statement of the law is relatively direct, but not entirely accurate. The law is not so simple. When Congress last fully revised copyright law, effective 1 January 1978, it was not prepared to move fully toward automatic copyright protection and the elimination of formalities. Congress initially took an intermediate step, by retaining the requirement of a copyright notice on published copies,³² but giving copyright owners a means for curing the lack of a notice, or a defective notice, without jeopardizing copyright protection.³³ Thus, a notice was technically required, but failure to include a notice did not necessarily effect as a waiver of legal rights, as under previous law. Congress finally eliminated this “interim” step as of 1 March 1989, but it remains applicable to works published during the intervening years.³⁴ One practical consequence of this provision is that the absence of a copyright notice on a work published between 1978 and March 1989 could possibly mean that the work in fact is in the public domain, if the copyright owner did not take the required steps to remedy the deficiency.

Nevertheless, the lack of a copyright notice on any work published since the beginning of 1978 does not by itself mean that the work is in the public domain, and in most cases the lack of a notice bears no relationship to copyright status. Consider these examples:

Example. Jerry composes a musical score in 1985, and it is published for the first time in 1990. Under today’s law, the different dates of creation and publication are not relevant to the duration of copyright. As long as the work was created after 1 January 1978, the copyright will last throughout Jerry’s life, plus seventy more years.

Example. Jerry’s score was published in 1990, but Phil Symphony records and releases the first authorized performance of the work in 1992.³⁵ The sound recording is a second work that is eligible for a copyright separate from the copyright for the composition. The copyright to the recording will last through Phil’s lifetime, plus seventy years.³⁶

Consider the implications of the two separate copyrights. Susan Student purchases a CD of the performance in 2001. She would like to know when the work that she now has in hand will enter the public domain. The answer is that the composition enters the public domain on one date, and the recording at another. No one can determine either of those dates until the respective copyright owner dies. Even on that occasion, Susan must wait another seventy years for the work to be in the public domain. Thus, the entire copyright protection to the CD will not lapse until seventy years after the second of Jerry and Phil to die. Susan has a long wait, and she has to follow the lives of the copyright owners to note their passing.³⁷

Consider these variations on the examples. If Jerry publishes his composition in 1985, but fails to include a notice on the copies, he had not lost his copyright. As long as he meets the conditions of the statute, he can potentially “cure” his errors and not jeopardize his rights.³⁸ Push the date of Jerry’s work back a few years. Suppose he publishes it before 1978 without the notice. He will have lost his copyright protection.³⁹ Phil would then have made a new recording (which is a “derivative work”) of a public-domain musical work, and the recording is nevertheless eligible for its own separate copyright.

B. Jointly Owned Copyrights

The copyrights to many works are held jointly by two or more individuals who created the work together. In general, the copyright to a work may be held jointly when the creators intermingled their contributions and demonstrated some intent to have created a joint work.⁴⁰ A composer and a lyricist working together may be deemed to be joint copyright owners of the song they create. By contrast, in the examples above regarding Jerry’s composition and Phil’s recording of it, Jerry and Phil are usually not going to be joint copyright owners. They did not create the work together and exhibit an intent to form a joint work. Instead, each of them holds a separate copyright to his distinctive creative contributions.⁴¹

The duration rule for joint ownership is the life of the last of the joint authors to die, plus seventy more years.⁴² Thus, if Jerry and Phil instead composed a song together and were joint copyright owners, the copyright would last for seventy years after the death of the second of them to die. Such could have been the situation had this law applied to the works of the Gershwin brothers. They completed some of their most important compositions in the 1920s. Ira Gershwin died in 1983. George Gershwin died in 1937. If the current law applied to their joint works, the copyrights to their early compositions would last until the end of 2053, seventy years after the death of Ira.⁴³

C. Works Made for Hire—Alternative 1

A major exception to the general rule for contemporary works is the work-made-for-hire doctrine. Two varieties of this doctrine exist in current law.⁴⁴ The most common can be stated most succinctly. If the person who creates the new copyrightable work is an employee and creates the work within the scope of his or her employment, the employer is deemed to be the author and the copyright owner. This seemingly simple statement of law works fairly clearly in situations such as a staff programmer at Microsoft creating the next operating system, or the employee who creates a manual or internal memorandum regarding the company’s next product. These are common situations in which the creative work will likely be deemed “for hire” and the copyright will belong to employer.

This apparently simple law, however, is fraught with difficult applications and has stirred a remarkable body of court rulings and analytical studies.⁴⁵ In many instances, determining whether someone is an “employee” and whether the work is within that person’s “scope of employment” can be difficult and contentious. That determination makes an enormous difference when measuring the duration of the copyright and, consequently, whether the copyright has expired. While the copyright for a typical work lasts for the life of the author plus seventy years, a work made for hire will enjoy copyright protection for the term of ninety-five years from the date of publication, or 120 years from the date of creation, whichever term lapses first.⁴⁶

Example. Jane is a staff member at XYZ Corporation, and as part of her job she composes musical scores for multimedia software products. XYZ publishes one of her projects in the year 2000. As a work for hire, the copyright will last until 2095. Also in 2000, she writes a memorandum about her progress on the work, and the memo is filed at the company, but not published. The copyright on the memo will last until 2120. Should the company publish the memo in 2004, the copyright will instead expire ninety-five years later in 2099. Should the company publish the memo in 2050, the copyright will still lapse in the year 2120. The later publication date will not extend the expiration beyond the original maximum term of 120 years.

Example. Jane contributed to the same multimedia project, but she is not an employee of XYZ Corporation. She is instead an independent contractor. The copyright will last through Jane’s life, plus seventy years. The company will likely require Jane to transfer the copyright to XYZ Corporation, but the transfer does not change the fact that the work was not made “for hire” as defined under the statute.⁴⁷ Thus, the copyright duration is based on Jane’s life, and the company is only able to take title to the scope and range of rights that Jane holds.

These examples demonstrate not only the variety of duration rules that might apply, but also the extraordinary complications of isolating the facts necessary to apply the rules. Consider the following example.

Example. Juanita is a librarian, and her library collection includes a CD of recorded music that she would like to duplicate and make widely available for students. The CD has a copyright notice indicating (assume accurately) that the copyright is held by XYZ Corporation, with the year of 1980. She wonders how long the copyright might last. If it is a work made for hire, the copyright likely lasts until 2075, which is ninety-five years after publication. If the composers and performers originally held the copyright—even if subsequently assigned to XYZ Corporation—the copyright with respect to the individual contributions of each author lasts for his or her life, plus seventy years.⁴⁸

One can readily imagine the difficulties of determining the duration of copyright protection. To reach a conclusion, Juanita needs to know whether the recording is “for hire.” To make that decision, she needs to know the factual circumstances under which the composers and recording artists did their work. Did they have a contract? Did they work for others at the same time? Did they create the works at their own volition? Did the employing party control their work, supply materials, withhold taxes, etc.? Juanita will most often never be able to obtain this information. In fact, the elusive evidence related to such questions often overwhelms the parties to litigation involving the work-made-for-hire question. Realistically, Juanita is left without the ability to determine with any certainty the duration of the copyright on the CD in her collection. Regardless, as a post-1978 work, it undoubtedly has copyright protection for many more decades.

D. Works Made for Hire—Alternative 2

A second statutory version of the work-made-for-hire doctrine offers greater certainty about whether it applies to a given work, but it occurs much less frequently. Still, Juanita will have difficulty securing the facts she needs to determine whether the law applies to a particular work. If this version of the doctrine applies, the work is again deemed “for hire,” and the same rule of duration—ninety-five or 120 years—applies to the work.

This version of the doctrine applies only upon meeting three conditions specified in the statute:

1. The work must be specifically “commissioned” by the hiring party.
2. The work must be one of the particular types of works listed in the statute.⁴⁹

3. The parties (the hiring party and the creating party) must have entered into an agreement that both parties have signed that specifies that the work shall be deemed to be made for hire.

Applying this law again requires that Juanita have access to facts about the private, business relationship between the parties. If she can locate and review the contract between the parties, she might determine with relative certainty whether the work is for hire or not. Accordingly, she might then resolve whether the copyright expires after the fixed term of years or seventy years after the life of the author. But realistically, Juanita will not have the privilege of examining the contract, and she will again be left with no ability to determine the actual duration of the copyright in question.

Nevertheless, this version of the doctrine may well apply to many musical works and sound recordings. Among the particular works on the list⁵⁰ are contributions to “collective works,”⁵¹ and “a part of a motion picture or other audiovisual work,”⁵² and a “compilation.”⁵³ Any of these works could include musical works or sound recordings.

Worth noting is that the list of eligible works briefly included “a sound recording.”⁵⁴ Congress added sound recordings to the list in August 1999 without hearings or studies of the law’s implications.⁵⁵ The change was greeted with vehement criticism. In October 2000, Congress rescinded the change and added elaborate language to the statute essentially declaring that the brief mention of “sound recordings” in the law was a mistake and should never be applied.⁵⁶ This odd circumstance, however, does not preclude sound recordings from being treated as “for hire” under this statute if they can be identified as a “collective work” or one of the other works on the existing list.

IV. Framework of Rules before 1978

A. Works Published before 1 January 1978

Before 1978, the U.S. copyright law distinguished between published and unpublished works and applied a separate rule of copyright duration to each. For works that were published before 1978, the copyright generally lasts for the fixed term of ninety-five years.⁵⁷ A copyright owner who creates a new work was previously required to take deliberate steps to secure the full term of protection. In particular, before 1978, a work needed to include a formal copyright notice on all published works. Without the notice, the work lost its copyright protection.⁵⁸ Once the work was published with a proper notice, the copyright lasted for a term of twenty-eight years. The additional years—now to a total term of ninety-five years—were available only if the copyright owner filed a renewal registration with the U.S. Copyright Office. While no “formalities” are required to secure copyright protection today, proper notice was previously required for the first term of protection, and renewal was necessary for the second, additional term.

For purposes of determining the duration and expiration of copyright for a particular work that was published before 1978, three general rules emerge:

First, the maximum duration of protection is ninety-five years; consequently, many older works have entered the public domain. This rule is subject to a limitation that it applies only to works published in and after 1923. When Congress added twenty additional years of protection in 1998, copyright on works published before 1923 already had expired, because

they already had received the maximum of seventy-five years of protection. Congress did not bring them back under copyright, but instead granted the added protection only with respect to new works and works that still enjoyed legal protection.⁵⁹ Hence, although in general early publications now have up to ninety-five years of copyright, works published before 1923 were already in the public domain and remain so.

Second, many works from before 1978 have entered the public domain immediately upon publication, if they were published without a formal copyright notice.

Third, many other works from before 1978 are also in the public domain if they were published with a copyright notice, but if the copyrights were not renewed with a timely filing of a renewal registration. The second and third rules are subject to major exceptions with respect to foreign works. In general, American copyright law applies equally to domestic and foreign works that are being used inside the jurisdiction of U.S. law. On the issue of copyright duration and expiration of pre-1978 works, however, foreign works enjoy significant additional benefits. While copyrights could expire early for failure to comply with formalities, the U.S. was required to “restore” those expired copyrights with respect to foreign works, pursuant to obligations under NAFTA and the WTO agreements.⁶⁰

At the risk of stating the obvious, determining the term of copyright protection for pre-1978 works depends not only a proper application of the law, but clearly also on isolating facts relating to the date of publication, form of notice, and compliance with registration and renewal requirements.

Fortunately for anyone researching the copyright status of an earlier work, many of the essential facts are public record. One can inspect published copies of a recording, book, or other work to determine whether they include a formal copyright notice. The publication history of many works is also thoroughly documented on the work itself, in bibliographies, and in library catalogs. The records of the U.S. Copyright Office, especially registrations and renewals, are open for public inspection, and many of the records are available online.⁶¹

Unfortunately for the researcher, these seemingly simple rules are not so simple. The variations on the rules are also not confined to niches and obscure applications. The exceptions are crucial. Moreover, the facts can be elusive, and research can be costly and inefficient.

B. Restoration of Foreign Copyrights

The restoration of protection for foreign works, the copyrights to which already had expired, is a most extraordinary development in American law. Upon accession to certain multinational agreements, the U.S. had no choice but to reapply legal protection if it would be in full compliance with these new obligations.⁶² Thus, while copyrights to American works from before 1978 may be subject to early expiration for failure to comply with the formalities of notice and renewal, foreign works are not.

Before 1996, when Congress effected this change in the law, foreign works from before 1978 could be deprived of their copyrights in the U.S. if they did not adhere to all requirements, and many such works did lose their protection.⁶³ As of 1 January 1996, those works were returned to protected status.⁶⁴ The movement of large bodies of expired copyrights back under legal protection is unique in American history.⁶⁵

Thus, one set of rules for expiration applies to domestic works, while a distinctive set of rules applies to foreign works. Adding further complication, the rule for foreign works does not apply to works from all countries. The restoration of copyright applies only with respect to works from the following nations (other than the U.S.):

1. members of the World Trade Organization;
2. adherents to the Berne Convention;
3. adherents to the WIPO Copyright Treaty;
4. adherents to the WIPO Performances and Phonograms Treaty;
5. countries subject to presidential proclamation that they offer reciprocal protection for American works.⁶⁶

Realistically, this list embraces most of the countries of the world. A recent count lists 140 countries as members of the WTO and 147 countries adhering to the Berne Convention.⁶⁷

If a country is not on these lists, copyrights on works originating from that country are subject to earlier expiration for lack of formalities. Indeed, if a country is not on the list, the U.S. likely does not have any treaty arrangement or bilateral agreement for the mutual protection of copyrights. Thus, works originating from those countries may well lack any copyright protection at all in the United States, regardless of when they were created or published.

C. Works Created, but not Published, before 1 January 1978

In contrast to current law, previous copyright law in the U.S. treated published and unpublished works with considerable differences. A work created before 1978 received the benefits of federal statutory protection only when it was published, and only then upon complying with formalities. As long as the work was unpublished, it had protection under the so-called “common law” of state copyright. The Copyright Revision Act of 1976 eliminated this distinction and brought all copyrightable works, whether published or not, under statutory protection.⁶⁸

A major difference between the common-law and statutory protections was the issue of duration. Statutory copyrights for published works lasted a fixed period of years. The common-law protection lasted in perpetuity, as long as the work remained unpublished. Letters, diaries, and manuscripts had perpetual copyright protection, until they were published. Then the limited duration of statutory protection began to apply.

The decision to bring unpublished works under a consistent system of protection also meant elimination of the perpetual duration and replacing it with a term that would also eventually expire. Vast reserves of copyrighted materials that previously had potentially permanent copyright protection were made subject to the basic rule of protection for the life of the author plus, now, seventy years.

Rather than place in the public domain, in one swift gesture, all unpublished materials from authors who had died decades before, Congress chose to delay the operative application of the law. Not until twenty-five years after enactment of the law, on 1 January 2003, will this rule take effect. On that date, the unpublished works of authors who had died seventy years before will enter the public domain.⁶⁹

The practical consequence of this development in the law is that, for the first time, unpublished materials from the past are now scheduled to enter the public domain on 1 January 2003.

Example. Bonita, a composer of classical music, died in the year 1927. Any scores, manuscripts, recordings, and other copyrightable works that she created during her lifetime that have remained unpublished will enter the public domain after 1 January 2003. They will enter the public domain at that time, because she will have died more than seventy years before, and only if the works are not published in the meantime.

Consider this variation on the example. If Bonita had died instead in the year 1940, her unpublished works would not enter the public domain until 2010, seventy years after the year of her death. This result simply follows the basic rule that after the end of 2002, the term of protection for unpublished works will be based on the life of the author, plus seventy years.

Now add one more important variation to the example. Bonita died in the year 1927, and a relative inherited the copyrights. If at any time before 2003 the new copyright owner publishes the work, the work will receive an additional forty-five years of copyright protection, until 1 January 2048.⁷⁰ This unusual statutory provision is something of a bargain or incentive: it is a grant of additional protection as an inducement to publish the work and share it with the public. If the copyright owner instead decides just to leave the manuscript in the file box, the copyright will proceed to expire at the end of 2002. Should a researcher later find the material, it may be used without copyright restriction.

Thus, the expiration of copyrights for unpublished materials from the past depends primarily on the date of the author's death. If a researcher is anticipating the future expiration of a work, the researcher must also watch closely for whether the work is published before 2003 and gains additional years of copyright privileges.

D. Sound Recordings Made before 15 February 1972

Despite the current breadth of copyright protection for a vast range of new works, earlier law was slow to bring new media under its purview. Sound recordings were not given protection under American law until Congress amended the Copyright Act, effective 15 February 1972. In the typical example of a musical composition that is subsequently performed and recorded, the composition long has been eligible for copyright protection as an "original" work that is "fixed" in a tangible medium, but the recording had no federal protection until Congress amended the statute.⁷¹

The practical effect of this situation is that a sound recording made before 15 February 1972 does not enjoy any copyright protection in the U.S., and may be used without restriction from the federal copyright law.⁷² The underlying musical composition, however, may still be protected, and any use of the recording must give due regard to the rights of the copyright owner of the composition. A recording made since the given date in 1972, however, may well encompass at least two separate copyrights: one in the composition and one in the recording. Any use of the more recent recording must consider the rights of two—or possibly more—copyright owners.

Once again, the restoration of foreign copyrights has made this situation even more complex. Entry into the WTO has required the restoration of copyrights in the U.S. for foreign sound recordings made before 15 February 1972.⁷³ Thus, the sound recording made in the U.S. before 1972 lacks a separate copyright protection, while the recording made in one of the countries listed above might have been in the public domain, it now stands to have been brought back under copyright protection as of 1 January 1996.⁷⁴

Return to the example of Jerry's composition and Phil's recording of it. If the composition were from 1970 it would most surely be protected today. If the recording were also from 1970, it would lack federal copyright protection. If the recording from before 1972 were made in a foreign country, it may well have lacked protection in the United States for many years, but the copyright in the recording is now valid not only in the home country, but also has been "restored" in the U.S.

V. Dimensions of the Inquiry of the Public Domain

Identifying works in the public domain under American law has become enormously complex, and yet identifying those works can be crucial for the success of the DML and other digital libraries. For nearly two centuries of copyright law, the matter was largely a mathematical calculation based on the date of the work's publication. Today, the determination of whether a work has entered the public domain depends on a myriad of facts and the application of an array of statutes. In many cases, the quest will simply be impossible; the needed facts are outside the reach of the investigator. In other cases, the quest may be possible, but the burden of securing the needed information will be so great as to outweigh the importance of the resolution. In other instances, the needed facts might be vague and elusive, and the investigator may simply be utterly unable to reach a conclusion about the status of a work with a satisfactory degree of certainty.

Nevertheless, some general rules about the expiration of copyrights are possible. These general rules are set forth here from the perspective of the developer of a digital library who is seeking to identify when the copyright on a work may expire and the work enter the public domain.

Rule 1: Works Created in or after 1978.

Works created on or after 1 January 1978 enjoy automatic copyright protection for an extensive period of years—generally for the life of the author, plus seventy years—and will at the earliest enter the public domain at the end of the year 2048.

Practical Implication: Little among contemporary published and unpublished works will at any time soon enter the public domain. One can reach the same conclusion with respect to Rule 2.

Rule 2: Works Made for Hire.

Works Made for Hire that are created on or after 1 January 1978 have protection for ninety-five years from publication or 120 years from creation, whichever occurs first.

Rule 3: Works Published before 1923.

Works first published in the U.S. before 1923 are in the public domain.

Practical Implication: Although these works are old and serve only a limited scope of the objectives of the DML, this category of works can be identified and used with the greatest assurance of all works addressed in this paper.

Rule 4: Works Published between 1923 and 1977, Inclusive.

Works published between the beginning of 1923 and the end of 1977 may have copyright protection for a maximum of ninety-five years.

Practical Implication: As with respect to Rules 1 and 2, works from this era are subject to many years of protection. Even the earliest of the works—those published in 1923—will not enter the public domain until after the end of 2018. Nevertheless, Rules 5 and 6 demonstrate that some works from this era may yet be in the public domain.

Rule 5: Works Published before 1978 without Notice.

Works published before 1978 without formal copyright notice entered the public domain upon publication; most foreign works are exempt from this possibility and have had their copyrights restored.

Practical Implication: If initial inspection of a work suggests that it is from this time period and was published without a copyright notice, the situation may merit further research to verify whether it is in the public domain.

Rule 6: Works Published between 1923 and 1964 without Renewal.

Works published in and after 1923 and before the end of 1964 with a formal copyright notice entered the public domain after the first term of twenty-eight years, unless the copyrights were renewed; most foreign works are exempt from this possibility and have had their copyrights restored.

Practical Implication: If a work from this time period is sufficiently important to the digital library project, it may merit further investigation. Unlike the situation at Rule 5, an inspection of the work itself is likely not revealing of the essential facts. Application of this rule depends on an investigation of the registration and renewal records at the U.S. Copyright Office.

Rule 7: Works Published between 1 January 1978 and 1 March 1989 without Notice or with Defective Notice.

Works published between 1978 and 1989 with a missing or defective notice that was not corrected entered the public domain upon publication; most foreign works are exempt and have had their copyrights restored.

Practical Implication: Application of this rule is most peculiar, and a work from this era entered the public domain if it lacked a proper notice. During only these years the copyright owner was able to correct the deficient notice, in part through registering the work with the Copyright Office. Application of this rule thus also depends on an inspection of the Copyright Office records.

Rule 8: Unpublished Works Created before 1978.

In 2003, unpublished works created by authors who have been deceased for seventy years will enter the public domain; in each subsequent year, additional works by authors who had died seventy years before will also enter the public domain.

Practical Implication: Beginning in the year 2003, this rule will be of significant value for identifying works in the public domain. For the first time in American history, unpublished works will begin to enter the public domain. Users seeking to apply this rule must carefully investigate whether a work in question was published at all before the end of 2002; publication before that date can add years to the term of protection.

In addition to these rules about the expiration of copyrights, the public domain also includes discrete categories of works that are exempt from copyright protection at all. Two statements of copyright law about exempt classes are of potentially great importance for the development of the DML:

Sound recordings made before 15 February 1972 are not eligible for copyright protection in the U.S. and are in the public domain; most foreign sound recordings are exempt and have had their copyrights restored.

Works of the U.S. government, that are produced by government employees acting within their duties, are not eligible for copyright protection.⁷⁵

Future studies in connection with this digital library project may investigate more fully these and other exemptions from copyright protection.

VI. Conclusion

The identification of the public domain can be highly important for using copyrightable works in a digital library, but the application of the rules of copyright can be complicated and uncertain. One can also readily see that nearly all recent works are automatically protected by copyright and will remain under the law's protection for many more decades. Among those works that in fact have been protected by copyright law, the following categories of works are most likely to be in the public domain. Again, these categories are subject to critical caveats, especially the limitation in most cases that the work have originated in the United States.

- (1) Works published before 1978 without a copyright notice.
- (2) Works published before 1964 with a copyright notice, but not renewed as required after the initial twenty-eight years of protection.
- (3) Works published before 1923.
- (4) Beginning in 2003, unpublished works from authors who have died at least seventy years before.
- (5) Sound recordings made before 15 February 1972.

Identifying these works, however, will depend on conducting research into the details of each work to determine facts such as the year and place of publication and whether the works included a copyright notice and whether the work was properly renewed as may have been required under earlier law.

Finally, application of these principles ultimately has the promise of solving only the federal copyright issues. The use of a particular work may raise other legal concerns beyond copyright. Those issues will be the subject of future studies in connection with this project.

I would like to give a special thanks to the many good colleagues at the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law in Munich, Germany, for giving me important support and a productive work environment during the early months of 2001 when I completed this paper.

For Further Information

Analytical Tables

The following sources include tables or charts that summarize various aspects of the law of copyright duration in order to clarify and simplify that application of the law. Like any summary, they run the risk of not including details about the law. Yet they are a helpful start. The three sources below are listed in descending order of the detail presented in each chart; the Hirtle source is most complete.

Peter B. Hirtle, "Recent Changes to the Copyright Law: Copyright Term Extension," *Archival Outlook* (January-February 1999) [table available at <http://cidc.library.cornell.edu/copyright>].

Laura N. Gasaway. *When Works Pass into the Public Domain*. [available at <http://www.unc.edu/~unc/ncg/public-d.htm>].

Kenneth D. Crews. *Copyright Law & Graduate Research: New Media, New Rights, and Your New Dissertation*. Ann Arbor, MI: Bell & Howell Information and Learning, 2000 [available at <http://www.umi.com/hp/Support/DEXplorer/copyright/>; includes a brief examination of the duration issue and a chart summarizing the basic rules].

Law Review Articles (using legal citation format)

Lisa M. Brownlee, *Recent Changes in the Duration of Copyright in the United States and European Union: Procedure and Policy*, 6 *FORDHAM I. P., MEDIA & ENT. L.J.* 579 (1999).

Shauna C. Bryce, *Recent Development: Life Plus Seventy: The Extension of Copyright Terms in the European Union and Proposed Legislation in the United States*, 37 *HARV. INT'L L.J.* 525 (1996).

Richard Colby, *Helen Sousa Abert, Mary Baker Eddy, and Otto Harbach—The Road to a Copyright Term of Life Plus Fifty Years*, *COMM. & L.*, June 1984, at 3, 4.

Jerome N. Epping, Jr., *Harmonizing The United States and European Community Copyright Terms: Needed Adjustment or Money for Nothing?*, 65 *U. CIN. L. REV.* 183 (1996).

Christina N. Gifford, *The Sonny Bono Copyright Term Extension Act*, 30 U. MEM. L. REV. 363 (2000).

Jane C. Ginsburg, *Copyright Legislation for the "Digital Millennium"*, 23 COLUM.-VLA J.L. & ARTS 137 (1999).

Marci A. Hamilton, *An Evaluation of the Copyright Extension Act of 1995: Copyright Duration Extension and the Dark Heart of Copyright*, 14 CARDOZO ARTS & ENT LJ 655 (1996).

Orrin G. Hatch, *Toward a Principled Approach to Copyright Legislation at the Turn of the Millennium*, 59 U. PITT. L. REV. 719 (1998).

Peter A. Jaszi, *Goodbye to All That—A Reluctant (and Perhaps Premature) Adieu to a Constitutionally-Grounded Discourse of Public Interest in Copyright Law*, 29 VAND. J. TRANSNAT'L L. 595 (1996).

Joseph A. Lavigne, *For Limited Times? Making Rich Kids Richer Via the Copyright Term Extension Act of 1996*, 73 U. DET. MERCY L. REV. 311 (1996).

Jessica Litman, *The Exclusive Right to Read*, 13 CARDOZO ARTS & ENT L.J. 29 (1994).

David Nimmer, *The End of Copyright*, 48 VAND. L. REV. 1385 (1995).

William F. Patry, *The Copyright Term Extension Act of 1995: Or How Publishers Managed to Steal the Bread from Authors*, 14 CARDOZO ARTS & ENT LJ 661 (1996).

William Patry, *The Failure of the American Copyright System: Protecting the Idle Rich*, 72 NOTRE DAME L. REV. 907 (1997).

R. Anthony Reese, *Reflections on the Intellectual Commons: Two Perspectives on Copyright Duration and Reversion*, 47 STAN. L. REV. 707 (1995).

J.H. Reichman, *An Evaluation of the Copyright Extension Act of 1995: The Duration of Copyright and the Limits of Cultural Policy*, 14 CARDOZO ARTS & ENT LJ 625 (1996).

Adam P. Segal, *Zombie Copyrights: Copyright Restoration Under The New § 104a Of The Copyright Act*, 13 COMPUTER & HIGH TECH. L.J. 71 (1997).

Luigi Carlo Ubertazzi, *The "Butterfly" Case or EC Term of Protection Directive and Transitive Law*, 31 IIC: INTERNATIONAL REVIEW OF INDUSTRIAL PROPERTY AND COPYRIGHT LAW 142 (2000).

Tung Yin, *Reviving Fallen Copyrights: A Constitutional Analysis of Section 514 of the Uruguay Round Agreements Act of 1994*, 17 LOY. L.A. ENT. L.J. 383 (1997).

¹ Perhaps the most important ruling in recent years addressing the question of copyrightability of a work is *Feist Publications v. Rural Telephone Services*, 499 U.S. 340 (1991), in which the U.S. Supreme Court ruled that standard alphabetical listings of names, addresses, and telephone numbers in a directory are not sufficiently

original and creative to be eligible for copyright protection.

² The issue of “formalities” was important under earlier in law and is examined in Part IV.A. of this paper.

³ See *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001).

⁴ For an overview of relevant copyright issues, see the “Outline of Copyright Issues” also prepared by Kenneth D. Crews in connection with the same National Science Foundation project, available at <http://dml.indiana.edu/pdf/crews-issues.pdf>.

⁵ American copyright law is codified at 17 U.S.C. Sections 101, et seq.

⁶ Of course, once any legal rights apply, an ensuing issue is to determine who the owner of those rights might be. This study does not specifically explore the matter of identifying the copyright owner, although it does arise as an incident to the determination of duration and expiration. However, the identity of only the initial owner is distinctly important to the duration question; once the work is created, the copyright may well have been transferred to a succession of new owners. Especially with respect to music, copyrights are commonly bought and sold. The duration of the copyright nevertheless remains the same as determined according to the context of the original creation.

⁷ See note 4.

⁸ Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 2.02 (New York: Matthew Bender & Co., 2000). This multi-volume treatise is perhaps the most frequently cited standard work on the subject of copyright law, and this paper will on several occasions reference it for general treatment of various topics.

⁹ Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 2.10 (New York: Matthew Bender & Co., 2000).

¹⁰ Section 102(a) of the U.S. Copyright Act provides, “Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression. . . .”

¹¹ See the Feist decision at note 1.

¹² While earlier law required “formalities” as a precondition to copyright protection, the United States was required to drop all preconditions upon accession in 1989 to the Berne Convention for the Protection of Literary and Artistic Works. These developments are examined in Part III.A. of this paper.

¹³ Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 13.06 (New York: Matthew Bender & Co., 2000).

¹⁴ 17 U.S.C. § 302(a).

¹⁵ Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124, 124 (repealed 1802).

¹⁶ For example, under the act of 1790, copyright protected for a term of fourteen years, with the possibility of renewal for an additional fourteen years. Periodically through the years since, Congress has added years to the term. For articles that survey the historical growth of the copyright term, see, for example, Christina N. Gifford, *The Sonny Bono Copyright Term Extension Act*, 30 U. MEM. L. REV. 363, 366-69 (2000); Jerome N. Epping, Jr., *Harmonizing the United States and European Community Copyright Terms: Needed Adjustment or Money for Nothing?*, 65 U. CIN. L. REV. 183, 185-88 (1996).

¹⁷ Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541 (1976).

¹⁸ 17 U.S.C. § 302(a). As detailed later in this paper, the term is now life of the author, plus seventy years.

¹⁹ The principal reason for making this change was to anticipate conforming to the Berne Convention, which requires member countries to provide protection for at least the basic term of life plus fifty years.

²⁰ Commonly cited is the example of John Lennon, a prolific and popular songwriter, who was murdered in 1980 at the age of forty. Because his life was cut short, his copyrights that are based on the life of the author are subject to termination earlier than one might have anticipated.

²¹ The composer Irving Berlin died in 1989 at the age of 101. He composed many of his most important works in the 1920s through the 1940s. If his copyrights were subject to a term based on the life of the author, his long life gave him many years of copyright protection. But because he did his work before 1978, those copyrights were subject to a fixed term of years. He likely outlived the protection and witnessed the expiration of his own copyrights. The examples of Irving Berlin and John Lennon demonstrate that neither system of duration—a fixed term or author’s life—has a clear hold on fair application and effect.

²² 17 U.S.C. § 201(b).

²³ Many other countries have avoided this problem by never adopting a concept of “works made for hire.” Corporations and other employers are not deemed “authors,” and the copyright duration is based on the life of the individual who actually does the creative work. To provide for the interests of employers who support and motivate the creativity, the law in some countries in turn grants to the employer a non-exclusive license to use the new work. If the employer wants more, an agreement for the granting of additional rights is in order. See, for example, Adolf Dietz, “Germany,” in *International Copyright Law and Practice*, Paul Edward Geller, ed., § 4[1][b] (New York: Matthew Bender & Co., 2000).

²⁴ These provisions are detailed in Part III of this paper.

²⁵ Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, § 101, 112 Stat. 2827 (1998) (codified in scattered sections of 17 U.S.C.).

²⁶ North American Free Trade Agreement Implementation Bill, Pub. L. No. 103-182, 107 Stat. 2057 (1993).

²⁷ Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809, 4973 (1994).

²⁸ The requirement of formalities is detailed in Part IV.A. of this paper.

²⁹ The issue of restoration of expired copyrights is detailed in Part IV.B. of this paper.

³⁰ 17 U.S.C. § 302(a).

³¹ Copyrights expire on 31 December of the year in which they are determined to expire under the law. 17 U.S.C. § 305 (“All terms of copyright . . . run to the end of the calendar year in which they would otherwise expire.”).

³² This requirement that applied to works published before 1978 is examined in Part IV.A. of this paper.

³³ The omission of the copyright notice would not jeopardize the copyright protection, if the notice was omitted from a “relatively small number of copies,” or the work is registered within five years after publication and a “reasonable effort” is made to add the notice to the copies, or the omission of the notice is a violation of an agreement with the owner requiring the notice as a condition to publication. See 17 U.S.C. § 405(a). The Copyright further provides detailed consequences for the omission of or error in the name or date in a notice. See 17 U.S.C. § 406. To emphasize, these provisions were in effect only during the period between the beginning of 1978 and March 1989.

³⁴ Berne Convention Implementation Act, Pub. L. No. 100-568, 102 Stat. 2853, 2858 (1988).

³⁵ The fact that the recording is made with the authority of the copyright owner of the composition is important. A recording is a “derivative work” of the original composition. Without permission, it would likely be an infringement. With permission, it is able to enjoy a new and separate copyright protection.

³⁶ As a practical matter, the situation will be much more complex. If Phil acts alone in the example, the copyright duration will surely be based on his life. However, if multiple performers act together to make the recording, the situation may give rise to a joint work, examined in Part III.B. of this paper. In the world of music and recording production, Phil would likely be required to assign his rights to the production company, or the work would be structured as a work made or hire, as examined in Parts III.C. and III.D. of this article. Should Phil be the original owner under the law, but assign his rights to a production company, the company can only take what Phil owns. Thus, the duration of the copyright that is now in the company’s hands would be based on Phil’s life, plus seventy years.

³⁷ Studying obituaries has become an important part of copyright research. The Copyright Act provides that a person with an interest in a copyrighted work may file a statement with the U.S. Copyright Office indicating that the author of the work is alive or dead. 17 U.S.C. § 302(d). The code further provides that in the absence of such a recorded statement or other evidence, one may presume that the author has been dead for seventy years after the earlier of either ninety-five years from publication of the work or 120 years after its creation. 17 U.S.C. § 302(e).

³⁸ For a summary of the conditions in the statute, see note 33.

³⁹ See Part IV.A. of this paper.

⁴⁰ 17 U.S.C. § 101 (“A ‘joint work’ is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.”).

⁴¹ Several key court rulings have held, for example, that a composer and a lyricist working together to create a song have joint ownership of the copyright. Among the leading cases is *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.*, 161 F.2d 406 (2d Cir. 1946).

⁴² 17 U.S.C. § 302(b).

⁴³ The likely copyright duration their works in fact enjoy is not tremendously less. For example, the stage production “Porgy and Bess” was first “published” in 1935. Assuming it was published with all formalities as required at that time, it should receive ninety-five years of copyright privileges, until the end of the year 2030.

⁴⁴ 17 U.S.C. § 101. The two alternative versions of work made for hire are set forth in the definition section of the U.S. Copyright Act.

⁴⁵ A leading case from the U.S. Supreme Court that brought important clarity to the issue, but also initiated further debate, is *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989).

⁴⁶ 17 U.S.C. § 302(c). This duration rule also applies to anonymous and pseudonymous works, although the duration for these works can revert to the more standard term based on the life of the author if the identity of the author is disclosed in a registration or other filing with the U.S. Copyright Office.

⁴⁷ A voluntary transfer of a copyright is permitted under the law, if the transaction is evidenced in writing and is signed by the party conveying the rights. 17 U.S.C. § 204.

⁴⁸ Should the recording be the work of multiple “authors,” it may be deemed a work of “joint authorship.” In that event, the copyright lasts until seventy years after the death of the last of the authors to die.

⁴⁹ The list in the statute specifies that this form of work made for hire can be “a work specially ordered or commissioned for use as a contribution to a collective work, as part of a motion picture or other audiovisual work, as a translation, as a supplemental work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas. . . .” 17 U.S.C. § 101.

⁵⁰ See note 49.

⁵¹ The Copyright Act defines a “collective work” as “a work, such as a periodical issue, anthology, or

encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.” 17 U.S.C. § 101.

⁵² The Copyright act defines these types work works broadly as including images and possibly sounds. 17 U.S.C. § 101.

⁵³ The Copyright Act defines a “compilation” as “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. § 101.

⁵⁴ For all purposes under the Copyright Act, sound recordings are defined as “works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.” 17 U.S.C. § 101.

⁵⁵ Satellite Home Viewer Improvement Act, Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544 (1999).

⁵⁶ Work Made For Hire and Copyright Corrections Act of 2000, Pub. L. No. 106-379, 114 Stat 1444, 1444 (2000).

⁵⁷ 17 U.S.C. § 304.

⁵⁸ For example, a federal district court ruled in 1998 that the famous and important “I Have a Dream” speech by Martin Luther King, Jr. was in the public domain, because Dr. King made a “general publication” of the work by widely distributing copies and encouraging its publication in the press, and the printed copies that he circulated at the time of the speech in 1963 lacked a copyright notice. In 1999 the court of appeals reversed that decision, finding that King’s actions did not jeopardize the claim of copyright. *Estate of Martin Luther King, Jr., Inc. v. CBS, Inc.*, 194 F.3d 1211 (11th Cir. 1999). The lack of a notice would not threaten the copyright protection under today’s law.

⁵⁹ Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, § 101, 112 Stat. 2827 (1998). The operative language is codified at 17 U.S.C. § 304(b), which grants the full term of ninety-five years to those works that are in their “renewal term” on the effective date of the Copyright Term Extension Act. That date was 27 October 1998.

⁶⁰ 17 U.S.C. § 104A.

⁶¹ For details about searching the records of the U.S. Copyright Office, see the following Information Circulars issued by the Copyright Office: “Access to and Copies of Copyright Records and Deposit” (Circular 6); “How to Investigate the Copyright Status of a Work” (Circular 22); and “Copyright Card Catalog and the Online Files” (Circular 23). These Circulars are available at: <http://www.loc.gov/copyright/circs/>.

⁶² See notes 26 and 27.

⁶³ Technically, the restoration of copyrights also applies to works that were published before March 1989 with an omitted or defective notice, and the copyright owner did not act to cure the omission or defect as once permitted under the law. See note 33.

⁶⁴ The statute is actually vastly more complicated than this summary could ever address. For example, because of the sequential accession to NAFTA and later WTO, Congress applied the restoration law incrementally. As a result, among the litany of complications in the statute, the effective date of the restoration for some works remains ambiguous. For a detailed discussion of the statute and its awkwardness, see Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, chapter 9A (New York: Matthew Bender & Co., 2000).

⁶⁵ The restoration of copyrights, however, has occurred in other countries. Most notably, the Council of the European Union issued a directive in 1993 requiring all E.U. countries to harmonize terms of copyright protection, generally to a standard of life of the author plus seventy years. Article 10(2) of the directive further required each member country to apply the required term to any work which was still protected under the laws of any of the other member countries. Thus, a work that was then under copyright protection in France, for example, but might have been in the public domain in any other E.U. country, must then have been brought back under copyright protection in all of the other countries until expiration of the new standard term. Directive on Harmonizing the Term of Protection of Copyright and Certain Related Rights, Council Directive 93/98, 1993 O.J. (L 290/9).

⁶⁶ 17 U.S.C. § 104A(h)(3). This list encompasses a broad range of countries. Note 67 below indicates that most countries of the world are members of the WTO or adherents to the Berne Convention. Only a relatively short list of countries adhere to the other two treaties on the list, and all of those countries also adhere to Berne. The president of the United States has issued in recent years only one such proclamation, adding Vietnam to the list. Examples of the few countries apparently not encompassed by this list are Ethiopia, Iran, Iraq, Syria, and Afghanistan.

⁶⁷ For one source of a list of countries and their participation in multilateral agreements, see “International Copyright Relations of the United States” (Circular 38a), available at: <http://www.loc.gov/copyright/circs/circ38a.pdf>. For a continuously updated list of signatories to the Berne Convention, see <http://www.wipo.int/treaties/docs/english/e-berne.doc>. For information about the WTO, see http://www.wto.org/english/thewto_e/thewto_e.htm.

⁶⁸ 17 U.S.C. § 301(a).

⁶⁹ 17 U.S.C. § 303(a). Although because anonymous and pseudonymous works can have copyright protection for up to 120 years from creation, these materials from the past may well need to predate the year 1883 before they can enter the public domain in the year 2003.

⁷⁰ 17 U.S.C. § 303(a).

⁷¹ In *Goldstein v. California*, 412 U.S. 546 (1973), the U.S. Supreme Court upheld the constitutionality of a California statute that granted state protection to sound recordings, at least with respect to infringement activities occurring before federal legislation preempted the state law in 1972. This paper examines federal copyright law; this case is a reminder that state law might grant legal rights when the federal law does not.

⁷² 17 U.S.C. § 301(c).

⁷³ 17 U.S.C. § 104A(h)(6).

⁷⁴ See the list at note 66.

⁷⁵ 17 U.S.C. § 105.