White Paper

CRMS-World
Legal Analysis and Resulting Workflow
Bobby Glushko, Program Manager

February 20, 2012

IMLS National Leadership Grant, CRMS-World
Melissa Levine, Principal Investigator

CRMS-World Legal Analysis and Resulting Workflow by the University of Michigan Library Copyright Office is licensed under a Creative Commons Attribution 3.0 Unported License.
# Table of Contents

Acknowledgements .............................................................................................................................. 3  
Overview .................................................................................................................................................. 4  
Legal Overview....................................................................................................................................... 6  
What must be known to make a Rights Status Determination? ...................................................... 7  
  i. Date and Location of publication ................................................................................................... 7  
  ii. Publication Status ......................................................................................................................... 7  
  iii. Are there earlier versions ............................................................................................................ 7  
  iv. Other Contributors ....................................................................................................................... 8  
  v. Corporate Authors ......................................................................................................................... 8  
  vi. Government Works ..................................................................................................................... 8  
Investigation Process ................................................................................................................................ 9  
Chart of Copyright Duration/Public Domain Threshold Dates ....................................................... 11  
Additional Resources .............................................................................................................................. 15
Acknowledgements

The Copyright Review Management System – World (CRMS-World) project is an effort to research author death dates as part of an effort to determine the copyright status, both in the US and their countries of origin, of books published outside of the US. It is made possible with the generous support of the Institute for Museum and Library Studies through its National Leadership Grant program.

This document describes the legal basis for the project, explains the resulting process and workflow, illustrates the process by which reviewers will be trained, and provides resources to further similar inquiries and a national discussion on these types of efforts. It was prepared with oversight from an advisory group of copyright experts to ensure the accuracy of our legal assumptions. We wish to thank them for their time and expertise.

Jack Bernard, Associate General Counsel, University of Michigan
Kenny Crews, Director of the Copyright Advisory Office, Columbia University
Georgia Harper, Scholarly Communications Advisor, University of Texas at Austin
Peter Hirtle, Senior Policy Advisor, Cornell University
Jessica Litman, John F. Nickoll Professor of Law, University of Michigan
Kevin Smith, Scholarly Communications Officer, Duke University

We also wish to thank our partners for their participation. Partners include Baylor University, Columbia University, Dartmouth College, Duke University, Indiana University, Johns Hopkins University, Northwestern University, Penn State University, Princeton University, University of California at Irvine, University of California at Los Angeles, University of California at San Francisco, University of Illinois at Urbana-Champaign, University of Maryland, and the University of Minnesota. Other commitments and letters of support were made by: the Library of Congress, the California Digital Library, Harvard University, Ohio State University, University of California Merced, University of Utah, University of Wisconsin, Washington University in St. Louis, and the Universidad Complutense de Madrid.

Please contact us with questions and ideas about this effort. One of the goals of this grant is to encourage other research libraries and similar institutions to participate in the general effort to identify books that are in the public domain so that they may be shared electronically thus helping to meet the promise of the public domain for research and inquiry.
Overview

Under the 2011 IMLS National Leadership Grant for CRMS-World, the University of Michigan Library will collect author death date information in order to prepare and implement a copyright status determination process for books and monographs published outside the United States. This determination will be twofold: the rights status of the work will be determined both for the work’s country of origin as well as for the United States. Additionally, the University of Michigan Library will continue to make copyright determinations for US works published between 1923 and 1963, building on the work of the IMLS-funded Copyright Review Management System grant awarded in 2008 (‘CRMS-US’).1 These projects are described in detail on the library’s website for the CRMS-US project and the CRMS-World project.

The CRMS-World project is fundamentally about acquiring information. With a trained team of reviewers, we will gather author death dates and other relevant information for works in HathiTrust. While more than an author's date of death is needed in order to make a determination, acquiring these dates is an important step to understanding the copyright statuses of these works.

In CRMS-World, we will model our now-established approach to copyright determination to consider international works published between 1872 and 1941, beginning with English-language books published in the United Kingdom, Canada, and Australia. We will investigate these works to determine their rights status both in their country of origin and in the United States. When a work is in the public domain in the United States, we will make it available to US users; when a work is in the public domain in the United States and the country of origin, we will make it available worldwide.

The CRMS-World project is designed as a community-wide effort with many library partners committing staff time to develop the needed expertise and make determinations. The project will seek reviewers from libraries globally to assist with the copyright determination processes, taking constructive advantage of the professional desire of librarians everywhere for clarity regarding copyright status.

The project will result in copyright information about books in the HathiTrust, and increased public access to the world’s literary, scholarly, and scientific heritage as public domain books are identified and made available. For books still subject to copyright,

---

1 Under that grant, a total of 170,174 volumes were reviewed for copyright status; of those almost 87,000 volumes (approximately 51%) were determined to be in the public domain and are now available as full text in the HathiTrust Digital Library.
improved knowledge of the copyright status will help librarians and readers make reasoned choices about access and use of digital preservation copies. Additionally, some rightsholders of works that are still protected by copyright law may wish to make their works available under some sort of license, such as the Creative Commons licenses. Collecting this information may streamline a permissions process, if such an outcome is desired.

With the new IMLS award, the University of Michigan Library and its partners will continue to make copyright determinations for US titles and will make reliable copyright status determinations for foreign-published titles, which constitute a significant portion of the scholarly works held by HathiTrust. Currently there are one hundred seventy thousand (170,000) books from the United Kingdom, Canada, and Australia published between 1870 and 1941 in HathiTrust. By developing legal, administrative, and technical tools to identify books in the public domain, the University of Michigan and its partners will improve access to public domain books -- many of which are out of print and otherwise unavailable -- and tackle a difficult challenge for libraries worldwide that will be able to make better use of their collections to serve the public.
Legal Overview

Our CRMS-World review process focuses on three countries: United Kingdom, Canada, and Australia. Additionally, we are undertaking a preliminary investigation into developing a review process for Spanish works. We chose the first three nations as a starting point for several reasons. First, HathiTrust contains a large number of works from these countries. Second, the materials are largely in English, which reduces the need for translation. Third, all of the countries we are examining are Commonwealth nations and, as such, have a legal tradition similar our own; Spain is included in honor of the first HathiTrust partner library outside the US, the Universidad Complutense de Madrid.

In order to simplify our analysis, and to maximize the utility of our efforts, we will focus on works published between 1872 and 1941. This is because, given the way copyright terms are calculated, there are likely to be more public domain works in this period than in later years. Additionally, because of the complexities of US duration and the restoration of foreign copyright in accordance with our treaty obligations, this time period will limit the scope of works subject to copyright restoration; further inquiry will be required in order to make a determination as to the US rights status of works published between 1923 and 1941.

Because of the intricacies of international copyright law, some works may have different rights statuses in different jurisdictions. For example, because of the ways in which US copyright duration is calculated, all works published in the United States before 1923 are in the public domain. However, there are many non-US works published before 1923 still subject to copyright protection. Likewise, due to international treaty obligations, there are non-US works published after 1923 protected by copyright in the United States but in the public domain in their home countries.

Because of this lack of uniformity in copyright status, HathiTrust ensures that a work is only available in locations where it is in the public domain. Currently, this difference is addressed by restricting US public domain works to US users (users who access HathiTrust from US IP addresses), and by keeping works that are protected by copyright in the US -- but in the public domain in their country of authorship -- closed for copyright reasons in all jurisdictions. Although we would like to be able to make foreign works available to foreign users, we do not have the technological or financial resources to do so at this time. Adding formal HathiTrust partners in other nations may allow us to develop a solution to this issue.
What must be known to make a Rights Status Determination?

In order to accurately determine whether a given work is in the public domain in the country of its origin and in the US, more than just the death date of the author or the date of publication must be known. This is because there are a variety of different terms of copyright protection given to different types of works depending on where they were authored or published and depending on who authored and published them. The following are additional areas of inquiry for the CRMS-World review process.

i. Date and Location of publication

It is relatively straightforward to determine the location of a given work’s publication. This information is contained in the work’s bibliographic record, and this information will be presented to the reviewer in the review interface. Additionally, the location of publication is nearly always present in the frontmatter of a work; reviewers are instructed to match this information to the information in the catalog record. If the information does not match, then the work is removed from the candidate pool and marked as “undetermined/needs further investigation” and sent to the people who maintain the catalog records who make the necessary changes to the record.

ii. Publication Status

The vast majority of the works in HathiTrust are “published” works. One way to ascertain whether a given work is published is to rely on the place of publication data in the catalog record; another way is to check for publication status in the frontmatter of the work. The only category of works that we will consider “unpublished” as a generalization are dissertations, even though this is not necessarily the case. Dissertations are handled this way to maintain accuracy and efficiency as a matter of administrative convenience - it is easier to mark dissertations as such and reevaluate them once we have a more established process to do so in the future.

iii. Are there earlier versions

It is important to know which version of the work is being reviewed; if a work was first published in the United States, and we happen to be reviewing the first United Kingdom printing, there is a risk of error. This inquiry is similar to the location of publication insofar as the question can be generally resolved through investigating the title, verso, copyright notice, and/or table of contents of a given work. If there is some question as to the versioning of a work, then the Online Computer Library Center (OCLC) resources can be examined. Additionally, there are other indicia that a work may be a first edition, such as the copyright date being the same as the date of printing, the presence of a 1 on the verso page, or lines of numbers or text on the verso page of the book. As reviewers gain expertise, these will become more apparent and the process will be refined.
iv. Other Contributors

It is possible that a given work may have multiple contributors, or may include other copyrighted content. If the included content is minimal, e.g., limited to a few images, then making the work available due to the expiration of the author’s term is a fair use. Additionally, many embedded works in an otherwise public domain work will themselves be either in the public domain or near the end of their term of protection. However, in some contexts this may not be so. Elements of a work may be protected by copyright even if the original work is in the public domain. For example, the foreword to a new printing of a public domain work may be protected by copyright. Additionally, some works may have multiple authors, or a work may be a compilation of individually authored works. If either of these is the case, the work will be marked as “undetermined/needs further investigation” and removed from the candidate queue. Reviewers will be instructed to examine both the catalog record and the frontmatter of the work they are reviewing to ensure that there are not multiple contributors.

v. Corporate Authors

In the jurisdictions we are examining, works of corporate authorship are given a fixed term of years, generally the same term of years given to an author but tied to the date of publication as opposed to the death date of the author. The attached chart lists the durations of corporate authorship in the relevant jurisdictions. Reviewers will be able to determine whether a given work has a corporate author from an examination of the catalog record and the frontmatter of the work.²

vi. Government Works

Australia, Canada, and the United Kingdom provide protection for government works. Works produced by the governments of the above nations are protected by “crown copyright” which gives a fixed term of years depending on the publication status of the work. The attached chart lists the durations of crown copyright in the relevant jurisdictions. Reviewers will be able to determine whether a given work is a government publication from an examination of the catalog record and the frontmatter of the work.

² It is possible that the catalog record and the frontmatter may not track issues such as work for hire or assignment of copyright. In order to account for these issues, both the death date of the listed author and the date of publication will be recorded. Additionally, as a matter of policy, the bibliographic record associate with a work will be treated as correct unless this is shown not to be the case.
Investigation Process

In order to ensure reliable and efficient reviews, all reviewers will follow more or less the same review process. This process is designed to gather as much relevant information as possible in the most efficient manner.

Reviewers begin by logging into the secured, password protected library site for the CRMS-World project. Only authorized, authenticated, specially trained and approved reviewers have access to the site, and they may only access the site from specific computers. (Their access is terminated if they leave the project.) At the CRMS-World project site, reviewers will receive updates from project managers, communicate with one another, be able to review project documentation, and have a forum for questions. Once a reviewer is logged into the interface, they will be presented with a record for review. This record is presented in a framed view in a web browser, with the HathiTrust scan of the work on the right side of the window, and the relevant metadata, drawn from the works MARC record is presented on the left. Additionally, links to jurisdiction specific research materials are available in the review database; a reviewer selects the link and the relevant record information is entered into the resource and presented to the reviewer.

From this interface, a reviewer first checks the scan of the book with the metadata associated with it, making sure that the author, publisher, and location of the publisher are the same in the scan and the metadata. If there is a non-trivial\(^3\) difference between the scan and the metadata, the reviewer will mark the record as “bad metadata,” end the review, and proceed to the next review. The location of publication, and the type of author, human, corporate, governmental, is of particular importance for this investigation, and should always be examined thoroughly.

Location of publication can be determined in a few ways. One good source of publication information is the catalog record of the work that is presented in the review interface; generally, reprints and non-first editions will be noted in the catalog record. Another excellent source is the title page and verso of the work. Reviewers will be trained to look for publication information in the works that they review. For example, it is often possible to identify a first publication where the copyright date being the same as the date of printing, the presence of a 1 on the verso page, or special lines of numbers or text on the verso page of the book.

---

\(^3\) This decision will take some judgment, but there is a meaningful difference between a misplaced period or missing middle initial (trivial); and an incorrect author name or location of publication (non-trivial).
Once they have made a good determination as to the type of author and the location of first publication, reviewers will proceed to their investigation.

Reviewers will begin searching the appropriate materials, listed in the genealogical resource report prepared for us by the Library of Congress. These searches are undertaken in the CRMS interface, and are mostly automated, with search terms being populated from the works MARC record. The goal is to find a reliable death date for the author, being creative or clever in pursuit of that goal is always desirable.

If a reviewer finds an exact match, that is, a match on a record that has an appropriate birth and death date, or an appropriate publication date, and an appropriate location, they then check secondary sources to see if they can find a confirmation. If a reviewer cannot find any information to cross verify the records, they then mark the record as provisionally identified, and send it to the secondary review queue.

In addition to this process, reviewers will determine that the work before them does not have substantial “inserts” of copyrighted works, or is not a compilation of other works, a translation, or any other out of scope work. Works that are out of scope will be classified as “undetermined/needs further investigation” and examined at a later date.

Once a death or publication date has been established, and the work has been determined to be within scope, then the work is analyzed according to the “categorical public domain date chart” presented below. Essentially, this chart lists the dates for various classes of works before which all of those works are in the public domain. The reviewer will follow the chart, which will be presented in the review interface, and mark the works rights status as “public domain worldwide,” “public domain US,” or “public domain country of authorship.” These determinations will later be used to make access decisions about the given works. It is important to note that each work will be subject to this review process twice, with two different reviewers, and a rights determination will only be made when both of those reviews return the same result.

In the review process, the primary purpose is to collect information, not to make books available per se. We are far more interested in accurate research than we are in a de minimis effort to find a death date that indicates a work is in the public domain. Even if a book cannot be made available at this time, finding the death date and appending it to the record provides a huge value to the library community and the public.

---

4 For example, it's possible that a book may be published after the date of an author’s death. However, if reviewers see a death date of 1880 on a book published in 1940, they would undertake a closer inquiry as to be certain that all relevant information is correct.
<table>
<thead>
<tr>
<th>Chart of Copyright Duration/Public Domain Threshold Dates</th>
</tr>
</thead>
</table>

### Copyright Term for Published Books and the Public Domain in the UK

<table>
<thead>
<tr>
<th>Authorship Type</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual author, published works</td>
<td>Life + 70 (from calendar year after death of author)</td>
</tr>
<tr>
<td>Corporate Work</td>
<td>Date of publication + 70</td>
</tr>
<tr>
<td>Anonymous</td>
<td>Date of publication + 70</td>
</tr>
<tr>
<td>Author Unknown</td>
<td>Date of publication + 70</td>
</tr>
</tbody>
</table>

Crown Copyright –

- includes government department – subject to any agreement with an author otherwise –
  - To the end of first calendar year when work was first published + 125 years, unless published commercially, then +50 from date of publication so long as less than 125 years.

### Copyright Term for Published Books and the Public Domain in Canada

<table>
<thead>
<tr>
<th>Authorship Type</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual author, published works</td>
<td>Life + 50 (from calendar year after death of author)</td>
</tr>
<tr>
<td>Corporate Work</td>
<td>Date of publication + 50</td>
</tr>
<tr>
<td>Anonymous</td>
<td>Date of publication + 50</td>
</tr>
<tr>
<td>Author Unknown</td>
<td>Date of publication + 50</td>
</tr>
</tbody>
</table>

BUT if author identifies self in the 50 year period, term converts to Life + 50

Crown Copyright –

- includes government department – subject to any agreement with an author otherwise –
  - To end of first calendar year when work was first published + 50 from the end of that year

### Copyright Term for Published Books and the Public Domain in Australia (For all works in our class. Duration is extended for more recent works.)

<table>
<thead>
<tr>
<th>Authorship Type</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual author, published works</td>
<td>Life + 50 (from calendar year after death of author)</td>
</tr>
<tr>
<td>Corporate Work</td>
<td>Date of publication + 50</td>
</tr>
<tr>
<td>Anonymous</td>
<td>Date of publication + 50</td>
</tr>
<tr>
<td>Author Unknown</td>
<td>Date of publication + 50</td>
</tr>
</tbody>
</table>

Crown Copyright –

- includes government department – subject to any agreement with an author otherwise –
  - Date of publication + 50 years
Information to collect in order to make a PD determination

1. What is the nature of the work? Is it a book, serial, dissertation, etc.?
   a. Are there “inserts?” That is, other works subject to copyright protection embedded in the work?

2. When was the work first published?

3. Where was the work first published?

4. Who was/were the author(s)? Were they human, corporate, governmental? Were they named or anonymous?
   a. In the case of corporate works, who was the editor?

5. Was the work “published” or not?

6. Are any of the authors alive? If not, when did they die?

Categorical PD-US determinations

A given work can be said to be in the US public domain with certainty if it meets the following criteria:

1. The work was published before 1923. 5

2. The work was published between 1923-1977 without complying with US formalities, and was in the public domain in the source country as of 1996. (The relevant date must be before the date in parenthesis).
   a. Australia
   a.i. For known author or authors, the life of the longest living author plus fifty years if the author died before 1955. (1946) If an author was alive as of 1955, the life of the longest living author plus seventy years. (1926/NA)
   a.ii. For unknown authors, fifty years from the date of publication. (1946)
   a.iii. For works published posthumously before 1946, fifty years from the date of publication. (1946)
   a.iv. For government works, fifty years from the date of publication. (1946)
   a.v. The term of protection for unpublished material does not expire.

5 This only pertains to authorized publications. For more, see Peter Hirtle, “The Myth of the pre-1923 public domain.”
b. Canada

b.i. For a known author or authors, the life of the longest living author plus fifty years. (1946)

b.ii. For unknown authors, the lesser of seventy five years from creation or fifty years from publication.⁶ (1921, 1946)

b.iii. For works published posthumously before July 25th 1997, 50 years from publication. (1946)

b.iv. For corporate authors fifty years from creation. (1946).

b.v. For government works, fifty years from the date of publication. (1946)

b.v.1. Copyright in unpublished government works is perpetual.

c. United Kingdom

  c.i. For a known author or authors, the life of the longest living author plus seventy years. (1926)

  c.ii. For unknown authors, seventy years from publication. (1926)

  c.iii. For posthumous works, published before 1988, 50 years or more after the death of the author, 50 years from the date of publication. (1946)

  c.iv. For corporate authors, seventy years from date of publication. (1926)

  c.v. For works made by an officer of the crown, one hundred twenty-five years from the date of creation. (1871/NA) If the work was published commercially within 75 years of the date of creation, fifty years. (1946)

    c.v.1. For works produced under the direction or control of Parliament, fifty years from the date of creation. (1946)

A work can be said to be in the public domain in the jurisdiction of origin with certainty if it meets the following criteria:

a. Australia

  c.vi. For known author or authors, the life of the longest living author plus fifty years if the author died before 1955. If an author was alive as of 1955, the life of the longest living author plus seventy years. (1942)

  c.vii. For unknown authors, fifty years from the date of publication. (1962)

⁶ If an author becomes known then the term converts to life plus fifty years.
c.viii. For works published posthumously before 1946, fifty years from the date of publication.

c.ix. For government works, fifty years from the date of publication. (1962)

c.x. The term of protection for unpublished material does not expire.

b. Canada

c.xi. For a known author or authors, the life of the longest living author plus fifty years. (1962)

c.xii. For unknown authors, the lesser of seventy five years from creation or fifty years from publication.7 (1962)

c.xiii. For works published posthumously before July 25th 1997, 50 years from publication. (1962)

c.xiv. For corporate authors fifty years from creation. (1962)

c.xv. For government works, fifty years from the date of publication. (1962)

    c.xv.1. Copyright in unpublished government works is perpetual.

c. United Kingdom

c.xvi. For a known author or authors, the life of the longest living author plus seventy years. (1942)

c.xvii. For unknown authors, seventy years from publication. (1942)

c.xviii. For posthumous works, published before 1988, 50 years or more after the death of the author, 50 years from the date of publication. (1962)

c.xix. For corporate authors, seventy years from date of publication. (1942)

c.xx. For works made by an officer of the crown, one hundred twenty-five years from the date of creation. If the work was published commercially within 75 years of the date of creation, fifty years. (1887)

    c.xx.1. For works produced under the direction or control of Parliament, fifty years from the date of creation. (1942)

---

7 If an author becomes known then the term converts to life plus fifty years.
Additional Resources

For a more comprehensive search guide, please see our resources available at our grant website.

http://www.lib.umich.edu/imls-national-leadership-grant-crms-world