

The public domain

Numerous definitions for the term *public domain* exist. Although common themes in most of these definitions include the lack of copyright, the freedom from intellectual property rights (IPR), and no requirement to pay royalties, there is no universally accepted definition of public domain.

The US Copyright Office (2011) states: “The public domain is not a place. A work of authorship is in the ‘public domain’ if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright owner.”

In the United Kingdom, the Intellectual Property Office (2011) defines public domain as “The body of works not or no longer protected by Intellectual Property rights which are available for the public to use without seeking permission or paying royalties.”

Creative Commons (2011), a nonprofit organization established in 2001 to make “it easier for people to share and build upon the work of others, consistent with the rules of copyright,” defines the public domain as “When a work is in the public domain, it is free for use by anyone for any purpose without restriction under copyright law. Public domain is the purest form of open/free, since no one owns or controls the material in any way.”

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) (2011) defines the term as “Public domain information is publicly accessible information, the use of which does not infringe any legal right, or breach any other communal right (such as indigenous rights) or any obligation of confidentiality.”

The Linux Information Project (LINFO) (2011) defines it as “Public domain refers to the total absence of copyright protection for a creative work (such as a book, painting, photograph, movie, poem, article, piece of music, product design, or computer program).”

Wikipedia (2011) refers to public domain as “Works are in the public domain if they are not covered by intellectual property rights at all, if the intellectual property rights have expired, and/or if the intellectual property rights are forfeited.”

As a general rule, you should think of public domain spatial data as publicly accessible information about a spatial theme or phenomenon, the use of which does not infringe the legal rights of an individual or organization. Public domain spatial data encompasses all works or objects that may be used by anyone without any authorization.

Not only does public domain mean different things to different data users and data providers, the definition also varies from country to country. In fact, the concept of public domain simply does not exist in countries with no copyright laws, where the country owns all property including intellectual property, or where the country designates large amounts of information as state secrets or withheld in the interests of national security. As a further complication, copyright law is sometimes amended, for example when the US government extended copyright twenty years beyond the original terms stated by the Copyright Act of 1976. Such changes are controversial and subject to challenge, as in the case of *Eldred v. Ashcroft*, which sought to overturn the US government's extension of the copyright period. As a result of the extension, a number of works were prevented from entering the public domain in 1998 and following years.

One area of difficulty applying national copyright laws to spatial data is that spatial data by their very nature often deal with phenomena that have no respect for human-made boundaries and borders. Which country's copyright laws apply in such international situations? Another difficulty in applying copyright to spatial data arises when datasets are derived from multiple sources. It is often difficult to trace which organization or individual originally gathered specific data, or to separate and identify discrete data items, and therefore to determine if those data should be copyrighted. Some spatial data also combine elements from old and new sources. Features such as contour lines from topographic maps may have been created in analog form on paper, vellum, or even copper plates decades or a century ago but may appear together now with new satellite imagery. What effect does the date of creation have on whether a work is considered to be in the public domain?

Although there are many similarities as to what the public domain means to different national bodies, there is a lack of consensus at the international level. If a work is made available in the public domain in one country, what effect does that have on its copyright status in another country? What you can do with a certain dataset in one country may not apply in another country, even though you are still working with the same data? The US Copyright Office posts the following advisory on its website: "Even if you conclude that a work is in the public domain in the United States, this does not necessarily mean that you are free to use it in other countries. Every nation has its own laws governing the length and scope of copyright protection, and these are applicable to uses of the work within that nation's borders. Thus, the expiration or loss of copyright protection in the United States may still leave the work fully protected against unauthorized use in other countries."

FOR FURTHER READING

If you are interested in learning more about copyright and public domain in the United States, Cornell University (2011) provides a useful report, updated annually, identifying “works” that are in the public domain.

With respect to individual data providers, the terms and conditions for using those data are also varied. Companies such as Yahoo! and MapQuest have been providing web-based map services for a number of years. Although these data are generally available to the public, the data they provide access to are made available under proprietary licensing arrangements that impose certain restrictions on how the data may be used. Remember that there is a clear difference between what is *publicly accessible* versus what is in the *public domain*. Just because a dataset is downloadable does not place it in the public domain. Many photographs, for example, are available online today but are copyrighted, and some have a copyright symbol or watermark on the image itself. Spatial data are less likely to carry watermark or copyright symbols, but even if these are lacking, do not assume the data are in the public domain.

For Yahoo! Maps, the terms of use include

“You agree to use the Data together with Yahoo! Maps solely for personal, non-commercial purposes for which you were licensed, and not for service bureau, time-sharing or other similar purposes. Accordingly, but subject to the restrictions set forth in the following paragraphs, you may copy this Data only as necessary for your personal use to (i) view it on your screen, (ii) print it, (iii) transfer a copy to a personal electronic device such as a personal digital assistant; (iv) save it, and (v) transfer a copy, in html form only, to a third party provided that you do not remove any copyright notices that appear and do not modify the Data in any way. You agree not to otherwise reproduce, copy, modify, decompile, disassemble or reverse engineer any portion of this Data, and may not otherwise transfer or distribute it in any form, for any purpose, except to the extent permitted by mandatory laws.”

Similarly, for MapQuest, the terms of the license are as follows:

“MapQuest grants you a nonexclusive, non-transferable license to view and print the Materials solely for your own personal non-commercial use. You may