



Determining Public Domain Status

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An important part of an entertainment lawyer's job is determining what rights need to be obtained or licensed when a client wants to make some kind of use of a copyrighted work (eg making a movie based on a novel) - and part of that process is determining whether the work in question is even protected by copyright law at all. The task is complicated by a number of factors, particularly where the work in question originated in another country. With a tip of the hat to Simon Fodden at slaw, Creative Commons Canada offers a useful flowchart for determining whether a work is in the "public domain" in Canada (ie is of sufficient age that it has fallen out of copyright protection such that it is no longer subject to the restrictions on use contained in the *Copyright Act*).

The flowchart has some parts which are confusing (I have no idea what the box at the top of the flowchart is meant to say) or unclear (how one determines whether something is "Crown Copyright" is left vague), but it provides a helpful starting point (though it should be noted that if Bill C-32 comes to pass, the portion of the chart dealing with photographs will have been rendered obsolete). Fodden also helpfully points to Kenneth D. Crews short article *Researching the Copyright Status of a Book: Protected or Public Domain?* which, though written from a US standpoint (thus requiring considerably more complexity in the analysis because of the various renewal obligations which US copyright law once required), again offers practical guidance for any lawyer undertaking a similar inquiry.

For a thoughtful academic treatment of the matter of the public domain, Carys Craig's "The Canadian Public Domain: What, Where, and to What End?" (2010) 7 *Canadian Journal of Law & Technology* 221, is well worth the investment of time.

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