

On the Commons

The Public Domain Manifesto

New statement declares the public domain the rule and copyright the exception.

By [David Bollier](#)



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The public domain — long a stepchild in the fierce politics of copyright law — is finally starting to come into its own. A diverse array of individuals and organizations associated with COMMUNIA, the European “thematic network” on the digital public domain, have issued a major manifesto explaining the importance of the public domain to democratic culture.

The manifesto has already garnered endorsements from thousands of people and dozens of organizations. It has also been translated into seventeen different languages, including French, Czech, Chinese Mandarin, Portuguese, Italian, Hebrew, Serbo-Croatian and Turkish. This powerful show of support is helping to mobilize the many constituencies that depend upon the public domain. It also puts the corporate armies of copyright maximalists on notice that their attempts to enclose the public domain will be actively resisted.

At one time the public domain was regarded as a wasteland for dusty government documents and cultural curiosities from the 1920s and 1930s — a place of virtually worthless junk. Now that the Internet and digital technologies enable us to build our own commons and therefore share and re-use the music, images, writing and other works that we make, the public domain is properly seen as a rich cultural legacy and reservoir of shared value. It is a vital foundation for civic life, education and culture. We actively need to protect it.

As James Boyle put it in his 2008 book, *The Public Domain*, “Our markets, our democracy, our science, our traditions of free speech, and our art all depend more heavily on a Public Domain of freely available material than they do on the informational material that is covered by property rights. The Public Domain is not some gummy residue left behind when all the good stuff has been covered by property law. The Public Domain is the place we quarry the building blocks of our culture. It is, in fact,

the majority of our culture.”

It's nice to be reminded: Just because there are no price tags associated with the public domain does not mean it's worthless. In this sense, understanding the public domain means developing a deeper insight into the serious limits of “market valuation.”

The manifesto is no windy set of platitudes, but rather a substantive statement about why the public domain matters. I liked the five key principles of the public domain cited by the document:

1. **The Public Domain is the rule, copyright protection is the exception.** Since copyright protection is granted only with respect to original forms of expression, the vast majority of data, information and ideas produced worldwide at any given time belongs to the Public Domain. In addition to information that is not eligible for protection, the Public Domain is enlarged every year by works whose term of protection expires. The combined application of the requirements for protection and the limited duration of the copyright protection contribute to the wealth of the Public Domain so as to ensure access to our shared culture and knowledge.
2. **Copyright protection should last only as long as necessary to achieve a reasonable compromise between protecting and rewarding the author for his intellectual labour and safeguarding the public interest in the dissemination of culture and knowledge.** From neither the perspective of the author nor the general public do any valid arguments exist (whether historical, economic, social or otherwise) in support of an exceedingly long term of copyright protection. While the author should be able to reap the fruits of his intellectual labour, the general public should not be deprived for an overly long period of time of the benefits of freely using those works.
3. **What is in the Public Domain must remain in the Public Domain.** Exclusive control over Public Domain works must not be reestablished by claiming exclusive rights in technical reproductions of the works, or using technical protection measures to limit access to technical reproductions of such works.
4. **The lawful user of a digital copy of a Public Domain work should be free to (re-)use, copy and modify such work.** The Public Domain status of a work does not necessarily mean that it must be made accessible to the public. The owners of physical works that are in the Public Domain are free to restrict access to such works. However once access to a work has been granted then there ought not be legal restrictions on the re-use, modification or reproduction of these works.
5. **Contracts or technical protection measures that restrict access to and re-use of Public Domain works must not be enforced.** The Public Domain status of a work guarantees the right to re-use, modify and reproduce. This also includes user prerogatives arising from exceptions and limitations, fair use and fair dealing, ensuring that these cannot be limited by contractual or technological means.

Please consider adding your name and/or organization to the list of endorsers. The website can be found [here](#). You may also be interested to learn that there is now a [Public Domain Day](#) every year, on New Year's Day. The site helpfully identifies hundreds of authors who died 70 years ago (in 1939) whose works are therefore expected to enter the public domain in 2010. (Copyright terms for individual authors are the lifetime of the author plus 70 years.)

It will take some time before the public domain is given its full due as a matter of law, but it is encouraging to see vigorous new types of support for the public domain.