



United Nations
Educational, Scientific and
Cultural Organization

Organisation
des Nations Unies
pour l'éducation,
la science et la culture

Organización
de las Naciones Unidas
para la Educación,
la Ciencia y la Cultura

Организация
Объединенных Наций по
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منظمة الأمم المتحدة
للتربية والعلم والثقافة

联合国教育、
科学及文化组织

Public Domain and Intellectual Property



Bureau of Public Information
memobpi

Public Domain and Intellectual Property

"Promotion of equitable access to information and knowledge, particularly with regard to public domain" represents one of the main axes of UNESCO's Communication and Information Sector.

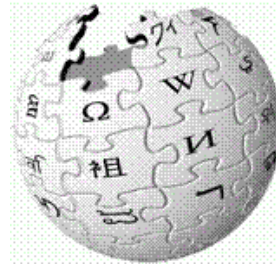
What is the "public domain"? Does it refer to the ownership of material goods, which are public property, intended for the direct use of the community and not liable to appropriation in the private context? Or is the public domain confined to the way the concept has developed in intellectual property law, or more specifically in copyright law - is it the conditions under which a literary or artistic work has ceased, upon expiration of a certain period of time, determined by law, to give rise to certain exploitation rights for its author, and therefore the work can be exploited by anyone free of charge? Does the term "public domain" have an informal and colloquial use, to indicate

information that is publicly available without getting into the legal niceties of whether or not it is also subject to copyright? The answer to these questions is obviously a complex one – the concept is evolving with new emerging forms of expression and business models. The latest formal definition, on the international level, is to be found in UNESCO's **Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2003)**. The Recommendation defines 'public domain information' as "*publicly accessible information, the use of which does not infringe any legal right, or any obligation of confidentiality. It thus refers on the one hand to the realm of all works or objects of related rights, which can be exploited by everybody*

without any authorization, for instance because protection is not granted under national or international law, or because of the expiration of the term of protection. It refers on the other hand to public data and official information produced and voluntarily made available by governments or international organizations".

WHAT DOES UNESCO STAND FOR?

The Preamble to the Constitution of UNESCO affirms, "*that the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern*".



The Wikipedia logo. Wikipedia is a Web-based and free-content encyclopedia

Both the protection of creativity and preservation of creative products and the promotion of a wide access to culture, knowledge and information are considered by UNESCO as indispensable strategies to improve "the free flow of ideas by word and image". These two aspects of the Organisation's core mandate lie at the heart of UNESCO's activities in the fields of copyright and access to information, and have to be reflected in the approach to 'public domain' initiatives.

WHERE TO FROM HERE ?

One of the recurrent issues in the debate on the public domain is whether its growth is at odds with the existing

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Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (October 2003)

The importance of public domain content constitutes one of the main elements of the Recommendation, which recommends to Member States and international organizations to:

(...) recognize and enact the right of universal online access to public and government-held records(...), giving due account to confidentiality, privacy and national security concerns, as well as to intellectual property rights (...).

(..) encourage open access solutions (...), as well as online accessibility of public domain information and (...) promote and facilitate ICT literacy,(...).

To develop and adopt best practices, professional and ethical guidelines, UNESCO published, in 2004, the ***Policy Guidelines for the Development and Promotion of Governmental Public Domain Information***. Pilot activities were initiated in Latin America in order to assist Member States in implementing the policies recommended. A meeting in Lima (26-27 May 2005) allowed to gather experts from 8 Latin American countries (Argentina, Chile, Colombia, Nicaragua, Mexico, Paraguay, Peru and Uruguay) to review the current status of laws, policies and institutional aspects concerning the public domain information strategies of each participating country.

intellectual property rights (IPR) framework or enabled by it? Where should the appropriate balance lie in terms of the interests of the authors and creators rights holders and those of the wider public? Basically, the IPR system does not prevent copyright holders from dedicating their work to the public domain or assigning their rights to an open access project. Certain communities have already set up structures that are compatible with their governing intellectual property laws. Creative commons licenses and open access repositories are just a few examples of the variety of different licensing options available to IPR rightholders. Most recently, the revival of the notion of the "information commons" encourages the science community to make scientific and technical data publicly available on certain conditions. These initiatives co-exist within the IPR system.

In conclusion, the philosophy underlying the interest in the public domain is soundly based and will take on even greater significance in the future. There are two pressures which must be acknowledged. The first is due to the increasing sophistication and capacity of the technology, enabling massive digitization of collections, intelligent searching, control over applications and content through the technical platforms and architecture, and the unprecedented technical access to

digital content. These technical developments are also driving new notions of economic value, such as "reputational capital", that will open up other economic returns from the sharing of information en masse. The second influence is the recognition that knowledge is a key driver for social and economic transformation. Therefore, broadening access to information and knowledge will continue to be a main strategy, within which the growth of the public domain and the information commons will be critical. It is important to encourage innovation and investment in knowledge-creation through appropriate intellectual property rights, and the macro economic benefits that can flow through knowledge transfer and systems that foster the sharing of ideas.

Contact :

Communication and
Information Sector,
Information Society
Division

To Find Out More

See the Observatory on Access to Information and Knowledge:

www.unesco.org/webworld/portal_observatory