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What do films such as *It's a Wonderful Life* (1946), *His Girl Friday* (1939), and *Sherlock Holmes and the Secret Weapon* (1942) have in common with *My Man Godfrey* (1936), *The Little Princess* (1939), and *Our Town* (1940)?

Apart from being examples of Hollywood studio craftsmanship at its peak, they

are just a few of many films for which the motion picture copyright was not renewed. Having fallen into the "public domain," they are available for commercial use by anyone with a print.

Although not all of these titles equal the quality of *Till the Clouds Roll By* (1946)—MGM's Technicolor all-star biography of Jerome Kern—or Alexander

Korda's production of *Things to Come* (1937), two other well-known public domain films, there are enough good public domain films to support a whole new industry. They can be found at discount prices in most video stores and some bookstores, frequently play on cable television, and appear at odd time slots on small local (and some public) television stations.

Copyright laws are designed to protect creative works, including films, from unauthorized use. The law's intent is to protect authors' rights for a limited time, and encourage them to create more works. Prior to 1978, a filmmaker or studio could copyright a film in the United States for twenty-eight years by first publishing the work with a copyright notice, with an option of renewing that term in its last year for another twenty-eight. The new law, in effect since 1978, extends the length of that second term for pre-1978 films to a total of seventy-five years, giving films released after January 1, 1978, an unrenovable term of seventy-five years of protection. Although the renewal may seem to be only a legal formality, it is one that not all film owners have bothered to observe.

Public television stations, always on the lookout for low-cost programming, air several series that utilize public domain works. "Sprockets" runs public domain features more or less intact; "Six-Gun Heroes," hosted by cowboy actor Sunset Carson, scissors its Western features into sixty-minute time slots. The most widely seen of these programs using public domain material was "Matinee at the Bijou," which appeared on over 150 stations on PBS. "Bijou" used edited versions of features and serial chapters along with cartoons and shorts to create ninety-minute episodes.

The action is perhaps busiest in the videocassette business. Anyone with two machines can go into business, and many people have. Public domain films can give any distributor a list of popular titles to offer to video stores and by mail order.

Some video companies have gotten into public domain in a big way. Kartes Video Communications distributes some 150 public domain titles through Waldenbooks and other chains. But there is an inherent problem. "Once a distributor puts money into public domain," one observer notes, "someone else can come along and do it cheaper."

Other big users of these films are the advertiser-supported cable networks. The busiest programmer is the Tulsa, Oklahoma, Satellite Program Network. SPN, which reaches more than eleven million homes, runs some ninety features each month from its library of over three hundred public domain titles. Its fare extends from Pathé's 1929 Carole Lombard film *High Voltage* to low-budget monster mov-

ies like *Frankenstein's Daughter* (1958).

Although the independent cable networks use public domain material in volume, the major pay cable services are more wary. One problem with public domain films, says Michael Lasky, the director of film acquisition for Showtime and the Movie Channel, is that "they can show up at any time in local markets. We are a national service and [want to] offer films that can't be seen elsewhere." With licensed titles, he continues, "we are guaranteed exclusivity to us [in the] pay TV window." A film like *It's a Wonderful Life*, Lasky says, "will still be playing on local stations and uninterrupted on public television at Christmas, the same time we [would be] offering it."

Cinemax takes a different tack. According to Bob Kreek, former vice-president of film acquisition for HBO and Cinemax, "We have no policy of running or not running public domain films. We take them as they come. The big factor is whether it's a good film. Public domain titles are [often] not the best." But public domain status, Kreek says, "is obviously a factor in [determining] price, because all you're doing is renting the print," not licensing the rights.

There are frequent complaints about the quality of copies of many public domain films. With a good negative and careful lab work, a fifty-year-old film can look as if it was photographed yesterday. But since few public domain distributors have access to the high-quality 35mm masters and negatives that the studios control, their results vary widely. Often the copies are made from well-worn television or library prints—with splices, lines, and other marks—that are cheaply transferred to videotape. Some of the smallest mail-order videocassette dealers have been known to sell copies of public domain titles taped off of television broadcasts.

Even if a copyright has lapsed, however, the owner still has an interest in the film. The owner still controls all of the negatives and prints, and the titles continue to be leased to television and nontheatrical markets just as before. The only difference is that owners can no longer promise exclusivity.

New York's Janus Films distributes some of the most popular public domain titles under license from their owners. Its extensive library of international classics includes Alfred Hitchcock's *The 39 Steps* (1935) and *The Lady Vanishes* (1938), as well as Carol Reed's *The Third Man*. Janus has profitably distributed these titles even though their motion picture copyrights are unrenewed. Jonathan Turell, managing director of Janus, notes, "We bought the rights, we have the best materi-

als, we are paying or have paid royalties to represent these films."

Some films are based on books or plays that are still protected by copyright, and some owners assert that control of underlying rights gives them exclusive claim to what would otherwise be a public domain film. One such title is the 1938 British production of George Bernard Shaw's *Pygmalion*, with Leslie Howard and Wendy Hiller. Shaw would only lease, not sell, movie rights to the play, so producer Gabriel Pascal had to renew his license every five years. *Pygmalion* was a television staple until it was withdrawn in favor of the musical remake *My Fair Lady*. With the original out of distribution in the United States, the copyright was not renewed.

In 1971, after nearly six years of trying to license the movie rights to the play from the Shaw estate, Janus Films matched those rights with rights to the movie itself, which it licensed from the producer's widow. Soon after, Janus found that because the film was in the public domain, Budget Films in California was renting prints of *Pygmalion*. Janus sued, claiming that showing the film infringed the copyrights on the Shaw play, which had been renewed. Budget eventually lost the case, but only after Janus spent seven years on its lawsuit. Was it worth it? "The actual award that we got represented less than twenty percent of expenses," says William Becker of Janus, but he adds that *Pygmalion* was worth the effort.

Other owners or licensors of underlying material have forced distributors to withdraw a number of films otherwise unprotected by copyright. Warner Bros. went to court over the original *A Star Is Born* (1937), but lost because the judge ruled that it was not based on anything copyrighted. The studio won in its next try, over *Life With Father* (1947), a faithful adaptation of the hit play.

In general, the major studios have been very careful to renew their copyrights. But there are various reasons why particular films enter into the public domain. Some films are never registered. There is no requirement that films be copyrighted, and occasionally major studio films have slipped by, such as *Mr. Moto's Last Warning* (1939) and the film version of Irving Berlin's World War II stage show *This Is the Army* (1943).

Conversely, government-produced works are not accorded copyright protection. The National Audiovisual Center in Washington, D.C., sells prints and videotapes of many government-produced documentaries, including Frank Capra's *Why We Fight* series and John Huston's *Let There Be Light* (1946).

Other films are in the public domain because their copyrights were sold by their

producers for remakes: The original was then usually withdrawn to prevent comparison with the new version, and the owners of the new version often did not remember to renew the copyright on the original. David O. Selznick's Technicolor productions of *A Star Is Born* (1937) and *Nothing Sacred* (1937) (remade as *Living It Up*), the 1922 Rudolph Valentino version of *Blood and Sand*, and the first version of *A Farewell to Arms* (1932) all have unrenewed motion picture copyrights. Similarly, after Charles Chaplin revised *The Gold Rush* in 1942, the original silent 1925 release went unrenewed.

Sometimes, of course, copyrights are not renewed simply by mistake. In the late fifties, when RKO General was getting out of feature film production, the company did not renew the copyrights on any of its films for fifteen months, leaving some of its 1930-31 films unprotected. *Check and Double Check* with radio stars Amos 'n' Andy, and Wheeler and Woolsey's comedy *Half Shot at Sunrise* are two that surface more frequently than their entertainment values alone would explain.

Similarly, MGM missed some titles released in 1950, and Universal did not renew eleven features copyrighted during the summer of 1938, including *Letter of Introduction* with Adolphe Menjou and James Whale's *Sinners in Paradise* and *Wives Under Suspicion*. In all these cases, it seems fair to assume that the loss of exclusive rights to these titles will not do much damage to their studio's profits.

One copyright condition almost unique to this country is that copies of published works need a copyright notice to qualify for continued protection. Public domain distributors have used this formality to justify their distribution of such relatively recent films as George Romero's *Night of the Living Dead* (1968) and Roger Corman's 1960 cult classic *The Little Shop of Horrors*. But regulations governing copyright notices are less restrictive under the new law.

Copyright notice is strictly interpreted for motion pictures, but television shows are a different matter. One notable case involved Paramount Television's series "Star Trek." The first season of episodes did not have the vital copyright notice for their network broadcast or their initial local syndication. As a result, some sharp-eyed independent distributors started selling 16mm copies and videotapes to collectors and public libraries.

Paramount sued and won. The judge ruled that broadcasting television shows does not count as publication, so they are protected as unpublished works under common law copyright. This concept was

reinforced when NBC stopped a home video company from selling copies of its television production of the Mary Martin version of *Peter Pan*.

Another potential casualty of neglected copyright notices is foreign films, which are often unregistered. In the past, companies frequently leased distribution rights for only a few years. Foreign producers now find it difficult to negotiate distribution contracts for films already available from public domain companies. One public domain distributor sold Michelangelo Antonioni's *Eclipse* (1962) for several years before finding out that the film had been copyrighted, as *Antonioni's Eclipse*. He then withdrew the film, but other companies that carry it have not.

There are many foreign titles that have fallen victim to lack of a copyright notice or registration, or simply to less than scrupulous distributors who get away with treating them as public domain. Among these pictures are classic films: from Japan, Mizoguchi's *Ugetsu* (1953), Kurosawa's *The Seven Samurai* (1954) and *Yojimbo* (1961); from Italy, Rossellini's *The Miracle* (1948), Antonioni's *L'Avventura* (1960), and De Sica's *Umberto D.* (1952); from India, Ray's Apu trilogy; and from Mexico, Buñuel's *Los Olvidados* (1950).

An expired copyright does not necessarily mean that a film is in distribution. Films such as *The Sheik* (1921) are preserved at the Library of Congress, but are not available to public domain distributors because of donor restrictions.

Most problems arise when owners find that they are losing sales. Some companies have gone to elaborate lengths to try to reclaim exclusive distribution. When Howard Hughes's lawyers discovered that the copyright on *The Outlaw* (1943) was not renewed, they tried to backtrack by copyrighting the dialogue continuity in an apparent attempt to discourage unauthorized distribution.

Yet there are other reasons why producers may want to keep exclusive control of their product. *Suddenly*, the 1954 thriller starring Frank Sinatra as a would-be presidential assassin, was kept from public view after the assassination of President John F. Kennedy in 1963. Sinatra was apparently uncomfortable with the film, and it disappeared from distribution. But vigilance is not always eternal. In 1983, *Suddenly* quietly fell into the public domain, since its copyright was not renewed. So Frank Sinatra is once again on the screen preparing for his rendezvous with the president of the United States.

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