



## The Netherlands

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Decision tree for the Netherlands to answer the question whether a certain work or other subject matter vested with copyright or neighbouring rights has fallen into the public domain.

*Researcher:* Christina Angelopoulos, Institute for Information Law, Amsterdam

*National Expert:* Christina Angelopoulos, Institute for Information Law, Amsterdam



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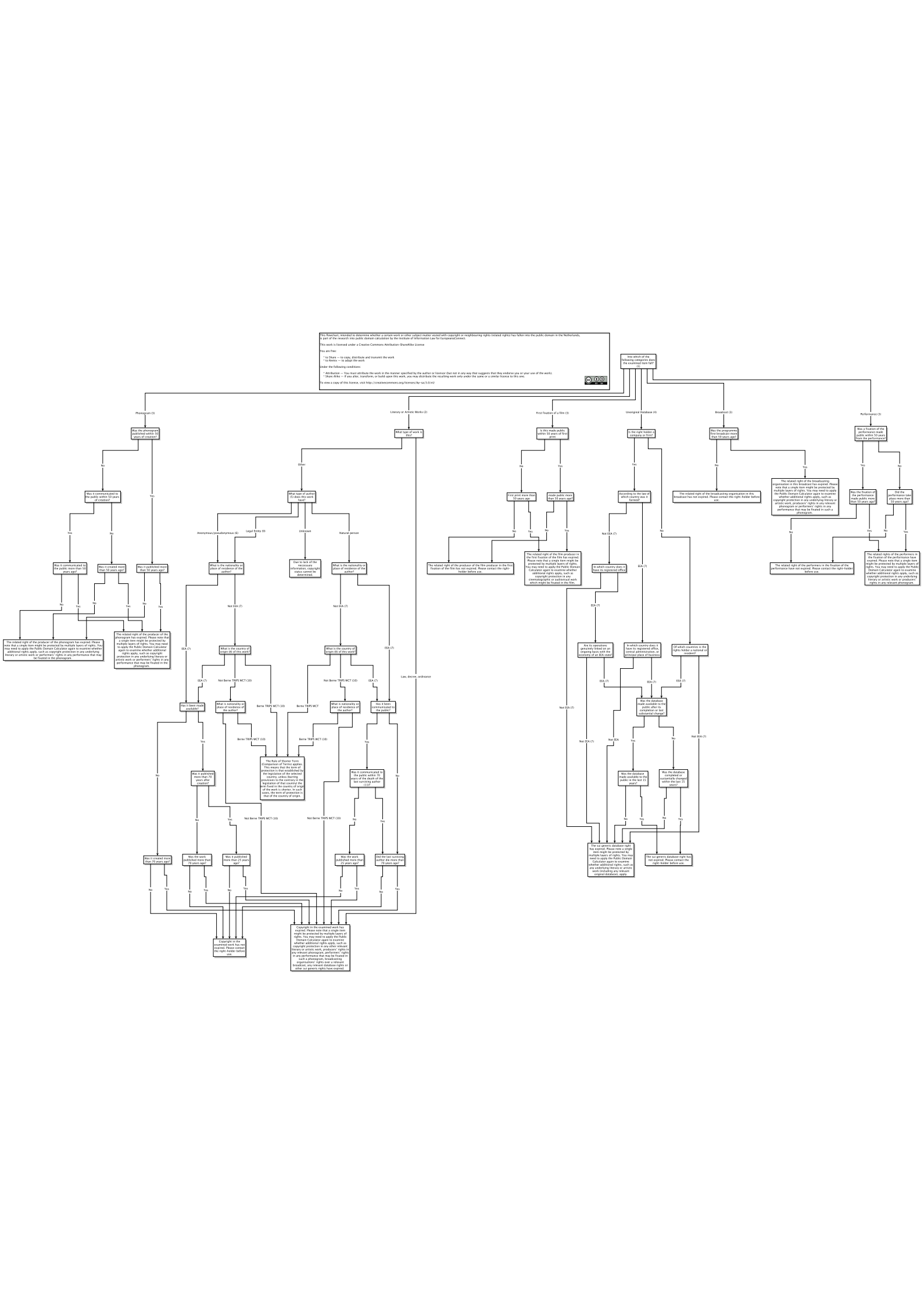


## Introduction

In order to use works of authorship and other media on the Internet you need permission from rightsholders, to use them according to an exception established in copyright law or the work needs to be in the public domain. The copyright status of books, photographs and images of cultural heritage objects can be difficult to determine. This is especially true if you are attempting to determine their status in multiple jurisdictions.

The public domain calculators available on [outofcopyright.eu](http://outofcopyright.eu) answer the question whether a certain work or other subject matter vested with copyright or neighbouring rights (related rights) has fallen into the public domain. The Public Domain Calculators are a tool that can help with the effort of identifying public domain material in order to make it available online (or elsewhere). This document contains the flowchart and additional information relevant to answering this question for the Netherlands.

The Public Domain Calculator is a research product of EuropeanaConnect and has been executed by KnowledgeLand and the Institute for Information Law.



## Information Boxes

(1) Please note that a single item might be protected by multiple layers of rights. For example, a CD will often comprise four layers of rights: if it contains music, that may be covered by copyright; any lyrics accompanying the music may also qualify for copyright protection, while the performers (musicians and singers or any other performer) as well as the phonogram producer may be protected by related rights. Similarly, a book may consist of text and illustrations, both of which may be protected by copyright. If an illustration is a photograph of a painting, a third layer of protection may be added. The term of protection of all relevant rights should be examined in order to determine whether the item as a whole is in the Public Domain or not. Please make sure you correctly identify and apply the Public Domain Helper Tool to all subject matter that qualifies for protection.

To this end, please also keep in mind that in accordance with Dutch law and for the purposes of this Public Domain Helper Tool:

- A volume, part, instalment, issue or episode of a work should be considered to be a whole independent work. The Public Domain Helper Tool should accordingly be applied to each of these individually.
- If two or more authors have collaborated on the production of a work and their individual contributions are inseparable, it is a work of joint authorship. The Public Domain Helper Tool should accordingly be applied to the work as a whole, but not to the individual contributions. An example of such collaboration would be a painting on which more than one artist has worked. By contrast, if the contributions of the co-authors are separable (as would be the case, e.g. in the combination of music and lyrics that results in a song or the text and illustrations of a book), that will be a case of a combination of separate works. In the latter case, the Public Domain Helper Tool should be applied to each of these separate works individually.
- If a work consists of separate works by two or more persons and the work as a whole was made under the guidance and supervision or the separate works were compiled by one or more people, the collection as a whole is an independent work to which the Public Domain Helper Tool should be applied. Copyright may also subsist in each of the individual contributions to the collection, in which case the Public Domain Helper Tool should also be independently applied to these as well.
- Where a work was made according to the draft and under the guidance and supervision of one or more persons, that work is an independent work. The Public Domain Helper Tool should accordingly be applied to the work as a whole, but not to the individual contributions.



- Individual items included in an (original or unoriginal) database may be independently protected. In this case, the Public Domain Helper Tool should also be applied to each of these individually.

(2) In order to determine whether a work is a work of copyright or not, please consult the following list. Please keep in mind that this list is only intended to be indicative and should not be understood as being either exhaustive or binding. Subject matter which does not seem to comfortably fall into any of these categories may nonetheless be protected by copyright and subject matter which does fall into these categories may not qualify for protection, subject to the provisions of Dutch law.

### LITERARY OR ARTISTIC WORKS

- LITERARY WORKS, such as texts of books, pamphlets, lectures, addresses, sermons, poems, computer programmes, etc.
- ARTISTIC WORKS, such as works of drawing, painting, sculpture, engraving and lithography, sketches, sculptures, works of applied art, illustrations, original photographs, works expressed by a process analogous to photography, etc.
- MUSICAL WORKS. This includes any musical composition with or without words, whether fixed in musical notation or other writing or not.
- DRAMATIC OR DRAMATICO-MUSICAL WORKS, such as plays, choreographic works, entertainments in dumb show, etc.
- CINEMATOGRAPHIC OR AUDIOVISUAL WORKS, such as feature films of all categories, music and dance films, music videos (music clips), advertisement films (ads), documentaries, video art, etc. Works expressed by a process analogous to cinematography are also included.
- WORKS RELATIVE TO SCIENCE, such as maps, plans, three-dimensional works relative to geography, topography, architecture, etc.
- DERIVATIVE WORKS, such as translations, adaptations, abridgements, arrangements of music and any other alteration of a literary or artistic work.
- COLLECTIONS WHICH BY REASON OF THE SELECTION AND ARRANGEMENT OF THEIR CONTENTS CONSTITUTE INTELLECTUAL CREATIONS, such as encyclopaedias, anthologies, original databases, books of recipes, school textbooks, commemorative publications, etc.



(3) **DISCLAIMER:** In relation to neighbouring or related rights (i.e. rights over performances, phonograms, the first fixation of a film and broadcast) the Public Domain Helper Tool only applies when at least one of the right-holders is a national of an EEA state. The European Economic Area (EEA) includes all member states of the European Union (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom), as well as Iceland, Liechtenstein and Norway.

(4) Unoriginal databases are databases which show that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of their contents. By contrast, original databases should be considered to be databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation. For the purposes of this Tool, original databases should be considered to be literary or artistic works.

(5) For the purposes of this Tool,

- Where labour carried out by an employee consists in the making of certain literary, scientific or artistic works, the employer should be understood as being the author, unless otherwise agreed between the parties.
- If a literary, scientific or artistic work consists of separate works by two or more persons, the person under whose guidance and supervision the work as a whole has been made or, if there is no such person, the compiler of the various works, should be understood as being the author of whole work; The maker of each constituent part should be considered to be the author of that part.
- If a work has been made according to the draft and under the guidance and supervision of another person, that person should be understood as being the author of the work.
- Where the work is the result of a close collaboration between two or more authors so that their contributions resulting in the final work are inseparable (joint authorship), all contributors should be considered to be joint co-authors.

(6) For the purposes of this Tool, an author shall be considered to be anonymous if his/her identity has not been indicated or has not been indicated in such a way that it is without doubt. Disclosure of the author's identity may take place any time before the expiry of the term of 70 years after 1 January of the year following the year of his/her death. If such disclosure takes place, the author should not be considered to be anonymous or pseudonymous.

(7) The European Economic Area (EEA) includes all member states of the European Union (Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal,



Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom), as well as Iceland, Liechtenstein and Norway.

(8) For the purposes of this Tool, the term “country of origin” should be understood according to the definition of Article 5(4) of the Berne Convention. According to Article 5(4) Berne Convention, the country of origin of a work should be considered to be:

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection.

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country.

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

- (i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and
- (ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

(9) For the purposes of this Tool, a public institution, association, foundation or company shall be deemed to be the author of a work when it has lawfully communicated the work to the public as its own and the natural person who created the work is not indicated as the author on or in copies of the work which have been communicated to the public.

(10)

- The signatory states to the Berne Convention can be found at:  
[http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=15](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15)
- The signatory states to the WIPO Copyright Treaty (WCT) can be found at:  
[http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=16](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=16)
- The signatory states to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) coincide with the members of the World Trade Organization and can be found at:  
[http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)



(11) For the purpose of the calculation of the term of protection, the author of a cinematographic or audiovisual work should be considered to include all of the following persons: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.



## Contact

The Public Domain Calculator is a research product of EuropeanaConnect and executed by Knowledgeland and the Institute for Information Law.

### *Questions regarding the Research and Flowcharts*

If you have any questions or comments on the legal research for the flowcharts used in the Public Domain Calculators, please contact [Christina Angelopoulos](#) at IViR.

### *Questions regarding Software, Development and Implementation*

If you want to use, contribute or comment on the calculator software, found on [outofcopyright.eu](http://outofcopyright.eu), please contact [Maarten Zeinstra](#) at Knowledgeland.

## Disclaimer

The Public Domain Calculator is not intended to replace the case-by-case assessment by a legal expert of the public domain status of a copyrighted work or other protected subject matter. For legal certainty as to whether the term of protection of copyright or related rights has expired please contact a legal professional.

The Public Domain Calculator is intended to provide the public domain status of examined material exclusively in the selected jurisdiction. Please note that the public domain status of subject matter may differ between jurisdictions. In relation to neighbouring or related rights (i.e. rights over performances, phonograms, the first fixation of a film and broadcast), the Public Domain Calculator only applies when at least one of the right-holders is a national of an EEA state, with the exception of Switzerland, where the Public Domain Calculator only applies when at least one of the right-holders is a Swiss national.

The Public Domain Calculator does not cover questions of authors' or performers' moral rights.

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