Open Access, Copyright & the Public Domain

KEVIN L. SMITH,
DUKE UNIVERSITY LIBRARIES
Legally, OA is easy!
Legally, OA is hard
Copyright and OA forms a tangled web
Strands for this talk

- The vanishing Public domain
  - The Copyright bargain
  - The Berne problem
  - Government works

- Steps in the right direction?
Why the public domain?

Part of the bargain.
U.S. public domain is withering

A lost generation of culture
- No published works has entered PD since 1989
- Nothing published will become PD until 2019
The irony of 1989
Orphan works

The Berne Problem
We have replaced the public domain,

With Orphan Works
Why are works of the Federal Gov’t PD?

- Accountability – taxpayer access
- Policy – open government
- Democracy – no access distinction based on $$$
Purpose of copyright!

- Incentive to “promote progress of science and useful arts”
- Not needed for government works.
Most other national governments do claim copyright.

WHY?
The public domain is an engine

• Drives
  • Creativity
  • Scientific progress
  • Economic development
Steps toward a solution, PD edition

- Even during this period of statutory limbo, HathiTrust/CRMS project is growing the public domain:
  - 511,000 new PD determinations!
Steps toward a solution, Contract edition

- Copyright limitations and exceptions should preempt contract provisions.

- Get Berne back on the right track!
Whose hands?

A limited reintroduction of formalities
Thank you!