

## BOTH (SLIDE 1) Introduction

Jane: Welcome to this short video about Copyright for community archives. This is part of a toolkit of resources on digital preservation issues. My name is Jane Secker...

Chris: and my name is Chris Morrison and we run the website [copyrightliteracy.org](http://copyrightliteracy.org). We're on a mission to make learning about copyright fun, engaging and empowering so feel free to come and check out our blog and resources.

Copyright is an important consideration when working with digital collections in community archives. Although working with copyright and related rights can become quite involved, the basic concepts behind how copyright works and applies to collections in community archives are quite straightforward.

## JS - (SLIDE 2) What is copyright?

Copyright is a type of intellectual property right - a set of legal rights that regulate what people can do with the outputs of human creativity and innovation. Copyright protects a range of creative works such as books, letters, photographs, artworks, music, software, sound recordings and films.

We have produced a simple model based on Copyright the Card Game which we created to break copyright questions down into their constituent parts. This involves first considering the type of copyright work you have in front of you, then working out what you want to do with it from a copyright perspective (often this will be copying the work if you are going to digitise it), and finally considering if there are any suitable licences or copyright exceptions that apply.

## CM - (SLIDE 3) Copyright works

In the UK the relevant legislation is the Copyright, Designs & Patents Act 1988. Copyright automatically arises in any sufficiently original creative work and will last for a set period of time - typically 70 years after the death of the author (or last author to die). However durations will differ depending on whether the work was published, the date it was created and the type of work it is.

## CM (SLIDE 4) TNA Copyright duration

The National Archives have produced some very helpful flowcharts to work this out.

## JS (SLIDE 5) Usages

Copyright law regulates certain, specific activities which are called 'restricted acts' in the relevant legislation. We call these usages in the game. These are:

- Copying a work
- Issuing copies to the public
- Rental or lending
- Public performance
- Communicating works to the public - which includes broadcast and online uses
- Adaptation

## CM (SLIDE 6) How can I use a work legally?

There are three main legal routes to doing any of these activities: Getting permission from the rights holder through a 'licence', making use of a 'copyright exception' or relying on a risk-managed approach. In practice most community archives will need to use a combination of all of these:

## JS (SLIDE 7) Licences

Licences present the lowest level of risk as it means using the work with the permission of the copyright holder. These can be formal, legal contracts or informal agreements. They can be paid for or provided for free. They will often have limitations as to who is able to benefit from them, for how long and in which country. Community archivists may use a range of different licences - for example subscriptions to digital resources and software from third party suppliers.

## CM (Slide 8) Applying licenses to archive content

Community archives might also want to apply licences to the content they provide to their audiences, to indicate what people are allowed to do with the digitised collections. This is something their organisation will need to make some important and thoughtful decisions about which involve considering a range of factors.[CM1][JS2] For example, whether the underlying works are in copyright or whether to apply an open licence to the works. [JS3]

## CM (SLIDE 9) Creative Commons

Licences can also be quite permissive - for example, the Creative Commons suite of licences [link to <https://creativecommons.org/>] which encourage and enable the 'open' sharing of copyright material. Creative Commons are the most widely used set of 'open' licences and they are made up of different components. For example they all require that users of the work attribute the author or creator, but some have non-commercial restrictions or prohibit the making of derivative works.

## JS (SLIDE 10) Copyright exceptions for digital preservation

However, licences are not always available or appropriate. Therefore copyright exceptions are an essential part of the balance between the exclusive rights of the copyright owner and the wider social and cultural benefit of people and organisations being able to use copyright works in ways that are fair or reasonable without having to get permission. For example, UK law has copyright exceptions that allow libraries and archives to make copies of works for preservation purposes subject to certain conditions.

## CM (SLIDE 11) Fair dealing and fair use

Many people are aware of the term 'fair use', but this is actually a doctrine of US copyright law. The UK equivalent is the concept of 'fair dealing' which is not defined in the legislation, but is a feature of a number of copyright exceptions. Fair dealing is intended to serve a similar purpose to fair use, but is more limited in that it must be aligned with a specific type of activity (e.g. parody or quotation).

## JS (SLIDE 12) Fair Dealing

Using a work in a way that would be considered 'fair dealing' means ensuring that if you use a work without the permission of the copyright owner, then this doesn't undermine their legitimate interests. For example, if you were to provide free access to a work that the copyright owner is

selling or licensing elsewhere, and as a result you were undermining sales, then this is likely to be unfair and therefore an infringement of copyright. Many uses of copyright material in education and research, such as using illustrative excerpts or images, are likely to be covered by fair dealing. However, it is important to consider each use on a case by case basis.

## CM (SLIDE 13) Risk management

Risk management refers to the process of assessing whether to digitise and make works available where there is some uncertainty as to the legal status of a work or the communication of it. It involves asking the following questions:

- What's the likelihood that your activity infringes copyright?
- What is the likelihood that the copyright owner will discover and object to your activity?
- What would the financial and reputational impact be if the copyright holder was to take action against you or your organisation?

## JS (SLIDE 14) Orphan works

Risk management is now an established route for archives to follow when dealing with diverse collections which may include what are known as 'orphan works'. These are works where the copyright holder cannot be identified or contacted. If you decide you want to digitise an orphan work you can apply for a licence via the UK Government's orphan works licensing scheme. Whether you decide to use risk management, apply for a licence or a combination of the two, you must do a 'diligent search' to try and track down any rightsholders. Diligentsearch.eu is a useful tool that can help you.

## CM (SLIDE 15) Consider the following scenario

Let's consider a worked example:

An amateur historian has donated her collection to a local historical society of which she was a member.

The collection includes letters, books, journals, photographs, ephemera and videos in a range of different formats.

How would the society archive address the copyright considerations of digitising the collection, preserving it and making it available to the public?

## JS (SLIDE 16) Things to consider:

- Are the items in copyright? If not, no rights clearance is needed
- Who owns the copyright in the collection items? Get permission from the historian for the archive to use and reuse content they have created.
- If relying on preservation exceptions, are the items now in the archive's 'permanent collection'?
- Are any of the collection items 'orphan works' and if so, what is the archive's due diligence process?

•Should the archive use a risk managed approach, or is the UK Orphan Works Licensing Scheme more appropriate?

## CM (SLIDE 17) In Summary

1. Copyright automatically arises in any original creative expression recorded in a fixed form
2. Copyright only needs to be considered if you are doing a 'restricted act'
3. Copyright licences come in many different forms from closed to open
4. Copyright is not just about licences; exceptions allow for many preservation activities
5. Copyright exceptions for preservation allow community archives to digitise in copyright material, but not necessarily make them publicly available online
6. In many situations you will need to think about 'risk management' – uncertainty is inherent in copyright law and is also desirable

## JS (SLIDE 18) Find out more: Copyright User

This [copyrightuser.org](https://copyrightuser.org) guide on archives and preservation is a particularly useful resource if you want to find out more

## JS (slide 19) Usage Links

And we've put together a list of links that we hope you'll also find helpful

Deazley, R (n.d) Copyright User.org Archives and Preservation Available at:  
<https://www.copyrightuser.org/educate/archives/>

Bodleian Copyright Guidance - <https://www.bodleian.ox.ac.uk/ask/copyright>

Copyright, Designs & Patents Act 1988 - <https://www.legislation.gov.uk/ukpga/1988/48/contents>

Copyright Literacy - <https://copyrightliteracy.org/>

Copyright User – <https://copyrightuser.org> (see in particular the sections on Archives and Preservation and Orphan Works)

EnDOW Due diligent search tool - <https://diligentsearch.eu/>

Intellectual Property Office (2020) Orphan works and cultural heritage. Available at:  
<https://www.gov.uk/guidance/orphan-works-and-cultural-heritage-institutions>

TNA Copyright Duration – <https://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/duration-copyright/>