

# **Report on Copyright Considerations**

Peter Judge and Frances Madden

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## **Executive Summary**

This report considered the copyright concerns of the DWS OGA project looking at the copyright environment in February 2014. It concludes that the major concerns are correctly capturing the copyright holder information when material is being uploaded by members of the OGA and identifying the copyright holder of material held in the Meirionnydd Record Office. Therefore it recommends that the upload form for material be constructed to optimise capturing the copyright information and for it to be published with a notice and take-down section so that items can be removed quickly and easily from the site if necessary.



## **1.0 Introduction – What is copyright?**

Copyright is a type of intellectual property right, which gives the owner a set of privileges over the use and distribution of the work. It does not have to be claimed but automatically arises when a work is created.

Copyright covers literary works (anything written), artistic works (including photographs), sound recordings, dramatic and musical works and films.

The period of copyright varies depending on the medium of the work, e.g. for literary works copyright expires 70 years after the death of the author, see Appendix.

For literary works and sound recordings, the copyright holder is the author or producer of the work. For photographs, there are a number of issues to take into consideration, but the copyright holder is the owner of the negative for photographs taken between 1912 and 1989.

For works which were commissioned, e.g. official school photographs, the copyright lies with the person who commissioned it. For works carried out while in employment, the employer is the copyright holder.

## **2.0 What does copyright give the owner?**

Copyright gives the owner economic rights, which allows the holder to charge money in return for granting a licence to reuse the material. Copyright also gives the holder moral rights such as the right to be identified as the author of the work.

## **3.0 What do you need to think about regarding copyright?**

Copyright needs to be considered:

- When material is being added to the site
- When determining the reuse conditions of the materials



In addition:

- The copyright holder needs to give their permission for their materials to be used on the site
- Copyright holders need to understand the conditions of reuse which the site allows, see section 4.0
- This permission and understanding should be recognised either by oral agreement, or in the case of high risk materials with written permission
- For material held in Meirionnydd Archive, the copyright holder will need to be established before the material is digitised, see section 1.0 for information regarding establishing the copyright holder and section 5.0 for what to do when the copyright holder cannot be found
- Volunteers own the copyright of the content they create, therefore their permission needs to be obtained before publishing the material
- Should a user not agree to the licence or have sufficient copyright clearance, they will be directed to contact the site administrator, in this instance the administrator will have the option to contact HLF to seek to use an alternative creative commons licence, see section 4.1.

#### **4.0 Terms of reuse**

All digitised archival material on the site will be subject to the Creative Commons licence CC BY-NC. This licence entitles users of the website to reuse materials provided it is attributed to the copyright holder and is not used for commercial purposes. The Creative Commons logo needs to be included on all materials uploaded to the website.

##### **4.1 Alternative licences**

For any materials which the copyright holder is not prepared to agree to the terms of use, special permission will have to be sought from the Heritage Lottery Fund. For further details, please refer to the guide,



## 5.0 Orphan works

### 5.1 What is an orphan work?

An orphan work is any work which may still reasonably be in copyright but for which the copyright holder is impossible to identify or trace. As of February 2014 there are no legislative bases for dealing with orphan works in a digital context. There have been steps taken however to address the issue. The European Commission (EC) issued a directive in October 2012 on the basis of which a consultation process has been started in the UK. For the moment, the EC has also issued guidelines on how to deal with these works in the absence of legislation (although these guidelines are untested in court). They advise the following:

- The conduction of a diligent search in good faith
- The keeping of a search document to substantiate the search
- The drawing up of a risk assessment document
- The publishing of a disclaimer stating all efforts were made to identify owners, apologising for any potential infringement and inviting owners to make contact

### 5.2 Assessing the risk

The level of risk involved may be calculated at an item level using the Web2Rights Risk Calculator found at

<http://www.web2rights.com/OERIPRSupport/risk-management-calculator/>

The EC's directive states that the rightholder can receive fair compensation for an infringement, but also states that consideration should be given to non-commercial and public interest missions such as that of DWS OGA project. There is also currently a drive to disseminate information digitally as part of the cultural heritage plans of the Europe 2020 scheme which may also mitigate against any risks.

### 5.3 Future developments

An 'Archives and Copyright' symposium held in September 2013, discussed the proposed copyright exceptions to library and archives material which are



currently under draft review. This situation should be monitored as legislative changes may mean that it will be possible to digitise more materials at a later date.

## **6.0 Recommendations**

It is recommend that the following items be included on the site.

### **6.1 Copyright section on form**

When adding images to the site, there will be a section of the form which will gather information relating to copyright. It is important to give all due consideration to identifying the copyright holder and so that images can be viewed and used without fear of repercussion. This section will ask the user to identify the creator of the item. If the owner of the copyright is different to the creator, the user will also be able to add this in the appropriate field.

### **6.2 Creative Commons licence**

By adding images to the site, the user is agreeing to the Creative Commons licence (CC BY-NC) see section 4.0.

The Creative Commons logo needs to be included on all materials uploaded to the website.

Copyright information needs to be displayed for individual images added to the site. Ideally this will take the format:

© XYZ (XXXX)

where XYZ represents the copyright holder and (XXXX) the year the copyright began.



### 6.3 Terms and conditions page

A page on the website should be devoted to copyright considerations. This page should contain, terms and conditions providing full details of copyrights considerations and the licence agreement to which the user has consented. This should also include a 'notice and take-down' section which will provide users with details of where rights holders can seek redress if necessary. These terms could be based on the Terms of Use page on the People's Collection Wales website <http://www.peoplescollectionwales.co.uk/Terms>.

### 6.4 Use of orphan works

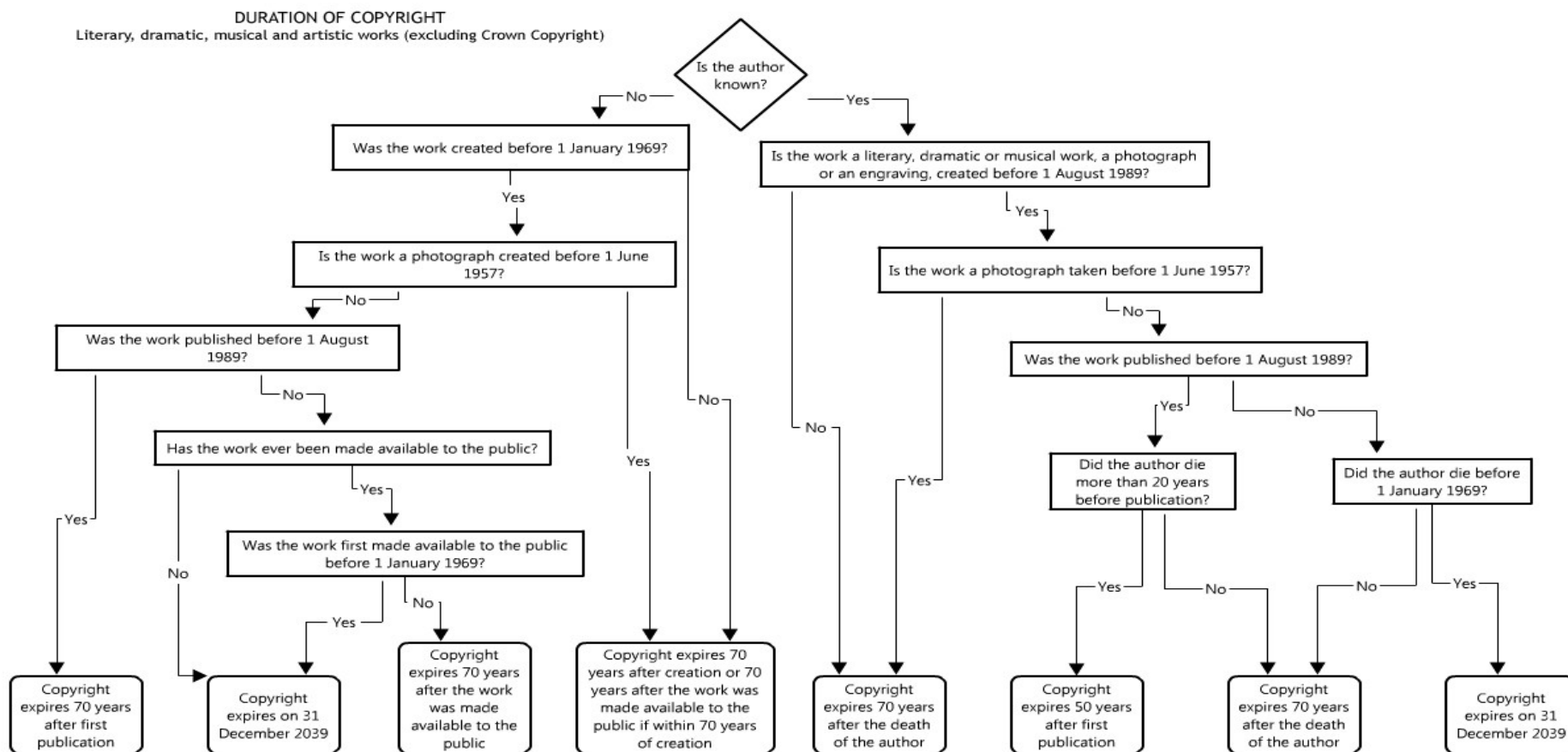
Any materials which are added to the site where the copyright holder is not known should be flagged so that the site administrators can vet the material.

### 6.5 Previously digitised materials

Materials digitised previously can be included on the website, with the owner of the material given as copyright holder. As the material is low risk and the items were confirmed to be the property of the person who provided them for digitisation, this is sufficient information.



## Appendix – Padfield flowcharts



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graph TD; Q1{Was the work created before 1 August 1989?} -- Yes --> Q2[Is the work a photograph or engraving?]; Q1 -- No --> Q7[Has the work been published?]; Q2 -- No --> Q3[Is the work an artistic work?]; Q2 -- Yes --> Q4[Is the work a photograph?]; Q3 -- No --> Q5[Was the work published after 1 August 1989?]; Q3 -- Yes --> Q6[Was the work published before 1 August 1989?]; Q4 -- Yes --> Q8[Was the work created before 1 June 1957?]; Q4 -- No --> Q9[Was the work published before 1 August 1989?]; Q5 -- Yes --> Q10[Was the work published commercially less than 75 years after creation?]; Q5 -- No --> Q6; Q6 -- Yes --> A1[Copyright expires 50 years after publication]; Q6 -- No --> A2[Copyright expires 125 years after creation or on 31 December 2039, whichever is later]; Q8 -- Yes --> A3[Copyright expires 50 years after publication]; Q8 -- No --> A4[Copyright expires on 31 December 2039]; Q9 -- Yes --> A5[Copyright expires 50 years after publication]; Q9 -- No --> A6[Copyright expires 125 years after creation]; Q10 -- Yes --> A7[Copyright expires 50 years after publication]; Q10 -- No --> A2;
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