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Demystifying rights: Copyright

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# Demystifying rights: Copyright

Copyright is not the first thing you think about when starting a digitisation project. However, copyright legislation affects how your collections can be digitised and re-used in the future, so it is very important to consider these implications while planning your project. This leaflet offers a brief overview of the issues, to help you to begin planning the access and re-use of your collections under UK law.

## Copyright – key facts

- Copyright is an intellectual property right **protected by law**
- Copyright protects expressions of **original ideas** in **fixed forms** (ie, recorded in some way)
- A work can have **layers of copyright**, and each of these rights may be owned by **one or more rights holders** (ie, people who own or manage the copyright)
- Copyright is usually owned by the creator themselves but can be transferred to another rights holder, for example to an employer as part of a contract, or in a will
- Copyright **typically lasts 70 years** from the end of the year of creation, of first publication or the death of the creator. As a result **most sound collections will be in copyright**.
- Copyright is primarily an economic right, allowing the rights holder to control **how their work is used by others**, including copying, distribution and adaptation
- If you would like to use a work that is in copyright you need to check if you can do so under **an exception** or if you will need to contact the rights holder for **permission to licence their work**.

## UK copyright legislation

The current copyright legislation in the UK is the Copyright, Designs and Patents Act 1988 (CDPA). This sets out what you can and can't do with in-copyright works.

This legislation has been amended numerous times over the last 30+ years to keep up with technological and societal changes and there are various additional legislation to be read in conjunction with the CDPA. When making decisions about copyright it is advised that you seek legal advice to make sure you are consulting the most recent version of the law.

## Copyright in sound

Sound recordings often include more than one type of work, so more than one copyright:

Right	What it covers	Typical rights holder	Remember
Sound recording	The sound recording itself	The person who made the recording, or organisation who arranged for it to be recorded	In commercial music, this is likely to be held by a commercial recording company
Performance	The voice or playing performance	The performer, or their agent	Performers often perform works created by other people (ie, lyrics, scripts)
Literary work	Words spoken or sung within a performance	The author or lyricist of the words, or their agent	Natural speech (ie, in interviews answers) is a literary work when it is 'fixed' by being recorded.
Musical work	The melody or notation of a piece of music	The composer of the melody, or their agent	If music and lyrics were created to go together (ie, a song) you will need permission from both rights holders
Broadcast	The signal of a scheduled broadcast (ie, not an 'on demand' recording)	The organisations/people who provide the programme and/or arrange the transmission	You won't be copying the signal itself, but a broadcaster is likely to own other rights (ie, sound recording) or have an exclusive licence to reproduce the content

## Copyright exceptions

CDPA has some important exceptions for cultural heritage and educational institutions, meaning there are some actions you can do without getting permission from the rights holder first. These can be found in Chapter III, sections 32-44A.

These exceptions are often referred to as 'fair dealing', however it is important to note that there is no set definition of 'fair dealing' – working out what is fair often involves looking closely at the exceptions, weighing up the risk, and making a judgement call.

The most important exceptions for digitisation are:

### **S.42 Replacement copies of works**

This allows many institutions to make preservation copies of works in their permanent collections. This exception cannot be used to digitise items that are on loan.

### **S.40B Making works available through dedicated terminals**

This allows many institutions to make their digitised collections available to the public via a 'dedicated terminal'. This terminal should be on the premises and accessed by one person at a time. **This exception cannot be used to make digitised material available online.**

## Other exceptions

It is likely that you would like to use your digitised recordings for a broader range of activities. The exceptions in Chapter III allow certain re-uses of copyright works, for example in classroom settings or for non-commercial research and private study. However, these are largely limited to onsite access and making individual copies for researchers, so do not generally cover online access.

If you would like to make your digitised collections available online, to download, or to be re-used for marketing, exhibitions or in new pieces of work, you will need to contact rights holders and ask for permission to licence their work.

## Licensing copyright works for re-use

In order to get a licence you will need to track down the rights holder and ask for permission, which can be a lengthy process. This can be done by email or letter, but it is strongly recommended that you create a licence that both yourself and the rights holder can sign and keep for reference.

You should clearly state which work you want to use, for what purpose(s), and for how long. It is advised that you seek **legal advice to make sure documents are legally sound**, particularly if you plan to make digitised material available to download, or use it commercially.

## Next steps

This is a very brief overview of how copyright may affect your digitisation project. Next steps to consider might include:

**Check funding requirements** – do funding bodies require digitised collections to be made available more widely in order to receive funding?

**Check the copyright status** – is the material in copyright and do you know who the current rights holder is? Are they likely to give you the permissions you need?

**Other legal requirements** – are there data protection issues or other sensitivities?

**Calculate resource** – will you need extra staffing to deal with copyright permissions? Do you need to pay licensing fees? Do you require legal advice to carry out your project?