

East Midlands Oral History Archive

Information sheet
#4

Data protection,
copyright and
ethics

This sheet will:

- Advise on what copyright issues you should consider while creating oral history recordings.
- Ask you to think about your moral and ethical duties.
- Detail the way in which the data protection act is likely to affect your project.
- Show you a sample copyright form.

East Midlands Oral History Archive

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What do I need to know about data protection, copyright and ethics?

Questions of copyright, data protection and ethics can seem rather daunting to people who simply set out to conduct some oral history interviews. They are not necessarily as complicated as they might seem – but they are very important to the success of any oral history project. The following are an outline of some of the main points that you need to consider, along with sources of further information and guidance.

What is copyright, and how does it apply to oral history recordings?

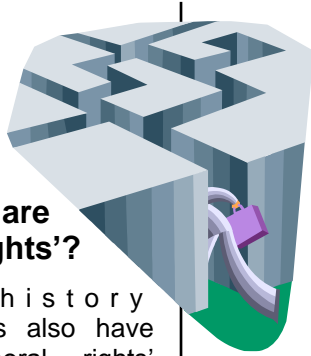
Copyright is a civil law designed to protect the creative interests or 'intellectual property' of those who create a product, and anyone who has invested in enabling its production. Sound recordings of oral history interviews are classed as intellectual property, and are therefore subject to this law.

There are in fact two copyrights in oral history recordings.

1. Copyright in the spoken word of the person being interviewed belongs to that individual, and under the Copyright, Designs & Patents Act 1988, this expires 50 years from the end of the year in which the speaker dies. However from July 1995, copyright duration throughout the European Union was extended to expire 70 years from the end of the year in which the speaker dies.
2. Copyright in the recording itself belongs to the person making the recording, or the organisation on whose behalf it is made. Under the 1988 Act, this expires at the end of 50 years from the end of the year in which the recordings were made, unless the recordings are published or broadcast, in which case copyright expires fifty years from the end of the year of publication or first broadcast.

For a more detailed explanation of these provisions, we recommend that you refer to the Copyright and Ethics guidelines issued by the Oral History Society. See <http://www.oralhistory.org.uk>, or request a printout from EMOHA if you do not have access to the internet.





What are 'moral rights'?

Oral history interviewees also have certain 'moral rights' under copyright law, even after assigning their copyright to someone else. These include the right to be named as the 'authors' of their recorded words if they are published or broadcast. However, for a variety of reasons, they may actually wish to remain anonymous, and there should be provision on the copyright consent form for them to indicate this. They are also protected against 'derogatory treatment' of their words by publishers or broadcasters - for instance, editing or alterations which distort what they have actually said.



What happens if an interviewee dies without assigning copyright?

In these circumstances, the consent form needs to be signed by the subsequent owner of the intellectual property. Often this will be the next of kin of the interviewee - but copyright can be willed, so this may not necessarily be the case. We can provide an example of the form that EMOHA uses for this purpose.

What does this mean in practice?

It means that it is important for the person or organisation recording the oral history interview to obtain the **consent** of the interviewee for the spoken material to be used. This is known as **assigning copyright**. If this consent is not obtained, then the uses to which the material can be put will be strictly limited under the law.

How can we obtain copyright?

The simplest way of doing this is to ask the interviewee to sign a form indicating what uses of the recording he or she agrees to, and what restrictions if any they wish to place on these. The Oral History Society recommends that restrictions should last for a maximum of thirty years from the date of recording. The law requires the '**informed consent**' of interviewees, so it is important to explain the range of possible uses before asking them to assign their copyright. These could cover such areas as:

- educational purposes such as use in schools, universities, colleges and other educational establishments
- public performance, lectures or talks
- publications, including print and audio or visual recordings
- public reference purposes in libraries, museums and record offices
- public broadcast, or on the internet

Copyright clearance forms should clearly state that the purpose of the agreement is the permanent retention and use of the recordings. An example of a consent form is included in this Information Sheet, and you might like to adapt this for your own use. All signed consent forms should be kept securely, as they are the proof that copyright has been assigned to you for specific purposes. It may be difficult or impossible to acquire this consent after a number of years have passed.

How does data protection affect oral history projects?

The Data Protection Act of 1998 imposes certain restrictions on the collection and use of personal data. This includes the contents of oral history recordings and any accompanying documentation.

One issue with sound recordings (similar to one with photographs) is that you won't be able to get the consent of everyone 'appearing' in it. The interviewee will sometimes refer to other individuals by name or other identifying features, and you will often not know whether that person is alive or dead. If they are alive, they too are data subjects. However, as with photographs, a 'risk assessment' approach is required. This means asking what is the likelihood of damage or distress occurring to the person mentioned as a result of the particular use of the recording? If in doubt, leave it out!

You also need written permission from individuals to enter personal details onto a database, e.g. a mailing list. If you intend to use them for anything else, it is worth having a sentence at the bottom saying something along the lines of 'the details you provide will be used for administration of the project and for xxx'.

Further information on data protection is available at the official Government website at <http://www.dataprotection.gov.uk/principi.htm> - but please contact us if you have any queries.

NAME OF YOUR PROJECT

COPYRIGHT ASSIGNMENT & CONSENT FORM FOR ORAL HISTORY RECORDINGS

The purpose of this assignment and consent is to enable the (project name) to permanently retain and use the recorded recollections of individuals.

In respect of the **content** of a sound recording made by and, or, being deposited with the (Name of your project), consisting of the recollections of a contributor and constituting a literary work as defined by the Copyright, Designs & Patents Act 1988:

As present owner of the copyright in the contributor content (i.e. the words spoken by the interviewee), I hereby assign such copyright to the (Name of your project). I understand that this will not affect my moral right to be identified as the 'author' in accordance with the Copyright, Design and Patents Act 1988. I understand that no payment is due to me for this assignment and consent. In assigning my copyright, I understand that I am giving the right to use and make available the content of the recorded interview in the following ways:

- use in schools, universities, colleges and other educational establishments, including use in a thesis, dissertation or similar research
- public performance, lectures or talks
- use in publications, including print, audio or video cassettes or CD ROM
- public reference purposes in libraries, museums & record offices
- use on radio or television
- publication worldwide on the internet

Do you want your name to be disclosed? YES/NO

Brief details of deposited material (if previously recorded by other than [project name], indicate name of recordist):

.....

Signed: Date:

(Print name):

Address:

.....

Postcode Telephone:

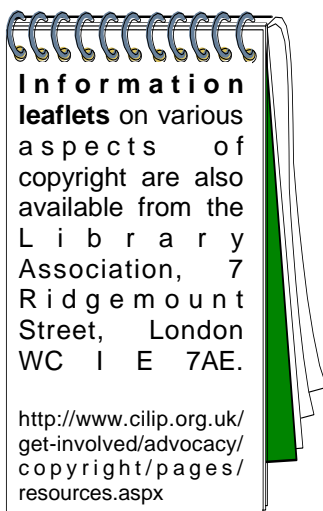
Email:

Project use

Signed on behalf of [project name] (Print name):

Subject of deposit:

Accession number: © in sound recording also assigned ? YES/NO or N/A



What sort of ethical issues should I consider?

You also need to be aware of some of the ethical issues involved in oral history interviewing, and preserving it for future use. These go beyond the legal requirements of copyright and data protection. They are basically a question of your relationship with your interviewees – of how you treat them and their testimony, and of building up a degree of trust between you.

We suggest that you follow the ethical guidelines published by the Oral History Society. These include such matters as:

- Acquiring sufficient technical knowledge to conduct an interview to the best possible standard
- Treating interviewees with respect and courtesy
- Offering them a copy of the recording
- Informing interviewees of the arrangements made for the custody and preservation of the recordings
- In the case of organisations sponsoring or accepting deposits of material, ensuring that the interview is documented, indexed, catalogued, and made available as agreed with the interviewee
- Ensuring that the names and personal details of interviewees are not passed on to third parties without their consent

You can find the full version on the internet at <http://www.oralhistory.org.uk> - or contact us for a printout. For further advice, see also Yow, V.R., *Recording oral history: a practical guide for social scientists* (1994), which has a chapter on ethical issues.

Where can I get further information on copyright?

This is only a brief guide to the main points of copyright as they relate to oral history recordings. If you are in any doubt about any aspect of these, we strongly recommend that you seek further advice. Some useful sources of additional information are:

Books

- Alan Bruford et al., "My tongue is my ain", *Phonographic Bulletin*, 57 (1990).
- GP Cornish, *Copyright: interpreting the law for libraries, archives and information services* (1997)
- Theodore Karamanski, *Ethics and public history: an anthology*, Malabar: Krieger Publishing, 1990. An American collection of articles on ethical issues.
- National Oral History Association of New Zealand, *Code of ethical and technical practice*, NOHANZ: nd.
- John Neuenschwander, *Oral history and the law*, Albuquerque: Oral History Association, revised edition 1993. This provides a useful comparison by describing the position in the US.
- Oral History Association [USA], *Oral history evaluation guidelines*, New York: OHA, 1980 (and amendments).
- Daphne Patai, "Ethical problems of personal narratives, or, who should eat the last piece of cake?", *International Journal of Oral History*, 8 (Feb. 1987). A clear discussion of the ethics of oral history in the US.
- J.B. Post and M.R. Foster, *Copyright. A handbook for archivists*, Society of Archivists, 1992.
- R A Wall, *Copyright Made Easier* (1998).
- Alan Ward, *Manual of sound archive administration*, Gower, 1990. Includes a chapter on copyright considerations.
- Valerie Raleigh Yow, *Recording oral history: a practical guide for social scientists*, Sage, 1994. An excellent guide which includes a useful chapter on ethical issues.

Websites

- Oral History Society
<http://www.oralhistory.org.uk>
- Copyright Licensing Agency
<http://www.cla.co.uk>
- UK Copyright Service
<http://www.copyrightservice.co.uk>
- Official site re Intellectual Property
<http://www.intellectual-property.gov.uk>
- The Patent Office
<http://www.patent.gov.uk/>