

Tracing Copyright Holders

How two digitisation projects coped with copyright for historical material

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Introduction

Digitising certain types of material can cause great difficulty when it comes to clearing their copyright. Anonymous photographs or unpublished letters are examples of sources that one might presume would not cause too many difficulties but, when trying to organise the copyright clearance, can irritatingly cut into the time and money that a project has earmarked for other tasks. There is, as of the date of writing, little clear information of how to actually deal with clearing such 'ambiguous' material; much information on copyright is tailored towards instances of copyright clearance where the parameters are clearly defined.

This case study looks at two projects, supported under the New Opportunities Fund (NOF), where the material under question was of confusing copyright status. The [Coalfield Web Materials](#) project, based at the University of Swansea, was digitising an archive relating to South Wales coal-mining; the archive, including material from the nineteenth century to the present day, incorporates photographs, pamphlets, newspaper clippings, posters and audiovisual material. Meanwhile, the [Hantsphere project](#), organised via Hampshire County Council, was creating a local studies resource on the history and heritage of Hampshire, digitising, amongst other objects, postcards, photographs and prints from the late eighteenth century to the present day.

In investigating how these projects have tackled copyright, this case study hopes to give an indication of actual practice in the field, demonstrating that clearing copyright in such instances is not so much a complex legal question, but more of a time-consuming organisational and administrative issue.



Miners and officials at Seven Sisters Colliery, c. 1912

Determining Copyright Status

The Hantsphere project had perhaps the more difficult task in determining the copyright status of the objects to be digitised. Several of the photographs in their collections were copies; whether they be photographic copies of postcards, prints or even pre-existing photographs. The copies had mostly been made by librarians working for Hampshire County Council in the 60s, 70s and 80s. Copyright law pertaining to photographs is already confusing. For photographs taken between 1911 and 1989, for example, photographic copyright is not held by the creator of the photographs, but by the owner of the negatives - a situation that runs against the grain of most copyright scenarios, in which the creator holds the initial copyright. Sorting through this difficult situation, the Hantsphere project reckoned that besides the original copyright in the photos, the photographer who created the copy also held rights. Copyright law suggests that when there is professional skill involved in creating the copy (as would be required in setting the conditions for, and taking the actual photograph) this needs to be recognised in the copyright. Thus, some kind of copyright existed in many of the photos, whether it be the rights of the original owner or creator, the rights of the copyist, or, as happened often in the case of the Hampshire project, the rights of both.

For the Coalfields team, determining the actual status of the material was more clear-cut, for, with the exception of a small quantity of nineteenth-century material, nearly everything they wanted to digitise was still in copyright. Much of the material was created in the last fifty years, and thus would fall under the author's lifespan plus seventy years rule. The rights for posters relating to elections for positions in the National Union of Mineworkers (South Wales Area), for example, were still held by the union. Rights to newspaper articles still belonged to the newspapers. Nevertheless, it should not be thought that this simplified Swansea's task. Like Hampshire, the difficult part of their project was not in determining the copyright status of a particular item but actually tracing the holder of the copyright and getting the necessary permission to digitise.

Tracing Copyright Holders

It is important to stress that the two projects in question did not let themselves be strait-jacketed by the issue of right clearance. Both projects took the decision that in cases where a copyright holder was untraceable, then the project could proceed with putting the digital object on their website. They did not see copyright as an obstacle that ended any further progress.

Nevertheless, a decision such as this can only be undertaken by acknowledging that the projects were working within a specific context. Firstly, the projects realised that there was little economic value in the material to be digitised and thus no rights holders were losing out because the material was being disseminated freely. Had there been the opportunity to make financial gain from the digitised resource, the projects would not have made the decision to proceed without tracing the licence holder. Secondly, the materials were being digitised with an educational purpose in mind, and therefore the projects considered that there was a public gain to be had digitising the material without securing the permission of the unknown rights holders. Finally, and most importantly, the projects only made the decision to publish after determined efforts to locate rights holders had been undertaken. Should any copyright dispute end up in court, the law would look very dimly on any digitisation project that had made no attempt whatsoever to contact the copyrights holders.

Realising the importance of this last factor, both Hampshire and Swansea incorporated copyright strands into

their project plans; a concerted effort to trace copyright holders and to obtain permission to digitise.

When an organization embarks on a digitisation project, there is often accompanying catalogue information that can help locate the rights holders, as well as providing other key information on the resource. For the Coalfields project, this was partially true, as a previous assignment had clarified the copyright holder of some objects in the archive. But in many collections, particularly archives collections that have built up sporadically over a period of several years, such provenance simply does not exist. This was particularly true of the Hantsphere project; many of the postcards within their collection had no indication of who had taken the original photograph, let alone who owned the rights to it. In situations such as these, projects must be prepared to undertake some copyright research.

Swansea's previous project had helped small leads into identifying copyright holders, but the project still had to consult a wide variety of sources in an attempt to follow up these leads. Such resources included Directory Inquiries, the Electoral Roll and the Internet itself, as well as local libraries and records offices.

Advertisements were also placed in local newspapers to try and alert possible rights holders to the project's plans. Other possible sources include trade journals, Copywatch, a source of copyright information based at the University of Reading, or various organisations, such as ALCS (Authors' Licensing and Collecting Society), that mediate between copyright holders and those wish to create the copy. The information gathered from these various sources was then drawn into a database, which informed the project of the precise position of each digital item for which they were attempting to clear copyright. Members of the Hantsphere team also did some individual research. A number of the items they wished to digitise had originally been held by companies or government bodies that had become defunct, or had gone bankrupt. In such circumstances, the path of the copyright is particularly difficult to establish, requiring detailed knowledge of the handover of company properties. Hampshire found that Companies House and its website were particularly helpful, indicating where rights passed from defunct commercial bodies who may have had rights for postcards and aerial photographs. Official government sites and documentation provided clues for copyright relating to bodies such as BR and the GLC (Greater London Council).

But rarely was such research carried out simply by the individuals working on the projects themselves. Both Swansea and Hampshire emphasised the importance of utilising local networks of knowledge in order to locate potential copyright holders.

For the Hantsphere team, this involved exploiting the knowledge of senior and long-standing librarians. In some way or form, they had often been related to the original deposits of the local studies material, and could recall the names of those who were involved. They were also able to add information about individual items within the collections themselves. Local history groups were often informative as well, providing a pool of detailed knowledge which could help following up clues in a very specific copyright problem. Those cataloguing the resources for the project were also helpful, and were encouraged to notify the project of any information or connections on copyright they made whilst indexing the digital material.

Swansea discovered that when their research on copyright was initiated, it began to grow under its own momentum. Visitors to the archives, contacts with the press and discussions with particular rights holders would uncover further information about other copyright holders that the project was trying to trace. Other projects may well have a different set of specialised knowledge to contact - research-based projects may have to cast their net more widely to grasp their specific scholarly community - but this still remains a vital

avenue to exploit.

It is easy to view this aspect of a digitisation project as time consuming and a drain on resources that could be utilised elsewhere. But such research can have many positive aspects. Drawing in greater expertise helped both projects expand their knowledge about the materials they were digitising. Local networks could help identify and date pictures and images and lead them to other useful information. It also helps to build up trust; through this contact, interested parties could see that the project teams had their interests at heart. More generally, tracing copyright holders also helped advertise the project, bringing it to the attention of a wider sphere of people.



Two men in a field in Denmead, 1950s. A copy of an original photograph, creator of the original unknown.

Developing a Licence Form

The task of tracing copyright holders does not exist by itself. Once a rights holder is located, projects need to gain written permission to digitise the materials in question.

In developing a suitable form to enable this, Hantsphere sought advice from external legal sources and the Coalfields project used advice taken from a previous project. While this was reassuring in some respects, the advice given tended to be very conservative, either suggesting that the projects ask rights holders to sign lengthy contracts, or even as going as far to warn the projects off proceeding with digitisation. The conclusion the projects took from this advice was that a too-literal reading of the law could just about stop dead certain parts of their projects.

So instead, the projects developed their own forms, researching and drawing on from the licence forms of others on the web, and then tailoring them to create a suitable document for their own purposes.

The size of this document was considered a vital factor. Anything long, or with too much legal-speak, or that tried to assert too many rights, would frighten potential rights holders away. Thus the forms were kept short (the Hampshire permission to digitise form was a single page in length) and simple. The projects were also keen not to assert too many rights - the focus was very much on the aims of their NOF projects. Other projects undertaking digitisation may need to be more wary, making sure that any future plans are catered for

in the licence. But the predominant concern of Hantsphere and the Coalfield Materials project was obtaining the permissions to complete their NOF project. So one can see from the Hampshire document that they state they will not "make any further use ... without seeking permission of the owner of the original copyright". But both made sure the digital object could be managed and disseminated in the future. Swansea's agreement permits them "to make any necessary back up copies and to make the machine readable form available on local, wide-area or online networks". Both projects also adapted their agreement so it catered for both photographic and audio material, although the actual changes between the forms were minor.

There were only occasional problems with the content of the licence form. Some signatories crossed out the statement declaring that Hampshire County Council could assert their own rights in the digital versions, even though Hampshire, in digitising the material, evolve their own rights in the digital material. In such situations, both Swansea and Hampshire took a pragmatic course and simply accepted the relatively insignificant grievances of the signatories. The projects' aim was to get permission to digitise and publish and this was still feasible despite the adjustments made to the licence.

Again, the necessary skills in organising this element of the copyright strand were not predominantly legal, but organisational. The majority of the time was not passed in debating the legal details of the licence form, but in administering the process. Partially, this involved the essential work of maintaining the diligence files recording details of the copyright status of the works. Swansea, for example, developed their own database that housed a variety of information on the status of each item. It also involved sending the forms and then processing them once completed. Indeed, Swansea pointed out that one of the most frustrating parts of the projects was receiving verbal agreements from copyright holders but then not receiving the licence itself - permission cannot be legally granted unless it is in written form. In some cases this was because the rights holders just because they didn't consider the written document too important. But in other cases, rights holders expressed the feeling that they were much more reluctant to sign a formal legal document. Where this happened both projects made sure that it was recorded in their copyright databases. Hampshire also attempted to navigate this problem by including stamped addressed envelopes with the original permission forms.

Managing copyright within a project

While both projects knew at the outset that copyright would be a significant issue whilst running their projects, it still proved a difficult element to factor into the workflow. Swansea began their project by appointing a full-time copyright officer, whose work fluctuated between flurries of activity and some periods of relative calm. Much of the work of the copyright officer depends on others, whether it be advice from the local network of knowledge, or waiting for copyright holders to sign and return copyright forms. Swansea were immediately aware of this problem, and they decided at the outset to allocate their copyright officer to other tasks within the project. In total, around fifty percent of the officer's time was taken up with copyright matters.

One other factor that greatly added to the tasks of a copyright officer was the additional work which dealing with copyright produced. The Coalfields team remarked that copyright holders often requested copies of the material that were present in the collections, and Swansea felt it was their duty to respond to such requests. Neil Kinnock and Tony Benn, for example, asked for copies of the speeches that the project had digitised. This was especially true when there was some familial connection between the copyright holder and the people involved in creating the original item. Both projects also received requests from commercial

organisations to reproduce particular digital items. While such requests were passed on to the rights holders, dealing with and responding to them still took up time. It is worth noting that both projects decided not to financially exploit the digital material they had created, recognising that this would be a time-consuming process and would greatly complicate the rights issues. Sustainability is something of a buzzword among digitisation funders and projects, but one should take note of the costs involved in establishing a project arm that aims to exploit the commercial rights within a digital collection.

Dealing with copyright was shared by different staff in the Hampshire team. But the Hantsphere staff also noted that it had to set a limit on the amount of time spent researching copyright. It would have been possible to spend a much greater amount of time tracing copyright holders, but this would have meant sacrificing other important parts of the project.

Given the emphasis on liaising with rights holders, rather than consulting legal manuals, Swansea pointed out the advantages of a copyright officer having good communications skills. The ability to explain clearly the purpose of the project and licence form, often to those with a hazy conception of a digital project, was an important factor in securing the necessary permissions. In other cases, such as dealing with a health worker representing an elderly person or concerned children of deceased parents, an equal amount of sensitivity was required to explain the aims of project.

Conclusion

Neither Hantsphere nor the Coalfield Web Materials have yet received any negative feedback or criticism about the material they have digitised. Swansea put aside a sum of money to deal with any future problems, but this remains untouched. Pages exist on both websites asking potential copyright holders to get in touch, but Hantsphere commented they are far more likely to receive comments pointing out misattributions or spelling mistakes than anybody querying their digitisation of a photograph in copyright.

But both acknowledged the importance of following good copyright practice within the project lifespan. Not only because of the drier legal issues, but because contacting and discussing issues with the rights holders was felt to be morally important. Copyright practice also offered the teams added advantages, permitting them to forge close relationships with important stakeholders in their projects and drawing on their experience and knowledge to add to the quality of the content they were providing. When viewed in this light, copyright is not a negative factor, but a positive that enriches and extends a project.

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Bibliography and Links

[Other AHDS Resources on copyright](#)

[Coalfield Web Materials](#)

Coalfield Web Materials provides a unique insight into the social, political and cultural life of the South Wales Coalfield during the 19th and 20th centuries.

[Coalfield Web Materials licence form](#)

[Coalfields copyright database](#)

Details of the fields used in the Swansea copyright database, plus brief details of procedures for tracing

copyright holders.

[Hantsphere](#)

Hantsphere is an online Hampshire local studies resource.

[Hantsphere permission to digitise form](#)

[Darwin Correspondence Project](#)

Readers who are considering digitising material within an academic context may also be interested in the work of the Darwin Correspondence Project. The project, which is creating both print and electronic versions of letters sent to and from Charles Darwin, has incorporated a copyright strand into its work to deal with the copyright in the letters, as unpublished letters can have copyright lasting until 2039. As with the two projects above, the Darwin Project has proceeded with digitisation if it has been unable to locate the rights holder, but has done so in the context of being a non-commercial, educational project that has made concerted efforts to trace copyright holders.



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