

Copy Right Advice for Authors

Following concerns awakened by the County History Committee and advice proffered by a specialist on this matter at the Gloucestershire Archives, the Committee of the Society has produced this advice:

A. Intent:

As a responsible organisation which wishes to have its own copyright respected, we wish to respect that of others. This issue has long been a very grey area and we are grateful to the County Committee for trying to add some clarifying colour.

B. Copy Right Statement from the inside front cover of the Bulletin:

Copyright and Responsibility

Unless otherwise specified, copyright of articles or illustrations remains with the author or illustrator. Copyright of original material remains with the owner or, in the case of letters, the writer, or with the relevant Record Office or Library. **It is the responsibility of the author to seek and obtain permission to use copyright material.**

The Society does not hold itself responsible for statements in papers, but invites additions and corrections which may be printed in the next issue as articles or notes. Comments about articles in the Bulletin should be addressed to the Editor. Copies of all the Society's publications are held in the British Library in accordance with the Copyright Act.

C. Practice: according we ask and require all contributors to the Bulletin to see and obtain permission in writing for any illustrations which they wish to include and whose copy right does not belong to the author. It is the responsibility of the author to decide whether to pay a fee demanded or not to use the illustration. However, in this case please advise the Editor.

1. Exemplar of Letter of request (try to use email where possible):

I am in the UK and am writing an article for the Tewkesbury Historical Society. According to this website <http://www.archive.org/details/grasshopperinlo00martgoog> you have the book 'The Gasshopper' in Lombard Street/ in your library, that they have put on their website.

In this book is a photograph of John Martin (1805-1880) that I would like to use in my article. Presumably, you hold the copyright for this?

The following are some details of our publication.

- The title of the article is:
- the title of the publication is "*Tewkesbury Historical Society Bulletin 21*"
- The Bulletin publisher is *The Tewkesbury Historical Society*.
 - It is written in English. Mainly distributed in England but sometimes a sale overseas, usually in Australia and USA.
 - Print run is 'on demand' but is usually about 50 copies sold.
 - **It is sold merely to recoup its costs of production**
- The image would be used inside the publication. The image size used would be less than 1/4 page.
- Buyers of the publication have the option to have a copy in PDF format, but only one or two are usually sold in this way.

- The *Tewkesbury Historical Society* is a registered charity and has a website on www.ths.freeuk.com <<http://www.ths.freeuk.com/>> where details of its activities can be found.

I would be grateful if you can let me know whether it is possible for me to use the image.

I thank you in advance for your consideration

2. Exemplar of Response to that letter – which was positive!

On 07/09/2011 19:44, Library Copyright Office wrote:
When replying, type your text above this line.

Notification of Ticket Change

Description:

Entered on 09/07/2011 at 14:44:04 EDT (GMT-0400) by Robert Glushko:

We do not own the copyright in the photograph, but if it is available in HathiTrust, it is there because we either have a license or the work is in the public domain, as the term of protection has lapsed.

This applies for you as well; you should feel free to make use of any public domain materials.

Does this help? Thank you! Bobby Glushko

3. Use of the Photograph and Caption



*John Martin. (b.1805. d.1880.)
Photo-Engraved from a Photograph (taken about 1863)
by Mayall & Co. London.*

F1. From the book 'The Grasshopper' in Lombard Street by John Biddulph Martin, pub.1892 (Michigan Univ.)

4. Please use the footnotes to thank the copy right owner and include a weblink to the organisation as per: <http://www.gloucestershire.gov.uk/index.cfm?articleid=15434>

5. a. You would then need to send a copy of the picture and caption together with your letter of permission to the Editor along with your article by 31 October 2011.

b. If you are awaiting your permission by the submission of the article then please forward the letter requesting permission on the understanding that, if it is not forthcoming, then we might have to withdraw the illustration in question.

6. **A Difficult response:**

From: Picture Library <rightsandimages@npg.org.uk>

I'm sorry we cannot help in this instance, and that you could not afford to obtain a copy from the ILN. UK institutions operate utterly independently. However, for images where new photography or digitisation is required (such as this ILN image) we will always need to make a charge to cover our costs (otherwise we would operate at a loss, which as an institution partly funded by government, we are not allowed to do).

Regarding copyright, although the original work is out of copyright, the copyright you need to clear for such images is that which is created when a new photograph is taken of it. **Under UK copyright law, a new copyright is created when photographing (with "skill, judgement and labour") an out-of-copyright original.**

Kind regards, Matthew

Matthew Bailey
Assistant Manager, Rights & Images
National Portrait Gallery St Martin's Place London WC2H OHE

Direct T 020 7312 2475 F 020 7312 2464 www.npg.org.uk

----- Original Message -----

Subject:Re: Illustrated London News copyright

Date:Fri, 26 Aug 2011 18:05:57 +0100

To:Jessica Talmage <jessica.talmage@maryevans.com>

The THS is a small society and registered charity of about 80 members. We sell under a 100 copies of our Bulletin. £30 for the picture is simply not worth our while. It is a great pity that things that are over 100 years old are not in the public domain.

On 26/08/2011 17:02, Jessica Talmage wrote:

Thank you for your email about the image of Edward William Cox from the Illustrated London News. The image comes from the ILN of 6th December 1879. As representatives of the Illustrated London News archive, we hold the copyright and can license the image to you for use in your article. We're happy for you to use the picture, but there will be a small fee to pay for doing so. **For use in one edition of the Tewkesbury Historical Society Bulletin, up to ¼ page size, this would be £25 + VAT for a total of £30 GBP. We can provide a high-resolution scan of the image via email.**

The author would then have to decide whether or not to pay and therefore whether or not to use. The author in question decided not to use it – which is understandable but very sad for the public.

If you have any questions, please email the editor on johnhistory@o2.co.uk as soon as possible.

D. Copy Right Guidance from paper submitted to the County Committee

This section is extracted from a paper by © **Neela Mann** of Glos Archives and presented to the County Committee of Historical Society on June 2011. The Law is still evolving and we await more information as soon as Neela can deliver.

1. What credit lines or acknowledgements should I use?

- a. It is usual in the case of a photograph or illustration which has been photographed to **credit the photographer** as 'Photo (or 'Image') (c) 2011, Joe Bloggs'.
- b. However, if someone has scanned a document or page or illustration out of an out of copyright book they own it is usual to acknowledge with 'Image courtesy of Joe Bloggs'. **They do not own copyright in this image as it has been scanned.**
- c. **Crown copyright material needs to be acknowledged even though there is free use.** Acknowledge the source of the information and any reference number. If this is not practicable then use the words '**Contains public sector information licensed under the Open Government Licence v.1.0**'. However, if you are using images from, say **The National Archives**, this does not come under the Open Government Licence and you will have to apply to **The National Archives** for an image licence for which there will be a fee. This also applies to NA material that you photograph yourself.
- d. To use **current OS maps** you may need a licence from the Ordnance Survey and may need to quote the reference number of the licence beside the image. Maps which are out of copyright need to have their source and reference number quoted and the wording '**Reproduced from (date of map) Ordnance Survey map with the kind permission of the Ordnance Survey.**'

2. What is the copyright situation with photographs?

- a. If the Society has been given photos which you know **are less than 70 years old** then **ask the donor to sign a statement** saying that they give permission for their use and details about the photographer (or the fact that they don't know) and try to get permission for their use.
- b. However, here is the information regarding photographs.
 1. **Before 1912 or after 1989** The copyright is with the person who created the photo and is for the life of the photographer + 70 years.
 2. **After 1912 up to 1989** The copyright holder is the person who owned the material on which the photo was taken e.g. the negative.
 3. **Crown copyright photos** Taken before 1957: copyright expires 50 years from the year first published. Taken after 1957 and before 1989 or taken after 1989 and not published, copyright expires 2039.
 4. **Photos acquired from a digital outlet.** Any accessible photo on the internet is not in the public domain even though it may be publicly accessible. Find out who the copyright owner is. You may find that there is a digital watermark on the photo which will tell you who the copyright owner is or it may be embedded in the photo. Either click on the photo or move your cursor over it and this may reveal the information. **If you do use a photo that has information embedded in it, it is illegal to remove this information when you publish. Do not do a screen grab and hope to get away with it. Chances are you will but you don't want trouble or sleepless nights worrying!**

- c. **Persons in photographs:** This is a tricky issue.
1. If people are 'incidentally included' in a photograph you have taken of, say, a Tudor building, you don't need their permission.
 2. **However, if you take someone's photograph you do need to ensure that they have given permission or if they are prominent in a photo (usually facing the camera) be aware that they have the right to object.**
 3. Taking photos of people at Society events for public use is alright as long as the people attending are aware of this in order that they can object if they want to.
 4. If you have any photos of children (not old photos) then be aware that you definitely need their parent's/guardian's written permission to take and use the photographs.

D. Wikipedia photos Most photos on Wikipedia are licensed under **Creative Commons Licences**. Click the photo and it will tell you what kind of a licence it comes under. There are eleven different kinds of licences, all of them nice! They range from 'Yes you can use the photo for whatever reason you like and play around with it and I don't need acknowledging' to 'Use the photo but let me know what you're using it for'. Have a look by searching 'Cheltenham' in Wikipedia and then left-clicking on the photo. You have all the information you need even the contact details for the photographer.

This work has been released into the **public domain** by its author, **Arpingstone**. This applies worldwide. In some countries this may not be legally possible; if so: *Arpingstone grants anyone the right to use this work **for any purpose**, without any conditions, unless such conditions are required by law*

More-or-less the same exists for the use of text from Wikipedia. **Creative Commons** is what is known as 'Copy Left' and is a way of distributing information, images or work so that people can gain free access and re-use on a much freer basis than items under copyright restrictions.

E. Neela's Briefing

The bits in pink are my emphasis and in red questions and responses

What is copyright?

First of all it is important to know what copyright actually is in order to understand what it applies to and how it is complied with. As a basic notion copyright allows an **'author'** (this term applies to an illustrator, musician, sculptor, choreographer, photographer, potter, etc) the right to decide how, where and under what conditions they want their work to be 'used' or copied. Copyright has been described as a 'trading system for works of the mind' (**intellectual property**) and, as such, it is a means by which a work can be protected in order that the author can benefit, mainly in financial terms, but, of equal importance, in order to protect a work's integrity.

The majority of English copyright law is enshrined in **The Copyright, Design and Patent Act 1988** (CDPA). This was the first major overhaul of copyright law for decades **but it was out of date by the time it became law**. There have been many Statutory Instruments and European Directives since 1988, a major review of Intellectual Property (The Gowers Review of Intellectual Property, 2006) and also harmonisation with EU Copyright Law in the ensuing 20 odd years. The Gowers Report resulted in the **Digital Economy Bill (2010)** **but it really wasn't of much help in terms of publishing copyright as it was too limited in a broad subject. It made no concessions for, in particular, orphan works (see notes later on)**. The law will never be able to catch up and it is still not completely fit for purpose in the fast changing electronic era. However, having an understanding of the essence of what copyright is intended to protect will help to figure out what you need to be aware of when using someone else's material.

The following, in brief, is what copyright is in practical terms:

1. It allows the copyright holder (usually the creator of a work) **the exclusive right to copy, publish, broadcast, perform or adapt his/her work and to decide who uses the work, where and how the work is used or exhibited or to license others to do this** (e.g. agent, publisher, literary executor).

2. Copyright in this country does not have to be registered. It exists when it is written down or drawn and for literary works lasts for **70 years from the death of the author**.

3. It covers **literary** (any written work –even on a beer mat!) **artistic** work (sculpture/paintings/illustrations and photographs), **dramatic** or **musical** work. Incidentally, **maps, plans and charts** are considered to be artistic works and a circuit diagram is both a literary and an artistic work! **Be aware that there could be two sets of copyright in images you use for publication e.g. a photograph of a sculpture or painting would require the permission of the artist as well as the photographer as they are two separate artistic works in copyright**. Copyright does not protect ideas unless they are written down and **it is the literary aspect that is protected rather than the idea** i.e. the manner of their expression. The material must be **original** and have involved the **use of skill and labour**. **For example, the transcription of the Lloyd George Domesday Survey Records is not the copyright of the volunteers transcribing as there is no skill in 'copying' word for word what is already written**.

However, with the transcription of an Anglo Saxon document there is a subtle distinction in the skill used to 'translate' the wording and therefore the 'translator/transcriber' owns the copyright to that transcription even though the document itself is out of copyright.

4. Copyright is a property right reflecting skill and labour (sweat of the brow) – **economic rights**: the right to be paid fairly for the use of the work – and a **reputational right** representing honour (moral rights) The **moral rights include**:

The right of **paternity** (the right to be correctly identified as the author of the work). This is particularly important when crediting any material.

The right of **integrity** (the right not to have work falsely attributed to you):

Privacy is the right not to have a photograph, taken for private purposes, used commercially (without permission, that is!).

The right to object to **derogatory treatment** of a work. This covers a multitude of sins and can even include the cropping of a photograph, the wrong colour register or a work of art photographed poorly. In literary terms it could mean poor editing or the use of material in the wrong context.

5. Duration of copyright in the written work is life of the author plus 70 years. See later notes for photographs. Other categories of work carry different defined periods of copyright but mostly it is +70 years.

6. Fair Dealing This term makes it permissible, for the purposes of **criticism or review, news reporting, private study, (non-commercial) research and Braille** to use a piece of material in copyright. This does not cover any more than a few words such that you would use for a quotation. Think 'qualitatively' as much as 'quantitatively'. **Guidelines which state that you can use 400 words or 40 lines are grossly misleading. Use common sense and ask yourself 'If I were the author would I want paying for this?!'** as mostly freelance writers and authors who do this for their living will expect payment. #What your Local History Society does, even in a newsletter, is not considered news reporting in this context but quotations used in a book review would be considered 'fair dealing'. Any 'research' that one of your authors does for an article in your journal is not research in this context when it becomes published in the journal. If it was for an academic study and not published it would be in context and classed as 'research'. In this country fair dealing doesn't exist outside of these uses.

Neela's response: Q2 News reporting is what the BBC does on the 10 o'clock news on tv and radio and what The Times does – reporting of current news. When they have an article in the colour supplement that is not news. So, although some of your 'newsletter' may contain reporting of news, any use of images and other people's material would have to have permission.

7. Copyright is owned independently of the physical material which records it. This means the purchase of a book or a work of art doesn't entitle you to own the copyright whether the work is in or out of copyright! EBAY!!!!!!!!!!!!

8. Public domain. This refers to a work that is out of copyright, having existed past the lifetime + 70 years of the author. **However, sometimes copyright is renewed** (as in *Peter Pan* where the royalties are 'owned' by The Trustees of Great Ormond Street Hospital under CDPA 1988) and copyright exists in perpetuity in the King James version of the Bible (administered by Cambridge University Press as The Queen's Printer). The meaning of the phrase 'in the public domain' needs clarification. Easily accessed material, such as that on websites, is often referred to as 'being in the public domain'. That refers to material that is accessible by anyone and does not have restricted access. This is not the same as 'in the public domain' in copyright terms, which means 'out of its term of copyright'. **If your author uses this term ask them what they (think they) mean!???**

Q3. surely if an author/photographer publishes something on the web and does not make a claim for copyright (as do photographers) surely one can interpret this as a wish by the author to educate the public providing a due acknowledgment is made?

Neela: Q3 No – copyright exists without the need to claim it. It works the other way round, the author has the copyright and ability to control use without having to say so therefore you can use it freely ONLY if they say you can, in writing. **OK not quite so fair**

9. Works created in the course of their work for a company are not the creator's copyright but that of their **employer**. For example, a teacher's lesson plans, even though they may have been created in their own home in their own time, are the copyright of the education authority that employs them.

When I was a teacher, I would have resented this and undermined it wherever possible; I doubt if I would have written then in the first place!

So, the photographs in the *Gloucestershire Echo* are the copyright of the newspaper not the staff photographer, unless the newspaper used a freelance photographer not employed by them and even then they would probably have an agreement that would license the newspaper to control the use of the photos.

There are many more issues to do with copyright but I hope that this is enough to help you in your local history work.

I
Neela Mann, **Copyright Consultant**