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Copyright in digital environments

Copyright and Data Protection Seminar
ARA,I and IRMS, 18 October 2018

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HEA HIGHER EDUCATION AUTHORITY
AN tÚDARÁS um ARD-OIDEACHAS

EUROPEAN REGIONAL DEVELOPMENT FUND

About this presentation

Parts of this presentation are based on ‘Exploring CC Licences’ workshop given by Rebecca O’Neill of Wikimedia Ireland to DRI, which in turned is based on the *Change your mind* workshop by Barbara Fischer and licensed under Creative Commons Attribution-Share Alike 4.0 International

The Digital Repository of Ireland

DRI is a trusted digital repository for Humanities and Social Sciences Data

Linking and preserving the rich data held by Irish institutions, with a central internet access point at http://repository.dri.ie

From a copyright point of view, DRI preserves and publishes content, but does not **own** content.

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What is copyright?

- Copyright is a property right
- Automatically applies to an original work. Exists from moment of creation of original work -no need to declare or register
- Permits the copyright owner to use and/or authorise others to use.
- Automatically prevents others from using the protected work without permission.
- Usually endures for life of author plus 70 yrs

Property rights versus Copyright

Property rights

The right of ownership serves to ensure material control of the **tangible** object.

The owner of an object can do as he or she wishes with the object and exclude others from exerting any influence.

FOR AN INDEFINITE PERIOD

Copyright

Copyright serves to protect the intellectual **intangible** content of objects.

An author can make decisions on the use of the intellectual content of an object (that can be characterized as a “work”) created by him or her.

FOR A FINITE PERIOD

Technical terms

Intellectual property touches upon many laws and regulations

- Public domain
- Creative Commons
- Re-useability
- Free licences
- Commercial purposes
- Copyright
- Intellectual property rights
- Image copyright
- Personal rights
- Data protection

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Copyright law in Ireland

Copyright and Related Rights Act 2000 - Section 17

- Original literary, dramatic, musical or artistic works
- Sound recordings, films, broadcasts or cable programmes,
- The typographical arrangement of published editions
- Original databases

Does not cover the full range of digital and web materials that have become available since 2000.

Legal framework in Ireland



According to **sections 24 and 35** of the **Copyright and Related Rights Act, 2000**, all literary, dramatic, musical or artistic works enter the public domain after seventy years counted from the beginning of the following calendar year (i.e. as of 2013, prior to 1943-01-01) after either the death of the author, or, if the author is unknown or pseudonymous, the date of publication.

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Copyright law in Ireland

In 2013, the Copyright Review Committee published 'Modernising Copyright', a report recommending updates to the 2000 Act.



Some main recommendations:

- Establishment of a Copyright Council of Ireland
- Introduction of some CR exceptions for innovation & fair use
- Improving technological protection measures for rightsowners.
- Match CR exceptions allowed under EU law*
- Extend legal copyright deposit provisions to digital publications

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Copyright law in Ireland

In response to the 2013 report, the Government approved the drafting of a General Scheme of Bill entitled the Copyright and Related Rights (Miscellaneous Provisions) Bill in 2016.

Does not answer all the recommendations of the 2013 report.
Instead, the main issues covered include:

- Disability access
- Improving educational use
• Intellectual property claims
• Non-commercial research
• Digital Deposit
• Caricature, satire and parody;
- Fair dealing
- Photographic metadata
• Copying work for preservation purposes.

Copyright and digital content – international laws

- World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty or WCT): 1996 treaty designed to cover digital content.

- EU Copyright Directive 2001: attempt to harmonise copyright law across EU to bring it in line with WIPO. However individual states can still have idiosyncratic laws.

- On 12 September, European Parliament approved a new Copyright Directive. This is still being debated and its approval will not be 100% finalized until 2019. It is intended to strengthen the rights of content creators however some of its provisions have sparked controversy.

2018 European Copyright Directive

Key provisions:

- Ensure that artists are paid for their work when it is used by sharing platforms

- Make online platforms and aggregators financially liable for copyright infringements.

- Ensure that copyright law is observed online without unfairly hampering freedom of expression

- Uploading to non-commercial online encyclopedias will automatically be excluded from the requirement to comply with copyright rules.

- Strengthens the negotiating rights of authors and performers

2018 European Copyright Directive - Controversy

Article 11 gives publishers the right to ask for paid licenses when their news stories are shared by online platforms

Article 13 says that online platforms are liable for content uploaded by users that infringes copyright.

Both measures attempt to redress an imbalance at the core of the contemporary web: big platforms like Facebook and Google make huge amounts of money providing access to material made by other people, while those *making* the content (like music, movies, books, journalism, and more) get less.

2018 European Copyright Directive - Controversy

Article 11

Gives publishers a right to ask for paid licenses when online platforms share their stories

Some interpretations have suggested that this might even stop ordinary web users sharing new stories, but the text of Article 11 does exempt individuals.

However, it's not clear what counts as a commercial platform. What about blogs or RSS feeds that aggregate headlines in much the same way Google News does? What about a Facebook page operated by an individual who also has a huge audience?

What counts as sharing a story?

2018 European Copyright Directive - Controversy

Article 13

Platforms “storing and giving access to large amounts of works and other subject-matter uploaded by their users” are liable for copyright infringement committed by users. (Meaning they can be sued by rights holders.)

According to critics, this means ‘upload filters’: forcing sites like YouTube and Facebook to scan every piece of content users share, and checking it against a database of copyrighted material.

According to critics, such a mechanism would be ripe for abuse by copyright trolls and would make millions of mistakes. An upload filter has been framed by critics as the EU trying to “kill your memes.”

2018 European Copyright Directive - Controversy



2018 European Copyright Directive - Controversy

Others say that the text of the Copyright Directive doesn't actually necessitate upload filters. Instead, it would be something more like YouTube's Content ID, which scans content after the fact for copyrighted material.

Amendments have removed references to 'effective content recognition technologies', understanding that something that wholesale is not possible.

2018 European Copyright Directive - Controversy

Concerns over how the directive treats text and data mining programs (or TDM), potentially exposing automated scanners to copyright claims.

What's next? This version of the Copyright Directive now goes into trilogues (closed sessions). Further amendments may be made.

After trilogues, the directive will face a final vote from the European Parliament some time in spring 2019.

Too early to tell how this will affect the digital preservation landscape but important to be aware of it.

Some common rights & licensing issues

- Does digitisation create new copyrights?
- I own the physical copy but not the copyright
- The original depositor requires “right-click” to be disabled
- The object is still under copyright, but I can’t contact the copyright holder
- The copyright has probably lapsed, but I can’t identify the creator
- I have business records, but the business was sold
- The depositor said I could digitise, but the depositor wasn’t the creator
- I recorded oral history interviews with permission, but I didn’t ask whether I can put them online

Copyright and digital content (the current environment)

- For digital objects, there may be separate copyrights covering original work, the new digitised copy & any associated metadata.

- These separate copyrights are usually defined by the use of licences. Licences allow for various levels of republishing, modification etc.

- **Copyright is NOT relinquished by publishing a digital object openly online**.

- Copyright information must be included with every digital object in the Repository, allowing depositors to apply a licence, or state who owns copyright and how they may be contacted.

Open Access

Open access (**OA**) refers to online research outputs that are free of all restrictions on access and free of many restrictions on use (e.g. certain copyright and license restrictions).

Open Access implies that authors do not reserve all copyrights in their work, but ask only to have the work attributed to them. (attribution rights)

Two main categories of OA: **Gratis OA** refers to free online access, and **libre OA** refers to free online access plus some additional re-use rights

Open Access

Open Access is preferable for publicly funded data.

DRI encourages publicly accessible data; Open Access where appropriate; CC-BY licensed metadata and CC licensed objects.

Even for non-OA material, how to manage reuse and attribution rights? Answer is **licensing.**

Licensing and public access

- Licensing – giving permission for the use and reuse of copyrighted material – for specific purposes, people, territories or durations. Licensing a work does not relinquish or negate its copyright protection.

- Creative Commons provides standardised licences to allow reuse.

- All metadata in the Repository is given a CC-BY licence (Creative Commons Attribution 4.0).

- CC-BY is the licence that aligns most closely with the principles of Open Access.

Freedom of Panorama

§93 of the Irish copyright law permits photographers to take pictures of sculptures, buildings, and works of artistic craftsmanship that are permanently located in a public place or premises open to the public, and to publish such pictures in any way.

Although not tested, this is generally interpreted to cover 3D works and *not* 2D works. Thus, murals, posters and other flat artworks are not subject to FoP.

In short

A licence is, for an intangible work, the functional equivalent to the property of a tangible piece of work.

Creative Commons Licences

About The Licenses

What our licenses do

The Creative Commons copyright licenses and tools forge a balance inside the traditional "all rights reserved" setting that copyright law creates. Our tools give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions to their creative work. The combination of our tools and our users is a vast and growing digital commons, a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law.

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The Licenses



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https://commons.wikimedia.org/wiki/File:CC_License_Freedom_Scale_Chart.png

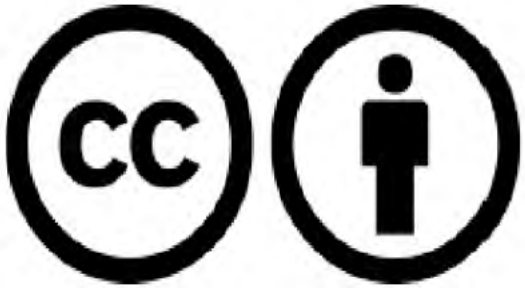
Irish context

No legal recognition of **Creative Commons Licences** within legislation yet.

This is in contrast to other EU states such as Germany

Licensing in application: 3 categories







Public domain

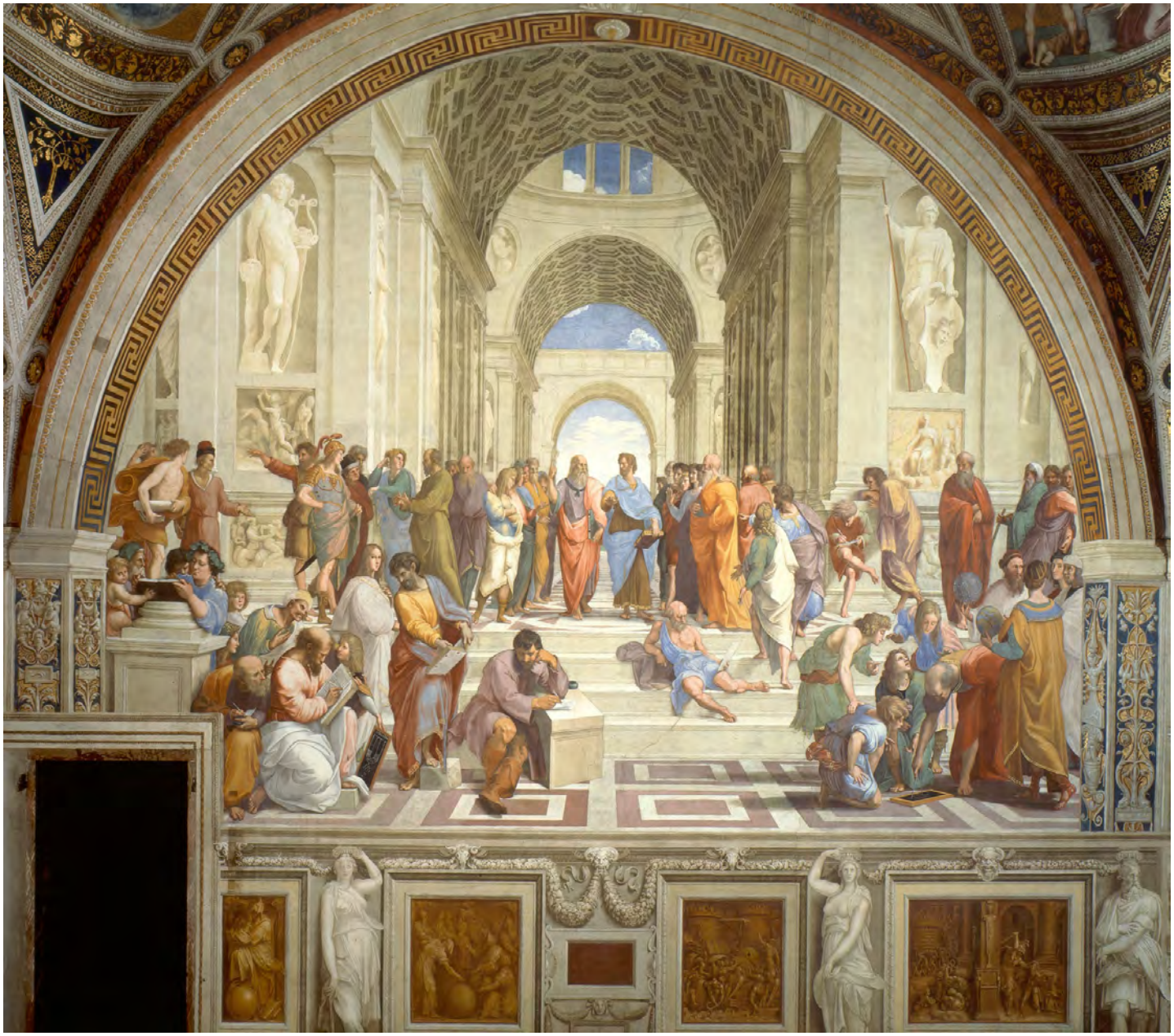
When is something in the public domain?

- Goods that are in the public domain can be used by anyone without consent or payment obligations for any desired purpose.
- In accordance with *lex loci protectionis*, legal protection is always determined by the particular national legal regulations in the context of which protection is desired.

In Ireland, a “work” will for out of copyright on 1st January of the 71st year after its creation.

Assessing Public Domain when digitised

- The original digital work is not or **is no longer copyright protected**, or the starting work was in the public domain, or not copyright-protected, prior to digitisation.
- **No ancillary copyrights** arose through digitisation.



Artwork by Raphael, The School of Athens (1509), Public Domain via Wikimedia Commons

PUBLIC DOMAIN

Why is this work in the public domain?



- The starting work was no longer protected prior to the digitisation process.
- Digitisation was an automatic book scanning process and no new rights arose.

Image of the book Twenty Thousand Leagues Under the Sea by Jules Verne. Illustrations by Alphonse de Neuville and Edouard Riou
Public Domain via Wikimedia Commons

CC BY: What do I need to know?

1. I am the copyright owner of the digital or digitised work

2. The work is not Public Domain

3. No third-party rights are violated through the process of providing public access

Why may this photo be subject to CC BY?



- The author licenced the photo themselves and uploaded it to Commons.
- No third-party rights are violated.

CC BY-SA 4.0 Smirkybec via Wikimedia Commons


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If in doubt, shelve it

When is caution appropriate?

There are works for which caution with regard to free use is appropriate. This category includes all digital object representations that are not (or are not yet) in the public domain and also cannot be *legitimately* published under CC BY. It also includes digital object representations for which the institution does hold rights of re-use but other justified reasons speak against publication (e.g. objection by the donor/giver, unclear research findings, family members' need for reverence, etc.).

Pitfalls: What do I need to watch out for?

- Author is still living, or died after 1945
- More than one author is involved
- Author is unknown or not all authors are known
- The work's year of origin is after 1900
- Year of origin is uncertain
- Personal rights or rights of third parties
- Objection by lender or donor
- New ancillary intellectual property rights that arose, for example, through digitization (3D)

Copyright and DRI

DRI is a Trusted Digital Repository (TDR), a standard issued by the Data Seal of Approval/Core Trust Seal guidelines.

These standards require that deposit agreements in DRI abide by copyright and intellectual property law.

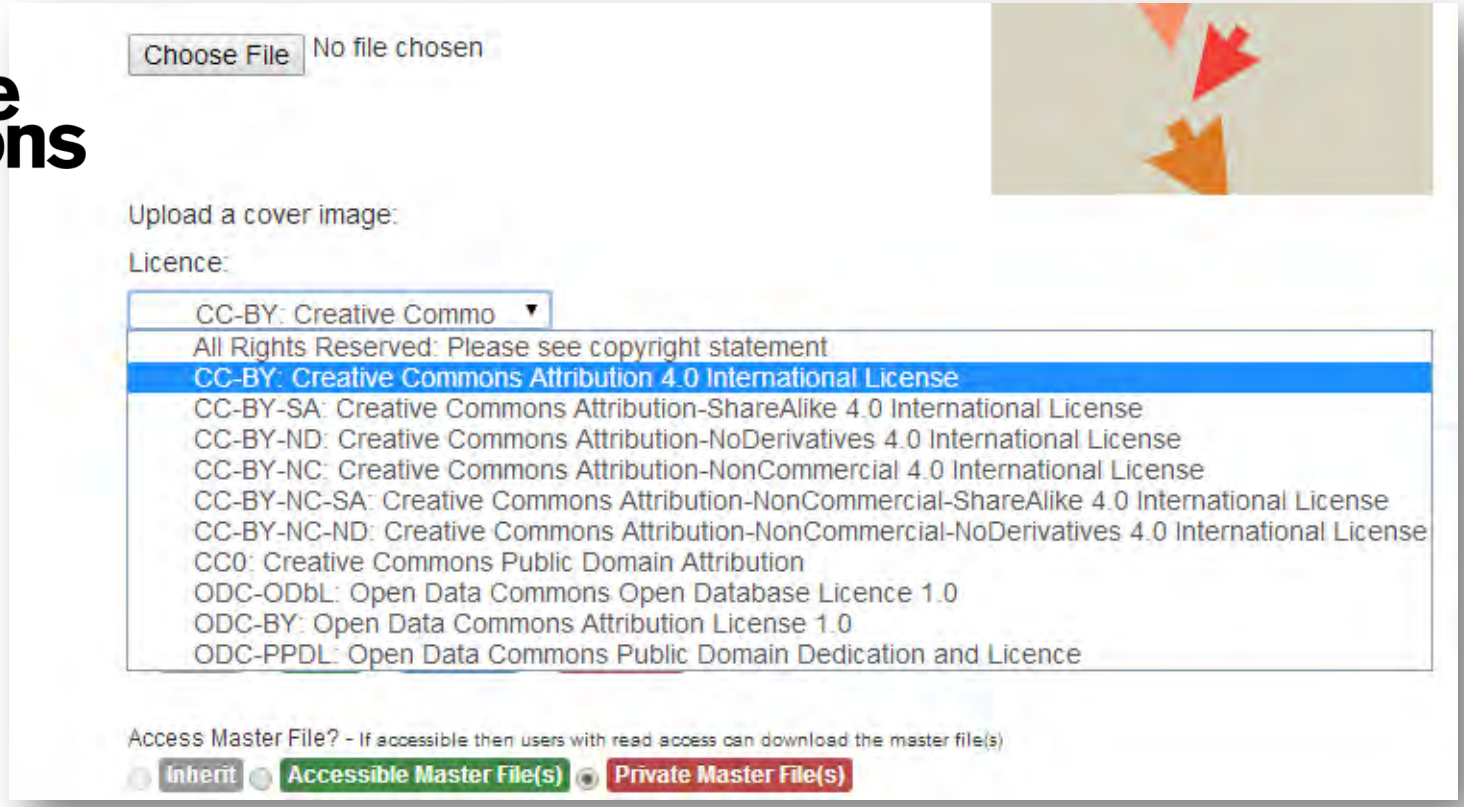
The work of our Copyright and Intellectual Property Taskforce informed our main policy documents relating to copyright:

- Organisational Manager Agreement
- Deposit terms and conditions
- End user agreement

- All available at http://dri.ie/publications#policy

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Applying copyright statements and licenses in the repository



Developing legal agreements

DRI can't respond to ad hoc queries on copyright issues, but we must facilitate deposit of content, protection of rights and encourage reuse where appropriate. Relevant policies:

- Organisational Manager Agreement
- Deposit terms and conditions
- End user agreement
- All available at http://dri.ie/publications#policy

Developing legal agreements

End User Agreement: This was developed specifically to protect the interests of copyright holders.

This is why it appears automatically when new users access the Repository

Ensure that new users agree to not use data from Repository for unlawful purposes and will abide by stated copyright & licence rules.

Nothing controversial in EUA – simply states explicitly what is implicitly expected of most content consumers.

Responsibilities for DRI and Depositors

The Organisational Manager:

• Has authority, on behalf of their Organisation, to deposit material in the Repository.

• Will ensure that correct rights statements, and where applicable, licensing statements, are applied to the digital objects in the System.

• Will ensure that appropriate access permissions are applied to the digital objects in the System

• Grants to the Repository, and to any third party nominated by the Repository, a non-exclusive, irrevocable and perpetual licence to make available all digital objects deposited in the System, and all ingested metadata.

Responsibilities for DRI and Depositors

The Repository:

• Will take all reasonable and lawful steps to ensure that the permissions granted by the depositor will be enforced by the system.

•Will display the rights statements applied to digital object by the Depositor in the System.

• Will ensure that all metadata in the Repository is publicly accessible.

Example 1: Image of Pocket Watch – Digital Asset

Pocket watch Hopkins & Hopkins



Download 1st Download master asset (4.08 MB)

Title
Pocket watch Hopkins & Hopkins

Example 1: Image of Pocket Watch – Rights Statement

Rights
This item is no longer in copyright. It was donated to the Inspiring Ireland project by the owner, Caroline McGee, to be shared under a CC0 licence.

Licence
- CC0

CC0 indicates ‘No Rights Reserved’ and that the copyright owner has waived all rights in order to place it as fully as possible in the public domain.

Example 2: Magdalene Oral History Interview – Digital Asset



Example 2: Magdalene Interview – Rights Statement

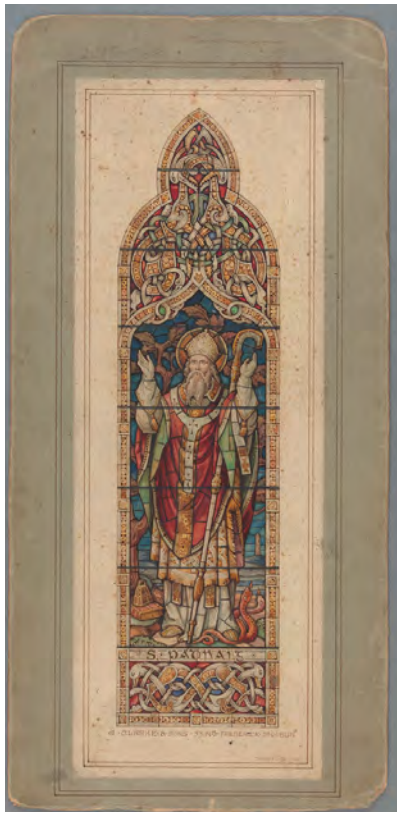
Rights
Katherine O'Donnell; Sinead Pembroke; Claire McGettrick; Irish Qualitative Data Archive. This work is licensed under a Creative Commons Attribution Non Commercial Licence.

Licence
- CC-BY-NC

"This license lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms"

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Example of different copyright statuses. DRI Collection: Harry Clarke Studios Archive, Trinity College Dublin



Work in the Public Domain;
Digital image copyright 2015
the Board of Trinity College Dublin.



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Example of different copyright statuses. DRI Collection: Harry Clarke Studios Archive, Trinity College Dublin



Rights

Copyright 2015 The Board of Trinity College Dublin. Images are available for single-use academic application only. Publication, transmission or display is prohibited without formal written approval of Trinity College Library, Dublin.

Depositing Organisation

- The Library of Trinity College Dublin, the University of Dublin

Restricted data

Data protection law may be relevant to your data if it relates to people who are still alive and who may be identified by your dataset. This is particularly relevant to social science data.

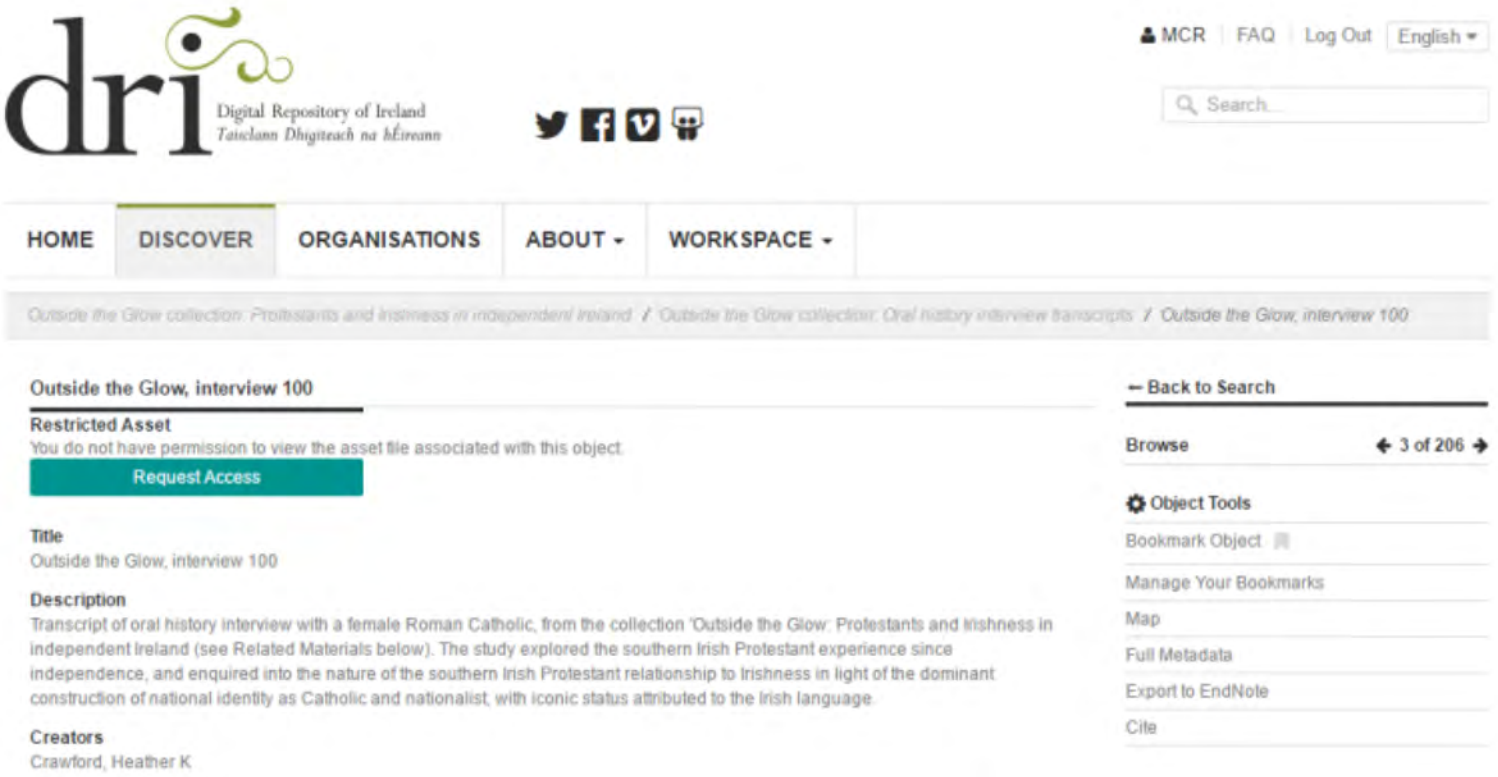
Data Protection Act – 2003 Amendment:
General Data Protection Regulation (GDPR) - 2018

Within the Repository you can set a Restricted level of access to the assets (not metadata). For restricted assets, logged-in users will have to request your permission to access the assets & surrogate thumbnails are not displayed.

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Restricted data

What users see when they clicked on Restricted Assets in DRI:



DRI Copyright Factsheet



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2

Copyright, Licensing and Open Access

fact sheet

DRI Factsheet Series No. 2: Copyright, Licensing and Open Access. Feb. 2014

For more information, please contact:

The Digital Repository of Ireland
Royal Irish Academy
19 Dawson St,
Dublin 2

web. www.dri.ie
email. dri@ria.ie

Copyright is an area of Intellectual Property law which covers original creative works including literary, dramatic, musical and artistic works, film, sound recordings, broadcasts and the typographical arrangement of published editions, computer software and non-original databases, and performances.

Copyright exists from the moment the work is created, and does not require any registration. Generally, copyright covers a work until 70 years after the death of its creator. For digital objects, there may be separate copyrights covering the original work, the new digitised copy, and any associated metadata.

Licensing allows copyright owners to permit approved use and reuse of their work, without waiving their copyrights fully. Licensing can permit both commercial and non-commercial reuse of a work, depending on the terms of the licence, and licences may last in perpetuity or for a specified period, or cover certain geographic locations.

Creative Commons is a charitable organisation which provides a suite of free, standardised licences which allow content creators to share their work. Currently there are 6 licences available, which give varying degrees of re-use permissions (see chart on page 2).

The most open licence is CC-BY (Attribution) which allows any re-use of the work as long as the original creator is credited. The most restrictive licence is CC-BY-NC-ND (Attribution-Non-Commercial-NoDerivs) which requests that the creator of the work is credited, and does not allow any derivatives or commercial re-use of the work.[1]

DRI supports the application of standardised licences such as Creative Commons to digital objects, publications and metadata where possible.

Public Domain Dedication, CC0, or "No Rights Reserved" is similar to Creative Commons licences, but it does not reserve any rights in a copyright work. Assigning a Public Domain Dedication to a work waives all rights

How to DRI: Protect Your Data



How to dri

How to DRI: Protect Your Data

Protect Your Data in the Digital Repository of Ireland

DRI advocates for data ingested into the Repository to be made publicly accessible on the web and widely disseminated. When metadata is published in the Repository, it is automatically licensed as CC-BY, allowing unrestricted reuse with attribution.

For data which has been generated by public bodies or in the course of publicly-funded research, DRI supports the principles of Open Access, which state that such data should be made openly available for use and reuse as long as the creator is properly acknowledged (see DRI position statement on Open Access at http://dri.ie/publications for more details).

Even when data or metadata are published openly online, there are a number of ways to protect your data and intellectual property rights.

Stating your copyright and applying a licence

Copyright is an area of Intellectual Property law which covers original creative works including literary, dramatic, musical and artistic works, film, sound recordings, broadcasts and the typographical arrangement of published editions, computer software and non-original databases, and performances. Copyright is intrinsic and doesn't require registration of a work, and generally lasts until 70 years after the death of a work's creator.

Copyright is not relinquished by publishing a digital object openly online. Without a licence, no one has permission to republish or reuse a copyrighted work, even if they can access and view it. Copyright information must be included with every digital object in the Repository, allowing depositors to state who owns copyright and how they may be contacted.

DRI supports the application of a range of licences to digital objects, including Creative Commons and Open Database Licences (LINK). The application of a licence informs users of how they are permitted to reuse your data.

Downloading/preventing download

Within the repository you can set a Restricted level of access to the assets (not metadata) of the Objects. For Restricted Assets, logged in users will have to request your permission to access the assets, surrogate thumbnails will not be displayed to general users

Data protection and anonymity online

Data protection legislation may be relevant to your data if it relates to people who are still alive and who may be identified by your dataset.

Conclusion

• Ensure that you are aware of your responsibilities and the copyright status of the content you manage.

• Investigate all cases of unclear copyright e.g. potential orphan works.

•Delegate roles within your organisation e.g. Organisational Manager, Collection Manager – and legal responsibilities therein.

• When in doubt, seek legal advice!



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www.dri.ie