COPYRIGHT IN NEWSPAPER ARTICLES

Ronan Deazley and Kerry Patterson

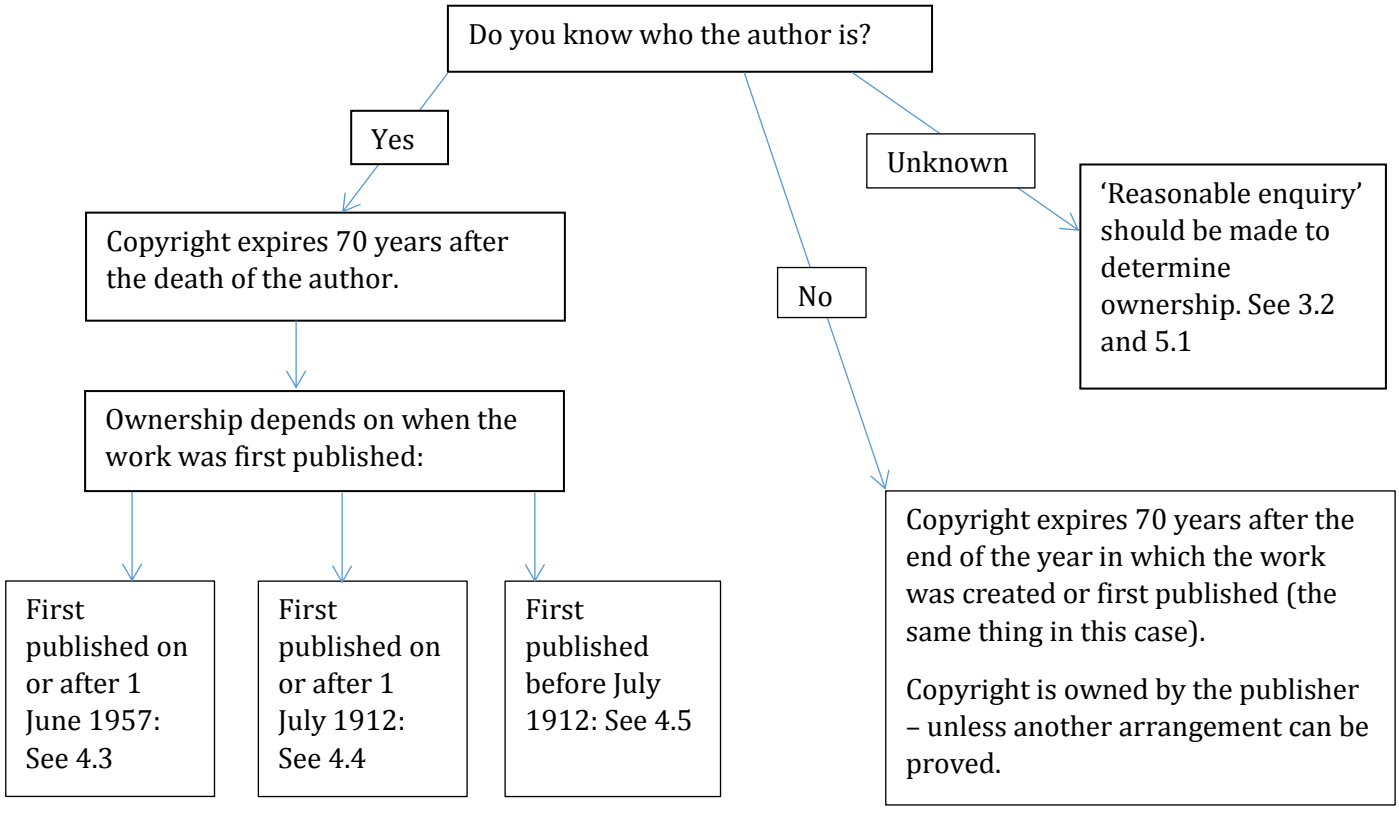
1. Introduction

This Guidance concerns the duration and ownership of copyright in newspaper articles. Determining who owns the copyright in historic material of this nature often requires familiarity with the provisions of several Copyright Acts. In this note, we focus on material created before 1 August 1989, that is, material created before the current copyright regime came into force: the Copyright Designs and Patents Act 1988 (the CDPA). We consider:

- the importance of establishing whether the author of the work is known or unknown and the impact this can have on the duration of protection in the work
- which legislative presumptions about copyright ownership apply to newspaper articles published at any time before 1 August 1989

2. In Practice

Determining the duration and ownership of copyright can be especially challenging, as work in newspapers, magazines and other similar publications was often published without authorial attribution. Whether an author can be identified will impact the duration of the copyright term in relation to that work, and understanding the nature of the relationship between the author and the publisher will be crucial in understanding who first owned the copyright in the work. The chart below will help to direct you to the relevant sections, while section 5.2 is a set of example scenarios exploring the implications of the law.



3. Works of unknown authorship

3.1. Unknown authorship: understanding the public domain

Historically, newspaper articles were often published without authorial attribution or a relevant byline, and whether the author of a work is known or remains unknown may significantly impact the duration of protection a work enjoys under the copyright regime.

The CDPA states that if a work is of unknown authorship then copyright expires 70 years after the end of the year in which the work was created (s.12(3)(a)). However, if the work is made available to the public during that 70 year period, copyright expires 70 years from the end of the calendar year in which the work was first made available (s.12(3)(b)). For newspaper articles and other similar material, the year of creation and year of first publication are likely to be one and the same. What matters though is that, once published, the term of protection expires 70 years from the end of the year of publication.

This means that any work of unknown authorship first published on or before 31 December 1946 can from 1 January 2017 be considered to be in the public domain. That is, the copyright term in the article will expire 70 years from the end of the year in which the work was first published.

Moreover, with every passing year more previously published work will enter the public domain. So, if you are reading this commentary after 2017, then the relevant date to bear in mind (in relation to published works of unknown authorship) is not 31 December 1946, but 31 December 1947. Anything published on or before this date can be regarded as now in the public domain.

3.2. When is a work of unknown authorship?

What steps do you need to take in order to determine whether a work is of unknown authorship?

The CDPA states that a work is of unknown authorship if the identity of the author is unknown or, in the case of joint authorship, if the identity of none of the authors is known (s.9(4)). It continues that 'an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry' (s.9(5)), although the Act does not define what constitutes a 'reasonable inquiry'.

For newspaper and magazine articles published without a named author, a reasonable inquiry must surely involve approaching the relevant (or parent) newspaper to see if they can provide details of authorship. If the newspaper is unable to provide any such details, and in the absence of any other relevant identifying information, one might reasonably consider these works to be of unknown authorship.

3.3. Ownership of copyright in works of unknown authorship

If the work of unknown authorship is still in copyright, the CDPA sets out a number of presumptions concerning copyright ownership that apply regardless of when the work was created. That is, they apply to all works of unknown authorship created both before and after 1 August 1989 (when the CDPA came into force). The relevant presumptions are set out in ss.104-106.

For literary works of unknown authorship s.104(4) states that where there is no author's name but the name of the publisher appears on a copy of the work as first published, then the publisher is *presumed* to have been the owner of the copyright at the time of publication. There is no reason to think that this presumption would not apply to unattributed articles first published in a newspaper, and the newspaper should be presumed to be the first owner of the copyright.

However, these rules about the first ownership of copyright are *presumptive* only. This means they provide you with a starting point in determining ownership in the absence of other relevant evidence. They do not apply if the copyright in the work has been proved to belong to someone other than the newspaper proprietor.

4. Ownership of works of known authorship

4.1. Duration of protection

Under the CDPA, copyright in literary, dramatic, musical and artistic works expires 70 years after the death of the author (s.12(2)). Moreover, when dealing with newspaper articles and other similar material created and first published before 1 August 1989 – when the CDPA came into force – duration of protection is governed by the standard rules set out in the CDPA (life plus 70).

4.2. First ownership of the work created before 1 August 1989

The first ownership of copyright in works created on or after 1 August 1989 is determined in accordance with the provisions set out in s.11 of the CDPA. However, in relation to material created *before* 1 August 1989, the first owner of the copyright in the work is determined by *the law in force at the time when the work was made or completed* (CDPA, Schedule 1, paragraph 11(1)).

Typically, the first ownership of copyright in works created before 1 August 1989 lies with the author although this is not always the case. Given the historical nature of archive material, it is important to be familiar with earlier copyright legislation. These are:

- the *Copyright Act* 1956 (for work created on or after 1 June 1957)
- the *Copyright Act* 1911 (for work created on or after 1 July 1912)
- the *Copyright Act* 1842 (for literary, dramatic and musical works created before 1 July 1912)

As noted above, the rules about the first ownership of copyright in different types of protected work are *presumptive* rules. This means they provide you with a starting point in determining ownership in the absence of evidence of express agreement between the relevant parties. When dealing with the work of a known author produced for publication in a newspaper or magazine, it may be that a contract exists that sheds light on the ownership of the copyright in the work; if so, you should be guided by the terms of the contract. In the absence of a contract, you should be guided by the statutory rules set out in the relevant legislation.

4.3. Works of known authorship first published on or after 1 June 1957

Relevant legislative regime: the Copyright Act 1956.

The 1956 Act sets out special rules about the ownership of copyright in literary, dramatic and artistic works created by a journalist in the course of her employment for the purpose of publication in a newspaper, magazine or periodical. These presumptive rules *do not* apply to work created by freelance journalists.

Where the journalist is an employee of a newspaper or magazine proprietor, the employer is entitled to the copyright in the work but *only* in relation to publication in the newspaper or magazine. In all other respects, the copyright in the work remains with the employed journalist (s.4(2)). For example, this would enable the journalist to have their article reproduced as part of an anthology publication without the need for permission from their employer. Similarly (and of relevance to digitisation initiatives) the right to permit making the work available online would remain with the employed journalist.

Note also that this provision concerns both literary and artistic works, and so would encompass material created for the newspaper by staff writers as well as photographers and illustrators (where relevant).

And, as explained in the previous section, these presumptions apply only in the absence of relevant contract terms between the journalist and their employer.

4.4. Works of known authorship first published on or after 1 July 1912

Relevant legislative regime: the Copyright Act 1911.

Under the 1911 Act, in the absence of any agreement to the contrary, the right to publish the work remains with the author *other than* as part of a newspaper, magazine or periodical (s.5(1)(b)). That is, similar to the 1956 Act, only certain types of rights are retained by the newspaper publisher in relation to articles in question: publication *as part of a newspaper, magazine or periodical*. In all other respects, the copyright in the work is presumed to belong to the employed journalist, unless, that is, the contract of employment states otherwise.

Note also that this provision concerns work that constitutes 'an article or other contribution to a newspaper, magazine, or similar periodical'; as such it would seem to encompass material created for the newspaper by staff writers as well as photographers and illustrators (where relevant).

4.5. Works of known authorship first published before 1 July 1912

Relevant legislative regime: the *Copyright Act* 1842.

The 1842 Act states that 'where the proprietor of a review, magazine or periodical employs a person to write essays, articles or portions thereof, and such work is composed under such employment, *on the terms that the copyright therein shall belong to the proprietor*, the copyright in such work shall be the property of the proprietor as if he were the actual author thereof' (s.18). So, where the terms of a contract of employment state that copyright belongs to the employer, then copyright belongs to the

employer. If the contract is not explicit on this point, copyright is likely to remain with the author.

However, even if copyright in the work belongs to the owner of the newspaper, magazine or periodical, the 1842 Act includes an important proviso as follows: 28 years after first publication, the right of publication shall revert to the author for the remainder of the copyright term (s.18).

So, for journalistic works first published before 1 July 1912, one cannot simply assume that the copyright in works created under contract first belonged to the newspaper; that is, the contract of employment must specify that the copyright belongs to the newspaper. Moreover, even if those rights do belong to the newspaper as an employer, the copyright may well have reverted back to the author after the statutory period of 28 years.

5.1. Clearing Rights

When dealing with unattributed articles from newspapers and magazines, the publisher will be the only meaningful source for information regarding the authorship and ownership of the copyright work. When dealing with publishers in trying to clear rights in material of this nature, it may be helpful to ask:

- Do they know who the author of the article was and/or when the author died?
- Do they know if the author an employee of the newspaper at the time the work was composed and/or published?
- Can they provide any details about the contract of employment and copyright ownership of work created by this author/employee?

That said, our experience of contacting newspaper proprietors was not particularly productive in terms of determining who the author was and whether they were a staff writer or worked on a freelance basis. We approached seven proprietors regarding material from ten printed publications. Five of those were unable to provide either names or any information on their contractual arrangements with the journalists concerned, although permission was granted for reproduction in any case. Reasons given for not providing information were that their records did not extend back that far or that they did not have the staff or resources to check. One respondent (DC Thomson) offered an interesting anecdote that shows the complex nature of this issue:

> "The reporters were employees of the newspaper and as far as we are aware copyright lies with DCT although contracts have not survived. Pay packets I believe had a statement on them, even with freelancers, that all content was copyright DCT although I've never seen an example of this."

Of the two remaining proprietors contacted, one ignored the questions completely and provided only their list of expensive terms in response. The other (The Times) was able to provide the names (and contractual details) of writers not named in the printed newspaper from as early as 1912.

5.2. Examples

Scenario A: an article was first published in a newspaper on 19 March 1900 without any authorial attribution. You have not been able to identify the author, nor has the newspaper been able to provide any relevant information.

Who first owned the copyright in the work? This is effectively a redundant question as the work is likely to be out of copyright. That is, in accordance with the rules on the duration of copyright in works of unknown authorship – when the identity of the author cannot be identified by reasonable inquiry – copyright lasts for 70 years from the end of the calendar year in which the work was first made available to the public (s.12(3)(b)); in this case: until 31 December 1970.

Now consider two similar scenarios:

Scenario B: an article was first published in a newspaper on 19 March 1900 attributed to a named author. As the author died in 1950, you know that the article remains in copyright (until 31 December 2020).

Who first owned the copyright in the work? Without any further information, we must start with the presumptions about ownership set out in the CDPA.

Here, s.104(2) applies: it states that where a name purporting to be that of the author appears on the work as published, that person shall be presumed to be author, and it shall be presumed, until the contrary is proven, that the work was not created in the course of employment. So, we presume that the first ownership of the copyright lay with the author.

In this case, it would be in the newspaper's best interests to provide evidence of some kind to establish that they hold the rights in the published work.

Scenario C: an article was first published in a newspaper on 19 March 1900 without any authorial attribution, although you have been able to work out who the author is from other relevant sources. As the author died in 1950, you also know that the article remains in copyright (until 31 December 2020).

Who first owned the copyright in the work? As above, we must start with the presumptions about ownership set out in the CDPA although they operate differently for Scenario C than they did for Scenario B.

In Scenario C, s.104(4) applies: it states that where there is no author's name but the name of the publisher appears on a copy of the work as first published, the publisher is *presumed* to be the owner of the copyright at the time of publication. So, we presume that the ownership of the copyright at publication lay with the newspaper.

These are just presumptions, and they do not apply in the face of any contrary evidence or proof.

Now imagine that you approach the newspaper to try to establish whether ownership lies with the author, the newspaper or indeed elsewhere. Evidence about the nature of the relationship between the author and the newspaper and, if she was an employee at the relevant time, what the terms and conditions of the contract of employment reveal, will be particularly important. If the author was an employee when the work was published, and the newspaper still has a relevant contract for that employee within its own archive records, then you should be guided by the terms of the contract. What exactly does it say about who owns what rights and for how long?

However, what if the author was an employee but the contract of employment cannot be found or no longer exists?

In our scenario above this may impact any claim the newspaper has to the copyright in the work. That is, s.18 of the 1842 Act may prove decisive as to whether copyright lies with the newspaper or not. Although the copyright may have belonged to the newspaper at the time of first publication (either because the author was an employee, or because the presumption in CDPA s.104(4) applies), s.18 of the 1842 Act provides that 28 years after first publication the right of publication reverts to the author for the rest of the copyright term. So, unless the newspaper can provide evidence – whether in the form of a contract or otherwise – that they also owned the author's reversionary interest, one should presume that the copyright in question did indeed revert to the author 28 years after first publication.

Again, in this case, it would be in the newspaper's best interests to provide evidence of some kind to establish that they hold the rights in the published work.

This is one in a series of notes on aspects of UK Copyright law that may affect digitisation projects. It was created as part of *Digitising the Edwin Morgan Scrapbooks*, through support by the RCUK funded Centre for Copyright and New Business Models in the Creative Economy (CREATe), AHRC Grant Number AH/K000179/1. This note has been edited by K. Patterson and is included in the CREATe Working Paper: *Digitising the Edwin Morgan Scrapbooks: Copyright Guidance Notes (2nd Edition).* The first version of this note is part of R. Deazley, K. Patterson & P. Torremans, *Copyright Guidance Notes (1st Edition)* (2017), available at: www.digitisingmorgan.org/resources

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