



The copyright detectives

Tracking down copyright holders can be a frustrating business, as anthologists, biographers and editors know only too well. David Sutton of Reading University Library describes WATCH, an exciting database project that aims to solve the problem

Let us imagine two scenarios: you have money and a brilliant idea for a movie based on *The Devil Himself: The Mutiny of 1800* by the late Dudley Pope; you have no money but you are a keen amateur anthologist of poems of the sea and you want to include three John Masefield poems in your anthology.

In either case, what would you do next? Perhaps you would go down to your local reference library and ask for the address of the central registry of copyright holders; presumably it will be in London, possibly something to do with Stationers' Hall. Then, to your amazement, the librarian says sorry, there is no such thing as a central registry of copyright holders, you will just have to try to unearth the information about Dudley Pope or John Masefield yourself, and no, there are no starting-points.

Until the recent establishment of a database called WATCH (Writers, Artists and Their Copyright Holders), this was the dead-end position in which anthologists, biographers and other writers and editors were regularly finding themselves. The absence of any register of copyright holders in the UK (and in any other country in Europe) has been lamented by writers and publishers throughout the century and ever since the Berne Convention was signed.

The Berne Convention of 1886 marked a huge step forward in authors' rights. One of its central tenets is that copyright is an inalienable right which belongs automatically to creators of original works. In each country where the Berne Convention was adopted (and its adoption is now universal in the western world) the need to register copyright disappeared. It became recognised that copyright should come into existence automati-

cally, as the pen moved across the page or, more recently, the cursor across the screen.

What is more, the definition of "original works" under copyright law is far more inclusive than anyone might reasonably expect. It covers not only published writings, but also unpublished and unpublisable material, including private correspondence. Among published works that have been deemed sufficiently original in content to warrant copyright protection are football pools coupons; an alphabetical list of British railway stations; lists of Stock Exchange prices; sheets of election results; and copies of advertisements.

Ever since 1886, then, there had been a huge range of copyright material potentially available for publication and republication, but with no reliable way of finding out who might own the copyright. The position had been the same in all the countries of western Europe, and, to a slightly

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lesser extent, in the US. (As a late signatory of the Berne Convention, the US has retained its Copyright Office, although registration is now voluntary.)

The problem has been compounded by progressive increases in the period of duration of copyright over the years and the centuries. In Britain the Copyright Act of 1842 introduced the idea of *post mortem* copyright protection; it established a copyright period of 42 years from the date of first publication or seven years after the author's death, whichever was the longer. The Copyright Act of 1911 extended the period to 50 years after an author's death. The European Union Directive on Term of Copyright (adopted by the UK on 1st January 1996) further extended the standard period to 70 years after death. Thus, in 1999, works by authors who died in 1929 or any year thereafter remain "in copyright".

The duration of copyright in manuscripts and other unpublished papers used to be even longer. Until British law was changed, on 1st August 1989, such papers enjoyed "perpetual copyright". Perpetual copyright has now been abolished, but in order to protect the rights of surviving copyright holders, a transitional 50-year period was established until 31st December 2039. (For authors who are not dead or who died after 1st August 1989, the term of copyright—70 years from the date of death—will be the same for published and unpublished writings. The US law on duration is under review at the moment.)

Literary dam burst

The amount of unpublished British literary material that will come out of copyright for the first time on 1st January 2040 is quite remarkable. Theoretically, it could include unpublished papers of Swift, Pope and even Shakespeare or Chaucer. In practice, I am not aware of any literary estates that survive from before the age of Wordsworth, Coleridge and Byron. But if by some miracle someone did discover a new Shakespeare play, in theory the Shakespeare family could refuse publication rights until January 2040.

So for archivists and keepers of manuscripts the tracing of copyright holders is especially important. The estates of a number of long-dead authors are still a subject of lively debate and even litigation. John Clare (1793–1864) is one of the best known of these "handle with care" cases.

From the 1960s many important libraries—including the British Library, the Bodleian Library and the Huntington Library in California—began to keep their own informal, often hand-written, files of copyright holder information. The Society of Authors was doing the same thing. And at numerous conferences in the 1970s and 1980s, the appeal for something to be done about copyright holders was heard. Only in 1993, however, did action begin to be taken, and in that year, curiously, two projects began to emerge, one based in the US and one in the UK.

In the US the lead was taken by archivists and librarians; in the UK by a very British literary charity called the Strachey Trust, which was, appropriately, financed by the royalties of the author

WATCH record for:

Disher, M. Willson 1893–1969

The UK WATCH Office has not located a current copyright holder for M[aurice] Willson Disher. He was unmarried; his last address was in Campamento, Cádiz, Spain; and there is no will in his name in the London Probate Office. His principal publishers are all now part of Random House, but there is no information in their files beyond the date of his death.

WATCH record for:

Figgis, Darrell 1882–1925

After Darrell Figgis's suicide, it appears that his estate passed to his father Arthur William Figgis. Darrell Figgis's will left everything to his wife Emily, but she had already committed suicide in 1923. The estate then passed via the will of Arthur William Figgis (probate London, 18 January 1934) to Bryan Edward Figgis, via the will of Bryan Edward Figgis (probate London, 1 March 1966) to Ethel Mary Marshall Figgis, and via her will (probate London, 23 June 1966) to Margaret Hope Lallah Parker. It has not yet, however, proved possible to establish the current copyright holder.

WATCH record for:

Lawless, Emily 1845–1913

The UK WATCH Office has not yet discovered a current copyright holder for the Hon. Emily Lawless. By her will (probate Dublin, 3 February 1914) she left all her copyrights and royalties to her brother, the Hon. Frederick Lawless. Her first literary executor was Lord Cloncurry, of Lyons Castle, Hazelhatch, County Kildare, Ireland. The present owners of Emily Lawless's house in Surrey, also called "Hazelhatch", do not have any copyright information.

Lytton Strachey. In 1993 the Strachey Trust funded a feasibility study for a directory of copyright holders, and in January 1994 asked the research team at the University of Reading Library, which was just completing its work on the Location Register of English Literary Manuscripts and Letters, to start work on such a directory. (The Archives in Reading University Library specialise in literary holdings, notably Samuel Beckett, and especially in publishing.)

Meanwhile in December 1993 staff at the Harry Ransom Humanities Research Center in Austin, Texas, started to make all their copyright information freely available through the Internet.

The teams at Reading and Austin already knew each other well from their research work on literary manuscripts, and by March 1994 a decision had been taken to merge the two projects. We did not know it at the time, but we had in fact created the first Anglo-American research project in the humanities collaborating through the Internet. One spring evening in

Austin we realised that the name Writers and Their Copyright Holders would allow us to call ourselves WATCH-makers.

The information from Austin (which had sent out more than 1,000 letters to copyright holders in late 1993) gave the file an excellent start. The Reading team began by gaining permission to access the files at the British Library, the Bodleian Library and several other libraries. Most of the important literary agencies in London also proved very helpful, and the Society of Authors shared its information on non-members (information on members it has to keep confidential, of course, but if all else fails we try to contact them c/o the Society).

Literary private eyes

A file of almost 2,000 writers, available on the World Wide Web, came into being fairly quickly. Then came the really testing task, as we began to try to track Other Authors. We soon came to realise that this work was not much like literary research or librarianship; it was more like being a private detective. We importuned people with distinctive surnames; we read through hundreds of wills in the Probate Office—until the recent phenomenal price increases; we followed up hints as vague as "the Dobell copyright holder sells jazz records somewhere in London" or "the Shewring royalties are paid to a Catholic charity"; we wrote to biographers and others already in the field; and we drew heavily on the help of a few very co-operative publishers.

This is how we located the copyright holder for Hugh Kingsmill (1889–1949). First there was a brain-storming session with his biographer Michael Holroyd, which took us as far as "I'm sure the copyright holder is now a nun". Then we discovered from other biographical sources that Kingsmill's widow had married Sir Tom Hopkinson and died in 1993. Having located Lady Dorothy Hopkinson's will, we found in it a reference to "Sister Edmée at the Convent of the Incarnation". There is no guidebook to convents, but eventually we found this one and received in due course a most charming letter from Sister Edmée, who told us, among other things, that she had used to work on copyright matters for Oxford University Press.

Triumphs and failures

The WATCH file has filled up with similar small triumphs of detective work, and there are now almost 4,000 entries there. To return to where we began, WATCH can quickly tell any searcher that the estate of Dudley Pope is managed by Messrs Campbell Thomson & McLaughlin, and the estate of John Masefield by the Society of Authors.

Of course, trails often run cold and copyright often disappears completely from view. Very few wills refer specifically to copyright or to royalties, and residual estates of the dead are often divided and re-divided. WATCH has started to include entries detailing our failure to locate a current copyright holder, and some of these tell quite a story too [see boxes].

The project got away to a sudden start in 1994, launching as it did so soon after the first discus-

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sions with Austin between December 1993 and January 1994, and it was some time before definite terms of reference were agreed. WATCH now has very clear objectives, and six categories of persons whose copyright holders will be pursued:

- literary authors in the English language
- other English-language authors in the humanities
- British and American artists
- politicians and public figures
- literary authors in other European languages
- English language authors outside the humanities.

Of these six categories, the first is now very well covered, and some start has been made on the others—although the fifth ought really to form a partnership project with European Community funding. In 1997, it was decided to add artists to our terms of reference, and a splendid collaboration with the National Portrait Gallery has since enriched the file greatly.

Our funding is uncertain (although the Strachey Trust, the Arts and Humanities Research Board and the Arts Council have been stalwart in their support); our work is incomplete; and we are increasingly left trying to trace the untraceable. Nonetheless we have created the first real copyright register in Europe since the signing of the Berne Convention, and we know from the letters of thanks that come in and from the number of visitors to our Website that we are providing a valued service.

Keeping a watch

The need for WATCH in the future is ensured by the European Union Directive on Term of Copyright and by the Berne Convention. There is a powerful irony in this since at least one of WATCH's founders and directors (namely me) believes both legal texts to be seriously flawed and even nonsensical.

First, a standard copyright period of 70 years after an author's death is absurdly long and a particular impediment to biographical research. Is it sane, for example, that Bernard Shaw's novels, published in the 1870s and 1880s, should remain copyright protected until 1st January 2021 (he died in 1950)? And second, a system of copyright based on registration, as with patents, would be more sensible and easy to administer for all concerned—writers, publishers, literary agents, scholars and heirs. Sadly, however, there is no possibility of either the Berne Convention or the EU directive being overturned in any foreseeable future.

WATCH is happy to act as a voluntary register for any and all published writers, copyright holders and heirs, and we will endeavour to continue to supply up-to-date information to the reading, writing and publishing communities about those elusive folk, copyright holders. □

The WATCH Website is at <http://www.lib.utexas.edu/Libs/HRC/WATCH>. Copyright information may be sent to Dr David Sutton, director of research projects in the University of Reading Library, at d.c.sutton@reading.ac.uk, or the Library, University of Reading, PO Box 223, Whiteknights, Reading RG6 6AE.