

# TO SEARCH OR NOT TO SEARCH

Digitising Archive Collections

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# LIBRARIES AND ARCHIVES

Libraries aggregate, organise, enable access to, and assist users in navigating the world's accumulated knowledge

In this respect, library collections are primarily concerned with commercially published material

Archives collect unique, reliable, authentic and trustworthy records produced by organisations, families, and individuals during their day-to-day activities or business

And while archival records have considerable political, social, cultural and historic significance, they are rarely created for the purpose of commercial exploitation

# **DIGITISING ARCHIVE COLLECTIONS**

## **Universal Declaration on Archives (2010)**

We undertake to work together in order that:

Archives are made accessible to everyone, while respecting the pertinent laws and rights of individuals, creators, owners and users

Two major barriers to (mass) digitisation of archive collections:

- ❖ Cost of rights clearance
- ❖ Orphan Works (OWs)

# THE REALITY OF CLEARING RIGHTS

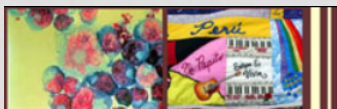
The cost of rights clearance often outstrips both digitisation and the monetary value of the work itself

In most cases, the results of rights clearance processes are unsatisfactory: rightsholders cannot be traced, or they do not respond

The burden tends to be greater for archives than for libraries, because their collections are significantly larger, and typically contain more orphan works

# THE JON COHEN AIDS RESEARCH COLLECTION

## UNIVERSITY OF MICHIGAN



### Jon Cohen AIDS Research Collection

Welcome to the Jon Cohen AIDS Research Collection. Noted Science writer Jon Cohen, has donated to the University of Michigan this collection of AIDS-related material he amassed while writing the book, *Shots in the Dark: The Wayward Search for an AIDS Vaccine*. Largely focused on AIDS vaccine research, the collection spans 20 years and contains conference materials, meeting agendas and minutes, promotional materials, scientific reports and numerous government materials among other forms of documentation not found elsewhere in digital form. With a generous grant from the John D. Evans Foundation and support from the University of Michigan School of Information, the University of Michigan Library and School of Information have organized and digitized the collection, creating this online, publicly accessible resource for research.

This Web site features 7,349 digital objects. Journal articles were not digitized but users can link dynamically to the articles if their library subscribes to the journal. Users should also be aware that due to copyright restrictions, not all items listed in the finding aid will be available online. To see these materials, contact the Special Collections Library ([special.collections@umich.edu](mailto:special.collections@umich.edu)).

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# THE JON COHEN AIDS RESEARCH COLLECTION

## UNIVERSITY OF MICHIGAN


Akmon, “Only with your permission” (2010) *Archival Science* 45

TOTAL ITEMS IN COPYRIGHT	5,463 (of 13,381)
No. of Copyright Owners	1,377
Copyright Owners traced	87%
Replied	79% of those traced
Permission granted	95% of respondents
Permission denied	5% of respondents
Non Response	18% (981 items)
Orphan Works	13% (687 items)

**1,973 items (36%) were not made available online**


# THE THOMAS E. WATSON PAPERS


## SOUTHERN HISTORICAL COLLECTION & CAROLINA DIGITAL LIBRARY AND ARCHIVES



THE THOMAS E. WATSON PAPERS

**Home**

 **Collection Finding Aid**  
Browse All Digitized Materials  
with the Collection Finding Aid

 **Advanced Search**  
Search correspondence,  
photographs, and periodical  
fulltext.

**FEATURED MATERIALS**

**Correspondence**

**Photographs**

**Oral Histories**


**MORE INFORMATION**

**About Thomas E. Watson**

**About the Digital Collection**

**How to Use This Site**

**Acknowledgements**



**THE THOMAS E. WATSON PAPERS**  
*Digital Collection*

### Welcome

This digital collection provides comprehensive access to the papers of Thomas E. Watson (1856-1922), a prominent Southern Populist politician, lawyer, and author. Using this digital collection, researchers may search and browse digitized materials from the correspondence and pictures series, or browse digitized materials from all of the series in the collection using the finding aid.

*The Thomas E. Watson Papers Digital Collection* is the result of a collaborative effort by the Southern Historical Collection, which houses the manuscript collection, and the Carolina Digital Library and Archives, and is made possible by a grant from the Watson-Brown Foundation.

*The photograph above depicts a crowd gathered at the side entrance of Thomas E. Watson's home, Hickory Hill, in Thomson, Georgia, at his funeral. View the full image in the collection.*

# THE THOMAS E. WATSON PAPERS

## SOUTHERN HISTORICAL COLLECTION & CAROLINA DIGITAL LIBRARY AND ARCHIVES

Dickson, "Due Diligence, Futile Effort" (2010) *The American Archivist* 626

TOTAL ITEMS	7,253 in correspondence series
Correspondent List	3,304
Confirmed/Possible Identifications	3,280
Died before 1939	608 (19%)
Died after 1939	1,101 (33%)
Uncertain	1,571 (48%)
Reliable contact details	4 correspondents
Permission granted	3 (75%)
Non Response	1 (25%)



# THE REALITY OF CLEARING RIGHTS

## THE THOMAS E. WATSON PAPERS

### **Dickson, “Due Diligence, Futile Effort” (2010)**

After investing approx. \$8000 in rights clearance activity (or \$1,050 per linear foot of correspondence) they were able to make 21% of the material available online, and largely because that material was out of copyright

Only 4 letters that were known to be in copyright were made available online (permission granted)

[Total return on investment: \$2,000 per item]

# ORPHAN WORKS

A work is an orphan work if the copyright owner(s) cannot be identified or located by someone seeking permission to make use of the work (e.g., copy and communicate online)

Works become 'orphaned' for a number of reasons:

Copyright arises at the point of creation and is not contingent on any formalities, such as registration

The length of the copyright term: tracking a chain of title over a long period of time can be incredibly complicated

# ORPHAN WORKS SCHEMES

	EU	UK
TYPE OF SCHEME:	Exception	Licensing (non-exclusive)
WHO BENEFITS:	Cultural Institutions	Everyone
WHAT MATERIAL:	Books, newspapers, and so on (inc. embedded artistic works), films, audiovisual works and sound recordings	Everything
TYPE OF USE:	Digitise and Display (non-commercial)	Anything (commercial/non-commercial)
CONDITIONS:	Diligent Search	Diligent Search Licence Fee (upfront)

# DILIGENT SEARCH

We have two wonderful new schemes for Orphan Works, one from the European Union and one from the UK government. Frankly, neither of them will be a great deal of use to archivists ...

Tim Padfield

*Former Copyright and Information Policy Officer, TNA*

This idea of diligent search for orphan works for archives just isn't going to work; it's way, way too expensive ...

Peter Hirtle

*Senior Policy Advisor, Cornell University Library  
Research Fellow, Berkman Center for Internet & Society, Harvard*

# A SKEWED [DIGITAL] PUBLIC RECORD

**Dryden, “Copyright issues in the selection of archival material for internet access” (2008) *Archival Science* 123**

Two-thirds of institutions did not select items involving third-party copyrights for inclusion in digitisation projects

Institutions tend to develop digitisation strategies based on ease of copyright compliance:

- ❖ depositor copyright material, or
- ❖ material in the public domain

# ARCHIVE COLLECTIONS AND THE PUBLIC DOMAIN

CDPA 1988, Sch 1(12) (*Saving and Transitional Provisions*)

For authors of literary, dramatic and musical works who died before 1969, and whose work remained unpublished on 1 August 1989 (when the CDPA came into force) the work remains in copyright until **31 December 2039**, regardless of when the work was created

# STRATEGY 1: EMBRACE RISK\*

\* TAKE SENSIBLE RISKS

# DIGITISATION AND RISK

Copyright clearance is about managing risk, always ...

Christy Henshaw

*Digitisation Programme Manager, Wellcome Library*

[D]ecisions about copyright clearance, when to do it, how to do it and how much to do, are always considerations based in the end on a vision of risk, and of risk tolerance in a particular institution ...


Peter Jazsi

*Washington College of Law*



# THE NATIONAL ARCHIVES

## THE OLYMPIC RECORD

 The National Archives

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### Timeline

### THE OLYMPIC RECORD

### 2012 activities

1896

Athens

Greece

The first modern Summer Games were held in Athens, the home of the ancient Olympics. Fourteen nations took part, with Greece winning the marathon race in their home country.

The National Archives' collections on the modern Olympics begin here, with dispatches from the Minister in Athens.

We also hold images of sporting events and advertising posters from this time.


7 records available

Dispatches from British minister in Athens.  
FO 286/434/1




Preview

Cycle race Iliffe & Son Coventry, 1893.  
COPY 1/108 (220)




Preview

Athletics meeting, 1892.  
COPY 1/410




Preview

The famous ancient stadium, Athens, where the Olympian Games were held in 1896.  
COPY 1/433/525



Preview

Frank Shortland, Cuca Cocoa cycling challenge cup champion.  
COPY 1/410 (34)



Preview

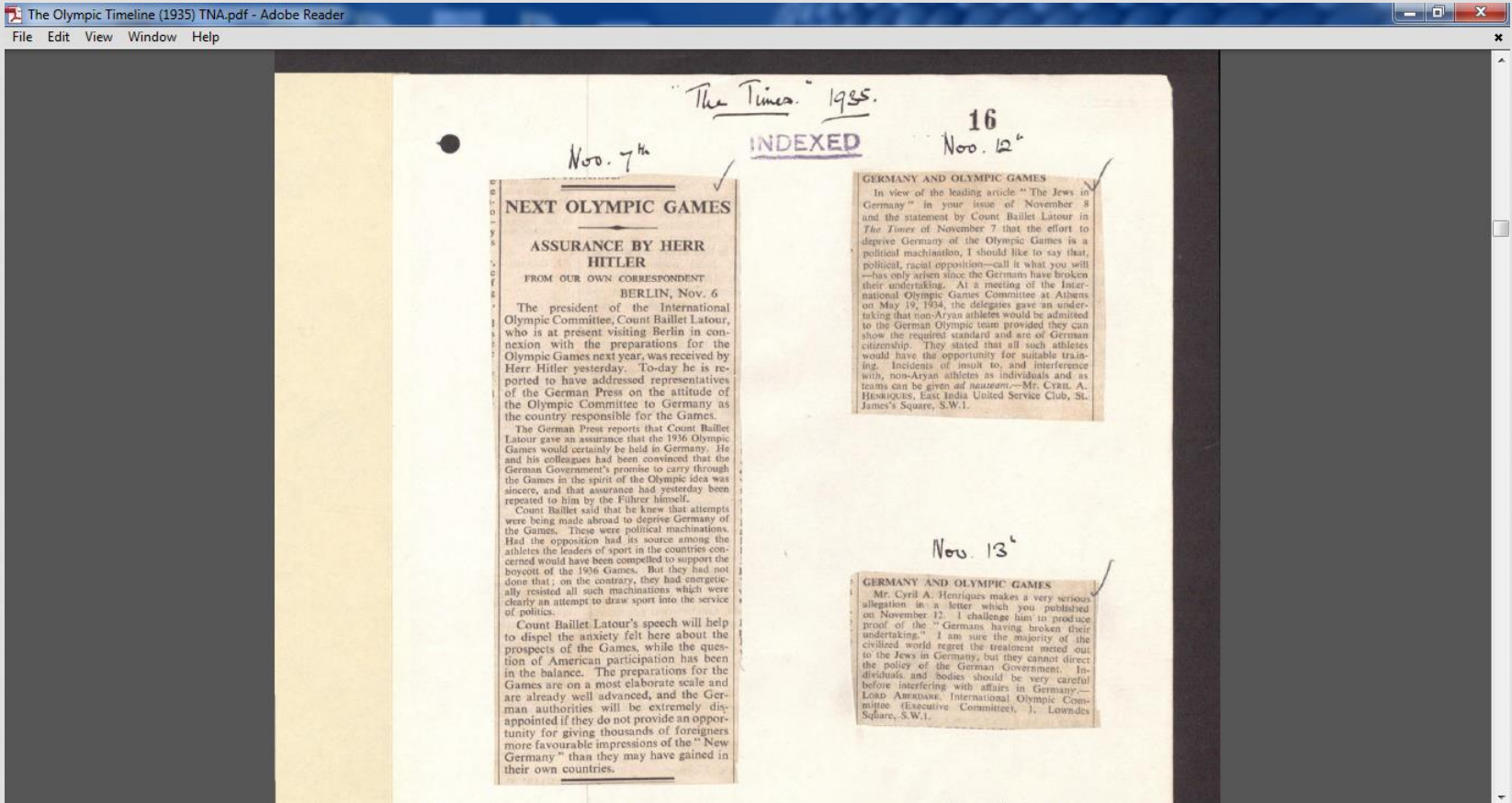
Runner James Kibble, 1891.  
COPY 404 (pt1)



Preview

# THE NATIONAL ARCHIVES

## THE OLYMPIC RECORD



Olympic Games: Effects of persecution of Jews and possible boycott (1935)  
Catalogue Reference: FO/371/18863/7600

# COPYRIGHT AND RISK

## CODEBREAKERS: MAKERS OF MODERN GENETICS

The library at Wellcome Collection

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# Using the Library

## Codebreakers: Makers of Modern Genetics

**JOINING THE LIBRARY**

VISITING THE LIBRARY

SERVICES AND FACILITIES

HOW TO USE THE LIBRARY

SUBJECT GUIDES

- Codebreakers: Makers of Modern Genetics**
  - Digitised archives
  - Genetics in context
  - History of genetics timeline
  - Browse by subject

RESEARCH NEWSLETTER

An online research resource for the history of genetics, including digitised books and archives from the Wellcome Library and partner institutions.

### Explore the digitised archives

The papers of some of the leading figures in the genetics revolution of the 20th century have been digitised for this online research resource.

[More on the digitised archives](#)

#### HISTORY OF GENETICS TIMELINE

KEY EVENTS IN THE HISTORY OF GENETICS  
FROM DARWIN TO MODERN DAY

#### BROWSE BY SUBJECT

RESEARCH THE SCIENCE, HISTORY AND SOCIAL ASPECTS OF GENETICS  
BROWSE MORE THAN 650 DIGITISED BOOKS

# COPYRIGHT AND RISK

## SCOPING THE WELLCOME DIGITAL LIBRARY

Mass digitisation pilot project concerning the history of genetics in the 20<sup>th</sup> century (Crick, Watson, et al) incorporating **both library and archive material**

Wellcome Digital Library launched in 2012 with over 2M+ images available online

With thousands of potential rights holders, the Wellcome Library decided to adopt a risk-based approach to copyright compliance

# RISK CRITERIA

## CODEBREAKERS

HIGH RISK		MEDIUM RISK
Author is a well-known literary figure, broadcaster, artist		Author has (or had) a high public profile
The author/estate/publisher is known to actively defend their copyright		Author is alive and known to have a literary estate as recorded in the WATCH file
The relationship between the institution and the author/estate/publisher is awkward		The material appears to have been published or broadcast and/or prepared for commercial gain rather than to advance academic knowledge or in a not-for-profit context



# RISK-MANAGED RIGHTS CLEARANCE

## CODEBREAKERS: THE RESULTS

NAMES IN COPYRIGHT DATABASE	160	
Reliable contact details	134	84% of all rightsholders
Total replies	103	77% of those contacted
Permission granted	101	98% of respondents
Permission refused	2	2% of respondents
Did not respond	26	19% of those contacted
Low risk: put online after suitable delay	23	89% of non-respondents
High risk: do not put online	3	11% of non-respondents

# CODEBREAKERS

## SOME LESSONS LEARNED?

### RESPONDENTS TEND TO GRANT PERMISSION

*Codebreakers:* 98% of respondents

*Jon Cohen Project:* 95% of respondents

### AND THEY DO SO WITHOUT SEEKING A FEE

*Codebreakers:* 1 respondent requested a charitable donation be made (and this related to library not archival material); no-one asked for a fee in relation to the digitisation of archive material

*Jon Cohen Project:* 1 respondent asked for a copyright fee; the library refused, and the owner subsequently granted permission

# DIGITISATION AND RISK

Users are demanding, they're unforgiving, and more and more they are very unimpressed if archivists cannot produce or provide material online

Lesley Richmond

*University Archivist, University of Glasgow*

[A]rchivists' masters expect people to be making material available, and the public expects it, which means that the politicians expect it

[A]rchivists are going to have to accept risk if they want to do the things that ... the politicians want them to do

Tim Padfield



## AND YET ...

The biggest problem we have is our professional standards which say that archivists respect copyright law ...

And [our professional standards] don't say: archivists respect copyright law unless they think they are unlikely to be sued and then they'll do whatever they want

Peter Hirtle

# STRATEGY 2: ENABLE RESEARCH

## **Information Society Directive 2001, A.5(3)**

Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

- (a) use for the sole purpose of ... scientific research ... to the extent justified by the non-commercial purpose to be achieved
- (n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of [relevant institutions]

# FAIR DEALING FOR NON-COMMERCIAL RESEARCH

Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement (proposed s.29(1)(a))

Copying by a person other than the researcher or student himself is not fair dealing if: ... (b) the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose (s.29(3)(b))

# FAIR DEALING FOR NON-COMMERCIAL RESEARCH

It seems that [section 29(3)(b)] was intended to ensure that the research and private study exception could not be used to justify classroom copying, but its effect is to prevent entirely any reliance on the research exception to justify the inclusion of a substantial part of an earlier work in a published research paper

R. Burrell and A. Coleman  
*Copyright Exceptions: The Digital Impact* (2005), pp.117-18

# RESEARCH REDEFINED

[T]here is an increasing tendency across Government and other bodies, both in the UK and elsewhere, to regard information generated by researchers as a public good; and to promote the reduction, if not the complete removal, of barriers to access ...

Also associated with such ideas is a recognition that communication and dissemination are integral parts of the research process itself

*The Finch Report (2012), p.53*

# RESEARCH REDEFINED

The Research Councils take very seriously their responsibilities in making outputs from this research publicly available – not just to other researchers, but also to potential users in business, charitable and public sectors, and to the general public

Research Councils UK  
[www.rcuk.ac.uk/research/Pages/outputs.aspx](http://www.rcuk.ac.uk/research/Pages/outputs.aspx)

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# ARCHIVES AND COPYRIGHT

## DEVELOPING AN AGENDA FOR REFORM

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AssociationArchives & Records  
Association  
UK & Ireland

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### Welcome to Archives and Copyright: Developing an Agenda for Reform

This resource has been produced as an orientation point in critically assessing how copyright shapes the work of archives as it relates to preservation and access. It recognises that the copyright regime enables and facilitates the work of archivists, but that it can also inhibit and frustrate that work. As such, it considers what role a risk-based approach to copyright compliance might play in making it easier for archivists to preserve their collections appropriately, and in making those collections as accessible and as useful as possible.

The resource contains transcripts and short videos of the discussions at 'Archives and Copyright', an RCUK-funded Symposium hosted by the Wellcome Trust on 27 September 2013.

The symposium was generously funded by the Wellcome Trust; and the production of this resource by the Archives and Records Association UK & Ireland, and the British & Irish Law Education and Technology Association.

This is a beta version, and we will continue to add further materials to the site.

Comments are welcome to: [contact@create.ac.uk](mailto:contact@create.ac.uk)

[www.create.ac.uk/archivesandcopyright/](http://www.create.ac.uk/archivesandcopyright/)



## **s.40B: MAKING WORKS AVAILABLE THROUGH DEDICATED TERMINALS**

Copyright is not infringed where a [lawfully acquired] work is made available [by the institution] to: (i) individual members of the public; (ii) for the purpose of non-commercial research or private study; (iii) through dedicated terminals on the institution's premises; and (iv) [subject to contract] [s43A: July 2013]

Copyright in a work is not infringed by an institution ... communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the work: (i) has been lawfully acquired; (ii) is communicated or made available to individual members of the public for the purposes of research or private study; and (iii) [subject to contract] [s.40A: March 2014]