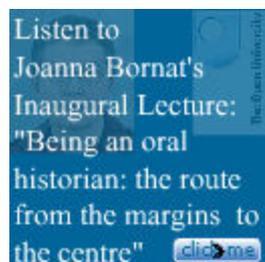


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Is your oral history legal and ethical?

Alan Ward

Preface

This guide is for people who record oral history interviews, and organisations and individuals who keep collections of oral history recordings in the United Kingdom. The Oral History Society promotes the use of oral history techniques to record the memories of those whose life stories would otherwise be lost to future generations, and encourages researchers and teachers to make use of oral history in their work. It is essential that informants should have confidence and trust in interviewers, and that recordings should be available for research and other use within a legal and ethical framework which protects the interests of informants. The following information and guidelines are aimed at ensuring that these objectives are achieved.

Disclaimer

While every effort has been made to ensure the accuracy and currency of the information brought together here from a wide variety of sources and experience, neither the author nor the Oral History Society can accept liability for any consequences which may result from the use of this information for any purpose.

Copyright statement

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"Informed consent"

Interviewing people serves very little purpose unless the interviews become available for use. It is unethical, and in many cases illegal, to use interviews without the *informed consent* of the interviewee, in which the nature of the use or uses is clear and explicit.

Many of the legal constraints referred to below can be very simply avoided if informed consent is obtained; and most of the Ethical Guidelines at the end of this document are concerned with the necessity and process of obtaining consent.

Consent is best negotiated by means of a clearance form (example below), which should be completed and signed at the time of the interview. Retrospective clearance is usually very time-consuming and often impossible if informants or interviewers have died or moved away. Where informed consent has not been given, interviews cannot be used for many purposes and the value of keeping them is much reduced.

Copyright

1. Introduction

There is nothing in UK Copyright law to prevent individuals or organisations from

- playing sound recordings of any kind or age to individuals

and nothing to prevent individuals from

- listening to sound recordings or watching videos
- taking notes based on the contents of recordings
- transcribing the contents of unpublished speech recordings or transcriptions of them word for word

Copyright law is only concerned with copying, and equivalent or related activities such as publishing, performing, broadcasting or transmitting electronically e.g. via the Internet.

The rights established by copyright law enable copyright owners to license the copying, distribution and performance of their "intellectual property" (including written or recorded words, musical compositions, sound and video recordings etc.) in return for payment. This is one of the main sources of income supporting authors, composers, publishers and record companies, not to mention the thousands of lawyers and executives who run the large international organisations which negotiate and distribute copyright payments.

Copyright owners are entitled to

- sue those who make unauthorised use of their words, recordings etc.
- seize "infringing copies" of their copyright works

- sue those who misuse their testimony in publications (under the "moral rights" enjoyed by authors) and those who sell or distribute infringing copies are liable to prosecution.

However, individual interviewers and interviewees involved in oral history work cannot normally expect payment if their words or recordings are copied or distributed, and they cannot normally afford to sue those who infringe their rights. Partly for this reason, most are willing to transfer recordings and assign their rights to custodians such as sound archives, museums, or local history collections in libraries, which can

- prevent the abuse and unauthorised copying of interview material
- provide suitable facilities for proper use.

The Society strongly supports this and can give advice about suitable local places of deposit (some of which are members of the Society's Regional Network). In this context therefore, copyright law provides a rather cumbersome framework for the transfer of rights to trustworthy custodians. In return, the custodians obtain permission to make responsible use of interviews, for example by making them available for research or for educational use.

Copyright in the UK is still based on the provisions of the Copyright, Designs and Patents Act (1988). Although it covered many kinds of intellectual property, the text of this act was relatively easy to follow and implement. However since it came into force it has been amended by the

- Broadcasting Acts 1990 and 1996
- Copyright etc. and Trade Marks Act 2002
- Copyright (Visually Impaired Persons) Act 2002
- several statutory instruments required to implement European Commission directives.

Although these measures have had little effect on the law as it applies to oral history, they have served to obscure what was already a complicated subject, and it is not surprising that many people find it forbidding. So an attempt has been made below to summarise in straightforward terms those parts of the current law which relate to oral history in the UK. In doing this some details and exceptions have been omitted. There are several good articles and websites which are worth consulting in addition - these are listed at the end.

2. Ownership of copyright

When an interview is recorded, separate copyrights in

1. the words spoken
2. the recording

are created.

Initially the owner of the copyright in the words is the speaker, while the copyright in the recording belongs to the person(s) or organisation(s) which arranged for the recording to be made. Recordists working as individuals own the copyright in their recordings, but where the recordist is employed by someone else, the employer owns the copyright.

Copyright in written transcripts of interviews, made either verbatim or subsequently from recordings, is best regarded as belonging to the owner of the copyright in the words transcribed.

Copyright is a form of property and its ownership and operation are subject to contract. In the UK most features of copyright can be altered or set aside if the copyright owner agrees. In particular, the copyright in an interview can be assigned or bequeathed by the owner to another person or organisation; or the owner can agree that the interview can be used for various purposes without permission, or impose restrictions on access and use; or if an interview is jointly owned by two or more people or organisations, they can make an agreement which clarifies their respective roles and obligations.

There is no requirement under British law for copyright to be registered in some way, or for copyright material to be marked as such. Some countries require copyright material to be marked with the © symbol followed by the owner's name, and copyright owners are advised to do this in conjunction with material placed on the Internet.

It is necessary for copyright material to include a statement giving permission for copying and dissemination before copies can be made without the specific permission of the copyright owner(s) or licence holder(s). For instance if permission is not included with material on the Internet, it cannot be assumed that it is legal to copy more than an insubstantial extract from it.

3. Duration of copyright

(a) Recorded speech

Copyright in speech recorded since 1 August 1989, remains in force for 70 years after the end of the year in which the speaker died or dies.

If recorded before 1 August 1989, copyright remains in force for 50 years from the end of 1989, if this is longer than 70 years after the death of the speaker. (Or, put another way, if the speaker died before 1 January 1969, copyright expires on 31 December 2039. If not, copyright expires 70 years after the death of the speaker.)

(b) Sound and video recordings

Copyright in sound recordings expires 50 years after the end of the year in which the recordings were made, unless the recordings are published

(including web publication) or broadcast, in which case copyright expires fifty years from the end of the year of publication or first broadcast. Thus if a recording was made in 1993, copyright in it will expire on 31 December 2043, unless it is, say, published in 2010, in which case copyright will expire on 31 December 2060.

Copyright in unpublished sound recordings made during the currency of the 1956 Copyright Act (1957-89) expires at the end of 2039 (50 years after 1988 Act came into force). If such recordings are published within this period, copyright expires at the end of 50 years following the date of publication.

Copyright in films and videos was revised in 1995 to suit the requirements of the film and TV industries, and is owned jointly by the "principal director", the author of the screenplay, the author of the dialogue and the composer of any music specially created. Copyright expires 70 years from the end of the year in which the last of these dies. If the identity of the above persons is unknown, copyright expires 70 years from the end of the year in which the film was made, or if the film is "made available to the public" within that period, 70 years from then. In many cases the four potential copyright owners will be employees or contractors and as usual their employers will own any copyright in their output. If the film or video did not have a director, author, etc. then the pre-1995 provision still applies: copyright expires 50 years after the end of the year in which the film was made (ie the same as sound recordings). Film or video sound tracks are regarded as integral and copyright in them is the same as for films and videos.

4. The scope of copyright

Recorded speech and recordings which are "in copyright" may NOT be

- copied,
- "issued to the public", e.g. in a publication, exhibition or website
- performed or played in public,
- adapted
- broadcast without the copyright owner's permission.

Where the recorded content of oral history interviews is "in copyright", some "non commercial" activities are still permitted

- copying for private study, research, criticism or review
- use of short extracts as illustrative matter in publications
- copying by libraries and archives for preservation purposes
- copying for instructional purposes by educational establishments, subject to various limitations

There are NO "fair dealing" provisions which apply to the separate copyright in a recording. So the recording copyright owner's permission is required if any copying of any sort is envisaged. Strictly speaking, "conservation copying" of recordings, without which they might not survive, requires the permission of the copyright owner, but in practice, custodians of collections regularly make copies for this purpose. Since no one's interests are at stake, the risk of legal action is slight.

5. Moral rights

A new provision of the 1988 Copyright Act gave oral history interviewees the right to be named as the "authors" of their recorded words if they are published or broadcast; and publishers and broadcasters are obliged not to subject their words to "derogatory treatment" by, for example, editing, adapting or making alterations which create a false impression. These rights are retained by interviewees whoever owns the copyright. The right to be named needs to be "asserted" (ie stated formally, preferably in writing) by the interviewee in order to have legal force. However, except in cases where interviewees have asked not to be identified, it is recommended that interviewers and custodians should ensure that informants are credited whenever their words are made public.

6. The Internet

Copyright law relating to the transmission of recordings or transcripts on the Internet is developing. The safest course is to regard the Internet as a new method of publication and dissemination, to which existing copyright law applies in all respects. It is therefore an infringement to "make available to the public" transcribed interview material on the Internet, except in the form of insubstantial illustrative extracts, without the copyright owner's permission. The sound or video recording copyright owner's permission is required for the transmission of any recording, long or short, on the Internet.

7. Practical steps

Oral history interviewers, and bodies such as local history societies or museums which organise interviewing projects, should ask their interviewees to assign copyright to them by completing and signing a clearance form (example below). The purpose of the assignment is

- to enable routine consultation of interviews to take place as agreed with interviewees (subject to any restrictions they may wish to impose)
- to enable parts of recorded interviews or extracts from transcriptions to be used in publications, broadcasts, exhibitions or on the internet.

Where possible recordists or custodians should inform or consult interviewees when their words may be published or broadcast (see Ethical Guidelines below). But as time goes on it may become difficult to contact interviewees or their friends, relatives or heirs, and without the signed clearance form, publication or other beneficial uses may be prevented.

Custodians should also obtain written assignments of any copyrights held by individual recordists. Where recordists have not obtained an assignment of copyright from their informants, the future usefulness and value of the recordings may not justify the time and effort needed to conserve and document them. Most custodians will not have the resources to make retrospective contact with informants, who may by this stage be scattered far and wide, if they are still living.

With few exceptions, UK copyright law provides no mechanism through which copyright interviews or recordings may be used without permission, for instance in cases where the copyright owners cannot be traced.

Although form-filling may be irksome, it ensures that

- informants are made aware of the purpose of the interview and its future use
- interviews are not subject to exploitative or other undesirable uses

Custodians who also organised and financed the recording of interviews will already own the recording copyright in them, so only the interviewees' rights need to be cleared.

Clearance forms currently in use follow a standard pattern such as in the one illustrated. The only variation tends to be in the range of options (if any) offered to interviewees.

Some interviewees will only agree to be interviewed, or to transfer copyright, if they can

- impose a closed period on the recordings and/or
- limit their use (e.g. no permission to use on the Internet), and/or
- be sure of being consulted about certain uses

Such options can be included on the form with boxes to tick, or can be added in writing, but complicated or long-term restrictions should be avoided.

Although access restrictions often serve little purpose except to make extra work, they may be appropriate or even essential when interviews contain personal, confidential or defamatory references (see below). Custodians may decide to impose access restrictions even if not required to do so by the interviewee.

The duration and ownership of copyright in interviews recorded on video is now complex (see under 3 b). To enable normal research use and possible inclusion in exhibitions, publications or on the web, the best course for custodians is to ensure that rights owned by the interviewees and by the video makers are transferred to them. In the case of commercially produced or published videos, copyright owners (typically TV channels or production companies) are unlikely to wish to transfer all rights to custodians, but an agreement should be signed to clarify the range of uses which can be permitted.

8. Frequently asked questions

Q. Can copyright be owned jointly?

A. Yes

Q. In recordings of group sessions (e.g. reminiscence groups) do all the speakers have the same copyright and does each one have to sign a copyright form?

A. Each participant owns the copyright in anything substantial he or she said which was recorded. They can each sign a form, or they can all sign one form provided they all agree to the wording.

Q. Can copyright be assigned orally (e.g. via a statement on the recording) or does it have to be written?

A. A written, signed statement is better, partly because it is easier to make the terms of any agreement explicit and unambiguous in writing. However a recorded verbal statement may be sufficient legally in cases where written clearance cannot be obtained, and is certainly much better than nothing.

Q. Is copyright legislation retrospective? What is the position with recordings made before the 1988 Act when they are being offered for deposit? Do custodians need to attempt to contact speakers to clear copyright?

A. Provision was made in the 1988 Act (and later amendments) for the continuation of copyrights which were in existence before the Act came into force on 1 August 1989, as summarised in section 3 above. The 1988 Act was the first to indicate that copyright does not exist in a literary work "until it is recorded, in writing or otherwise". Prior to this there was no certainty that speech preserved on sound recordings was protected by copyright, although copyright clearly existed in written transcriptions. In view of this it is recommended that

- access to pre-1989 recordings for research should be unrestricted unless some agreement to the contrary is in existence
- in the absence of an existing agreement, permission should be sought from pre-1989 interviewees or their relatives if a substantial extract from an interview is to be published or disseminated
- where pre-1989 interviewees have since died, or attempts to contact them or their relatives fail, their recorded speech could be used without permission in publications etc if, after careful consideration, no one's interests are likely to be damaged.
- Permission must be obtained to publish substantial extracts from written transcriptions of pre-1989 speech.

The 1988 Act DOES unequivocally cover recorded speech and DOES NOT permit publication without copyright clearance, even if the copyright owner is untraceable.

Q. Even where a speaker has assigned copyright and agreed public use, can he/she still subsequently object to the publication and/or public display of their words in any circumstances?

A. Yes, there are various remaining grounds for objection. For example an interviewee can object and could take legal action if his/her moral rights under the Copyright Act are infringed (see section 5 above) or if confidential or libellous statements (see sections below) are made public. If a living interviewee has any significant objection to the "public" use of his/her words, even if there is no potential legal infringement, custodians are best advised to find an alternative.

Q. What happens in cases when an interviewee repeatedly fails to sign a clearance form? Where an institution has paid for the recording to be made what kinds of access are possible?

A. This situation would be avoided if interviewers always obtained clearance at the time of the interview, as is recommended. At the very least the interviewer or custodian should have established beyond doubt whether the interview may be used for the "fair dealing" research purposes provided for by the Copyright Act (see section 4 above) and that the interview does not contain confidential or libellous material. If clearance for other uses, such as publication or inclusion on a website, is not available for whatever reason, such other uses are not permissible.

Q. Can third parties mentioned in recordings (e.g. the son or daughter of an interviewee) object to the recording mentioning them being made public even when the interviewee has agreed to open access?

A. Legal objections can be raised by third parties under the Data Protection Act, and if interviews contain libellous or confidential information relating to them. Even in the absence of legal grounds, custodians wishing to follow best practice should give careful and sympathetic consideration to such objections.

Q. Where an institution carrying out an interview programme has received an external grant to fund the work, does the external funder have any automatic copyright claim over the recorded data?

A. In a typical case both the institution and the funding body will have contributed significant resources to the interview programme, resulting in joint copyright ownership. It is essential that both parties agree the terms of their joint ownership, preferably before the programme starts. Alternatively the copyright can be assigned to one of the parties, or to a third party. Otherwise (for example) it may be impossible for one party to make reasonable use of the interviews because of objections from the other party. The funding body could only claim an automatic right to exclusive ownership of the copyright if it provided all the resources and made all the arrangements.

Q. For a video recording, what rights do other participants, such as camera-operators, lighting and sound staff, have in the recording? And how should these rights be negotiated?

A. Where recordings are undertaken on this scale, the recording crew are likely to be employees. Their employer will acquire the rights in the recording produced and no negotiation is needed.

Q. How does Crown Copyright differ from ordinary copyright and which oral history recordings are affected?

A. Copyrightable material produced by people working directly for the government is covered by crown copyright, which differs in duration from the copyright to which others are entitled. For more details see the National Archives website listed at the end, and <http://www.hmso.gov.uk/g-note3.htm>

In practice, the content of few oral history interviews is subject to crown copyright because

- Since 1989, this form of copyright only covers works produced by government employees. Works produced by others as government contractors, or (for instance) as employees of projects funded by government agencies DO NOT enjoy crown copyright.
- Most employees of national museums, galleries and libraries are technically not employed by the government but by the boards and trustees of these institutions, so any interviews they carry out are not covered by crown copyright. Collections owned by such institutions are not subject to crown copyright.
- The content of sound recordings which are part of the archives of government held by the National Archives or its designated repositories ARE subject to crown copyright, but there are few if any oral history interviews among them.
- Crown copyright was held to apply to a wider range of recordings prior to 1989. In some areas of Britain, local offices of the Manpower Services Commission attempted to claim crown copyright in oral history interviews carried out with MSC funding. But in other areas it was agreed or "arranged" that copyright should be owned locally. Since surviving interviews from MSC-funded projects is now typically owned and housed by local bodies, and the MSC is long since defunct, the existence of crown copyright in this material can generally be discounted.
- Copyright in recordings owned by central government does not appear to differ in duration or scope from other recording copyright.

[Example of clearance and copyright form](#)

(you will need Acrobat Reader to view this document)

Confidentiality and disclosure

Information is "confidential" if there is a restriction on its disclosure, normally placed by the person or organisation which provides it. Restrictions can be formal (e.g. a contract of employment may forbid the disclosure of business information to unauthorised persons), or merely implicit in the nature of the information (see below). In practice, if an oral history interviewee states that information is confidential, then it must be treated as such by interviewers and custodians. The UK law governing confidentiality and the disclosure of confidential information is based on case law rather than statute. A person or organisation who obtains confidential information has a duty not to disclose any of it unless authorised by the informant. Informants can sue interviewers for unauthorised disclosure and obtain restraining orders and damages.

A "duty of confidentiality" can arise without the supplier of information explicitly stating that it is to be treated as confidential. If the information is of a confidential nature or is supplied under circumstances which indicate that the supplier wishes it to be treated as such, then a duty will arise. If any form of agreement is made to keep information confidential, breaking it will amount to breach of contract which is actionable.

Much of the content of oral history interviews could be defined as confidential. To avoid possible legal action:

- clearance forms should state the uses to which interviews will be put, and no other use made of them without the consent of the interviewee or successors. Ownership of the physical recordings, transcripts or copyright is immaterial.
- interviewees should not pass on confidential information without permission. This could include information about current employment and work content, or information covered by the Official Secrets Act
- interviews and transcripts should be kept in secure conditions, not on open shelves, lying on desks etc.

It is difficult and often impossible to anonymise interviews and transcripts effectively. Custodians should avoid agreeing to anonymise interviews unless the content is of great value or significance, and there is no alternative. Agreements to mask the identity of interviewees *must* have a time limit.

A person or organisation in possession of information relating to criminal activities is legally obliged to disclose it to the police, *if legal proceedings or investigations are under way in connection with those activities*. Failure may lead to conviction for perverting the course of justice and/or contempt of court.

There is no legal obligation to disclose information if no investigation is in progress and there has been no approach from the police. Deliberately evading questioning by police or being evasive or untruthful when questioned may result in conviction for perverting the course of justice. In the course of investigations the police may obtain a court order obliging interviewers and custodians to disclose the content of interviews, thus overriding confidentiality agreements made with informants. Courts may similarly require interviewers or others to give evidence based on the content of interviews. Lying in court can lead to a conviction for perjury and failing to obey a court order may lead to a conviction for contempt of court.

Interviewees who are likely to provide information about criminal activities should be made aware that it may have to be disclosed to investigating police, even if access for everyone else has been restricted.

Defamation

The law of defamation is governed by the Defamation Acts 1952 and 1996, which enable people to take action if untrue or harmful statements are made about them. A person can be sued for damages, and in some cases prosecuted, if he or she conveys defamatory matter to anyone concerning a third person, either in writing (libel) or speech (slander).

A defamatory statement is one with a tendency to injure the reputation of another person (or organisation, company or business). Alleged libellous or slanderous statements are most usually defended in court on the grounds that

- they are true
- they are fair comment on a matter of public interest.

Statements relating to dead people are not subject to the law of defamation.

Anyone who considers that defamatory remarks have been made about him or her during an interview can sue

- the interviewee
- the interviewer and/or an institution which houses the interview, if the defamatory material is made available to anyone.

Interviewers and custodians should be aware of potentially defamatory statements made in interviews. Where a statement is believed to be untrue and damaging to a third party, the portion of the interview and/or transcript containing the statement should not be made available to researchers, and should certainly not be published, until the subject of the statement is dead. Where the truth or harmfulness of statements is less clear, the risks and benefits of making that portion of an interview available should be assessed.

Normally if the subject of statements in an interview complains that they are defamatory, access to these statements should be closed until the subject has died.

Data Protection

Oral history interviewers and custodians should be aware of the Data Protection Act. In practice the Act does not apply to interviewing and keeping interviews for research, as long as interviews and transcripts are covered by clearance forms.

The Data Protection Act 1998 reinforces earlier legislation designed to control the handling of data held about individuals, and gives individuals rights of access to data relating to themselves, though not to data about other people. Examples of data covered by the legislation are:

- personal records of employees
- health records kept by hospitals
- personal banking and credit information
- mailing lists and personal records kept for sales purposes.

All those who keep such data, whether large organisations, small concerns or individuals, should already have registered with the Information Commissioner if the information is on computer. By 2007 all those who hold "manual" (i.e. non-computerised) data must also register. In general the Act requires that data which is no longer needed for the purpose for which it was obtained should be destroyed.

There is a specific exemption from the provisions of the Act for data held for "research purposes", including statistics and "historical research", which allows the data to be kept indefinitely and used for different purposes. However the Act does state that this exemption only applies if "the results of the research or any resulting statistics are not made available in a form which identifies data subjects"

- Oral history practitioners need not register under the Data Protection Act in order to collect personal data for research, but in fact all those

- who do oral history work as employees will be covered by their employer's registration anyway.
- The Act reinforces the need to obtain permission from informants before publishing or disseminating interview material from which they or anyone else could be identified as individuals.

Freedom of Information

Under the Freedom of Information Act 2000, information held by public authorities has to be made available to anyone who requests it in writing. The overall purpose is to introduce a new culture of openness in the provision of information to the public. Some public bodies (eg national security services) are exempt from the Act, and many types of information are also exempt, often because access is prevented by other laws (eg personal information covered by the Data Protection Act or protected by the law of confidence). The implementation of both the Freedom of Information and Data Protection Acts is now regulated by a single Information Commissioner. The Act does not come into force till 2005, but there is a timetable leading up to this which those affected should already be complying with.

The Act ONLY applies to publicly funded organisations, not to other types of organisations and NOT to individuals. The Act DOES apply to reference collection material, such as oral history collections, held by public organisations, but since most public libraries, archives etc. are already in the business of providing information freely, they should have no problem complying with the Act.

The Act requires and encourages public authorities to prepare a "Publication Scheme", which is a guide to the types of information which will be made available easily to the public without a formal written request. People are not entitled to make separate time-consuming requests for information which is already available through a publication scheme. Although publicly funded libraries and archives already make the contents of their holdings known through catalogues etc, and allow access to the public, these resources SHOULD ALSO BE INCLUDED in the publication scheme.

Once material is included in a scheme, it has to be easily available, so the Act serves to encourage custodians to get their cataloguing up to date.

All publicly funded bodies large or small have to comply with the FOI Act. Most oral history collections are therefore held by organisations which should already be making arrangements relating to all the information they hold, and there should already be a designated FOI officer. Custodians of oral history material held by such bodies should arrange with the FOI officer for this to be included in the publication scheme. However these schemes need not be very detailed, and if library and archive holdings in general are already included, this may be sufficient to cover the oral history collection.

Public bodies which hold oral history material but do not provide public access to it (eg certain museums) may now be obliged to provide access under the Act, unless there are other reasons for not doing so (eg agreement with the donor or informant to maintain confidentiality). There are likely to be few grounds for withholding information about, and contents of, interviews with people who are now dead.

Children

There is no legislation which covers the specific process of interviewing children and holding and using information about them.

The Children Act 1989 states that children's wishes and feelings should be incorporated into decision-making about them.

Case law has established that children under 16 with sufficient understanding may consent to medical treatment even if their parents do not, and this is taken to apply to other forms of activity.

Guidelines produced for professionals in related areas can indicate the consensus on best practice. These include

- The Press Complaints Commission (no interviewing children under 16 without parents' consent)
- The Market Research Society (parents should be consulted before approaching a child under 16 to ask permission to interview)
- The British Sociological Association/National Children's Bureau (various guidance - the child must understand that he or she can withdraw from the interview without adverse consequences)

Children are the initial owners of the copyright in their words in the same way as adults. Any child who is able to understand his or her actions should sign a clearance form. Forms relating to interviews with children under 16 should also be signed by a parent or guardian, but may be legally invalid unless also signed by the child.

The Oral History Society strongly advises that

- The purpose of or framework within which interviews with children are carried out should be clearly established in advance, if necessary with appropriate professional guidance. These terms of reference should be available in writing to parents, guardians, teachers, or others with a legitimate interest
- Children under 16 should not be approached or interviewed without the consent of a parent or guardian
- Consent forms relating to interviews with under-16s should be agreed and signed by both the interviewee and a parent or guardian
- All access to interviews with individual children under 16, particularly before these children have reached adulthood, should be carefully considered and regulated. Any form of publication or inclusion in a website is not recommended, and should never be undertaken without explicit written consent from both the child and a parent or guardian

The Society encourages teachers to introduce children to oral history techniques. However the permission of a parent or guardian is required before any interview material featuring children at school is made available or disseminated beyond the classroom.

Recording telephone interviews

It is legal in the UK to record one's own telephone conversations for personal use, and there is no legal obligation to inform the other person or persons that their words are being recorded. UK laws and codes of practice, such as the Regulation of Investigatory Powers Act (2000), and the

Telecommunications Regulations (2000), are mainly concerned with recordings made for security surveillance ("telephone tapping") or various monitoring and market research activities, where the recordists are not being recorded themselves.

However it is unethical and legally risky to make telephone interview recordings available to anyone else without the permission of the speakers. If telephone interviews are to be deposited in a public collection or made available for research or any other purpose, all this should be explained in detail by the interviewer before the interview starts. Arrangements should be made for interviewees to sign clearance forms (perhaps by post or email), or at the very least the interviewee should state clearly in the recording that he or she agrees to the uses described by the interviewer.

Oral History Society Ethical Guidelines

Although several UK laws apply to oral history, those who give information to interviewers do not usually have the time or resources to take legal action if their words are used illegally. But they can easily complain to their MPs, local authorities or the press, and this can seriously affect the reputation for trustworthiness which all oral history practitioners and custodians depend on.

The Society believes that, while oral history work must comply with the law, legal requirements alone do not provide an adequate framework for good practice. No UK law was designed specifically to regulate oral history work; in fact no law even mentions it.

For these reasons the following ethical guidelines have been drawn up to cover responsibilities and obligations beyond legal requirements. Custodians and places of deposit (such as archives and libraries) which the Society is prepared to recommend have agreed to abide by these guidelines.

1. Interviewers have the following responsibilities before an interview takes place:

- 1.1 To consider the purpose of the interview and the possible range of future uses to which it might be put.
- 1.2 To carry out research and acquire sufficient technical knowledge to conduct an interview of the best possible standard.
- 1.3 To inform the interviewee of the purpose for which the interview is to be carried out, with background information where appropriate, and ensure he or she has understood this.
- 1.4 To determine the preferences of the interviewee as to the location and conduct of the interview (for example the presence of other persons; subject matter or personal references to be avoided).

2. The interviewer has the following responsibilities during the conduct of an interview:

- 2.1 To ensure that the interviewee's preferences as to the location and conduct of the interview are abided by.
- 2.2 To treat interviewees with respect and courtesy.
- 2.3 To observe confidentiality until a clearance form or other access agreement has been finalised.

3. The interviewer has the following responsibilities after an interview has taken place:

- 3.1 To inform the interviewee of the arrangements to be made for the custody and preservation of the interview and accompanying material, both immediately and in the future, and to indicate any use to which the interview is likely to be put (for example research, education use, transcription, publication, broadcasting). To record in writing (and later carry out or convey to others) any restrictions which the interviewee may require.
- 3.2 To inform the interviewee of his or her rights under copyright law.
- 3.3 To ensure that the interviewee is informed (preferably in writing) when arrangements are made under 3.1-3.2 above are carried out. If these responsibilities are transferred to others (for example an archive or other place of deposit), this should be with the knowledge or consent of the interviewee and should be recorded in writing.
- 3.4 To inform the interviewee of any new circumstances or changes to provisions made under 3.1-3.2 above.
- 3.5 To ensure that the interview is documented, indexed, catalogued and made available as agreed with the interviewee, and that a copy of the recording or transcript is given to the interviewee if an undertaking to do so has been given.
- 3.6 To ensure that all possible measures are taken to preserve interview recordings and related material.

4. Sponsoring institutions or places of deposit such as archives, libraries, museums or university departments have the following responsibilities:

- 4.1 To select interviewers of sufficient competence and skill, and to give sufficient guidance or training to ensure that these guidelines are carried out.
- 4.2 To ensure that recordings and documentation are carried out to the best possible, and at least to a sufficient standard.
- 4.3 To ensure that information on copyright ownership and other restrictions and conditions is recorded in writing and preserved. To document fully in writing all transfers of interview recordings and related material from individuals or others and ensure that 3.3 is fully carried out.

4.4 To ensure that responsibilities under 3.4-3.6 are understood and carried out.

4.5 To avoid the acquisition of interviews which are not accompanied by documentation including provenance, availability for use, and copyright status, except where there is a realistic prospect that 4.6 can be carried out successfully.

4.6 If interviews as described in 4.5 are acquired, to ensure that all possible steps are taken to contact interviewees or their heirs in order to obtain written statements concerning copyright and access.

4.7 To restrict access to interviews (even where this has not been required by the interviewee) in appropriate cases.

4.8 To ensure that names and personal details of interviewees are not passed on to third parties (for example broadcasters) without the consent of interviewees. Institutions should not become involved in any business arrangements which may result from such contacts.

4.9 To decide whether to charge for services and to fix a standard scale of charges which will apply to all users.

Further information

Useful websites

Patent Office (acts as the government copyright agency)
<http://www.patent.gov.uk/copy/index.htm>

UK Government "Intellectual Property Portal"
<http://www.intellectual-property.gov.uk/>

British Library
<http://www.bl.uk/services/information/copyright.html>

Qualidata
<http://www.essex.ac.uk/qualidata/forms/confiden.html>

Texts of Acts of Parliament
<http://www.hmso.gov.uk/acts.htm>

Information Commissioner
<http://www.dataprotection.gov.uk/dpr/foi.nsf>

National Archives copyright guidance
http://www.nationalarchives.gov.uk/policy/?source=ddmenu_services5

Useful publications

Alan Bruford et al., "My tongue is my ain", *Phonographic Bulletin*, 57 (1990).

Theodore Karamanski, *Ethics and public history: an anthology*, Malabar: Kreiger Publishing, 1990. An American collection of articles on ethical issues.

John Neuenschwander, *Oral history and the law*, Carlisle [US]: Oral History Association, revised third edition 2002. This provides a useful comparison by describing the position in the US.

National Oral History Association of New Zealand, *Code of ethical and technical practice*, NOHANZ: nd

Oral History Association [USA], *Oral history evaluation guidelines*, OHA, revised September 2000.

Daphne Patai, "Ethical problems of personal narratives, or, who should eat the last piece of cake?", *International Journal of Oral History*, 8 (Feb 1987). A clear discussion of the ethics of oral history in the US.

Wendy Rickard, "Oral history - Ômore dangerous than therapy?": interviewees' reflections on recording traumatic or taboo issues", *Oral History*, vol.26 no.2 (Autumn 1998).

Valerie Raleigh Yow, *Recording oral history: a practical guide for social scientists*, London: Sage, 1994. An excellent guide which includes a useful chapter on ethical issues.

Sheena Rolph, "Ethical dilemmas: oral history work with people with learning difficulties", *Oral History*, vol.26 no.2 (Autumn 1998).