

FRAGEN



Copyright within FRAGEN

Manual

Fragen is a subproject of the [QUING project](#)  
FP6 Integrated Project - 2006-2011

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## **1. SUMMARY**

### **Copyright**

Copyright is the right accruing to the "author" (i.e. the maker) of an original work. It protects certain categories (books, articles, films, songs, etc.) of published and unpublished works for specified periods of time. Copyright accrues to the author of a work in any of these categories, and he/she is then entitled to freely and exclusively exploit the work. The author can also grant or refuse permission for others to copy the work.<sup>1)</sup>

Basically, the author's consent is required before someone else can duplicate and/or publish his/her work (exploitation rights). Digitising a work and putting it online are types of duplication and publication. The author can grant consent by means of a (once-only) licence. The author can require payment to be made in return for his/her consent. The copyright holder also has the right to require his/her name and the title of the work to be indicated, and the right to oppose changes to the work (moral rights).

### **Ownership of copyright/Rightholders**

Rightholders are all those persons who may have rights in respect of a given work, and who therefore have the rights necessary to license the work for a certain use. Whether the person concerned is the author, the publisher, or some other person depends on the contractual agreements and the applicable law.<sup>2)</sup>

Rightholders may be:

- the author;
- a freelancer who has been commissioned to carry out a piece of work (unless he/she has assigned the rights to the organisation that commissioned it);
- an organisation to which the author has assigned the copyright (for example the publisher of journal articles);
- in the case of works produced by employees, as authors: the organisation that employs them;
- if no author is named: the organisation or company that made the work available.

### **Duration of copyright protection**

- In all EU Member States: until 70 years after the death of the author. After the author's death, copyright becomes vested in his/her heirs;
- In the case of legal entities/organisations: until 70 years after publication.
- If the author is unknown: until 70 years after the first publication/disclosure of the work.

*This means that all the intended texts for FRAGEN are probably subject to copyright protection.*

### **Online/Internet**

Actively providing protected works via a computer network such as the Internet *requires the consent of the author*. If it wishes to act in the legally correct manner, a heritage institution that wishes to place original works from its collection online will generally need to secure the prior consent of the rightholders.<sup>3)</sup> (An exception applies to the incidental use of works, which is sometimes possible without consent on the basis of the relevant statutory restrictions. This may differ from one country to another.)

An exception that may be relevant to FRAGEN: works produced by the authorities (these are often free of rights).

An additional complication arises in the case of "orphan works" (i.e. works whose rightholder cannot be identified or – if he/she can be identified – cannot be located). Officially speaking, these cannot be placed online. However, consideration can be given to doing what other institutions do, namely place the relevant material online and call on the rightholder to get in touch. This method should only be applied if serious efforts have already been made to identify the rightholder.

Opinions differ as regards digitising content and displaying it on a closed network within a library. Doing so is currently not advisable, but various initiatives are under way to regulate this, for example via rights management organisations.

*For more information, see the step-by-step plan.*

## **Europe**

"It is time for Europe to turn over a new e-leaf on digital books and copyright." Joint Statement by EU Commissioners Reding and McCreevy in September 2009.

"It goes without saying that digitisation of copyrighted works must fully respect copyright rules and fairly reward authors, who could be the biggest winners from better access to a Europe-wide online audience. However, we also need to take a hard look at the copyright system we have today in Europe. Is the present framework still fit for the digital age? Will the current set of rules give consumers across Europe access to digitised books? Will it guarantee fair remuneration for authors? Will it ensure a level playing field for digitisation across Europe, or is there still too much fragmentation following national borders? What could be the contribution of Europeana, Europe's digital library, when it comes to working on a European response to digitisation efforts in other continents? Is Europe's copyright framework modern enough when it comes to digitising orphan works and out-of print works? These books represent the vast majority of European libraries' collections (around 90%). In our view, these books must be recovered and given a new lease of life".<sup>4)</sup>

A great deal is going on in Europe regarding digitisation and copyright. Digitisation is being encouraged by the European Commission, partly through the provision of subsidies but also by calling on the Member States to undertake digitisation. Where copyright is concerned, Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society ("the Directive") has appeared. This must be implemented by the Member States, with or without national alterations (for example the 2004 Dutch Copyright Act [*Auteurswet 2004*]). Because the Directive partly frustrates the objectives of digitisation (because of the duration of copyright, the "70 years after..." requirement, etc.), large-scale digitisation is virtually impossible and unaffordable. As a result, there is a danger that it will only be older works that are in fact digitised and that a "black hole" will be created. Moreover, "orphan works" cannot be included in digital databases at all. The problem has been recognised and a number of countries have already put measures in place; the Commission itself is also looking for solutions. This is partly the result of the experience gained with Europeana, the European portal for digital cultural heritage material. The ARROW project is taking place in the context of Europeana; this involves orphan works and a Public Domain manifesto. The Commission has drawn up a Green Paper on Copyright in the Knowledge Economy, and a second round of consultation is currently taking place. It is therefore possible that placing publications online without securing explicit

consent beforehand – which is currently prohibited – will soon be somewhat more flexible. Keep track of developments, including those regarding the Google projects.

*It is important to keep track of Europeana and perhaps even to link up with it.*

## Other rights

Other rights that may play a role in this context:

- *Portrait right.* This may apply to an image within a text. You can attempt to gain the consent of the person portrayed, but he/she is already likely to have objected if he/she did not want the picture to be used.
- *Protection of personal data.* This may apply to documents in archives and similar material. You need to be cautious because there may be restrictions on publication.
- *Database rights.* In addition to protection as a literary work for the contents of a database, database right accrues to the person who funds, selects and arranges the content into a database. Although database right does not require registration, there needs to be substantial investment in obtaining, verifying, and presenting the contents of the database. Database right lasts for 15 years ... .5)

NB: It is probably a good idea to be careful with photographs and illustrations in texts and to consider whether to approach the authors of these items. A recent claim in the Netherlands by photo rightholders led to photos in a digital literature library having to be deleted.

## Licences

“Licensing is the tool used to control rights transactions. Licensing implies that you either want to use content whose rights are owned by third parties, *Licensee*, or alternatively, you have the right to grant others permission to use your content, *Licensor*. Licences can take various forms, but generally fall into two distinct categories: *Exclusive licences and Non-exclusive licences*.

*Non-exclusive licences* relate to agreements which do not restrict the rights holder from granting the same or similar licences to as many parties as they choose. This is the preferred licence type used by organisations in the cultural heritage sector when requesting rights, because they can be granted the rights that they need without taking any rights away from the rights holder.”6)

### *Creative Commons (CC)*

Creative Commons aims to promote wide distribution. Authors can impose certain restrictions, for example to the effect that their work cannot be used for commercial purposes. CC provides free, easy-to-use legal tools. CC tools give everyone from individual creators to large companies and institutions a simple, standardised way to grant copyright permissions for their creative work. The Creative Commons licences enable people to easily change their copyright terms from the default of “all rights reserved” to “some rights reserved.” Creative Commons licences are not an alternative to copyright. They work alongside copyright, so you can modify your copyright terms to best suit your needs.8)

There are six main CC licences. Creators choose a set of conditions they wish to apply to their work:



**Attribution** You let others copy, distribute, display, and perform your copyrighted work – and derivative works based upon it – but only if they give credit the way you request.



**Share Alike** You allow others to distribute derivative works only under a licence identical to the licence that governs your work.



**Non-commercial** You let others copy, distribute, display, and perform your work – and derivative works based upon it – but for non-commercial purposes only.



**No Derivative Works** You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

The six licences are called: Attribution, Attribution Share Alike, Attribution No Derivatives, Attribution Non-commercial, Attribution Non-commercial Share Alike, Attribution Non-commercial No Derivatives. They are listed starting with the most accommodating licence type you can choose and ending with the most restrictive licence type you can choose.

## 2. STEP-BY-STEP PLAN/SCENARIO

*What to do after selecting the texts:*

### 2.1. Rightholders:

*Is the material (still) subject to copyright?*

- Yes, if it is an original work and the author did not die more than 70 years ago.
- Yes, if a legal entity/organisation is concerned and the work was not published more than 70 years ago.
- No, if it is a text that is in the public domain. It can be placed online (unless explicitly stated otherwise). NB: that is in any case the position in the Netherlands.

*Is the work already the subject of a CC licence?*

- Yes. Then act in accordance with that licence.

*Rightholder known (author, multiple authors, publisher, organisation):*

- Contact the person concerned to request consent. (In some cases the author/maker may have transferred the copyright – in fact the exploitation right – to a publisher, for example. In that case, you need to ask who that is.)

*Rightholder is no longer alive:*

- Contact the heirs.

*Author unknown or address unknown? ("orphan works")*

- If the author is known but not the address: make extensive efforts to locate the person concerned or his/her heirs. Keep full records of all those efforts (e-mails, letters, phone calls, etc.).
- If the author is unknown, try to find the publisher or organisation concerned. Keep full records of this too.

If all these attempts are unsuccessful, placing the material online without consent is not permitted. (Attempts are being made to find a solution to this problem, including in a European context.) If you decide to place the material online anyway, you should act as follows:

- place a disclaimer and a complaints procedure on the site;
- give the name of the rightholder (if you know it);
- respond promptly to any complaint.

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### 2.2. Collective rights management organisations:

Check whether there are any relevant collective rights management organisations. Try to make the arrangements regarding rights via those organisations. The advantage of this is that you can arrange things all in one go (especially if there is a lot of content.) The disadvantage is that this costs money. In the Netherlands, it is only the rights organisation for the newspaper and periodicals publishers that applies: [www.clip.nl](http://www.clip.nl) (reuse of articles in newspapers and periodicals).

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### 2.3. Request consent:

There are two options:

- request transfer of rights (very drastic);
- request consent for use.

*Request written consent.* Request consent at once for online use, i.e. including digitisation (there is no point in digitisation alone unless it is a matter of preserving material). Do this by means of:

- a Creative Commons licence. The best method is consent in the form of a CC licence for non-commercial use (for example Attribution-Non-commercial-No Derivative Works). This allows for digitisation and uploading to the Internet; it also makes it clear immediately to users what they are permitted to do with the work. CC licences involve open access, and they are easy to understand. Free use, copying, and distribution (see example).

The disadvantage is that not everyone is familiar with them. If that is the case, it is better to utilise:

- an ordinary licence (see example). It is possible to make a selection from a variety of conditions.
- perhaps consent in the form of a signed return letter.

NB: Consent must always be given in writing.

#### *Letter to rightholders*

Edit the model letter to fit the particular circumstances. Make it perfectly clear that the intention is to allow broad access to the electronic publications for research purposes via the open access system, free of charge.

*A tip:* first ask consent from those who you expect to give it; this may win over others. Perhaps offer to provide a digital copy. Request the broadest possible consent, i.e. not just for the FRAGEN website but also for the websites that FRAGEN may participate in (for example Europeana).

*No consent:* do not digitise the material or place it online. Perhaps confine yourself to including metadata and referring to the relevant location.

*Future:* In the case of direct gifts of work (for example an archive), ask immediately for the rights to be transferred or request a licence for online use.

## **2.4. Logbook**

Note what has been done to trace rightholders. Create a kind of logbook for use in the event of any complaint. Demonstrate that you have done your best. Place a text about this in the database (disclaimer and complaints procedure).

## **2.5. Special questions:**

- Does the selection include letters or diaries? Is protection of personal privacy relevant? In that case, you can perhaps propose that the electronic version will be made available locally but not on the Internet.
- Does the selection include archives? Are there contracts?
- Is the text perhaps in the public domain? Or is it a government document? In that case, it is probably free of rights (unless otherwise indicated).
- Newspaper cuttings? Here too, request consent from the publisher or freelancer concerned.



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## **2.6. Rights management**

*Send all the consent documents to the Fragen Management at Aletta, Institute for Women's History (keep a copy for your own administration)*

Rights/licences will be managed by the coordinator of the database/the FRAGEN project. The licences for each text will then be indicated on the website or in the database. All other database right issues and claims will also be dealt with by Aletta, *Institute for Women's History*

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### 3. LITERATURE / WEBSITES

*Much of the information in the above text is based on an important source in this field:*

-Juridische Wegwijzer **Archieven en Musea online**, door Annemarie Beunen & Tjeerd Schiphof  
i.o. van de Taskforce Archieven/Museumvereniging, 2006  
ISBN-10: 90-78763-01-9 / ISBN-13: 978-90-78763-01-7

*An interesting English source is :*

-Guide to Intellectual Property Rights and Other Legal Issues, 2005  
Version 1.0, by Naomi Korn, 2005

[http://www.minervaeurope.org/publications/guideipr1\\_0.pdf](http://www.minervaeurope.org/publications/guideipr1_0.pdf)

Publication of MinervaEC on 'the digitisation life-cycle'.

*Other interesting information/sites:*

-Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

[http://eur-](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0029&model=quichett)

[lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0029&model=quichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001L0029&model=quichett)

-Copyright-text Europeana

<http://www.europeana.eu/portal/termsofservice.html>

-Arrow (on orphaned works)

<http://www.arrow-net.eu/>

-Green Paper Copyright in the Knowledge Economy

[http://ec.europa.eu/internal\\_market/copyright/docs/copyright-infso/greenpaper\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/greenpaper_en.pdf)

-Creative Commons

<http://creativecommons.org/about/what-is-cc>

<http://creativecommons.org/about/licenses>

[http://creativecommons.org/choose/?lang=en\\_CA](http://creativecommons.org/choose/?lang=en_CA)

<http://creativecommons.org/licenses/by-nc-nd/3.0/>

-FOBID Juridische Commissie (Dutch website)

<http://sitegenerator.bibliotheek.nl/fobid/overig29/overig63.asp>

*Footnotes:*

1, 5, en 6. Minerva, [http://www.minervaeurope.org/publications/guideipr1\\_0.pdf](http://www.minervaeurope.org/publications/guideipr1_0.pdf)

2. Definition as in the Final Report of 3.06.2008 of the High Level Expert Group (HLEG) - Copyright Subgroup on European Digital Libraries established by the European Commission in relation to the i2010 Digital Libraries initiative, as adopted by the HLEG on 4 June 2008.

3. Juridische wegwijzer, p. 38

4. Press Release European Commission

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/376&format=HTML&aged=0&language=EN&guiLanguage=en>

7. Creative Commons <http://creativecommons.org/about/what-is-cc>

*Disclaimer*

This manual and step-by-step plan are the result of a study that was carried out with the greatest possible care. However, neither the author nor the organisation can accept any liability for any loss or damage, of any kind whatsoever, that may arise due to deficiencies in the content, for example any errors or omissions.

## Appendice 1 : Letter to rightholders - model

### (Name and address of organisation requesting permission)

To: Name/address of rightholder

Date

Subject: database of core feminist texts

Dear .....,

We would like to request your co-operation in an exciting European project: FRAGEN.

FRAGEN is a means of preparing the ground for comparative research on the history of feminist ideas in Europe. Although gender equality as an object of policy-making originated in the feminist movements of the second part of the 20th century, this connection has not yet been the object of serious systematic study. FRAGEN aims to compile a database of original European second-wave feminist texts, and to make that database publicly available to researchers.

FRAGEN is a subproject of the QUING project, Quality in Gender and Equality policies. QUING is an integrated project within the context of the EU's Sixth Framework Programme Priority 7 – Citizens and Governance in a Knowledge-based Society (7.1.2 Gender and Citizenship in a Multicultural Context). The scientific director is Dr Mieke Verloo (Radboud University, Nijmegen, The Netherlands).

QUING will be working with Aletta, the Institute for Women's History in Amsterdam, The Netherlands, to construct the database, which will make selected core feminist texts available to researchers by storing original second-wave feminist texts in the database together with an analytic description of the texts in English. National partners are women's information centres, archives, and libraries in EU Member States (as well as Croatia and Turkey).

The FRAGEN project will run from January 2009 to April 2011. The database will be made available to the research community in the final year. Women's information centres, archives, and libraries in the EU Member States (and in Croatia and Turkey) are responsible for the selection, digitisation, and extensive coding of texts that have been influential for the development of feminist ideas in the countries concerned.

The publication (or article, manifesto, etc.) ....., **by .....** (**bibliographical description**), has been selected as one of the most influential texts in ..... (**country**). We would like to request your permission – as the rightholder – to create an electronic copy of this text and make it available to researchers on the Internet via the FRAGEN database/website.

..... (**add any information you think necessary to get permission**)

You can grant permission by choosing a licence and signing the enclosed form. The licence will ensure that your text is used in the way you choose and specify. If you have transferred your rights regarding the text, please let us know who we should contact.

We look forward to working with you on this important project. If you require any further information, please contact us at .....

Yours sincerely,

Name  
Position  
Organisation  
Address,  
Tel., etc.

Partner FRAGEN

For further information: [www.aletta.nu](http://www.aletta.nu) [www.quing.eu](http://www.quing.eu).

## Appendice 2 : Statement - model

The undersigned:

Name:

Street address:

Postcode, town/city, etc

hereby states in respect of

.....(title of chosen text)

that he/she grants consent for digitisation and inclusion in the FRAGEN database/website according to the Creative Commons licence Attribution-Non-commercial-No Derivative Works (see model).

that he/she grants consent for digitisation and inclusion in the FRAGEN database/website according to the licence:

X grants archive Y / museum Y the right to digitise the material and to make it accessible on the Internet (and in a closed network). In so far as necessary, the archive/museum may also make copies of the work for (preventive) preservation purposes.

that he/she does not grant consent.

Date:

Signature:

## Appendice 3 : CC Licenses

3.1 About licenses:

<http://creativecommons.org/about/licenses/>

# About Licenses

The following describes each of the six main licenses offered when you choose to [publish your work](#) with a Creative Commons license. We have listed them starting with the most accommodating license type you can choose and ending with the most restrictive license type you can choose.

## *License Conditions*

Creators choose a set of conditions they wish to apply to their work.



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You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.



### *Share Alike*

You allow others to distribute derivative works only under a license identical to the license that governs your work.



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You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.



### *No Derivative Works*

You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

## *The Licenses*



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2009 Campaign

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- **to Share** — to copy, distribute and transmit the work
- 

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What does "Attribute this work" mean?

The page you came from contained embedded licensing metadata, including how the creator wishes to be attributed for re-use. You can use the HTML here to cite the work. Doing so will also include metadata on your page so that others can find the original work as well.

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- **No Derivative Works** — You may not alter, transform, or build upon this work.

### With the understanding that:

- **Waiver** — Any of the above conditions can be [waived](#) if you get permission from the copyright holder.
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  - Your fair dealing or [fair use](#) rights, or other applicable copyright exceptions and limitations;
  - The author's [moral](#) rights;
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What are "Moral Rights"?

In addition to the right of licensors to request removal of their name from the work when used in a derivative or collective they don't like, copyright laws in most jurisdictions around the world (with the notable exception of the US except in very limited circumstances) grant creators "moral rights" which may provide some redress if a derivative work represents a "derogatory treatment" of the licensor's work.

[Learn more.](#)

What are "Publicity Rights"?

Publicity rights allow individuals to control how their voice, image or likeness is used for commercial purposes in public. If a CC-licensed work includes the voice or image of anyone other than the licensor, a user of the work may need to get permission from those individuals before using the work for commercial purposes.

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#### Attribution

You must attribute the work in the manner specified by the author or licensor.


#### **Allow commercial uses of your work?**

- Yes 
- No 


#### **Allow modifications of your work?**

- Yes 
- Yes, as long as others share alike 
- No 

#### Jurisdiction of your license

None of the above 

#### **Additional Information**

The additional fields are **optional**, but will be embedded in the HTML generated for your license. This allows users of your work to determine how to attribute it or where to go for more information about the work. 

#### **Tell us the format of your work:**

Other 

#### **Title of work**



#### **Attribute work to name**



#### **Attribute work to URL**



**Source work URL** **More permissions URL** **Embedded Metadata**

The information is embedded in a software readable format. This allows search engines to index additional information about your work and allows people coming to the license deed from your page to see information on the deed about how to attribute your work.

[More information](#) on Creative Commons metadata is available if you want to find out more.

**Source work URL**

A work another is derived from.

**Title of work**

The title of the work you are licensing.

**Attribute work to name**

The name users of the work should give attribution to. For example, the name of the work's author.

**Attribute work to URL**

The URL users of the work should link to. For example, the work's page on the author's site.

**More permissions URL**

A URL where a user can obtain information about clearing rights that are not pre-cleared by your CC license.