

Frequently Asked Questions about completing the Oral History Recording Agreement Form

1. What is the Oral History Recording Agreement?

The *Recording Agreement* is a contract between you as Interviewee, the oral historian who interviews you (the Interviewer) and the Commissioner (the person who initiates the recording) about how your recording will be managed – who can listen to it, how it can be used, who owns the copyrights in it, etc.

2. Placement

2.1 Where will the Recording be held?

This depends on what you agree with your oral historian. It is wise to make and keep a record of plans made for long-term storage of a recording so that everyone involved knows where the recording will be and who is responsible for looking after it in the future.

3. Access and use

3.1 Who will be able to listen to the Recording?

The oral historian who recorded your oral history is bound by a *Code of Ethical and Technical Practice* that requires each interview to be treated as a confidential conversation, available only as determined with you in the *Recording Agreement*. The oral historian will ask you whether you want to place any restrictions on who can listen to your recording.

3.2 How will access be given to the Recording in the Repository?

This varies from place to place. Ask the oral historian about the arrangements at the Repository where your recording will be archived.

3.3 How will the Recording be used?

This depends on the purpose of the recording or project you have been recorded for. The oral historian should tell you why the recording is being made and how it will be used. Sometimes the purpose is simply to make a record for archival purposes. In these cases the Interviewer will usually offer the recording to a repository (such as a library or archive) where it will be catalogued and held for use by researchers. In some cases the recording may be collected as research for a book, documentary, drama production or radio programme.

3.4 Can information from the Recording be published?

The oral historian will discuss this with you. Some interviewees are happy for their recording, or extracts from it, to be published. Other interviewees prefer to be consulted, in their lifetime, about any proposed use.

3.5 Do I have to be consulted if someone wants to quote from my recording?

This depends on what you say in the *Recording Agreement*. Tell your oral historian if you want to be consulted when people want to use your recording. You can place a restriction on access to your recording (for listening) and use of your recording (playing in public or quoting the spoken words).

3.6 Do I have to be consulted if someone wants to play my recording in public?

If you retain copyright you must be consulted before someone can play or quote from your recording in public unless playing the recording is a “permitted act” allowed by the Copyright Act. Permitted acts include educational purposes and research.

3.7 Will I be named as the person interviewed?

If your recording is published you will usually be named as the person interviewed and you can insist on this by claiming Moral Rights. Let your interviewer know if you have a problem with being identified as the speaker when your recording is played or quoted from in public.

3.8 Will I be contacted when the Recording is used?

Not necessarily. If you restrict access to and/or use of your recording you will be contacted if the archive where it is held receives a request to use it in a way you have restricted.

3.9 How are restrictions on access or publication of the Recording enforced?

If you restrict your recording the person or institution who holds your recording should observe the restrictions. Once the oral historian has deposited your oral history they may not have any further role in the administration of the recording. If you plan to restrict your recording and have concerns about how the restrictions will be managed, discuss these with your interviewer.

3.10 What happens to the Recording when I die?

If you decide to place any restrictions on your recording you will be asked to specify a date on which your restrictions are released. If no date is specified the restrictions may continue after your death and therefore your recording may not be able to be used.

In very unusual cases an interviewee wants the restriction to continue for a nominated period of years after their death e.g. if the recording contains sensitive information about other people who may still be alive. Let your oral historian know if this is a consideration for you.

3.11 What happens if someone mentioned in the Recording wants to listen to it?

The Privacy Act gives individuals rights of access to information about them, subject to certain exceptions. There have not been any reported cases where third parties have tested their rights to information about them in oral history recordings so it is not possible to say with certainty whether a request could be refused. Talk to your oral historian if you have concerns about recording information about third parties.

3.11 How will the Commissioner use the Recording?

The commissioner is the person who causes the recording to be made. Sometimes they are simply the person paying the bill. Sometimes the Interviewer is the person who initiates the recording – in this case they are the Commissioner.

The ways the Commissioner wants to use the recording will vary from case to case. The oral historian will tell you the projected use before the recording begins.

4 Copies

4.1 Who will have a copy of my recording?

Ask your oral historian about this as it varies from case to case.

You are entitled to a copy of your recording if you would like one. If you have concerns about who can access and use your recording, talk about these with your oral historian.

4.2 Can I get or make extra copies of the Recording?

This depends on copyright.

If you hold copyright in the sound recording you may make as many copies as you wish, with the agreement of other copyright holders.

If you do not hold copyright you are entitled to one copy of the recording for personal use. After that you will need permission from the copyright owner before you can copy or request extra copies of a recording.

If you anticipate needing more than one copy of your recording it is preferable to raise this with the oral historian at the beginning of the recording process. Remember that the more copies there are the more difficult it is to control future use and copying of the recording.

4.3 Will the Repository give out copies of the Recording?

If you are uncomfortable with a Repository supplying a copy of your recording let your Interviewer know.

5 Preservation

5.1 Who will be responsible for preserving the Recording?

This depends what arrangements have been made for long-term storage of your oral history. If the recording is placed in an archive the archive will care for it. The Alexander Turnbull Library, Wellington preserves its collection in perpetuity. Other archives may have varying levels of preservation. If your recording is not being formally archived it is advisable for someone to be nominated to take responsibility for caring for it (eg. by keeping a back up and checking the file from time to time).

6 Copyright

6.1 What is Copyright?

Copyright is a set of exclusive property rights owned automatically by the creators of a wide range of original materials including literature, works of art, films and sound recordings. Copyright acknowledges the creator's right to control how the material is used by others including its copying, publication and broadcast. Copyright exists independently of the physical article containing the copyright work so one physical article such as a sound recording may contain more than one copyright.

6.2 Do I have Copyright in my recording?

The Copyright Act 1994 does not specifically talk about oral history recordings. Nor have there been any reported cases about copyright in oral history. The general understanding is that there are several potential copyrights in oral history that can be held by the Interviewee, Interviewer and Commissioner. Your oral historian can explain these to you and will ask you whether you wish to retain or assign your copyright.

6.3 The Interviewer or Commissioner wants copyright – what does this mean?

If an interviewer or commissioner has a particular use in mind they may ask you to assign your copyright so that the process of using the oral history material is more straightforward. You are not obliged to agree to this. If you prefer you can retain your copyright and agree to specific uses that will not breach your rights.

6.4 Can copyright be held jointly?

Yes, and in fact one of the potential copyrights in oral history is in the interview that the interviewee and interviewer jointly create. This copyright is jointly held unless an agreement is made for one person to hold it.

6.5 What activities infringe copyright?

Copyright is infringed when a person uses a work in a way that is reserved to the copyright owner, without permission. Some activities are “permitted” without infringing copyright. For example the copyright owner’s permission is not required:

- For research and private study
- For educational purposes
- For criticism, review and news reporting.

6.6 Will I earn anything from my copyright?

Oral history is usually recorded for non-commercial purposes. Talk to your oral historian if you think your recording has potential commercial value.

7. What if I have other questions not answered here?

If your oral historian cannot answer all your questions contact NOHANZ nohanzexec@gmail.com or talk to the Repository where your oral history is going to be held.

NOHANZ
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For more information see *An Introduction to Copyright in New Zealand* by the New Zealand Copyright Council <http://www.copyright.org.nz/viewInfosheet.php?sheet=29>

Copyright and Oral History in *Oral History Handbook*, Beth Robertson (2010)

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