

By contrast, individuals who provide texts, whether simple narratives, oral history, folktales, modern poetry, letters written in the native orthography, or what have you, will in most cases qualify as the authors of those works and thus, as soon as they are written down, or fixed in any other tangible form, acquire copyright on those works. As indicated earlier, it is the author who obtains the copyright—without asking for it—even if the researcher commissioned the work and paid a considerable amount for it. The only question is whether that author's work is an original creative work that qualifies for copyright. If the text provider is simply repeating a traditional poem verbatim or has done no more than spoken a few lines of conversation, then the text might not meet the very minimal standards required for copyright protection. But if the work qualifies for copyright, the question of who initially owns the copyright to the work is usually straightforward, namely the text provider.

p. 445 How then can researchers assure themselves of the ability to use and publish these texts, which they may have gone to a lot of trouble and expense to collect because of their potential linguistic, cultural, or literary value? There are two main possibilities, which relate to the two kinds of conveyances discussed above. One approach would be for the linguist to have the text provider make a written transfer of his or her copyright to the linguist so that, from that time forward, the linguist would be the copyright holder. In the case of mundane texts provided for linguistic purposes, this seems reasonable and the text provider might be fully willing to do so given that the texts have no real value apart from the linguist's project. Placing the copyright in the researcher's hands so that the texts then had the same legal status as the rest of the linguist's corpus of materials would appear to be the most effective strategy. If convenient, the linguist could explain this arrangement to the text provider before the texts were collected, but the transfer could equally be done after the fact. In either case, a written document signed by the text provider would be needed.

In the case of stories, oral history, poetry, songs, etc., i.e. works that have some intrinsic literary or artistic value, the question is whether it really would be appropriate for the linguist to encourage the copyright holder to transfer the copyright leaving the person with no proprietary rights whatsoever. Even with the best of intentions, the idea of a linguist going to a field site as a guest and walking away as the owner of the copyright to the creative works of local poets and storytellers feels dishonest and exploitative. Moreover, the linguist has a duty to ensure that if such a transfer were to happen it would be made with informed consent, and, depending on the level of education and sophistication of the text provider, this could be problematic. The linguist could, of course, buy the copyright, which in some cases would leave everyone happy, but determining the fair value of intellectual property in an unequal power relationship involving individuals from distant countries and disparate cultures is not so easy.

The best solution in most situations when dealing with works having intrinsic literary or artistic value is for the linguist to get a broad non-exclusive licence from the text providers/copyright holders. Since, as we now know, a non-exclusive licence is nothing more than permission-to-use, this satisfies the researcher's needs while leaving the text providers with the copyright to which they are entitled. With written texts, the copyright holder could simply add a note at the bottom of a particular text or on a separate sheet of paper covering a number of texts giving the linguist permission to use. The statement could be formal sounding, e.g. 'I, Gorko Mbukulu, give Ms Sarah Smith, an American lady studying our language, permission to use my poem/story/parable/etc. in her work in whatever way she finds helpful'; or it could be as little as 'Sara, do with this what you want, [signed] Mbu.' (Sample permission letters are provided in the appendix to this chapter.) Note that even though the texts are written, the permission could be oral, e.g. a call to one's cellphone or a simple face-to-face conversation, although it is helpful if you have some means of demonstrating that the permission was actually given just in case a dispute were to arise. With recorded materials, the easiest and best practice is to have the text provider give permission on the tape itself, either at the beginning or the end of the audio or video recording. This way the text and the permission do not get separated and possibly lost.