

Authorship and copyright ownership in the digital oral archives domain: The *Gra.fo* digital archive in the CLARIN-IT repository

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Abstract

The paper addresses the problem of authorship and copyright ownership in relation to a digital oral archive created through the digitisation of several analogue archives. The case study is provided by the *Gra.fo* digital archive (*Grammo-foni. Le soffitte della voce*, Scuola Normale Superiore di Pisa and the University of Siena, Tuscan Region PAR FAS 2007-13), a collection of around 30 Tuscan oral archives which is in the process of being documented in the CLARIN-IT repository¹. The problem is addressed from both an archival and a legal perspective, since speech and oral digital archives are at the crossroads of different fields of knowledge.

1. Introduction

Today, thanks to new and accessible technologies, oral recordings are enjoying a resurgence: on the one hand, technological progress has brought recording tools within everybody's reach; on the other, many existing analogue archives are being digitised in order to ensure their preservation. Both in the recording of new audio data and in the digitisation of already existing oral documents, three aspects must be taken into careful consideration. Firstly, long-term preservation of data and metadata is essential for the persistence of the data derived from a research project beyond its limited time span. Secondly, the choice of data and metadata formats is crucial in order to make data findable, available, interoperable and reusable. Thirdly, from a legal perspective, archives are covered with several rights. Oral recordings containing original contributions constitute copyright protected works. Persons involved in these recordings have inter alia related rights (the rights of performers) and are entitled to personal data protection. Archives are also protected as databases (see Kelli et al. 2015).

The case study for the present paper is provided by the project *Grammo-foni. Le soffitte della voce* (*Gra.fo*; Scuola Normale Superiore di Pisa and University of Siena, Tuscan Region PAR FAS 2007-13). *Gra.fo* discovered, digitised, catalogued and disseminated via a web portal (<http://grafo.sns.it/>) nearly 3000 hours of speech recordings stemming from around 30 oral archives collected by scholars and amateurs in the Tuscan territory, mostly in the 1960s and 1970s. The *Gra.fo* digital archive is a

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heterogeneous collection of born analogue archives stemming from different disciplines and preserving a multitude of types of documents. Some of the archives originated from research projects conducted by linguists in order to document or investigate specific features of Tuscan dialects (e.g., the ‘Alto Mugello’, ‘Atlante Lessicale Toscano’ and ‘Carta dei Dialetti Italiani’ archives). Other archives were collected from anthropological, folkloric or ethnomusicological perspectives and thus concern folk music, folk literature and folk culture in general (e.g., archives ‘Edda Ardimanni’, ‘Roberta Beccari’, ‘Vanna Brunetti’, ‘Anna Buonomini’, ‘Paolo De Simonis’ - collection ‘Canti popolari del Mugello’, ‘FLOG’ - collections ‘Gilberto Giuntini’ and ‘Nunzi Gioseffi’, ‘Sergio Gargini’, ‘Benozzo Gianetti’, ‘Duse Lemetti - Gruppo Vegliatori’, ‘Museo del Bosco’). Yet others stem from history and sociology and deal with topics like working conditions in the twentieth century, the labour movement, women in the workplace, the Italian diaspora, the impact of industrialisation on rural society and memories of the First or Second World War (e.g., archives ‘FLOG - collection ‘Andrea Grifoni’, ‘ASMOS’, ‘Neri Binazzi’, ‘Cappelli di Paglia’, ‘Dina Dini’, ‘Elba’, ‘Roberto Segnini’, ‘Angela Spinelli’). It follows that the *Gra.fo* digital archive is also highly hierarchised: it is a digital archive of originally born analogue archives that in turn are made of subdivisions and that can be partitioned into further subdivisions (see Fig. 1a and Fig. 1b).

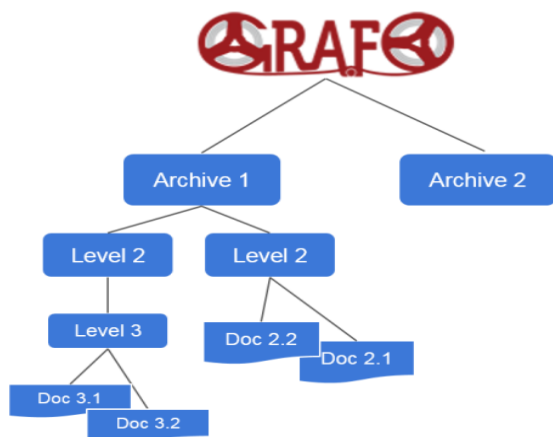


Fig. 1a The architecture of *Gra.fo* archives (as described in the paper).

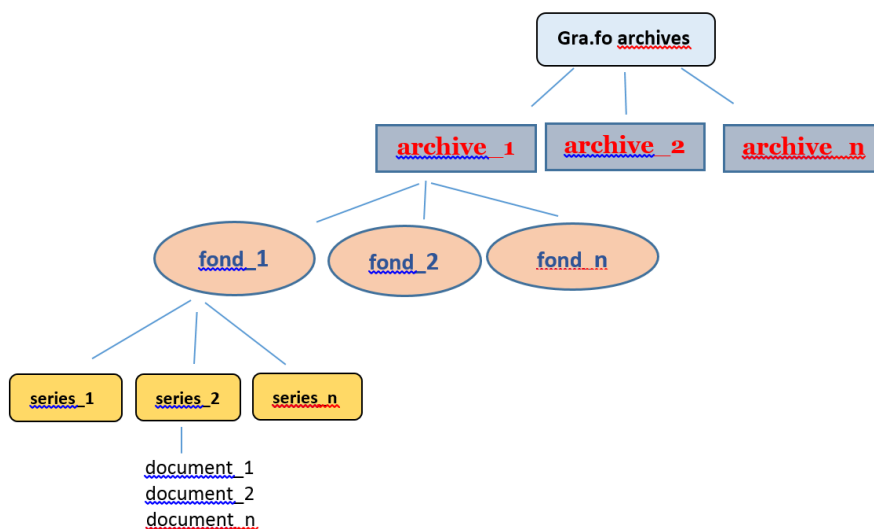


Fig. 1b The architecture of *Gra.fo* archives (with the original taxonomy used in the project).

As a collection of archives preserving valuable linguistic resources, the *Gra.fo* digital archive is in the process of being documented in the CLARIN-IT repository. At the beginning of this documentation process, issues concerning searchability, granularity and consistency of the metadata descriptors were expected and described in Calamai, Frontini (2016). Several crucial legal issues concerning the relationship between the original archives (constituted by the recordings originally collected by the researchers) and the digital archives (created from the digital files derived from the original recordings), and the issues of authorship and copyright ownership applicable to these two entities also arose and are now being discussed. Since archives contain oral speech (human voice), personal data protection is a pertinent issue. The European Union's adoption of the General Data Protection Regulation (applicable as of 25 May 2018) makes the issue even more relevant. However, personal data protection concerning oral archives requires extensive analysis, which cannot be accomplished in this article because of its limited space and focus.

The paper introduces the description of the *Gra.fo* archive in the CLARIN-IT repository (§2), posing the question of whether the original analogue or the digital archive should be the primary reference (§2.1) and trying to answer it (§2.2): what might be seen at first as a mere technical action (i.e., the metadata ingestion from an original dataset to another dataset) appeared in fact to be a rather challenging issue and required further development, at the crossroads of jurisprudence, archival science, and speech technology. Therefore, the legal aspects involved in the appropriate choice of metadata descriptors represent the focus of the paper. In particular, § 3 is devoted mostly to the discussion of the issues of authorship and copyright ownership (§ 3.1); a short section (§ 3.2) deals with the ownership of tangible objects (e.g., the analogue archives) – all of which lead to the conclusions closing the paper (§ 4).

2. The starting point

The CLARIN-IT repository² is managed by the Institute of Computational Linguistics “A. Zampolli” of the National Research Council (ILC-CNR). For the Italian SSH community, *Gra.fo* represents a case study allowing the testing of the system in preparation for the documentation of other oral archives. Therefore, every decision made for the *Gra.fo* archive – arduous though it may be – is an important benchmark for future developments.

The *Gra.fo* digital archive enters the CLARIN-IT repository as an independent collection. The different archives comprised in the *Gra.fo* archive are described as single items within the collection, while no description is provided for the single oral documents constituting the archives. This solution corresponds to the suggestion made by Calamai and Frontini (2016) as an alternative to the maximum-granularity and the minimum-granularity options.

2.1 Which archives need to be described for the metadata?

The description of the archives unveils the crucial problem of what should be the object of our description into the metadata set of information: the digital archives produced within the framework of *Gra.fo* or the original ones produced by the researcher(s) who collected the recordings in the first place. Upon close inspection, most of the metadata descriptors could be interpreted in one way or the other leading to opposite options of description. For example, when indicating the contact person of a given archive, one could refer to the contact person(s) of the original archive (usually its author or owner, depending on the circumstances) or to the person(s) working for the digital archive (in this case, the *Gra.fo* scientific coordinators); when stating the author of an archive, one could indicate the “creator” of the original archive (the researcher) or that of the digital one (the *Gra.fo* consortium).

² <https://dspace-clarin-it.ilc.cnr.it/repository/xmlui/>.

Such dichotomies could presumably apply to any archive that is transferred from the analogue to the digital domain. Yet in *Gra.fo* the situation is even more complex because the digital archives and the single digital oral documents accessible via the *Gra.fo* portal do not mirror the original ones, as they are the result of a meaningful interpretative activity and can therefore be considered derivative works (see the details in § 3.1.1.2). As described in Calamai, Biliotti, Bertinetti (2014), in speech recording fieldwork, a document (e.g., an interview, a narrative, etc.) can be distributed over various wireless carriers or portions of carriers, so that one and the same carrier may contain various unrelated documents while more than one carrier can refer to one and the same document (see also Kolletzek 2012). This led *Gra.fo* to consider the documental unit as independent from the carrier, which is viewed as a mere container, and to create new digital oral documents corresponding to the single communicative events (e.g. an interview, a narrative, etc.) contained in the original recordings (see Fig. 2).

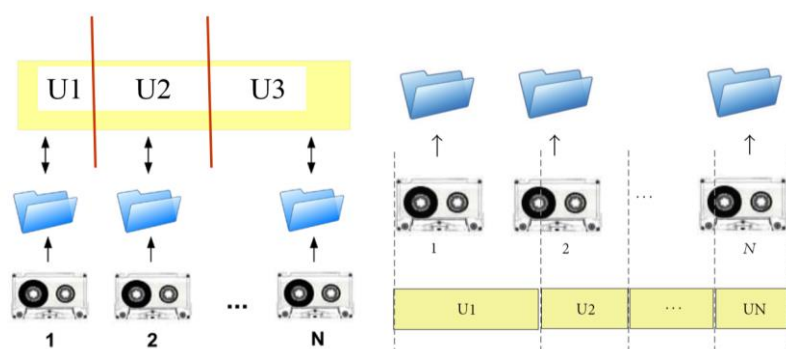


Fig. 2 The one-to-one relationship between the carrier and the documental unit, represented by ‘U’ (on the left) and the tricky relationship between the two in speech recording fieldwork (on the right).

After being edited from digital copies of the original recordings, these new digital documents are extensively described, transcribed (in some cases), and made available to the end user.

2.2 What we think we should describe

Our viewpoint is in line with the recently emerging idea that digitisation does not produce a mere copy of the physical reality; it rather produces a new reality that – as such – deserves recognition and a proper treatment (Sheridan 2017). In the *Gra.fo* project, the preservation process often produces something different from the original analogue document and the “final object” can be seen as the outcome of an interpretative process: digitisation is carried out by a technician who knows nothing about the content of the tapes, while the digital files that can be accessed via web (i.e., the audio document, the archival record, the potential accompanying documents) are created by an expert cataloguer.

Because the digital archives accessible via the *Gra.fo* portal do not mirror the original ones, we believe that, in describing the *Gra.fo* archives in the CLARIN-IT repository, the digital rather than the analogue archive should be the reference, provided that the source of the digital archive is clearly mentioned³. Accordingly, when stating the size of an archive, one should certainly indicate the number of digital oral documents it contains (rather than the number of open reel tapes or compact cassettes), since these are the documents that the user will find in the *Gra.fo* portal. Similarly, when stating the date of release of a given archive, one should refer to the date when the archive was made public in the *Gra.fo* portal. When indicating a contact person, one should always refer to the *Gra.fo* scientific coordinators, mentioning the contact person of the original archive only when that is deemed appropriate or useful for

³ This should be the case also when citing *Gra.fo* resources accessed via the CLARIN-IT repository.

some reason (in some cases the latter is merely the holder of the archive and is not willing to be contacted for issues related to it). Any relevant information concerning the original archive (who collected it, when and why, who owns it, etc.) will be provided in the Description box in the metadata record.

3. Authorship and copyright ownership in the *Gra.fo* oral archive

With respect to the metadata issues addressed in §2.2, one of the most challenging questions regards the metadata descriptor related to authorship and copyright ownership. The policies of the *Gra.fo* portal clearly state that all its contents are the fruits of the *Gra.fo* staff's labour. However, without the original archives, *Gra.fo*'s work would simply be non-existent. The researchers who collected the original recordings are the authors of the corresponding original archives and their authorship should be recognised. At the same time, the work of interpretation, editing, description and transcription carried out by the *Gra.fo* consortium certainly deserves recognition. The following paragraphs are devoted precisely to this thorny issue. The section on authorship and copyright ownership (§3.1 and §3.2) is organized as follows: the archival and legal frameworks are presented first, followed by their application to the *Gra.fo* archives, our case study. A shorter section (§ 3.3) is devoted to the ownership of tangible objects (e.g., the analogue archives). We will see that the archival definition and the legal definition of both concepts only partially overlap: both perspectives are nevertheless necessary to cope with authorship and ownership in the domain of a digital archive.

3.1 Authorship

3.1.1 The legal framework

Firstly, it is necessary to define what the meaning of “authorship” is, with respect to both the single document and the entire digital archive represented by *Gra.fo* (see Fig. 1). The distinction is relevant, especially if we consider that Italian law provides adequate forms of protection for

- A. the document/record itself, which can be defined (according to the ISAD(G) standards on archival description) as ‘recorded information in any form or medium, created or received and maintained by an organization or person in the transaction of business or the conduct of affairs’;
- B. the archive (or its subdivisions), defined by ISAD(G) as ‘the whole of the records, regardless of form or medium, organically created and/or accumulated and used by a particular person, family, or corporate body in the course of that creator's activities and functions’.

3.1.1.1 The document

Let us consider the document/records first. According to archival science, the “author” is “the individual or corporate body responsible for the intellectual content of a document. Not to be confused with creators of records” (ISAD (G)). This definition is inherent in any type of document as the expression of the intellectual activity of human beings and having informative content⁴.

According to the lawyers' point of view, two additional requirements are highlighted in the concept of “authorship”: the concept of “moral rights” on the one hand and the concept of “economic rights” on the other. In other words, the author has two sets of rights: 1) moral rights like the right of attribution (the right to be named as the author), the right of integrity (so that your work is not distorted, etc.), and 2) economic rights like the rights of reproduction (your right to make copies) and of distribution. Moral

⁴ As confirmed by the Latin origin of the word: *documentum* is derived from *docere* “to inform”, “to educate”, “to demonstrate”.

rights are not transferable but economic rights are. Nevertheless, such requirements are applicable only in the case that the document/record can be qualified as “work”, as will be discussed infra. The concept of authorship is, however, controversial and the intellectual property (IP) laws in continental Europe and common law countries diverge. Continental law countries – like Italy – usually define the author as a natural person and consider moral rights inalienable, not subject to transfer and imprescriptible. Common law countries accept legal entities as authors as well (e.g., in the case of work-for-hire) and authorship (or rather, copyright ownership) allows for transactions in both moral and economic rights (Ricketson, Ginsburg 2006, 358-363).

Let us tackle this issue one step at a time. Not all documents (in the archival sense) receive legal protection for the intangible content they represent. According to the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention),

The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science (Article 2.1).

The Convention then reserves to each Country the possibility “to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form” (Article 2.2).

According to the aforementioned principles, the Italian law on *Intellectual Property Rights* (hereinafter, the LDA) states that authorship is applicable to “original, creative works produced in literature, music, the visual arts, architecture, drama and cinema. Nevertheless, the list is merely illustrative, and not complete” (article 2). Therefore, a document/record might be considered as ‘work’ - and not only a mere vehicle of informative content – only in the case it meets the requirement of creativity, in the sense of ‘originality’ and ‘novelty’. Crucially, as stated by the jurisprudence of Italian courts⁵, the legal concept of ‘creativity’ does not coincide with that of ‘unconditional originality’ and ‘newness/novelty’; rather, it refers to a creative act – even if minimum – representing the ability to express a feeling, an idea, a fact, an action or whatever aspect of life in a personal way. The identification of the presence of such a requirement is anything but straightforward, since it refers to an interpretative activity, for which there are practically no objective criteria. The question whether oral records – mainly represented by interviews and answers to questionnaires – fall within the realm of the LDA is increasingly a matter of discussion among lawyers and scholars dealing with oral sources. Recently, two Italian lawyers coped with the issue of authorship in oral history interviews and stated that the author of an oral interview is the historian (Cortese, Giadrossi 2017).

With the clarification of this preliminary point, it is now possible to analyse the legal content of authorship with reference to the records being considered ‘works’, that is, having moral and economic rights. The definition of moral rights stems directly from the Berne Convention:

Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his

⁵ i.e., Cass. Civ. sect. I, 12 March 2004 Decision No 5089.

honour or reputation (Article 6bis).

With a reference to the doctrine of moral rights, it is suggested that the Berne Convention might conceptualise the author as the natural person who created the work rather than any legal person or entity (Adeney 2006, 115). As for the economic rights, the Berne Convention presents an explanatory enumeration of all the business exploitation rights of the work: translation, reproduction, fair use, right of performance, right of broadcast, right of public replication, right of adaptation. Exactly the same dichotomy can be found in the LDA⁶. Moreover, according to Italian law, the moral rights are inalienable, not subject to transfer and imprescriptible. Conversely, economic rights fall into the category of disposable assets, which originally lie with the author, and which the author may dispose of freely, according to the rules established by the LDA (Articles 12-19).

3.1.1.2 The archive

Let us now consider the archive from a strictly archival perspective. The concept of the creator of an archive is defined in ISAD(G) as “the corporate body, family or person that created, accumulated and/or maintained records in the conduct of personal or corporate activity. Not be confused with collector”. As in case of the documents/records reviewed above, the archival definition only deals with the ‘creator/producer’ – that is, it associates a set of objects with the person who created or collected them.

The point of view of the law is rather different, as stated in §3.1.1.1, and the component of ‘creativity’ is compulsory in the recognition of authorship. Moreover, the law highlights additional aspects: even in the case of archives, the need to protect moral and economic rights is recognised, irrespective of whether or not the recognition of authorship for the single records is present.

The Berne Convention, in Article 2.3, states that “Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.” Although the Convention expressly cites the term “collections” and not “archive”, we think that the principle can also be applied to the latter. Such interpretation is substantiated also by the LDA, where the protection of databases is envisaged⁷: in this perspective, databases are considered ‘as a whole’, and they are characterised by a particular structure and by an internal architecture, which are the outcome of human creativity, in the sense described above (i.e., in the Italian LDA, the database *as such* is protected as a human intellectual creation, regardless of the individual records described in it. In other words, the LDA grants an independent specific protection to databases). In this case as well, Italian jurisprudence does not specifically use the label “archive”, but the rationale at the root of intangible heritage safeguarding projects such as *Gra.fo* allows us to consider digital archives as genuine databases. Therefore, the *Gra.fo* digital archive can be considered a derivative work of the analogue archives, on the basis of Art. 4 of the LDA:

Senza pregiudizio dei diritti esistenti sull'opera originaria, sono altresì protette le elaborazioni di carattere creativo dell'opera stessa, quali le traduzioni in altra lingua, le trasformazioni da una in altra forma letteraria od artistica, le modificazioni ed aggiunte che costituiscono un rifacimento sostanziale dell'opera originaria, gli adattamenti, le riduzioni, i compendi, le variazioni non costituenti opera originale (English Translation: Creative re-elaborations of an original work – like translations into other languages, transformations into other literary or artistic forms, modifications and additions embodying a substantial remaking of the

⁶ The LDA predates the Berne Convention by more than thirty years.

⁷ Arts 64 quinquies and 64 sexies.

original, re-arrangements and variations which cannot be considered original – shall also, without any loss or waiver of existing rights over the original work, be protected).

3.1.2 What about authorship in *Gra.fo*?

In this section we analyse in detail how the above-described legal concepts may be applied to the *Gra.fo* project. Firstly, it is relevant to verify whether records and archives (both the original ones and the digital archives created by *Gra.fo*) may be defined as ‘works’ and be protected by copyright protection (in this specific case, the Italian LDA). The answer is anything but simple and has relevant repercussions, in particular with respect to the moral and economic rights protection that the Italian LDA grants to a ‘work’ (a subject which may require more in-depth attention elsewhere). Secondly, it is worth bearing in mind the importance of making an exact attribution of authorship, since this fundamental topic is independent and separate from whether or not the record (or the archive) is considered ‘work’. If the record (or the archive) is labelled as ‘work’, it follows that the authorship attribution will also be associated with the legal safeguards that the LDA ensures to ‘works’. In the case that the record (or the archive) is not considered ‘work’, from a legal perspective the ‘author’ simply does not exist⁸.

While there is no doubt that the authors of the digital *Gra.fo* archive are the researchers who worked for the *Gra.fo* project, identifying the authors of the original archives is a more complex task. In the domain of oral archives, the author is not identifiable in a straightforward way, nor is he/she the only subject holding rights over an archive. Considering records, in particular, at least three entities are entitled to moral rights over an oral archive: the informant(s), the researcher(s) who collected the document and the individual/organisation commissioning the research. If we also consider economic rights, we should add the individual/organisation with whom/which the archive is deposited, who/which may have acquired some economic rights (Le Draoullec 2006, Stéphan 2013).

Discerning which of these entities should be given the status of ‘author’ in speech and oral archives might not be clear-cut. Looking at other experiences of archive preservation and dissemination in the world is certainly useful, but the fact that every country has its own applicable legislation⁹ means that the guidelines derived from single experiences are not easily comparable. Speech and oral archives contain very different types of recording material: from answers to questionnaires where the respondent’s task is limited to the translation of linguistic elements into his/her own dialect to very long monologues in which the interviewer remains silent and acts as a mere witness. The range of cases between these two extremes is ample and varied and introduces the thorny problem of genres and elicitation styles in oral material collection. Take, for example, the particular case represented by improvised oral poetry where the poet creates something totally original and can clearly be considered the ‘author’ (he/she can even profit from his/her works financially). Such an issue is obviously extremely complex also in the case of ‘collective’ archives created in the context of a geo-linguistic enterprise. The *Carta dei Dialetti Italiani* Archive (one of the greatest endeavours in Italian dialectology research: see Calamai, Bertinetto 2012) is a convenient example: one scholar conceived of and directed the enterprise; each region had its own research team that was directed by a coordinator; many different researchers carried out the fieldwork; and many speakers were interviewed. Thus, who should be recognised as the author? According to the LDA (Art. 7), we may consider Oronzo Parlangeli, who was at the time the scientific coordinator of the enterprise, the author of the *Carta dei Dialetti Italiani*. Nevertheless, each

⁸ In any event, from a strictly archival perspective, the metadatum related to ‘author’ remains valid, since such attribution will in any case be relevant for putting records and archives into their proper context.

⁹ Laws about authorship differ greatly from one country to another. In the United States tradition, according to MacKay (2016, pp. 75-76), ‘the speakers in the recorded interview automatically own their own words from the moment they are spoken, until or unless transferred to another entity through a legal release agreement’. According to French norms, however, researchers are the authors of their recordings, though they might share the role of co-authors with the interviewees in cases in which the latter participate in the exchange creatively (Stérin, 2016).

research project has its own history and requires specific interpretation – assuming that this is possible in the case of born analogue archives – in order to successfully identify the ‘author’.

3.1.3 What about copyright ownership in *Gra.fo*?

The creation of the *Gra.fo* digital archive, entailing complex decision making, certainly required creativity and thus can be considered a derivative work of the analogue archives, as already stated.

In the *Gra.fo* project, the archives’ copyright holders were asked to sign a legal agreement to grant their rights over the recordings to the *Gra.fo* project so that these could be digitised, catalogued, transcribed, and disseminated through the web portal (see Appendix 1). By means of the legal agreement between the copyright holders (in most cases, also the owners of the analogue archives) and both universities working on the *Gra.fo* project (SNS and UNISI), it was possible to digitise, describe, catalogue and analyse the oral documents contained in every single archive and then, finally, create a digital archive accessible via the web with specific search boxes.

Moreover, the main investor in the Project, the Tuscan Region, signed a legal agreement with SNS and UNISI in order to regulate copyright rights and results dissemination (Art. 13 of the Agreement): ‘Diritti di proprietà intellettuale e diffusione dei risultati. I diritti di sfruttamento economico e di utilizzo dell’innovazione eventualmente prodotta dal progetto di ricerca appartengono in misura uguale alla Regione Toscana ed ai soggetti attuatori i progetti medesimi’ (English Translation: Copyright rights and results dissemination. Economic rights and, when appropriate, rights of use of the innovation produced by the research project belong equally to the Tuscan Region and to the implementing bodies of the project itself¹⁰).

3.2 Ownership

3.2.1 The legal framework

The previous section addressed the complicated issue of authorship with respect to oral records and archives. We now tackle the issue of rights *in rem*¹⁰, commonly labelled “ownership” rights and only in appearance less complicated than intellectual property rights.

According to Italian law, the concept of ‘ownership’ in the commonly accepted meaning of the term corresponds to three different ideas: ‘property’, ‘possession’, and ‘custody’. Property refers to the whole set of rights *in rem* over an object: according to the Italian Civil Code, it allows the owner/title holder to make any lawful use of the good that is mainly expressed in the power of enjoyment and disposition (“the right to enjoy and dispose of things in a full and exclusive way” – article 832). Property grants its holder full control over the good. It is also protected by the Italian Constitution in Art. 42, where, in the 2nd paragraph, it is said: “Private property is recognized and guaranteed by law, which determines the ways it is acquired and enjoyed, as well as its limits in order to ensure its social function”.

3.2.2 What about ownership in *Gra.fo*?

Figuratively speaking, oral archives have a very complex life. Researchers who spent their lives doing fieldwork might have guarded their archives jealously. This is often the case for those who financed their own research and are, therefore, also the owners of their archives (e.g., among the *Gra.fo* archives, the ‘Vanna Brunetti’ archive). Others, who received funding for their research, might have consigned their recordings to the funding organisation (like the ‘Duse Lemetti – Gruppo Vegliatori’ archive, entrusted to the Municipality of Galliciano, which financed the research), or to an organisation

¹⁰ The Latin word *res, rei* means a material good/object.

that guaranteed the physical conservation of the materials (like the ‘Angela Spinelli’ archive, which was handed over to the Istituto Culturale e di Documentazione Lazzarini in Prato). Some may have come into possession of an archive through their friends (e.g. the ‘Edda Ardimanni’ archive is made up of recordings that were collected by different, unidentified researchers and then donated to Edda Ardimanni). Yet others might have inherited an archive from a deceased relative (like the ‘Sergio Gargini’ archive, which belongs to his wife, Anna Buonomini)¹¹. Therefore, the owner may correspond to the researcher who collected the recordings, to the organisation funding the research, to the organisation guarding the archive, or even to other persons that were not involved in the research at all (researchers’ heirs or friends).

According to the legal agreement between the copyright holders and the *Gra.fo* project, the original recordings were retained for the time necessary to work on them and then returned to their legitimate owners (who have the property, possession and custody of the original archives), while the portal and everything it contains (including the edited audio files and the relative descriptions) belong (property, possession and custody) to the Scuola Normale Superiore, the University of Siena and the Tuscan Region.

4. Conclusion

The analysis of this case study brings us to the following conclusion: for the digital archives, the authors are the researchers who worked at *Gra.fo*, while the owners are SNS, UNISI and Tuscan Region, which supported and financed the research project. As for the original archives and records, it certainly appears more difficult to provide a single, clear answer, given the complexity of born analogue archives. Undoubtedly, the identification of both the author and the owner in such cases requires a complex, in-depth analysis with respect to the origin, the aims, the rationale and the members of the research project of every single archive. It is not infrequent that information retrieval is only partially possible, due to the passage of time, the scarcity of accompanying materials and a general lack of sensitivity to the problem of long-term preservation of the various primary research data (open cassettes, open reels, field-notes) once the research project has expired.

Among Italian scholars, issues related to rights over oral recordings are now taken into great consideration compared to the past, when little or no attention was given to legal and ethical issues. Undoubtedly, Italy lacks a reference point comparable to France’s *Questions éthique et droit en SHS* (<https://ethiquedroit.hypotheses.org/>). However, the increasingly urgent need to agree upon some guidelines is being recognised around the world; 2015 saw the launch of the Italian Oral History Association’s (AISO) *Good Practices in Oral History* (<http://aisoitalia.org/?p=4795>), the culmination of a lengthy process of reflection and discussion among oral historians, anthropologists, and legal experts (Bonomo, Casellato, Garuccio 2016; Casellato 2017). What the conclusions of the meetings of the AISO’s Good Practices working group seem to suggest is that there is no general rule for establishing who the author of an oral document is and, moreover, the identity of the author cannot be decided *a posteriori*: only the agreements made between interviewer and interviewee in the context of the interview can tell us who the author of that document is (Sinello 2015). Nevertheless, under the section “Use of the Interviews”, in *Good Practices* it is clearly stated that the title holder (*titolare*, in Italian) of the interview is the person who conducted it. The problem remains crucial for those undocumented archives created in the 60s and 70s (when authorship, privacy and personal data protection were not common issues among linguists and historians) which now demand hard work on the part of curators to reconstruct their history. Therefore, the inclusion of the *Gra.fo* archives in the CLARIN-IT repository appears to be not only a metadata ‘translation’, but also a refined reflection on authorship, ownership,

¹¹ Details on the single archive are provided in Calamai, Bertinetto (2014).

and on the relationship between original source and digital objects. For this reason, speech technology, jurisprudence, archival science and digital philology should cooperate closely in order to offer sustainable solutions to scholars dealing with speech and oral archives.

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Appendix 1. Legal agreement between the archives' owners and SNS and UNISI University (original version)

Spett.le

Scuola Normale Superiore

Piazza dei Cavalieri, 7

Pisa

Oggetto: cessione diritti su fonoregistrazioni

L'Associazione/Biblioteca/Archivio "....."

(C.F.), con sede legale a

..... in via, rappresentata dal

Presidente e legale rappresentante *pro tempore*, dott./prof.(ssa)

....., il/la quale agisce in virtù dei poteri conferitigli da

..... (ad es., lo statuto dell'Associazione)

Premesso che

- Grazie a un finanziamento regionale (Avviso pubblico FAS 2007 2013 Delibera CIPE 166/2007 PAR FAS Regione Toscana Linea di Azione 1.1.a.3. per il per il sostegno a progetti di ricerca in materia di scienze socio economiche e umane), la SNS e l'UNISI hanno dato vita alla realizzazione di un progetto denominato *Grammo – fonì. Le soffitte della voce*, volto a raccogliere, salvaguardare e analizzare documenti vocali di interesse linguistico mediante la loro digitalizzazione e la loro catalogazione, attraverso la costituzione di un archivio telematico centralizzato presso il Laboratorio di Linguistica della SNS, che – una volta realizzato – sarà regolato da apposite norme miranti ad evitare i rischi di usi impropri dei beni vocali raccolti;

- il materiale audio-fonico in possesso di XYZ abbia un valore storico, documentario e scientifico tale da giustificare la digitalizzazione, la descrizione, la catalogazione e la successiva messa in rete, onde permettere agli studiosi di poterlo utilizzare in futuro, evitando che questo possa andare disperso per il deterioramento o l'obsolescenza dei supporti materiali sui quali è attualmente conservato;
cede

in via non esclusiva e gratuita alla Scuola Normale Superiore, nella qualità di mandataria dell'Associazione Temporanea di Scopo (ATS) costituitasi tra la stessa e l'Università degli Studi di Siena (di seguito UNISI) per la realizzazione del progetto *Grammo-fonì. Le soffitte della voce*, i documenti audio-fonici di cui ha il legittimo possesso / proprietà indicati nell'allegato A affinché siano digitalizzati, catalogati e trascritti (parzialmente o integralmente), e successivamente costituiscano parte costitutiva dell'archivio telematico centralizzato che sarà realizzato presso il Laboratorio di Linguistica della SNS per finalità di studio, ricerca e pubblicazione, previo trattamento volto a rendere la fonte non identificabile, su apposito sito web dedicato con accesso regolamentato.

Dichiara

- che i documenti audio-fonici ceduti all'ATS sono in suo legittimo possesso e di non aver già ceduto ad altri in esclusiva il materiale di cui all'elenco allegato;
- che qualora terzi dovessero rivendicare la titolarità di diritti su tali beni non compatibili con la presente cessione i relativi files dovranno essere rimossi dalla banca dati della ATS e/o trattati compatibilmente con i diritti di tali terzi.
- di essere consapevole che la pubblicazione avverrà con la citazione espressa della XYZ da cui la ATS ha acquisito, mediante il presente atto di cessione, i diritti sui dati allegati;
- di esonerare l'ATS da qualsiasi responsabilità qualora i documenti audio-fonici subiscano danneggiamento durante le fasi di digitalizzazione nonché da eventuali danni (purché non causati da grave negligenza) che possano verificarsi durante le fasi di trasporto;

- di non voler sostenere alcuna spesa di trasporto dei supporti materiali contenenti i dati fino alla sede in cui saranno oggetto di digitalizzazione;
- di volere una copia digitalizzata su opportuno supporto (fornito da XYZ) del materiale ceduto
- di volere accesso gratuito all'archivio telematico, fatte salve le eventuali restrizioni temporanee imposte da altri enti cedenti, ragioni tecniche o altra causa ostativa.

Pisa, 2011

Il Direttore/Presidente di

.....

Allegato "A".

(Descrizione dei materiali temporaneamente ceduti da agli esclusivi fini del presente accordo)

Appendix 1. Legal agreement between the archives' owners and SNS and UNISI University (English translation)

Scuola Normale Superiore
Piazza dei Cavalieri, 7
Pisa

Transfer of rights over sound recordings

The Association, Library or Archive known as

.....,
(NIN), whose registered office address is
..... and which is represented by its President and legal
representative *pro tempore*,, who is acting by virtue of the
powers bestowed on him/her by (e.g., The Statute of the Association)

Given

- that, thanks to a regional grant (Public Notice FAS 2007 2013 Decision of the Interministerial Committee on Economic Programming [CIPE] 166/2007 PAR FAS Tuscan Region Course of Action 1.1.a.3 in support of research projects in socio-economic sciences and the humanities), the Scuola Normale Superiore (SNS) and the University of Siena (UNISI) have created a project named *Grammo-foni. Le soffitte della voce (Grammo-foni. The Attics of Voice)* whose purpose is to collect, preserve and analyse vocal documents of linguistic interest by digitising and cataloguing them and by establishing a centralised electronic database at the Linguistic Laboratory of the SNS which, once this web archive has been set up, will be regulated by specific norms for the purpose of avoiding the risk of improper usage of the collection of vocal assets;

- that the audio material owned by XYZ has such historic, documentary or scientific value as to justify its digitisation, description, classification and publication online so that scholars may access it in the future and so that it will not be lost forever through the deterioration or obsolescence of the tangible medium currently preserving it;

Agrees

to grant a non-exclusive, royalty-free licence to the Scuola Normale Superiore, as the agent of the Associazione Temporanea di Scopo (ATS – a temporary task force constituted between the SNS and UNISI for the fruition of the project denominated *Grammo-foni. Le soffitte della voce*), to use the audio documents listed in Attachment A of which ATS is the legal owner/title holder so that they may be digitised, catalogued and transcribed (either partially or fully) and so that they may in future constitute an integral part of the centralised online archive to be created at the SNS Linguistic Laboratory for studies, research and publication, subject to prior processing for the purpose of making the source unidentifiable, through the specific website dedicated to this project and through regulated access;

Declares

- that the audio documents transferred to the ATS are in his/her legal possession and that the exclusive rights to the material listed in the attachment below has not been ceded to others;
- that should third parties claim ownership of the rights over these assets incompatible with the present transfer the relevant files will be removed from the ATS database and/or handled in a manner compatible with the rights of said third parties;

- that he/she is aware that the audio documents listed in Attachment A, which ATS has obtained from XYZ with this Act of Transfer, will be published in the form requested by XYZ;
- that he/she exonerates ATS from any responsibility should the audio documents be damaged during digitisation or during transportation (unless, of course, the damage was caused by grave negligence);
- that he/she does not wish to incur any expense for the transportation of the tangible mediums containing the audio material to the location where they will be digitised;
- that he/she wishes to have a digitised copy of said material in an appropriate medium (supplied by XYZ);
- that he/she wishes to have free access to the online database, except when other transferring parties have imposed temporary restrictions or when there are other obstacles, like technical problems.

Pisa, 2011

Director/President of

.....

Attachment "A".

(Description of the materials temporarily transferred by for the sole purpose described in this agreement.)