



Consultant Archivist

## Session 3: Managing Third Party Copyright

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## Part 1: Tracing Copyright Holders and Orphan Works



## What issues are associated with managing third party copyright material?

- Copyright duration very complex
- If third party material still in copyright, organisations cannot use items without permission of copyright holder or their heirs
- Issue when seeking to use collections, eg digitisation, publication, use on website and social media, copying, licencing material
- All about **managing risk** in organisation



## Tracing third party copyright holders: checklist

- Examine Irish and EU copyright law regulations appropriate to your collection items
- Make informed judgement about copyright expiry date
- Keep detailed records of searches, eg Excel spreadsheet copyright database with named in-house researchers, email chains, letters
- Once rights holders traced, seek copyright permissions for using material via permissions letter / emails
- Seek sector or in-house legal / intellectual property rights advice if uncertain or unclear



## What are Orphan Works?

- Works where the copyright owner is either unknown or cannot be traced
- Includes photographs, texts, audio visual, objects, artworks et al
- Millions of archival items in heritage institutions in Ireland and the UK for which copyright is unknown or untraceable
- Many orphan works are still in copyright





## Managing Orphan Works in house

- Conduct a **diligent search** for all rights holders of every orphan work you want to use
- If one or more rights owners is known, seek copyright permissions as usual
- Carry out risk assessment to establish if your organisation will actually use the work
- Decision depends on how risk adverse the organisation is, so decision should be taken at senior management level
- Demonstrate tracing copyright owners, collect evidence, eg email chains



## Managing Orphan Works in-house

- If you decide to use the material, have 'take down' notice and procedures, eg on website:  
  
'All reasonable efforts have been made to ensure that any intellectual property rights displayed in these works have not been infringed. If you do not believe this to be the case, please contact...'
- Make sure your organisation has appropriate indemnity insurance to cover any claims



## Tracing Orphan Works: WATCH

- Writers, Artists and their Copyright Holders (WATCH):  
<https://norman.hrc.utexas.edu/watch/>
- Co-operative research project between University of Reading and University of Texas
- Strong literary emphasis, but extended remit due to user demand
- WATCH now collects and includes information about copyright holders of living and dead visual artists, photographers, sculptors, non-literary authors, celebrities





## Tracing Orphan Works: Firms out of Business

- Firms out of Business (FOB):  
<https://norman.hrc.utexas.edu/watch/>
- Partnership between University of Reading and University of Texas
- Sister project of WATCH
- Holds information about vanished publishing concerns, literary agencies, and similar firms



## Tracing Orphan Works: Diligent Search Tool

- Diligent Search Tool – <https://diligentsearch.eu/>
- Part of EnDOW Project – collaborative project funded by European Commission
- Platform enables users with no specialised legal knowledge to carry out diligent searches on behalf of cultural heritage institutions
- Tool available for searches in 20 jurisdictions in the EU



## Tracing Orphan Works: Other research options

- Very few records available for researching rights holders for most orphan works
- TinEye Reverse image search:  
<https://tineye.com/>
- Image search and recognition company
- Aims to make images searchable
- Useful for tracing photographic duplicates, modified copies of images in your collection, image verification





## Tracing Orphan Works: Other research options

- Online Google and image search
- Contact licensing agencies, image libraries, literary agents, press agencies,
- Contact professional bodies, eg Association of Authors' Agents, Irish Writers' Union
- Consult Irish Writers' Handbook
- Tracing copyright ownership through wills and probates



## EU Orphan Works Directive 2012

- 2012 – EU Orphan Works Directive
- 2014 – implemented in Ireland
- Helpful development that encourages heritage institutions to digitise material for websites, online catalogues, publications without infringing copyright
- Under Directive, works which identified as ‘orphan’ after diligent search on authorship may be used by public institutions
- Heritage institutions can use Orphan Works Exception from EU Orphan Works Directive for online works





## EU Copyright Regulation 2021

- Spring 2021 – EU implemented Copyright Regulation
- 2021 – signed into Irish Law
- Allows heritage institutions to use in copyright works without permissions, including orphan works online
- Regulations provide framework for more modern copyright legislation which will strengthen rights and protection of rightsholders
- Provisions reflect technological advances and increased digitisation
- Provide for wider access and use of copyright protected works to potential benefit of creative sectors, press publishers, researchers, educators, cultural heritage institutions, and citizens





## EU Orphan Works database

- EU IPO Orphan Works database:  
<https://euipo.europa.eu/orphanworks/>
- Allows rightsholders to search for orphan works, obtain contact information of organisations using them, and put end to orphan work status
- Can use material for websites or publications with reduced risk
- Must undertake thorough searches to identify rights holder or orphan nature of work
- Organisations wishing to register an Orphan Work in Orphan Works Database must first apply online to the EUIPO to be registered as a 'Beneficiary Organisation'



## EU Orphan Works database

Can use:

- Works in print sector, eg books, journals, newspapers, magazines
- Cinematographic or audiovisual works and photograms
- Unpublished works under certain conditions
- Works embedded or incorporated in other works or photograms, eg pictures, photographs
- Partial Orphan works, ie for which some rights holders have been identified

NB Not used much, partly due to technical issues with database





## Summary of Orphan Works solutions in 2024

- 1) Use EU IPO Orphan Works database  
Undertake risk assessments for use of orphan works in-house
- 2) Refrain from using orphan works
- 3) Use copyright exceptions for orphan works, eg dedicated terminals / preservation exceptions  
(acknowledged, justifiable)







## Part 2: Licensing in and out

## Managing freelancers and suppliers: Overview

- Essential to undertake robust copyright management in heritage organisations
- Build relationships with freelancers and suppliers, eg photographers, film makers, artists, designers
- Only copyright holders can copy, perform, show, adapt, and license works
- Freelancers and suppliers automatically own copyright and related rights to content they create whilst working for heritage organisations
- Organisations must therefore manage freelance and supplier copyright accordingly
- Heritage organisations must also manage volunteers, who have the same status as freelancers and suppliers in terms of owning copyright in work they produce
- Under Irish law, copyright content produced by contracted staff belongs to company



## Managing freelancers and suppliers: Agreements

- Copyright procedures should be established before works are commissioned from freelancers and suppliers, and before individual or team is appointed to role
- Written agreement essential if organisation is seeking to use content
- Written agreements should include clause about transferal of copyright (if possible)
- Also consider creator's **moral rights**, including **right of paternity** (right to be properly identified as author of work), and **right of integrity** (right not to have work subjected to derogatory treatment)
- Freelancers and suppliers can waive moral rights, or indicate preference for crediting, and / or consultation when content is changed
- Volunteer agreements should also include clause on transferring copyright to heritage organisations





## Managing freelancers and suppliers: Licensing in

- **Licensing in** from freelancers and suppliers one option for heritage organisations wanting to use content
- Proposed use of content will determine type of permissions sought
- Copyright assignment licences for use with suppliers include:
  - Exclusive licence – no person or organisation other than named licensee can exploit intellectual property rights
  - Sole licence – one third party and original creator retains rights to use intellectual property
  - Non-exclusive licence – licensee has right to use intellectual property, but licensor free to exploit same intellectual property, and allow any number of other licensees to exploit it
- Such licences can be restricted to country and time (ie not necessarily perpetual)



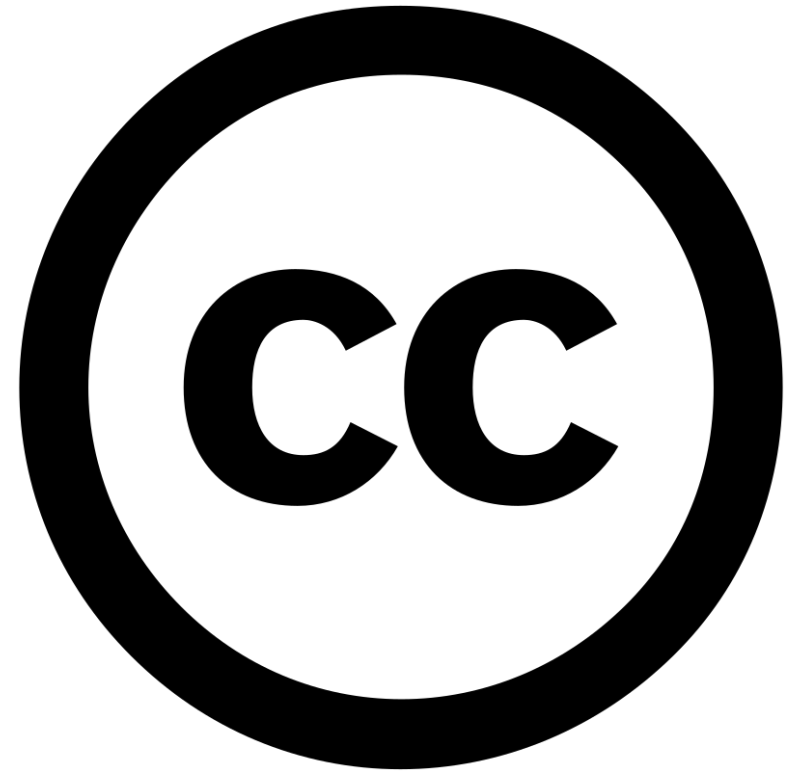
## Managing freelancers and suppliers: Artists

- Heritage organisations frequently manage art commissions differently, eg paintings, installations, sculptures
- When loaning in artworks for temporary exhibitions, artists are often unwilling to transfer copyright in artworks and paintings, so licensing more realistic option
- Likewise, waiver of moral rights may not be appropriate when working with artists and exhibitions
- As an alternative, organisations may opt to credit artist, and to seek their permission when adapting image of artwork or painting



## Creative Commons licence: Overview

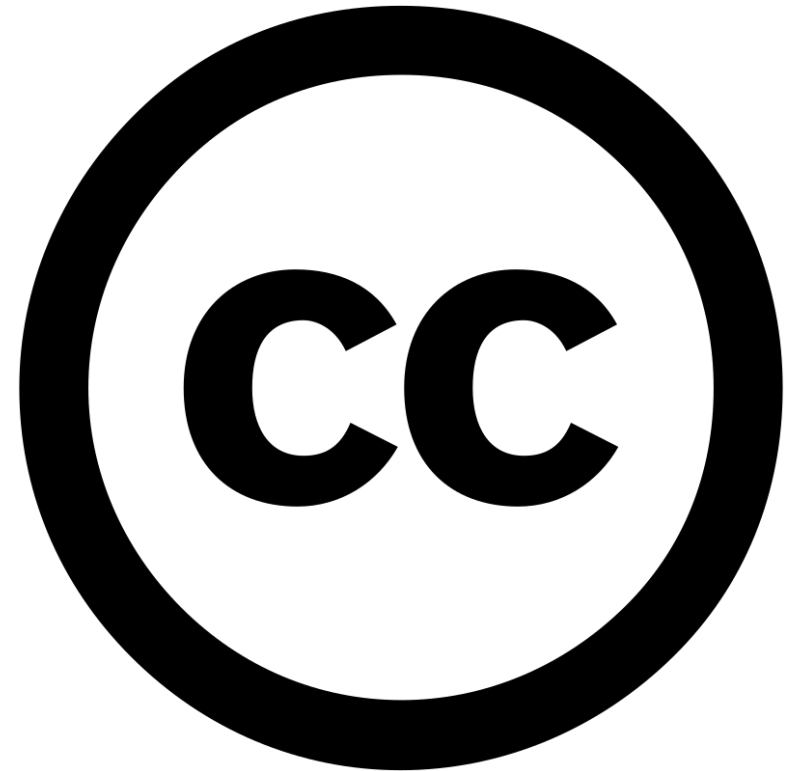
- Creative Commons (CC) – a US not for profit organisation which creates free, international, public licences:  
<https://creativecommons.org/>
- CC – one of several public copyright licences which allows for distribution and public use of copyrighted work under copyright law (mainly web based)
- International suite of licence templates, with over 1 billion items online currently licensed under CC
- Searchable online database of content
- Aim – to simplify granting of copyright permissions for published or web material, and to ensure users can locate content faster
- CC licence used when author wants to provide public with right to share, use, reproduce, develop, adapt their work
- CC licence granted by copyright holder(s), or with permission from rights holder(s)





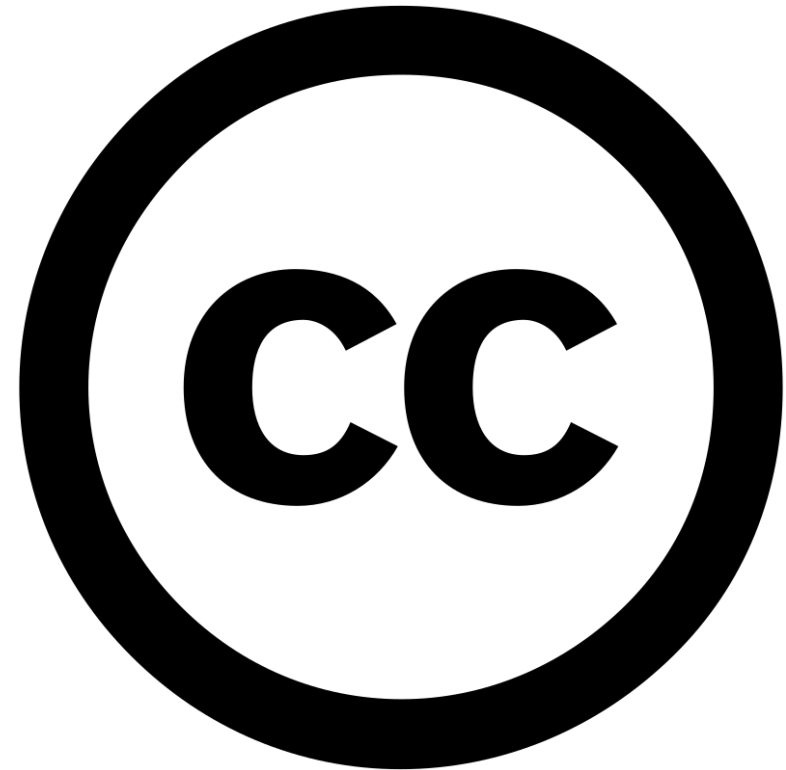
## Creative Commons: Overview

- CC can be used for all works under copyright law, including literary, dramatic, musical and artistic works, films, sound recordings, broadcasts etc
- CC licences easy to use, and can select pre-defined conditions of re-use
- Public can re-use licensed works as long as they are in copyright
- CC licences have 3 layers of design:
  - 1) Traditional legal tool = legal code layer
  - 2) Commons deed = human readable version of licence
  - 3) Machine readable version of licence (so web knows when work is available under CC)
- Can use CC tools to help share work, eg embedding information on website using html code associated with licence



## Creative Commons: Licensing out

- CC licensing undertaken by both individual creators and heritage organisations
- Many heritage organisations use CC licences which allow re-use of content created by freelancers and suppliers
- Some heritage organisations use image-licensing, eg Science and Society Picture Library (Science Museum Group UK), Bridgeman Images
- Some organisations use for brand-licencing (use of organisational logo in return for fee / profit), eg Science Museum
- Organisations must clear any third party copyright within content before it is re-used or licensed out
- Freelancers and suppliers must flag up any third party rights in their works, and ensure copyright is transferred to them
- As with tracing copyright holders, rights clearance should be assigned to specific teams, rights research documented and budgeted for, and permission letters created
- Ensure data protection element is managed appropriately



## Creative Commons: 6 licence types

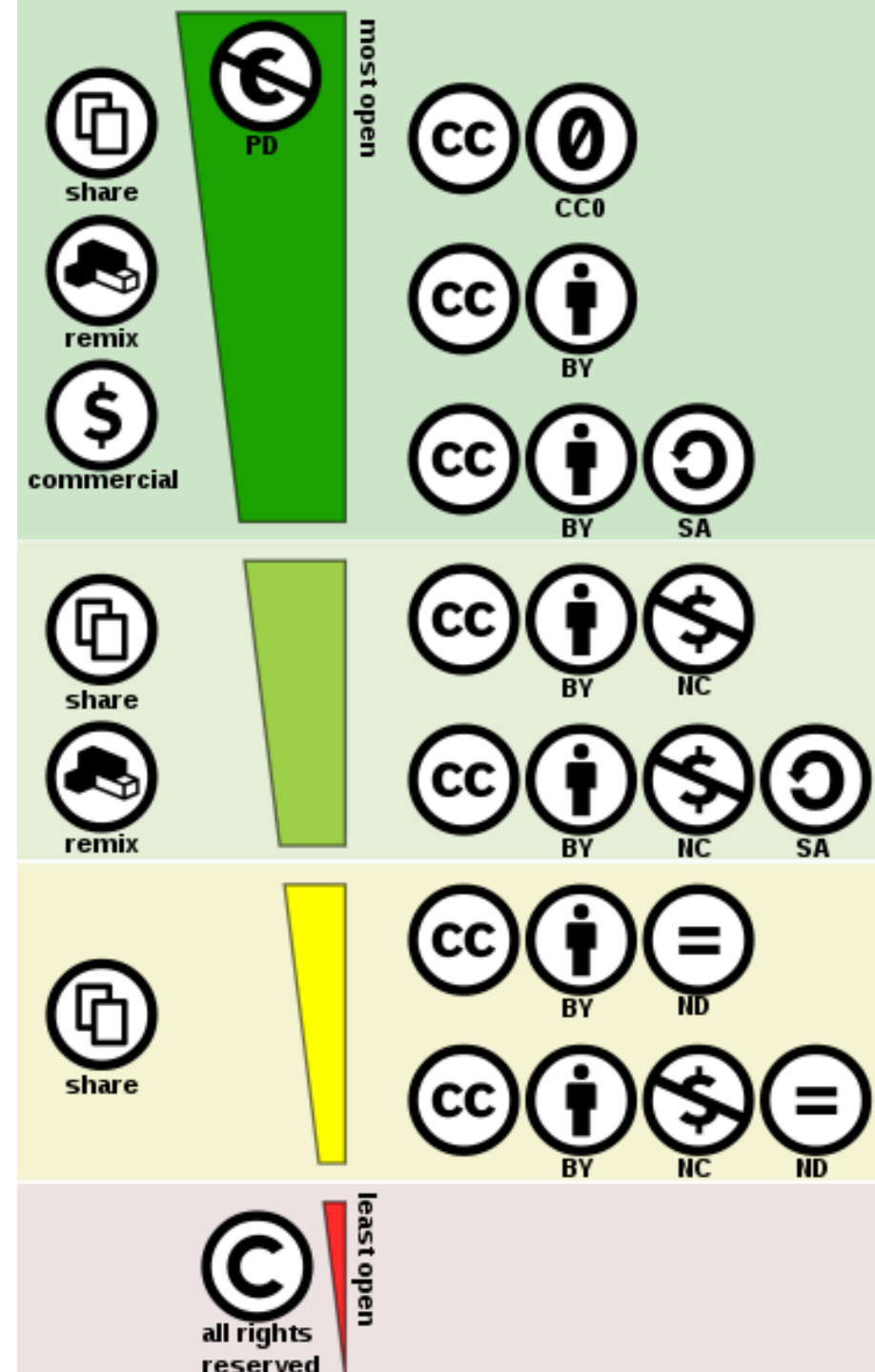
- 2013 – release of current 4.0 CC licence
- 6 main licences types (can also mix licences)

### 1) Attribution (CC-BY)

- Re-users can distribute, remix, adapt, and build upon material in any medium or format
- Author must be acknowledged
- Including use for commercial purposes

### 2) Attribution-ShareAlike (CC BY-SA)

- Re-users can distribute, remix, adapt, build upon material in any medium or format
- Modified material must be licensed under identical terms
- Must credit creator
- Including use for commercial purposes
- Used by Wikipedia

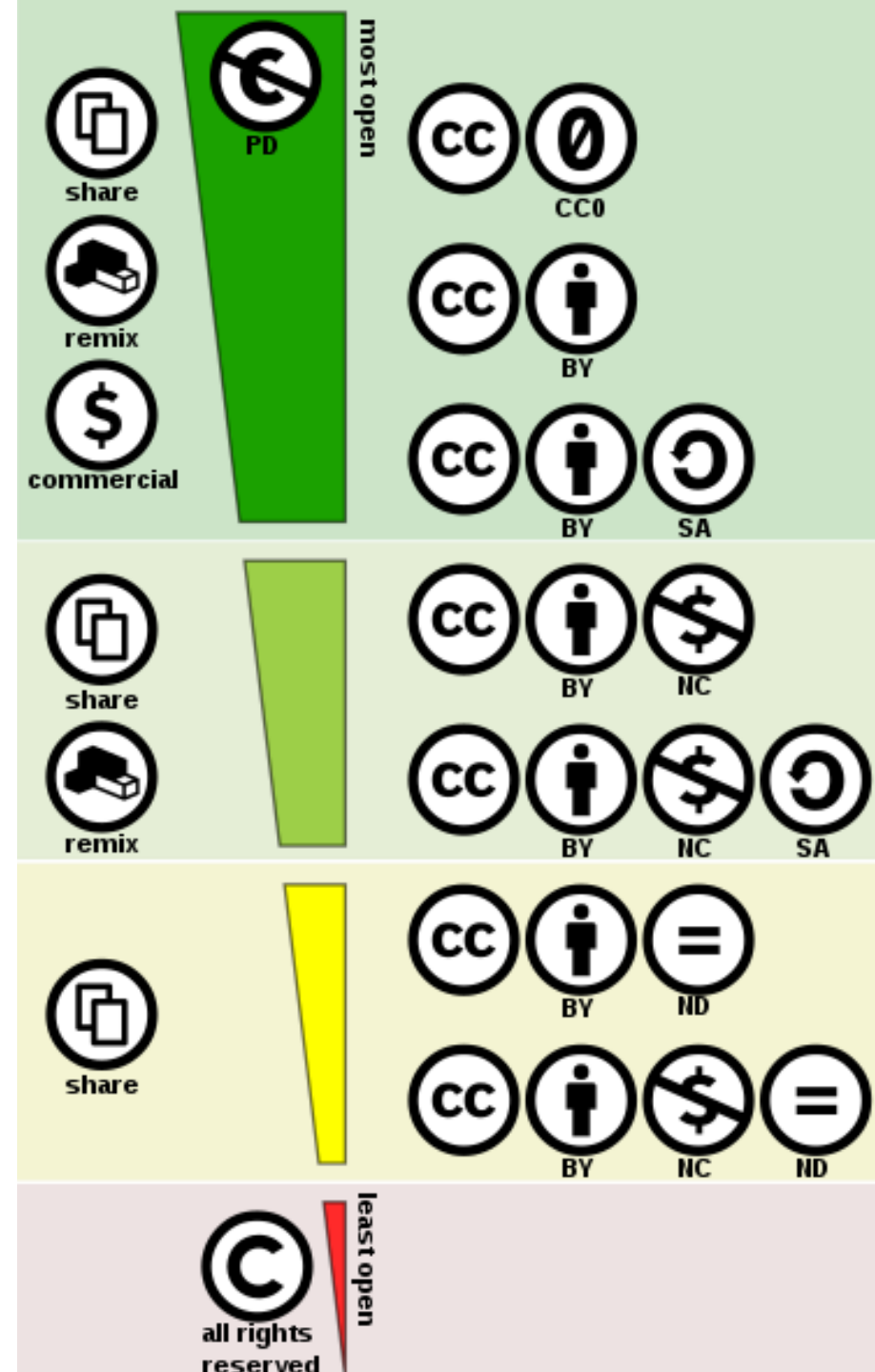




### 3) Attribution-NoDerivs (CC BY-ND)

- #### 4) Attribution-Non-Commercial (CC BY-NC)

- Re-users can distribute, remix, adapt, build upon work
- Non-commercial uses only
- New works must acknowledge rights holders
- Must credit creator



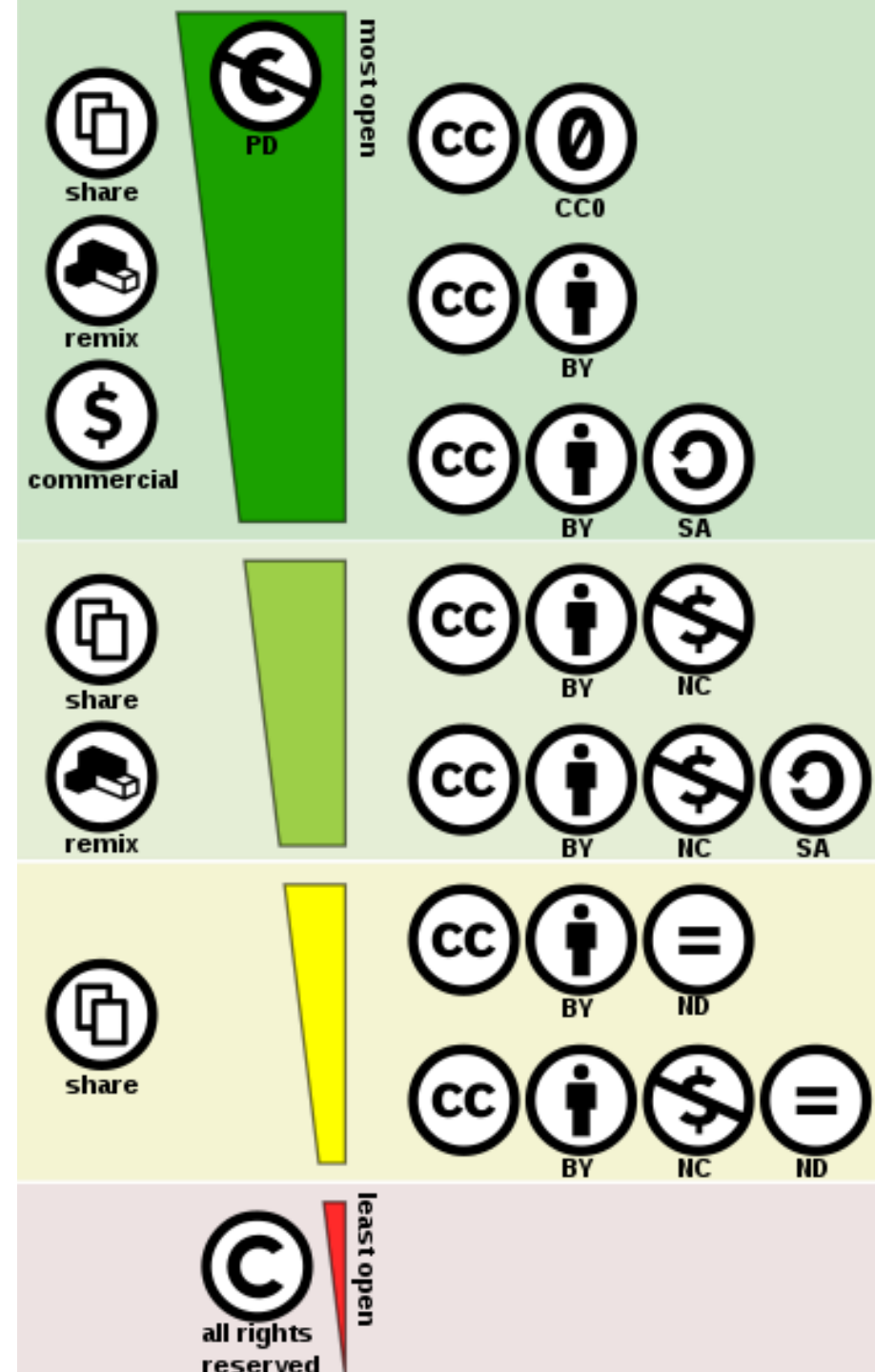
## Creative Commons: 6 licence types

### 5) Attribution-Noncommercial-Share-Alike (CC BY-NC-SA)

- Re-users can distribute, remix, adapt, and build upon work in any medium or format
- Re-users' new creations must be licenced under identical terms
- Non-commercial uses of works only
- Must credit creator

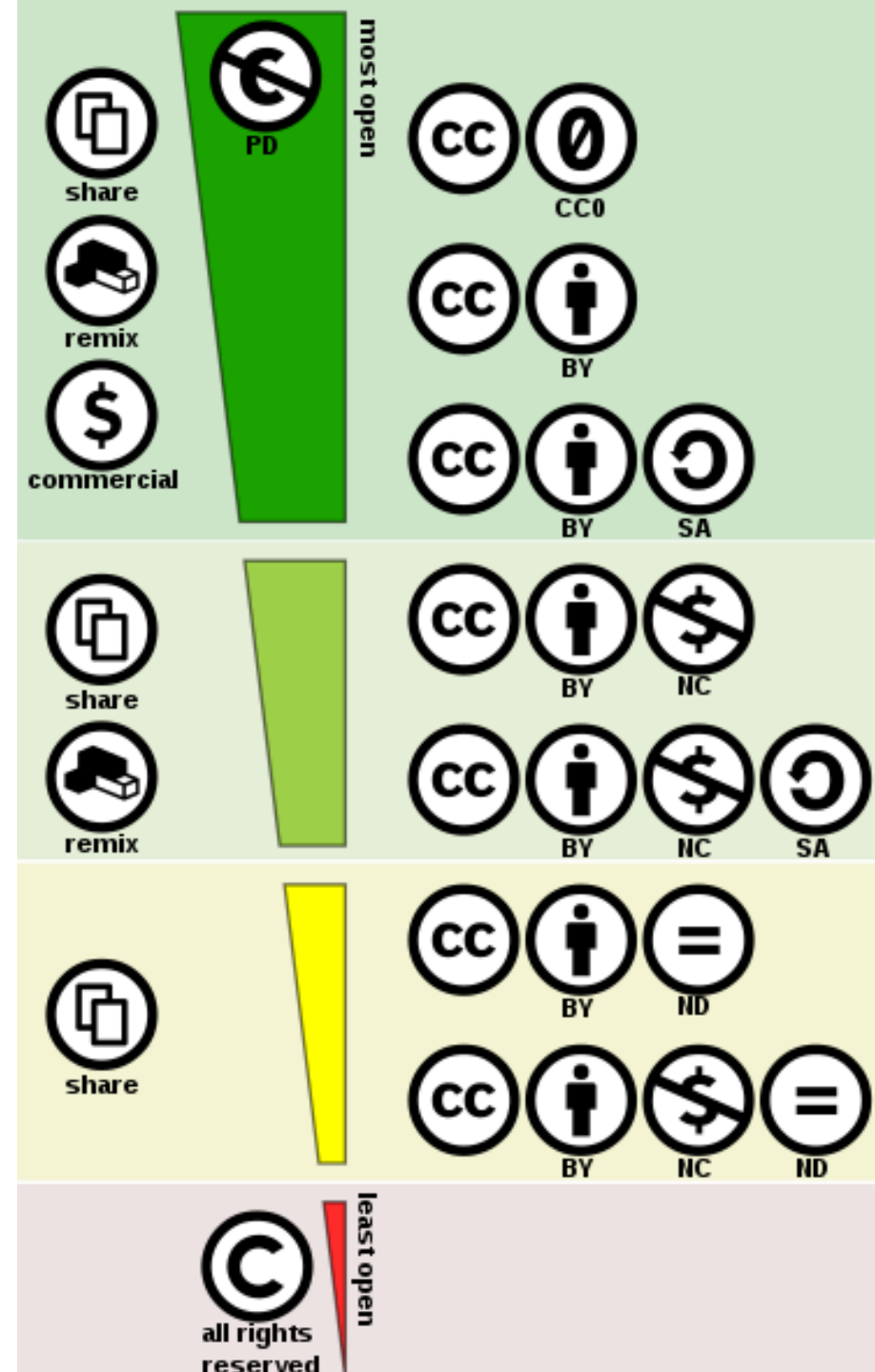
### 6) Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)

- Re-users can copy and distribute material in any medium or format in un-adapted form only
- No derivatives or adaptations of work permitted
- Non-commercial uses of work only
- Must credit creator



## Creative Commons Public Domain Dedication (CCO or CC Zero)

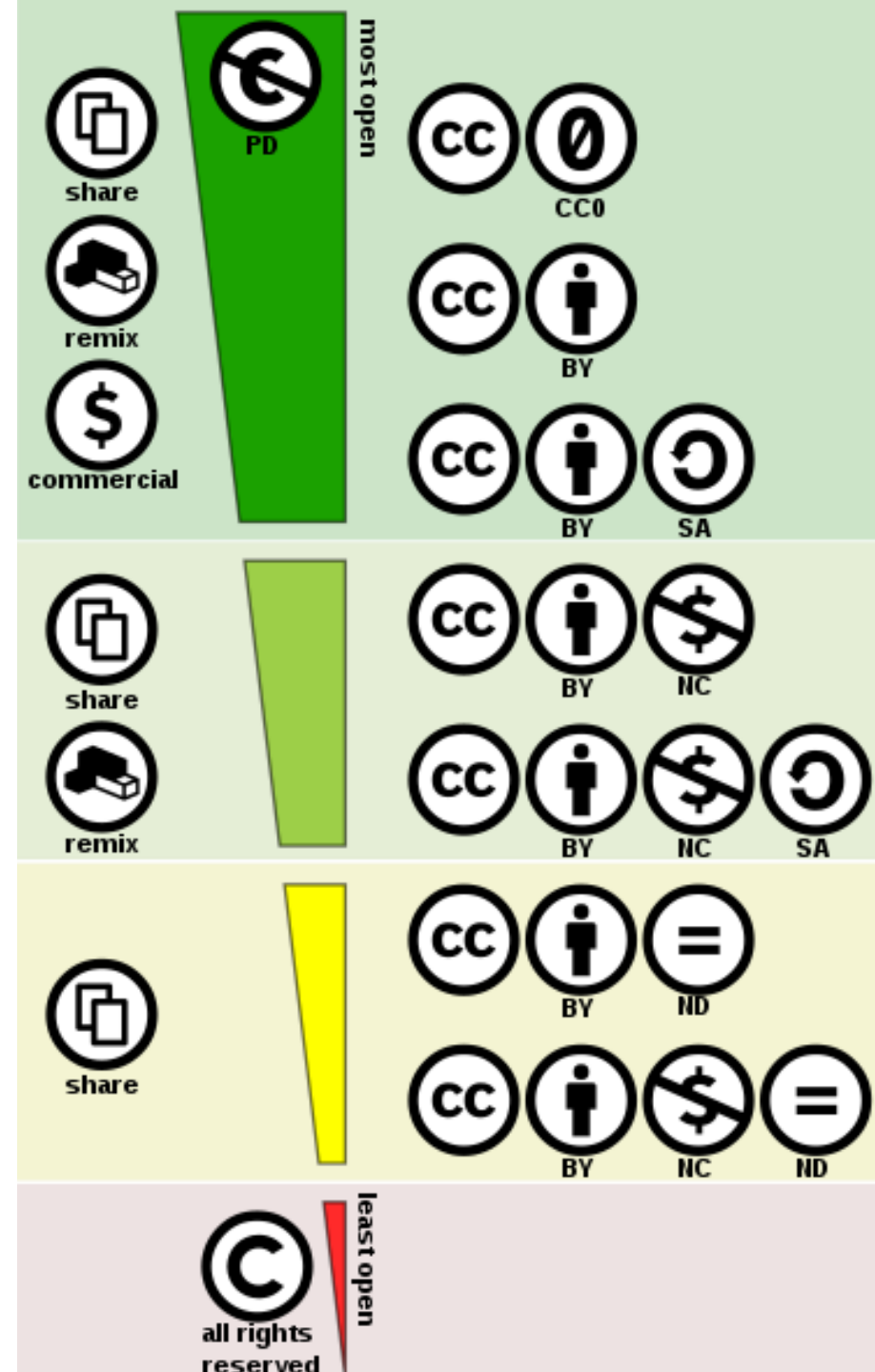
- Public dedication tool
- Allows creators to relinquish copyright and put works into worldwide public domain
- Re-users of content can alter, distribute, remix, adapt, build upon material (no conditions)
- Including use for commercial purposes





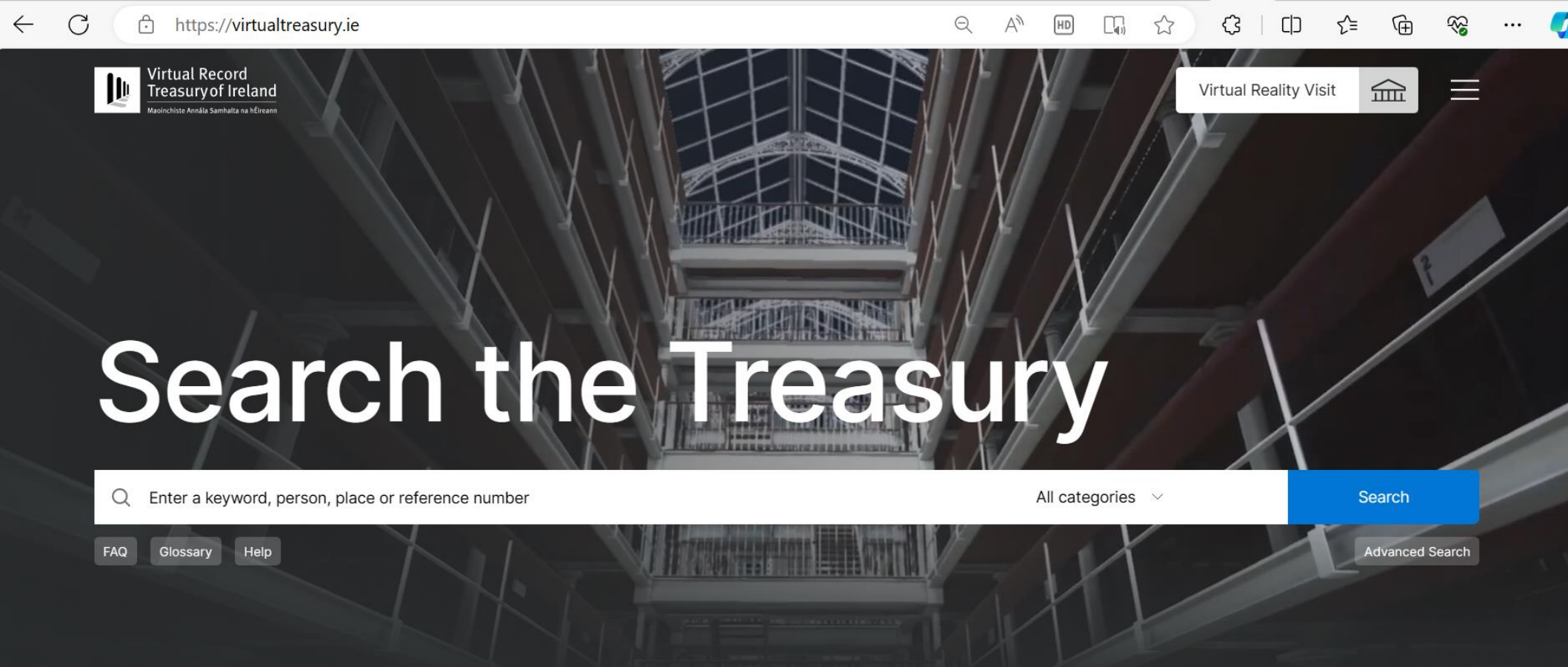
## Creative Commons licences: Risks

- Issues associated with funding bodies, eg National Lottery Heritage Fund new default international licence (CC-BY-4.0), which is unpopular with rights holders and organisations in the UK
- Risk of infringing creator's moral rights because use of content in derogatory manner is unpreventable
- Risk of content being used for promotional purposes, eg promoting people's views / ideas
- Risk when CC rights not cleared adequately because content re-users could be held responsible for copyright infringements
- CC licences cannot be revoked (even if individual or organisation stops distributing content)
- Cannot limit CC use to specific countries, even if 'ported' licence used to specify jurisdiction
- Highly complex when mixing 6 CC licences and CCO





## Case Study: Virtual Treasury of Ireland



# Search the Treasury

Q Enter a keyword, person, place or reference number

All categories ▾

Search

FAQ

Glossary

Help

Advanced Search

- Outcome of 5-year programme of research entitled 'Beyond 2022'
- Funded by the Government of Ireland under Project Ireland 2040 through the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
- Led by researchers at Trinity College Dublin
- Combined historical investigation, archival discovery, conservation and technical innovation to re-imagine and re-create through digital technologies the archive lost during fire in 1922 Civil War

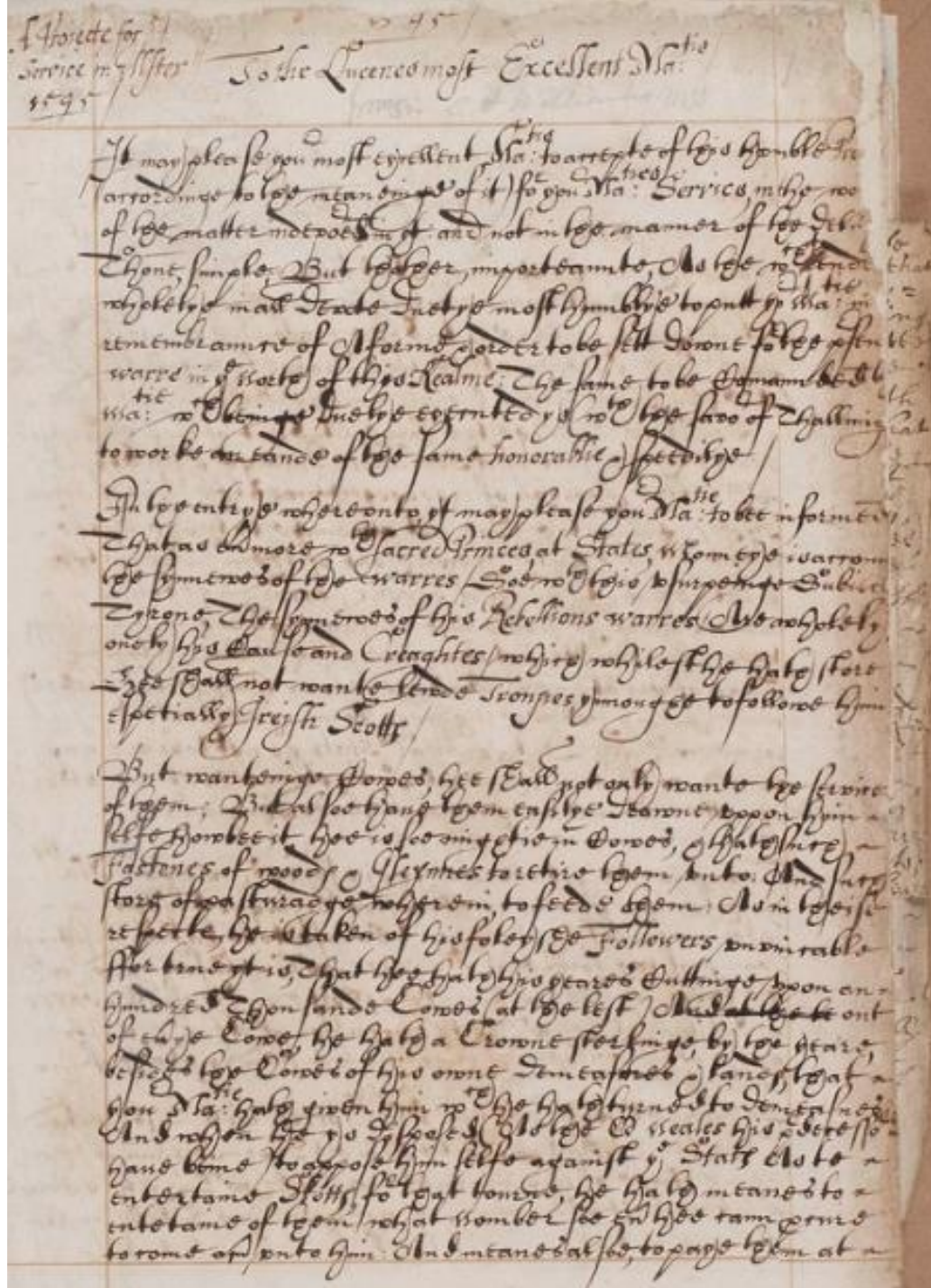


## Virtual Treasury of Ireland

- Extensive and growing treasury of digitised records scattered across many repositories now reunited on-screen
- Common open access resource

Five Manuscript documents bound together, including 'A Project for Service in Ulster' by Sir Ralph Lane (1595).

YaleLWL MSS7/SeriesIV/Box49/Folder11



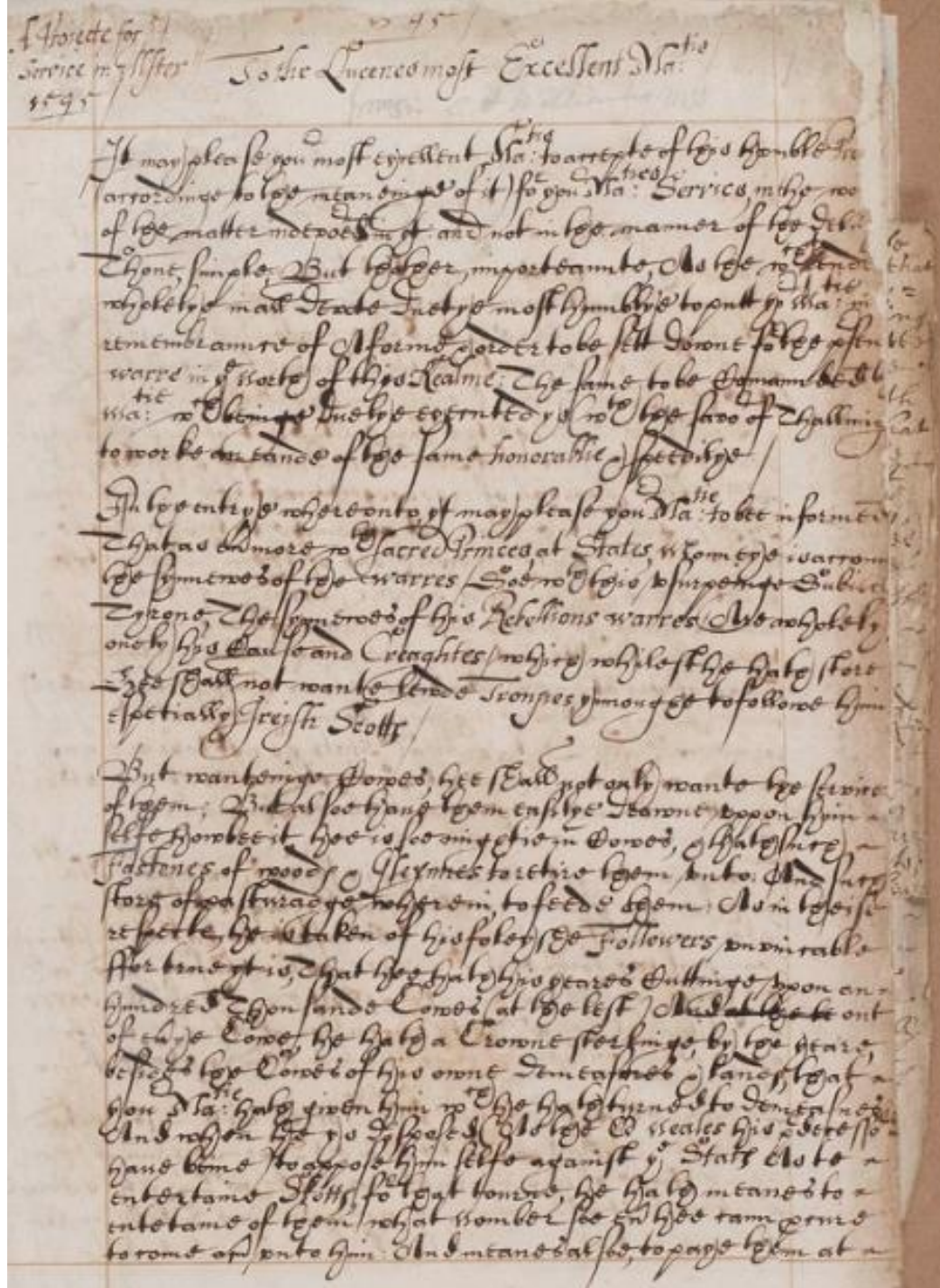


## Virtual Treasury of Ireland

- Digital content, including metadata and digital images, available unless otherwise indicated under Creative Commons Licence CC-BY-NC 4.0 (Attribution-NonCommercial)
- Digital images contributed by archival partners available under same licence and attribution licence
- Specifies appropriate credit
- Must indicate if changes made to image

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