

Identifying Third-Party Assets in your Work for Permissions Clearance

Guidance notes for Cambridge ELT & Education authors and editors



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Identifying Third-Party Assets in your work for Permissions Clearance

Q: “What are my contractual obligations in respect of Third-Party Assets?”

A:

- *Under your contract with Cambridge, you are required to identify all the Third-Party Assets in your work.*
- *Cambridge will endeavour to acquire the necessary licences to publish those Third-Party Assets in your work.*

Q: “How will these guidance notes help me?”

A: This guidance document sets out what information, in respect of Third-Party Assets, Cambridge needs you to record in the Asset Log in order to facilitate the acquisition of licences by Cambridge.

PLEASE NOTE: This document is provided by Cambridge University Press for your guidance only. It is not intended as comprehensive advice in respect of intellectual property law, nor as legal advice. If you have any queries or concerns regarding your use of Third-Party Assets and/or your obligations under your contract with Cambridge, you should consult an independent legal advisor.

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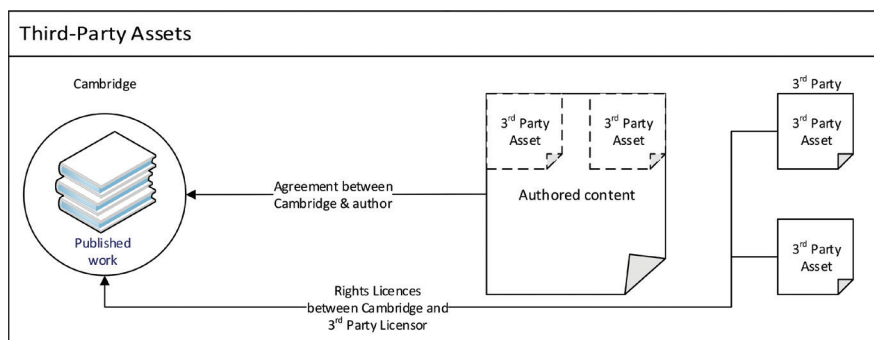
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Section I - Introduction

What are Third-Party Assets?

1. If you have entered, or you intend to enter, into an agreement with Cambridge under which you will be responsible for delivering your own original creative work to Cambridge for publication (i.e. a book, a book chapter, a journal article or otherwise), you may wish to include certain materials within your work which were not created by you and/or in which you do not own or control the copyright. These materials are known as ‘Third-Party Assets’.



2. Third-Party Assets will be the intellectual property of (i.e. owned or controlled by) a third-party. The third-party owner/controller of the material is the entity from whom it is likely that Cambridge will need to acquire a licence in order to have the rights to publish the Third-Party Assets in your work.
3. For the purposes of these guidance notes, the third-parties from whom licences must be acquired are referred to as ‘Licensors’.
4. In order for Cambridge to acquire the necessary licences to publish Third-Party Assets within your work, **you** need to identify **all** Third-Party Assets contained within your work.
5. **Please note:** Acquiring a licence to publish Third-Party Assets in your work from a Licensor is also sometimes referred to as “permissions clearance”, “rights clearance” or simply “permissions”.
6. **Please note:** Material created by **you** which you have already had published by another publisher/entity should be treated as A Third-Party Asset [see: Section II, Point 2].



Section II - Completing The Asset Log

Identifying Third-Party Assets

1. The following steps should be taken to identify and record Third-Party Assets(s) in your work:
 - a. **Accurately identify** all Third-Party Material(s) included in your work. The following data about those Third-Party Assets must be recorded in the Asset Log:
 - » content type;
 - » name(s) of content creator(s);
 - » location (destination) of content (where it is going in your work);
 - » indicate if you have adapted or modified the content in any way from the original (including but not limited to cropping, paraphrasing, relabelling).
 - b. **Identify** the Licensor. The following data about the Third-Party Assets you have identified must be recorded in the Asset Log:
 - » location (source) of content (where you got it from), including a copy (e.g. scan) of the original material in its original context;
 - » *(where possible)* name of the Licensor.
 - c. **Supply** Cambridge with the Asset Log in order for Cambridge to acquire licences for the Third-Party Assets you have identified.

Identifying the correct Licensor

2. In order for Cambridge to acquire licences to include Third-Party Assets in your work, it is important that the current owner(s) or controller(s) (Licensors) of the copyright in the Third-Party Assets are approached by Cambridge.
3. To that end, if you are able to include details of Licensors in the Asset Log, such details may reduce the time taken by Cambridge to acquire the necessary licences and avoid unnecessary production delays.
4. The correct licensor may, in some situations, **not** be either (i) the individual(s) that created the material in question, nor (ii) the copyright owner. Do not

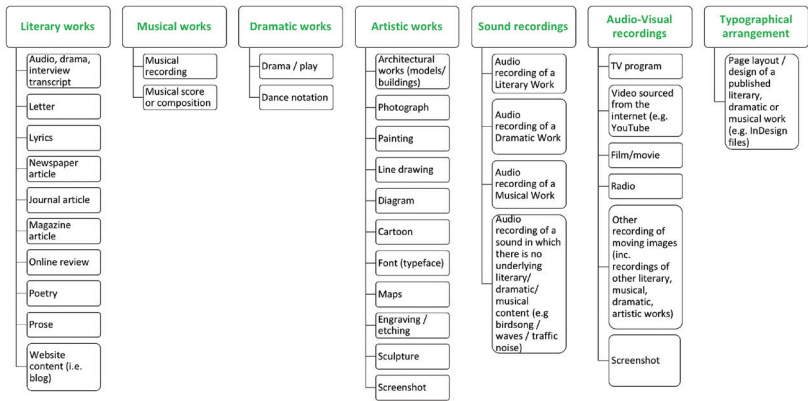
assume that either the creator of the material or the copyright owner (if different) are the correct entity from whom to request a licence:

- Example One:** a journal publisher may publish an article under an exclusive licence whilst the owner of the copyright in that article – who may or may not be the author – retains ownership of the copyright. In that scenario, the publisher would be the correct licensor to approach for the rights to reproduce the article in your work because, despite not owning the copyright, the publisher may be able to grant permission to (i.e. sublicense) others to use the article in other publications.
- Example Two:** a copyright owner may appoint another entity to manage the rights licensing of the material in question, such as an agent, a photo library, footage library or collective licensing agency.
- Example Three:** the copyright in video footage, such as a BBC TV clip, which you have sourced from an online video site such as YouTube or Vimeo will not be owned or controlled by that online video site (which may ‘host’, but not own, the content that it displays). In this example, the licensor would (most likely) be the BBC itself.

Section III - Understanding Copyright

The basics of copyright protection and what it means

1. Copyright law provides **protection** to the **copyright owner against** certain **activities** being carried out on (or to) a **creative work**. Here are some examples of the different types of creative work:



2. Copyright protection **prevents** anyone **except the copyright owner** from carrying out, or licensing to others, the following **activities** in relation to the copyright owner's creative work(s):
 - copying;
 - distributing copies, whether free of charge or for sale, in any type of format;
 - renting or lending copies;
 - performing, showing or playing the work in public; or
 - making an adaptation of the work.
3. For most types of creative works, copyright protection generally endures for 70 years after the death of the creator. In the event that there were two or more individuals involved in the creation of the work, copyright protection would endure for 70 years after the death of the last-surviving co-creator.
4. Please note: adapting/modifying a creative work **does not** negate the need to obtain a licence to use the adapted version in your own work. As mentioned in Point 2 above, making an adaptation of a creative work is one of the rights ascribed to the copyright owner.
5. Please note: even if the work that you are now creating is a new or revised edition of **your own work published by Cambridge**, (or a derived, adapted or repurposed version), Cambridge will still need to you identify any continuing use of Third-Party Assets within the new iteration of your work for which a new or extended licence might be required. Please provide details of such Third-Party Assets accordingly.
6. In the event that the material that you wish to include in your work for Cambridge is **material that you created** but which has **previously been published by another publisher**, then it should be treated like any other Third-Party Asset. In this sort of situation, you will need to identify which rights, if any, you retained and, if possible, supply Cambridge with the details of the Licensor which controls the rights in your existing material.

Section IV- Copyright exceptions

Using Third-Party Assets without infringing the rights of the copyright holder

1. In order to **avoid infringing** the right of a copyright owner to carry out the [activities](#), it is essential for Cambridge to obtain the necessary rights to use creative works, or parts of creative works, within your work. To do this, Cambridge requires you to identify **all** Third-Party Assets in your work. However, there are a limited number of exceptions (under copyright law) to the legal requirement for copyright clearance. These exceptions include:
 - a. material which is no longer protected by copyright law and is now in the **public domain**,
 - b. material which is **publicly available under a licence** or terms & conditions which permit publication of the material by Cambridge without need to acquire additional rights (such as Creative Commons licences which are discussed in more detail later in this Section),
 - c. use of material which qualifies as “**fair dealing**”.
2. If you believe that one of the exceptions listed in Point 1 above applies to a particular Third-Party Asset in your work, please record it in the Asset Log. (Please note: Cambridge will have final discretion to judge whether or not an exception is applicable in any particular instance.) The remainder of this Section provides more information about the various copyright exceptions.

Fair dealing

3. The spirit of copyright law is to protect the rights of creators without stifling the creativity of other creators or hindering advances in knowledge, research, learning and understanding.
4. The Copyright, Designs and Patents Act, 1988 (CDPA) specifies various “Acts Permitted in relation to Copyright Works”, (commonly referred to as ‘copyright exceptions’, ‘copyright exemptions’ and/or ‘fair dealing’). These permitted acts describe certain **types of usage** of creative works which are permissible without the need to acquire a licence, despite the otherwise monopolistic control ascribed to the copyright owner.

5. All the copyright exceptions are listed in the [CDPA 1988, C.48, Pt.1, Ch.III](#). There is also some very clear guidance about the different copyright exceptions available via the [UK Intellectual Property Office \(IPO\)](#). However, it is very important to understand that:
 - a. The only fair dealing copyright exceptions that Cambridge might potentially rely on for the publication of Third-Party Assets without a licence is where it is used in the context of **(i) criticism and review or (ii) quotation**.
 - b. Other fair dealing copyright exceptions for permitted acts, such as “private study”, “research for non-commercial purposes”, “news reporting of current events” cannot be relied upon due to the nature of Cambridge’s publishing business (which is commercial and is not, for example, a news agency reporting current events).
6. It is also important for Cambridge to be able to meet the following requirements when relying on the copyright exception for either criticism and review or quotation:
 - a. the copyright holder must be **correctly acknowledged**,
 - b. the amount of material used must be an **insubstantial portion** of the original material (and never the whole work),
 - c. the material must be reproduced **without** adaptation or modification,
 - d. the amount of material used must be a reasonable and appropriate portion of the original material to **achieve the point** you are trying to make, and
 - e. your usage of the material must **not adversely affect the market** for the original material.
7. For further information about fair dealing, visit the [UK Intellectual Property Office \(IPO\)](#) website.

Public Domain

8. Copyright protection generally endures for 70 years after the death of the last-surviving creator of the material in question. After that period of time, the material is said to have entered the “public domain”.
9. Material in the public domain is not protected by copyright and can therefore be freely used without the need to obtain a licence. However, it is important

(and sometimes difficult) to discern whether or not the material that you intend to use without obtaining a licence is genuinely in the public domain. Again, you may seek guidance from the IPO in this respect.

10. Please note: material which is publicly available (such as material found on the Internet) is not automatically 'in the public domain'. One should never assume that publicly available material can be used without obtaining permission to do so.

Creative commons (and other open access-type licences)

11. It is a common **misconception** that material which is made publicly available under an open access-type licence (of which there are various types, such as: Creative Commons, Copyleft and GNU) is not subject to copyright protection. In fact, all material which is made publicly available under a licence is protected by copyright law and **must only** be used in accordance with the terms of that licence.
12. Some open access-type licences permit an extremely broad use of material with few, if any, caveats (e.g. the **CC-BY licence**). However, other open access-type licences permit only a narrow use of material with many caveats (e.g. the **CC-BY-NC-ND** licence, which only permits non-commercial, non-derivative use). If you intend to include a Third-Party Asset in your work which is governed by an open access-type licence, you must indicate, in the Asset Log, which licence governs the item.
13. In the event that the licence which governs the use of the Third-Party Asset does not accommodate the particular usage that you intend to make, then it will be treated like any other Third-Party Assets for which Cambridge would request a licence from a licensor.
14. Please note: Cambridge is a not-for-profit organisation which makes **commercial** use of its IP Rights (and, in doing so, any surplus revenue is used to further its mission to disseminate knowledge in the pursuit of education, learning and research at the highest international levels of excellence). Thus, **any Open Access licence which restricts the use of materials to 'non-commercial uses' will prevent Cambridge from using the material within your work without the acquisition of a licence from the Licensor.**

Section V - Commonly used terminology

Glossary

1. The following terms are often used by Cambridge and by those working in the wider publishing industry. They are also found in this guidance document and all of Cambridge's various IP Rights acquisition contracts:
 - a. **Copyright:** Literally, means “the right to copy” and **it protects creative** works such as: written works, artistic works, musical works etc. Ownership of copyright gives the copyright owner a monopoly over the right to copy, distribute, license, lend, perform, or make an adaptation of the work in which the copyright vests.
 - b. **Copyright licence:** The **granting of rights** for one entity to exploit the copyright in a creative work with the permission of a rights-holding entity.
 - c. **Copyright Owner:** The individual(s) or entity(ies) that owns the copyright in a creative work.
 - d. **Fair dealing:** Use of Third-Party Assets without clearing permission from a Licensor, where your use might otherwise be an act of copyright infringement, but for the fact that your usage falls into one of a number of *statutory exceptions*.
 - e. **Licensors:** Any Copyright Owner or controller in a position to license rights in Third-Party Assets.
 - f. **Third-Party Assets:** Any content (whether textual, illustrative, audio, video or any other type of creative work) which you intend to include in your work in which the copyright is owned or controlled by a third-party.

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