

## Acquiring IP Rights In Third-Party Materials

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### **Q: “What are Third-Party Materials?”**

*A: The term ‘Third-Party Materials’ refers to any content (whether textual, illustrative, audio, video or any other type of creative work) which you intend to include in your own work in which the intellectual property rights are not owned or controlled by you but, instead, are owned or controlled by a third-party.*

### **Q: “Why do I need to know about them?”**

*A: Third-Party Materials are protected by intellectual property laws, such as copyright. This guidance document contains information about when and how to acquire the necessary rights to include Third-Party Materials in your work.*

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 Materials, you should consult your independent legal advisor.

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## Section I INTRODUCTION

### Clearing permission to use Third-Party Materials in your work

- 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 Materials’.
- 2 Such Third-Party Materials will be the intellectual property of a third-party from whom you are likely to need to acquire a licence in order for Cambridge to have permission to publish the Third-Party Materials in your work.
- 3 For the purposes of these guidance notes, such third-parties from whom licences must be acquired are referred to as ‘Third-Party Licensors’.
- 4 Acquiring a licence to publish Third-Party Materials in your work from a Third-Party Licensor is also sometimes referred to as “permissions clearance”, “rights clearance” or simply “permissions”.
- 5 **Please note:** material created by **you** which you have already had published by another publisher/entity will need to be treated as Third-Party Material [see: Section II, Point 3].

### Contractual requirements relating to acquiring IP rights in Third-Party Materials

- 6 Please refer to your publishing contract with Cambridge to find out:
  - a) which party (i.e. you, as author or Cambridge, as publisher) is responsible for acquiring licences to publish Third-Party Materials in your work; and
  - b) which party is responsible for paying any licence fees charged by the Third-Party Licensors.
- 7 In the event that your publishing contract states that you are responsible for acquiring licences to publish Third-Party Materials in your work, please take note of the requirements relating to the written records that you need to keep.
  - a) You should always keep:
    - copies of the licences you have acquired [in a format appropriate for delivery to Cambridge (if applicable)]; and
    - a written record of the scope/range of the IP Rights in Third-Party Materials that you have acquired from the Third-Party Licensors – Cambridge will provide you with a Permissions Clearance Log for this purpose.
  - b) **Please note:** a licence from a Third-Party Licensor can take various forms. Email correspondence or letters from Third-Party Licensors will only be accepted as written evidence that you have acquired the necessary IP rights if the email or letter **clearly identifies:** the Third-Party Material in question, your intended use of the Third-Party Material, all the rights that are being licensed **and** the agreement of the Third-Party Licensor. Please refer to Section II and Section III below for further guidance.

## Glossary of Commonly Used Terms

- 8 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 Owner:** the individual(s) or entity(ies) that owns the copyright in a creative work.
  - c) **Fair Dealing:** Use of Third-Party Materials without clearing permission from a Third-Party 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*.
  - d) **Illustrative Materials:** any artistic, diagrammatic, photographic etc. materials which are to be included in a work. Illustrative Materials may be your own original materials or they may be Third-Party Materials (see definition below).
  - e) **Permissions Clearance:** the acquisition, via a licence from a Third-Party Licensor, of the right to include Third-Party Materials in a piece of work.
  - f) **Third-Party Licensors:** any Copyright Owner or controller in a position to license rights in Third-Party Material(s) to you.
  - g) **Third-Party Material(s):** 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.

## Section II ACQUIRING RIGHTS IN THIRD-PARTY MATERIALS

### Process steps for acquiring rights in Third-Party Materials

- 1 The following steps should be taken when seeking permission to include Third-Party Material(s) in your work:
  - a) **Accurately identify** all Third-Party Material(s) included in your work. The following data about all Third-Party Materials should be recorded in the Permissions Clearance Log:
    - content type;
    - name(s) of content creator(s);
    - location (destination) of content (where it is going in your work);
    - appropriate caption or reference to accompany the content within your work;
    - have you adapted or modified the content in any way from the original (including but not limited to cropping, paraphrasing, relabelling).;
  - b) **Identify** the Third-Party Licensor. The following data about all Third-Party Materials must be recorded in the Permissions Clearance Log:
    - location (source) of content (where you got it from);
    - name of Third-Party Licensor.
  - c) **Indicate**, in the Permissions Clearance Log, any Third-Party Materials which **do not** require Cambridge to obtain a licence to include them in your work. For all Third-Party Materials which do not require a licence, you **must** indicate **why** a licence is not required.
    - Please refer to Section IV for further guidance relating to this requirement.
  - d) **Apply** to Third-Party Licensors for a licence to use the Third-Party Material(s) in your work and complete the licence arrangements (including signing the necessary paperwork and paying any agreed fees). **Be sure to inform the Third-Party Licensor of the intended usage of their material in your work (especially if the material will be adapted or modified in any way) since you will need permission to carry out your intended usage.** To apply for a licence, you could:
    - use the Third-Party Licensor's dedicated licensing tools (for example: <https://www.faberpermissions.com/>); or
    - use RightsLink, a licensing service owned by the Copyright Clearance Centre – (<http://www.copyright.com/rightsholders/rightslink-permissions/>); or
    - contact the Third-Party Licensor directly by letter or email. A sample licence request form can be found on **AuthorNet**.
  - e) **Make and keep** accurate records of:
    - all the Third-Party Materials you intend to use in your work;
    - all the approaches you have made to Third-Party Licensors for permission and licences; and
    - all the rights that you have acquired. This information must be recorded in the Permissions Clearance Log.
  - f) **Obtain and retain** copies of all completed licences from Third-Party Licensors and, if required, send copies of licences to Cambridge.
- 2 **Please note:** all licences and records required by Cambridge must be submitted to Cambridge in the English language.

### Identifying the correct Third-Party Licensor

- 3 In order to acquire permission to include Third-Party Material in your work, it is essential that you accurately identify and approach the current owner or controller (Third-Party Licensor) of the copyright in the Third-Party Material.
- a) Please note:
- The Third-Party Licensor may **not** be the individual(s) that created the Third-Party Material in question.
  - The copyright owner may **not** be the Third-Party Licensor (in which case, the copyright owner would not be the correct entity to approach for permissions clearance). For instance, a journal publisher may publish an article under an exclusive licence whilst the owner of the copyright in that article retains ownership of the copyright. In that scenario, the publisher would be the correct Third-Party Licensor to approach because, despite not owning the copyright, the publisher may be able to grant permission to others to use the article in other publications.
  - In the event that the material that you wish to include in your work is **material that you created** but which has previously been published by another publisher/entity, then you will need to treat it like any other Third-Party Material. In this situation, please refer to your agreement with the other publisher/entity to ascertain which rights it has to the material and which rights, if any, you retained.

### When should I start approaching Third-Party Licensors for permission to use their material in my work?

- 4 You should start approaching Third-Party Licensors as soon as you are sure that you intend to use their materials in your work. Reasons for this include:
- a) Cambridge does not publish potentially copyright-infringing content. It is therefore imperative that you acquire the necessary licence(s) to use your desired Third-Party Materials **prior** to publication; and
  - b) Cambridge will refrain from putting any works into production until the necessary rights in all Third-Party Materials contained within the work have been acquired. Once a work has been put into production, any changes to the final typescript are very likely to incur costs and/or delays and, as the work progresses through the various stages of production, those are likely to increase. It is therefore essential to acquire the necessary rights in all Third-Party Materials contained within the work before the final typescript is put into production.

## Section III WHICH RIGHTS SHOULD BE ACQUIRED?

### The scope of IP Rights in Third-Party Materials which are required for publication

- 1 Cambridge's publishing programme is driven by its mission to disseminate your work as widely as possible; to promote and sell your work to its maximum potential; and to make your work as accessible to as many people as possible by:
  - a) publishing in the widest variety of formats and media;
  - b) publishing throughout the world; and
  - c) selling translation rights in a large range of languages.
- 2 As a result of the variety and scale of Cambridge's publishing programme, Cambridge's goal is to ensure that the broadest possible scope of publishing rights in Third-Party Materials are acquired in order to minimise the need to apply for additional rights (and possibly incur additional costs) at a later date.
- 3 Cambridge requires that you acquire the following scope of rights to publish Third-Party Materials in your work:
  - a) all formats and media (including all print and electronic media);
  - b) all languages;
  - c) throughout the world;
  - d) for an unlimited print run and/or number of digital copies;
  - e) for this edition, and all future editions, of your work;
  - f) the right to adapt/modify the material (if applicable); and
  - g) for the duration of copyright in your work.

### Record-keeping and what to do if you are unable to acquire the full scope of rights

- 4 You must ensure that you accurately record the scope of the rights that you have acquired in the Permissions Clearance Log.
- 5 In the event that a Third-Party Licensor insists on limiting the scope of the rights (listed in Point 3 above) **and** those limitations will restrict Cambridge's publishing activities, you must use best endeavours to find alternative Third-Party Materials for which you are certain you can acquire the full range of required rights.
- 6 In the event that you are unable to obtain the necessary rights from a Third-Party Licensor (per Point 5 above) **and** you are unable to find suitable alternative Third-Party Materials, you must record the rights that you have been able to obtain and inform Cambridge. Cambridge *may* decline to publish any Third-Party Materials in your work in which the necessary rights have not been obtained.

### Sample licence request form(s)

- 7 You can find a sample licence request form on **AuthorNet**. To use it, you must be able to:
  - a) correctly identify the Third-Party Materials that you intend to use; and
  - b) include accurate details of the use that you intend to make of the Third-Party Materials.

## Section IV WHY DO I NEED TO CLEAR PERMISSION?

### Understanding copyright

- 1 Copyright protection applies automatically (upon creation) to many forms of **creative works** including:
  - a) original literary, dramatic, musical and artistic works, (including but not limited to: poetry, prose, scripts, sheet music, lyrics, illustrations, maps, photographs etc);
  - b) original non-literary written works, (including but not limited to: software, web content and databases);
  - c) sound and music recordings;
  - d) film and television recordings; and
  - e) the layout (aka typographical arrangement) of published editions of written, dramatic and musical works.
- 2 Copyright protection **prevents** anyone **except the copyright owner** from carrying out, or licensing to others, the following activities in relation to their creative works:
  - a) copying;
  - b) distributing copies, whether free of charge or for sale, in any type of format;
  - c) renting or lending copies;
  - d) performing, showing or playing the work in public; or
  - e) 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 In order to **avoid infringing** the rights of a copyright holder, it is essential to obtain permission to use creative works, or parts of creative works, within your own work.

### **For which types of Third-Party Materials do I need to obtain a licence?**

- 5 Since copyright protection applies to all creative works and endures for a minimum of 70 years, if you wish to include any copyright-protected materials within your own work and you do not own or control the copyright in those materials, then you **will need to obtain a licence to do so**.
- 6 **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.
- 7 **Please note:** even if the work that you are now creating is a new or revised edition of **your own** published work, (or a derived, adapted or repurposed version of your own work), you will still need to confirm that you have the requisite rights to use any Third-Party Materials within the new iteration of your work. [NB: it may be that you acquired the necessary rights in the Third-Party Materials when you cleared permissions for the previous iteration of the work but you still need to review your existing records and licences to confirm.]
- 8 **Please note:** Exceptions to copyright law are explained below in: “For which types of Third-Party Materials do I not need to obtain a licence?”

## Your own material, already published elsewhere

- 9 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 you will need to treat it like any other Third-Party Material. In this sort of situation, please refer to your agreement with the other publisher to ascertain which rights in the materials it owns/controls and which, if any, you have retained.

### For which types of Third-Party Materials do I **not** need to obtain a licence?

- 10 In certain specific situations (as outlined in the sections called: *Fair Dealing*, *Public Domain* and *Creative Commons*), it **may** not be necessary to acquire a licence from a Third-Party Licensor in order to use its materials within your work.
- 11 **Please note:** Cambridge is not able to provide legal advice as to whether or not it is necessary for you to acquire a licence from a Third-Party Licensor in order to use its materials within your work in any specific case. If you are not sure if one of the listed exemptions applies to you, your chosen Third-Party Materials or your intended use of your chosen Third-Party Materials, then you must either:
- seek alternative Third-Party Materials for which you are certain that you can obtain a licence; or
  - seek alternative Third-Party Materials for which you are certain that you do not need to obtain a licence; or
  - undertake your own risk-assessment and decide whether or not to use the Third-Party Materials without obtaining a licence; or
  - seek your own independent legal advice.
- 12 If you are contractually obliged to obtain permissions clearance and you fail to clear permission to use Third-Party Materials, you may be liable, under your contract with Cambridge, for any claims of copyright infringement which are made against your work.

### Fair Dealing

- 13 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.
- 14 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.
- 15 The Acts Permitted in Relation to Copyright Works are listed here in the [CDPA 1988, C.48, Pt.1, Ch.III](#). There is also some very clear guidance about copyright exceptions available via the [UK Intellectual Property Office \(IPO\)](#).

### Public Domain

- 16 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".
- 17 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.

- 18 **Please note:** material which is publicly available 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)**

- 19 It is a common misconception that material which is made publicly available under an Open Access 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 must only be used in accordance with the terms of that licence, although some licences do permit an extremely broad use of material with few, if any, caveats. However, other licences permit only a narrow use of material with various caveats. It is therefore important to read the licence terms carefully when considering using such material in your work. In the event that the licence which governs the use of your chosen material does not accommodate the particular usage that you intend to make, then the material must be treated like any other Third-Party Material for which you would request a licence from the Third-Party Licensor.
- 20 **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 you from using the material within your work without first acquiring a licence from the Third-Party Licensor.**

## Section V      **ACKNOWLEDGING THE COPYRIGHT OWNER/THIRD-PARTY LICENSOR**

### **Acknowledgements**

- 1 It is **essential** to:
  - a) provide the correct acknowledgement/citation in respect of all Third-Party Materials in your work; and
  - b) include an in-text caption or reference to all Third-Party Materials that you include in your work.
- 2 **Please note:**
  - a) Cambridge requires that you *reference or caption* the Third-Party Materials within in your own work in accordance with the appropriate referencing styles (e.g. the Harvard system). Some referencing styles may incorporate a citation within the reference or caption.
  - b) Some Third-Party Licensors may state a preferred citation that should be used in your work and, furthermore, a preferred citation may form a condition of the terms under which the Third-Party Material is licensed to you.
  - c) Simply providing an acknowledgement/citation in respect of Third-Party Materials used in your work will **not** negate the need to acquire a licence from the Third-Party Licensor.