

Copyright guidance for developing a resource

When planning a resource you should consider whether you intend to include any copyrighted content. There is a checklist at the end of the document to guide you.

You should **AVOID** using copyright work where possible. However, if you consider it is absolutely necessary you should complete the copyright declaration form **before** you start writing and send it to OCR to seek permission to use this work before you take the time and effort to write a resource around it.

Ask yourself whether any copyright material you have used is absolutely necessary.

What is 'copyright'?

Copyright arises automatically, as soon as a work is created or published. There is no requirement either to register the work or to claim copyright in it. The right to control it only lasts for a limited time and under certain circumstances the material can be used by others without the owner's permission.

The 'owner' of the work may be the author, publisher, government, employer of the person who produced it or the person who commissioned or paid for it.

How does copyright affect me as an author?

Reproducing or adapting some or all of a copyright work without permission, or authorising someone else to do so, could infringe its copyright. You and OCR could be sued or, in serious cases, prosecuted.

When do I need to complete the copyright declaration form?

If you know you are going to use copyright material you must submit your copyright declaration form before you begin writing the resource. This gives us time to seek the permissions necessary.

Always complete the copyright declaration form, even if you haven't used any published materials or if OCR has cleared copyright on a particular piece in the past.

OCR does not hold perpetual copyright for material that has appeared in past papers. Copyright permission is usually sought only for the lifetime of a qualification and is often restricted to a specific type of media, so we need to apply for copyright on an individual basis.

Do not try to obtain permissions yourself – OCR will do this where necessary.

When does OCR need to seek permission to use material?

OCR is legally obliged to apply for permission to use material taken from **any** published material, in print or online (e.g.°books, newspapers and websites). As well as passages of text, we also need to seek permission to use:

- photography
- translations
- data
- graphical representations
- websites.

We need to seek copyright clearance only where third party material is actually reproduced, not when it is only referenced (e.g. links to a source).

If you can't avoid using copyright work in your resource, include a link to the work, rather than quoting the work itself.

When does OCR NOT need to seek permission to use material?

Permission is not needed when it is not required by law (e.g. if copyright has expired due to the length of time passed since the death of the author/artist).

Permission is also not needed when it can be classed as 'fair-dealing' for insubstantial use. This means using the material in a way that is fair to the author, for example by using only a small amount and acknowledging them.

You may see certain numbers of words quoted as acceptable amounts for fair dealing. However, The National Archives, a government authority on copyright, is deliberately vague about this, as a 'rule of thumb' cannot cover all material. It states that:

"You may use an 'insubstantial part' of a copyright work in any way you like. A substantial part is not defined, but can mean quite a small part if that is the essence or an important part of the whole. Anything up to perhaps 5% (or in a few cases even more) of the whole might be insubstantial, but less than that quantity could easily be substantial if it is qualitatively important. Mona Lisa's smile is certainly a substantial part of Leonardo's painting."

Source: <http://www.nationalarchives.gov.uk/documents/information-management/copyright-related->

Isn't the reproduction of material for educational purposes an exception to the law?

The law allows more freedom for copying material for educational use, as long as it is not for commercial gain. This is called 'illustration for instruction'. It still only allows the use of such material for the purpose of quotation to a fair extent (i.e. it can be used if it does not replace a commercial sale of that material). So, for example, it could permit a short quotation for use in an exam paper.

However, although OCR materials are educational, and the reproduction of passages of text is not in itself commercial, OCR is a commercial (albeit not-for-profit) organisation so must abide by general copyright law. In any case, please complete the copyright form so that we can decide whether permission is required.

I've shortened or changed a copyright work. Is permission still necessary?

Yes. Adaptation is one of the exclusive rights conferred on the owner by copyright, and the author also has certain moral rights that may be infringed by an adaptation.

If you have adapted an original work, for example by missing out certain sentences, please mark-up a copy of the original text clearly showing the changes you have made. You also need to provide the word count of both the original and adapted version.

What sources should I avoid?

OCR will **not** apply for copyright from a long list of sources, due the potential cost or previous difficulties in obtaining permission. These are:

- materials for which you are unable to provide copyright information
- content from Wikipedia or Google Earth / Maps / Books / Images etc.
- leaflets unless the author/owner is clear
- Disney characters and other famous cartoon characters
- images, stills, clips, posters and/or characters linked to major film or TV franchises
- song lyrics, CD artwork, anything linked to famous singers
- real company names and logos, unless related to factual information or data
- photographs from books, unless full copyright information is available on the imprint page of the book and submitted with the copyright form
- images from the BBC website: copyright holders cannot be traced so BBC cannot grant permissions
- photographs from national newspapers
- excerpts from News International newspapers (e.g. *The Sun* and *The Times*).

What is Crown copyright?

“Crown copyright covers material created by civil servants, ministers and government departments and agencies. This includes legislation, government codes of practice, Ordnance Survey mapping, government reports, official press releases, government forms and many public records.

Crown copyright is legally defined under section 163 of the Copyright, Designs and Patents Act 1988 as works made by officers or servants of the Crown in the course of their duties...

You may quote or transcribe from Crown copyright documents freely and without formal permission. Where you are using documents held by The National Archives you must give the document reference number and acknowledge The National Archives as custodian of the document.”

Source: <http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/copyright-and-re-use/crown-copyright/>

OCR has a licence covering Crown copyright material but it must be used unaltered. The developer still needs to acknowledge the original source and declare it on the copyright declaration form.

What are OCR's recommended sources and procedures for different types of material?

Images

Any images need to be sourced from our preferred websites. Our current subscriptions are to:

- www.shutterstock.com
- www.fotolia.com

The image **must** be sourced from one of these sites. In some cases, OCR can commission an image to be redrawn to avoid copyright issues. Please bear in mind that in both cases a cost is associated with each image used.

Provide the reference number and weblink to the image. You will also need to include alternative text to tell viewers and those with visual impairments the content of an image when they hover the cursor over it.

For example:

Image 93259288 Alt text: Social network symbols in speech bubbles.

<http://www.shutterstock.com/pic.mhtml?id=93259288&src=lb-22432550>

Illustrations, diagrams, photographs, charts and graphs

If the image provided is indicative of what is required, it could be redrawn by our own artists or an alternative, similar image sourced.

If the image must be used, please provide:

- the name of the illustrator, photographer, graphic designer, image library or other source or owner given (this may appear with the image, with the credits of the article or on the imprint page of a book)
- the source of the image.

Newspaper articles

Even short newspaper headlines and articles still require usage permission. An average article from *The Guardian* costs approximately £300 (for text only). Avoid using excerpts from News International newspapers (e.g. The Times, Sunday Times, Sun, News of the World) as copyright clearance is difficult and expensive.

Consider instead if the article can be replaced with a link to the website?

If it is vital to the document you must include:

- name and date of publication
- journalist's name
- exact wording of headline
- page number/link.

Poems

The use of any words from poems will require copyright investigation. Please include:

- the name of the poem
- author
- anthology
- publisher
- dates
- ISBN and Page numbers of the extract/s where possible.

Text

The use of any text extracts will require copyright investigation. Please include:

- the name of book
- author
- dates
- publisher
- ISBN and Page numbers of the extract/s where possible.

Online content

Material published on the Internet is subject to the same copyright laws as printed sources. If the developer uses extracts from websites or blogs (even only for reference) you'll need the full URL (web address) of the page from which material is taken.

Whether social media posts are under copyright is a grey area, but should be regarded as such, having been published into the public domain. If a post from Twitter, Facebook or another social media site, you'll need a link and enough detail to locate the post and its author.

Data

OCR will seek permission for the use of all research-based material, including if it has been re-formatted for our purposes. You'll need full details of books or websites from which material is taken.

Useful guidance

Government guidance on copyright from the Intellectual Property Office	https://www.gov.uk/intellectual-property/copyright
A guide to copyright by The National Archives	http://www.nationalarchives.gov.uk/documents/information-management/copyright-related-rights.pdf
A flowchart by The National Archives showing the duration of copyright (excluding Crown copyright)	http://www.nationalarchives.gov.uk/documents/information-management/non-crown-copyright-flowchart.pdf
A flowchart by The National Archives showing the duration of Crown copyright for literary, dramatic and artistic works	http://www.nationalarchives.gov.uk/documents/information-management/crown-copyright-flowchart.pdf
The latest version of the Open Government licence	http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/
Government guidance on reproducing material for educational use	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375951/Education_and_Teaching.pdf
Creative Commons	http://creativecommons.org/

Copyright checklist

Question	Yes / No
Is it essential to use the material?	
Can a link to the material be used instead?	
<i>If the material must be used:</i>	
Advance notice must be given. Have you submitted the copyright declaration form to your Resources Project Manager?	
Is permission likely to be necessary?	
Can the excerpt be classed as fair dealing?	
If I've adapted the material, have I marked up the original to show the changes and provided a word count for both?	
Have I avoided using the types of material for which OCR will not seek permission?	
Have I used one of OCR's approved sources for photos and images?	
Can a photo, image or illustration be redrawn to avoid copyright infringement?	
Have I completed the Copyright Declaration Form with as much detail as possible?	