Section 2. Practical tools

This chapter provides specific tools and agreements, which can be adapted and used to help you deal with the rights and licensing issues associated with using content generated by third parties.

Introduction

The tools in this section can be adapted and used to help you deal with rights and licensing issues associated with the use and generation of content.

2.1 Getting Permissions Paper
2.2 IPR Risk Assessments
2.3 Terminology Toolkit Paper
2.4 Top Tips for Issuing Licences
2.5 Top Tips for Requesting Licences
2.6 IPR Model Consent Form
2.7 IPR Model Licence
2.8 Template Email Permission Form
2.9 IPR Template Permission Letter
2.10 Rights Management Template
2.11 FAQs
2.12 Model Contractual Clauses for Requesting Permission from Staff
2.13 Example Consortium Agreement
2.14 Model Contractual Clauses for Requesting Permission from Students/Volunteers
2.15 Model Contractual Clauses for Requesting Permission from Freelancers/Subcontractors
2.16 Model Terms and Conditions of Service

---

6 Based upon a paper produced by the JISC IPR Consultancy on behalf of the JISC IPR Working Group
7 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
8 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
9 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
10 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
11 Based on resources produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk] and modelled on the JISC Model Licence
12 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
13 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
14 Based on resources created within the HEFCE 'Intellectual Property Rights in elearning programmes' report
15 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
16 Based on resources created within the HEFCE 'Intellectual Property Rights in elearning programmes' report
17 Based on resources created within the HEFCE 'Intellectual Property Rights in elearning programmes' report
18 Based on a resource produced by the JISC-funded Web2Rights Project [www.web2rights.org.uk]
2.1: Getting Permissions
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project (www.web2rights.org.uk) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This paper should be read in conjunction with:

- 2.5 Top Tips for Requesting Licences
- 2.7 Model Licence
- 2.8 Template Email Permission Form
- 2.9 Template Permissions Letter

Clearance of Rights

The clearance of rights for the use of works protected by copyright can often be a complex and time-consuming exercise. Nevertheless, it is essential to get such clearance before you start using the material and/or let others use the material, as you might be infringing copyright if you or your users perform any restricted act without permission.

Assuming you have located the bona fide owner (or their agent) you should have the following information to hand when approaching them:

- Exact details of material you want to use and for how long
- How you want to use the material, permitted uses by third parties and for what purpose
- Description of the target audience and the service
- Description of the method of distribution and geographical territories to which the work may be marketed and used

You should also have considered and have answers to the following questions to ensure that there is compatibility between the rights that you need ‘rights in’, and those that you want in order to grant access to users ‘rights out’:

- Will the distribution of the work be restricted to a small group, to anyone within your organisation, to visitors to your organisation, or will be open to anyone in the world?
- Is there an intention to charge for the use of the service – now or at a later stage?

Remember that repeatedly going back to the rights holder for additional permission will add to the cost of the project and could serious frustrate the progress of the project. It is therefore essential that before you contact the rights holder you have a clear picture of the long-term aims and objectives of the project.
Rights Clearance Checklist

The following checklist provides a rights clearance framework for content creators and content users. Before initiating, if the answer to any of the following is YES, it is likely that rights will need to be cleared, by the use of licence or another form of permissions letter.

- Does the content that you wish to create include third-party rights? **YES/NO**
- If so, is the work that you want to reproduce still in copyright? **YES/NO**
- Is the material created by (or in conjunction with) an individual who is not a paid member of staff, such as a student, volunteer or a freelancer? **YES/NO**
- Is the use of material beyond the scope of any of licensing schemes (such as the CLA Licensing Scheme or individual licences entered into) or beyond the scope of any Exceptions and Limitations to copyright? **YES/NO**
- Will the content be 'communicated' or made available to members of the public, a body of students, staff or other users? **YES/NO**

Checklist for Rights Clearance

- Make plenty of time to clear rights – it takes longer than you think!
- Allocate resources for rights clearance (staff time and salaries, administration costs and potential rights clearance fees)
- Understand your rights clearance obligations to any third-party funders and other third parties with whom you may be working
- Identify the range of rights that will require clearance, and for how long the rights will be needed
- Record information relating to any rights research on a rights management database
- Carry out an IPR risk assessment, prioritise high risks and incorporate risk-mitigation strategies into project planning
- Finalise how the material will be reproduced and any other treatment (ie interaction, manipulation and alteration)
- Compile a list of the various ways in which the material will be used now and in the future
- Identify rights holders and request permissions to reproduce the material in the ways that you require (including the terms under which you wish to make it accessible). This permission should be requested in writing before the material is reproduced, using the guide below to the type of likely risk associated with material types and specific uses
- Adapt the template email, letter and licence supplied in the SCA IPR Toolkit or draft a licence for your specific purposes
- Carry out reasonable searches and document all your efforts in cases where rights holders are unknown or cannot be traced (‘orphan works’), ie exercise ‘due diligence’
- Update your IPR risk assessment to incorporate rights that have not been cleared or any other issues not determined at the beginning of the project (ie orphan works). Initiate mitigation strategies where appropriate
- Ensure that all permissions, rights which have not been cleared and status of rights clearance (pending, rights holder cannot be found, etc) are recorded on the rights management database. Any funding bodies should be kept closely informed of situations where permissions have not been received

1 It is likely that if the answer is Yes, there are unlikely to any exceptions to copyright that will apply to your specific usage and therefore copyright permission will need to be sought
What approach should you take?

When you approach the rights holder, different approaches can be taken depending on low, medium or high-risk content, as well as other factors such as the purpose of the use (ie educational, non-commercial or commercial), as well as the likelihood that the reputed rights holder is actually the rights holder. There may be some circumstances in which even though the material might be low risk, the purpose of use may be such that it is advisable to use a formal detailed licence.

For all types of material it is important that all agreements regarding copyright and associated rights are put in writing. Everything agreed by you for your project must be recorded with evidence of the acceptance of the terms by the rights holder. You must at least keep all agreements for the life of the project or as long as permission is granted for, so that you have proof of such permission.

Clearing rights can be time consuming and demands good negotiating skills, but setting up a good system of recording early on will save valuable time in the long run.

Low-risk content

Low-risk material is likely to include content such as documentary photographs, sound recordings of members of the public and amateur films. The initial contact can always be done by phone or email, but make sure that the content of each and every telephone call is confirmed by you in writing to the rights holder and every email and letter is saved. Allow plenty of time for approval, as the process is usually fairly slow. This is the type of content you are likely to encounter for which the rights holders may be unknown or cannot be found (so called ‘orphan works’).

Medium-risk material

Medium-risk material is likely to include artworks created by less well known artists, certain types of archival material such as letters and diaries as well as semi-professional photographs. In these instances, a letter might be sufficient in ensuring that permissions to reproduce the material in which third parties own the rights have been secured. In instances where it is not 100% certain who the rights holder is, or the work is being used in a high-risk environment, such as commercial use – then it is advisable that the material is treated as if it were high risk and a more formal detailed licence is used (as below).

High-risk material

For high-risk material, such as music, commercial films, artworks created by high profile artists, broadcasts etc, it is better to opt for a formal detailed licence rather than a letter or an email. This should not come as a surprise, as a licence creates a clear and controllable environment for the parties involved. Licences are governed by contract law. The basic notion of contract law is contractual freedom. This means that parties to a contract are free to negotiate the terms and use of copyright material or indeed waive rights that the copyright law grants them. The level of access and use of copyrighted material heavily depends on the terms and conditions of the licence. Since the negotiation of a formal licence can be a very time-consuming process, it will be important to consider this issue within project timelines and budgets accordingly.
Where might you look to trace rights holders?

Tracing rights holders can be the most time-consuming part of any rights clearance project and there are a number of sources that might be explored. Even if all possible avenues are explored for tracing rights holders and these efforts are documented, any use of the material without consent (apart from the limited uses that can be justified under the Exceptions and Limitations) will present risks. In these instances, further information and guidance about the types of risks and how to assess them can be found in ‘3.2 IPR Risk Assessments’. Further information can also be found in the i2010 Digital Libraries Due Diligence Criteria for Orphan Works.2

The types of places that might be explored for rights holders include:

- Examining the material itself for any provenance information. This might be found, for example on the back of a photograph, the bottom of a sculpture, in the metadata and/or credit lines associated with digital material
- Referring to information that might be held about the material, such as acquisition forms and registers, contracts and catalogue files
- Checking with curatorial staff and/or information professionals for any further information
- Liaising with colleagues in other organisations who might own works by the same author and/or related works
- Checking with collecting societies who administer the rights for a wide range of creators dependent upon the type of media, such as:
  - **Visual works**
    - Design and Artist Copyright Society (DACS) [www.dacs.co.uk]
    - Bridgeman Art Library [www.bridgeman.co.uk]
  - **Text-Based Works**
    - The Publishers Association [www.publishers.org.uk/en/home]
    - The Authors Licensing and Collecting Society [www.alcs.co.uk]
    - The Society of Authors (www.societyofauthors.org)
  - **Sound Recordings and Music**
    - The Performing Rights Society – collecting society representing song writers, performers and musicians [www.mcps-prs-alliance.co.uk/Pages/default.aspx]
    - Phonographic Performance Ltd (PPL) – representing the interests of music performers and record companies [www.ppluk.com]
- Check the WATCH File Database (Writers and Artists And Their Copyright Holders) [http://tyler.hrc.utexas.edu]
- Search on the internet
- Check trade journals, exhibition catalogues and other relevant publications
- Listing the names/titles of works on your website where you are unable to trace the rights holders or the rights holders are unknown, together with your contact details should the rights holders come forward

How to carry out Due Diligence

It is vital that you document all efforts to trace rights holders (due diligence), to use as a possible defence in cases where you choose to use works but where the rights holders are unknown or cannot be traced. Such documentation, which ideally should be kept in a separate file (as well as noted in any digital rights management system), might include:

- Taking notes about any phone calls that you make, including to whom, when, and what was said
- Keeping copies of all letters that are sent
- Keeping copies of any letters that are returned

---

2.1: Getting Permissions

- Sending letters by recorded delivery or registered post
- Printing emails that you sent and those that you receive, even if the response is negative
- Putting money to one side in case the rights holder does come forward
- Use of a statement if you do decide to take the risk and reproduce the works. The following statement below is an example used by National Portrait Gallery:

> Every effort has been made to obtain permission from copyright holders to reproduce this material. Owing to the age of some of this content, and given the resources available to us, this hasn’t always been possible or practicable. We have acted in good faith at all times, and any queries relating to copyright in this content should be referred to XXXX for immediate attention.

REMEMBER – EVEN IF YOU HAVE CARRIED OUT REASONABLE EFFORTS TO TRACE RIGHTS HOLDERS, KEPT A DUE DILIGENCE FILE AND DOCUMENTED THE ATTEMPTS THAT YOU HAVE MADE– THIS IS STILL UNAUTHORISED USE AND YOU COULD STILL BE CHALLENGED BY THE RIGHTS HOLDERS.

---


4 See ‘3.2 IPR Risk Assessments’ for further information about risk-mitigation strategies

---

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
2.1: Getting Permissions
Introduction

The set of resources contained within this paper has been adapted for SCA sponsors and other organisations across the public sector. It is intended as the basis of a toolkit to be issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. It includes:

- Template IPR Risk Assessment Table for evaluating risks associated with content creation and user
- Template take-down notice
- Scenarios

The resources that have been drawn upon include:

- Papers written by the JISC IPR Consultancy for the JISC IPR Working Group
- Content produced as part of the IPR toolkit created by the JISC-funded Web2Rights project
- The JISC-funded TrustDR Project

**IPR Risk Assessments**

The risk assessment component of this paper draws heavily upon the work of the JISC-funded TrustDR project. Further information about a managed approach to risk, particularly within a web environment, can be found in briefing papers produced by the JISC-funded Web2Rights project (www.web2rights.org.uk).

Content creators and content users across the public sector are likely to encounter a varying range of IPR-related risks associated with the creation and use of print, digital and online teaching materials. The scale of rights issues will vary in accordance with the scope of each project, but even projects involving relatively small amounts of content creation and use may encounter complex rights issues. This is because of:

- The differences in status of content creators who are likely to include staff, volunteers, students as well as freelance contractors and commercial entities and content created in collaboration with other organisations and third parties both based in the UK and internationally
- The likely incorporation of third-party content, which can be obtained from a wealth of sources (including user-generated content) and under various terms and conditions, some explicit and some implicit
- The potential range of content that can be created, including born-digital, digital surrogates and composite works incorporating images, text, film, graphics, music and sound as well other audiovisual material and the likelihood of layers of rights within each, many or all of which will require clearance

---

1 Whilst the focus of these resources is copyright and database rights, patents and trademarks are also covered briefly.
2 www.web2rights.org.uk
3 [www.hefce.ac.uk/pubs/hefce/2006/06_20](http://www.hefce.ac.uk/pubs/hefce/2006/06_20). This report was a follow-up to an earlier report issued in 2003 with the same title (available at: [www.hefce.ac.uk/pubs/hefce/2003/03_08.htm](http://www.hefce.ac.uk/pubs/hefce/2003/03_08.htm))
4 [http://trustdr.ulster.ac.uk](http://trustdr.ulster.ac.uk)
2.2: IPR Risk Assessments

- The longevity of copyright in most creative works and the fact that different media have different rules on ownership and lifetime
- The applicability of the limited copyright Exceptions and Limitations in the copyright legislation offered to public-sector bodies for the full range of uses of content, which in turn means that much third-party content will require clearance before it can be used
- The restrictions within blanket licences, such as the CLA (Copyright Licensing Agency) Photocopying and Scanning Licences, particularly regarding storage and reuse of electronic material
- The quasi-commercial and commercial nature of some of the uses of content across the public sector
- The levels of injunctive relief offered to rights holders in cases where their rights have been infringed
- The problems of tracing rights holders of third-party materials and of how to deal with so-called orphan works (those third-party materials where the rights owner cannot be traced or are unknown)

Figure 1
A Risk Management Framework

As a means to help develop suitable rights clearance frameworks, embedded within appropriate mitigation strategies, it is crucial that risks are identified, assessed, treated and monitored as per the Figure 1 below (after John Casey and Jackie Proven, 2007):

The IPR Risk Assessment Table below provides an overview of the types of IPR-related risks that may be encountered by content creators and content users, together with some recommended mitigation strategies that can be used to ‘treat’ the risk.

Assessing the Risks

Since the likely impact and probability of the specific risks encountered by content creators will vary per project, in order to fully understand the risks it will be important to consider the following factors in accordance with each type of project. These will include:

- The type of content being used
2.2: IPR Risk Assessments

- The scale of the project
- The likelihood that the rights holder is litigious
- Non-litigious types of risk that may be encountered
- The relationships and/or potential relationship that the content creator/organisation has with the rights holder
- The context of use of the content
- The audience and distribution of the content, including the scale of what is being copied or adapted
- Whether the content is being commercially exploited
- The employment of risk mitigation strategies

Once these have been established, IPR risks can be calculated by the application of the following framework to determine the level of impact and probability, and thus the level of risk:

- **Evaluating the level of impact**
  This is the negative impact of any of the risks described below materialising, and the impact [financial and non-financial] upon the organisation. Impact can be calculated by allocating a score of 1–5, 1 being the lowest and 5 the highest level of impact

- **Assessing the probability or likelihood**
  This might be based upon the likelihood of the problem arising, the probability of the rights holder coming forward and/or the likelihood of the rights holder seeking legal or other types of redress. Impact can be calculated by allocating a score of 1–5, 1 being the lowest and 5 the highest level of impact

- **Calculating the risk**
  The risk score can be calculated by multiplying the impact x probability: the higher the score, the greater the risk

![Figure 2 Illustration of a Risk Profile](image)

Figure 2, above, after Casey and Proven 2007, provides an alternative technique for measuring risk

**Risk-Mitigating Strategies**

Apart from the mitigation strategies offered in the risk-assessment table below, it is worthwhile considering the use of the following to help mitigate any potential risks:
2.2: IPR Risk Assessments

- Use of credit lines to show the works in which rights are owned by third parties.
- Use and observation of copyright statements and licences, which make it easy for the user to understand the terms under which content can be accessed and used. See `1.1 Creative Commons Licences – Briefing Paper' for further information about one of the options that might be considered.
- Access restricted by password to certain types of high commercial-value content
- Use of indemnity clauses: for use in agreements and licences for materials in which permission is granted by third parties, to ensure that the parties who are granting permission have legal title to do so.
- Acceptable Use Policy: an agreement that is physically or digitally signed or accepted to acknowledge the user is aware of the organisation’s stance on copyright infringement and will exercise due diligence and care when making contributions not to breach this policy.
- Notice and Take-Down Policy: a policy ideally linked to every page that has contributor content, highlighting the organisation’s stance on copyright infringement and specifying the conditions for removing content. It must have a formal procedure that is triggered when someone gives ‘notice’ of a complaint regarding possible infringement – on receiving notice the organisation the ‘takes down’ content from the repository while the complaint is checked. It must provide a contact mechanism, such as an email address, to report suspected breaches, under the terms of the Electronic Commerce (EC Directive) Regulations 2002, 6(1). Liability can be reduced by showing ‘due diligence’ in the form of prompt action. Note: this needs to be viewed as a ‘last ditch’ protection measure that works best when all the other elements in this list are in place and not as a legal panacea.

In addition, clear instructions should be given as to where and to whom notification of allegedly infringing content should be sent, along with details of the complainer, the complainer’s interest in the matter and where the complainer can be contacted. Processes should be put in place to act expeditiously on such a notification. While the E-commerce Directive does not require content to be replaced if the notice is challenged, it may be good practice in the academic community to investigate the complaint and, if it turns out to be frivolous, re-instate the content. Such a take-down notice is provided below:

TAKE DOWN NOTICE

In the event that you are the owner of the copyright in any of the material on this website and do not consent to the use of your material in accordance with the terms of conditions of use of this website, please contact us [INSERT: your contact details here/or a link to contact details] and we will withdraw your material from our website forthwith on receipt of your contact details, written objection and proof of ownership.

- Liability insurance: the possibility of taking out liability insurance to cover the risk of being sued for infringement of copyright (or investigating whether such insurance exists, for example in terms of the general insurance policy of your organisation) should be investigated. Many public-sector bodies in the UK will have professional indemnity insurance but it is important to check if any material which might present risks is covered. If you are working in partnership with other organisations, each project partner will have to check this unless the consortium agreement says otherwise.
- Technical protection measures: as part of the planning process for a project, decisions will be needed as to how the technology and content is to be made available – whether freely available to all or only from behind technical protection measures/password-protected sites/for use by the academic community. While the route chosen will not change liability should copyright be infringed (ie infringing content behind a password-protected site will still infringe), the circulation of the content is more limited where circulation/distribution of content is restricted by technical controls. Where circulation is limited to, for example, a specific community, this could inform decisions as to, for example, whether an orphan work should be used; or if fair dealing for the purposes of non-commercial research would form a creditable defence to an action for infringement.

5 www.jorum.ac.uk/support/legal.html
What Happens If It All Goes Wrong?

The risk that seems to worry most professionals working across the public sector is that of being sued for infringement of copyright. Firstly, it is likely that there is a long way that a disgruntled rights holder will go before they sue. In all probability, they will contact you first in writing and ask that you take the infringing work down and probably ask you to pay the fee that they usually would have charged for such a use of their work.

In the event that an owner of copyright did sue, the legal remedies they could seek include:

- **Damages**: the measure of any damages granted would be, so far as possible, such as to put the copyright owner in the position as he/she would have been had the infringement not happened. Within a Web 2.0 environment, for example, this will be difficult to establish as the sharing is potentially endless and the chance to stop the sharing even smaller than within a closed environment.
- **An injunction/interdict**: an order to stop infringing the work and/or to refrain from infringing again in the future.
- **Delivering up of infringing copies**

Sometimes rights holders do not sue and instead may no longer trust you and/or the organisations affiliated with your project. Infringement of rights can also cause damage to reputation and the possibility of further ramifications relating to removal of services and/or funding.

Ultimately, it is important that you are both proportionate about possible risks, whilst at the same time prepare suitable mitigating strategies in the eventuality that a rights holder does come forward.

Whilst not all rights holders will employ legal remedies, they may be annoyed that you have used their content without prior authorisation – an apology and promise of swift action, such as credit, payment and/or removal of content, can go a long way! It is important to note that across the public sector, it is more likely that the ramifications of unauthorised use of content will include loss of trust, damage to reputations and/or relationships as well as potential removal of services. Subsequently, these potential consequences need also to be factored into any risk assessments.

These case studies are helpful in providing an insight into certain circumstances that might go wrong, and the ways in which they are dealt with, which can result in a favourable conclusion or not!

1) **Case Study One**

A photographer approaches you stating that there are photographs on your website in which he owns the copyright. The photographer has not given permission for these photographs to be used. You take the photographs down immediately. The photographer demands money from you for the use of the photographs. You point to the Notice and Take-Down provisions in the E-commerce Directive and Regulations whereby they are absolved from liability if content is removed as soon as they know it infringes copyright belonging to a third party. The photographer argues that the provisions do not apply to you and he will raise an action. The photographer also states that there are many other owners of the copyright in creative content on websites owned by you being used without permission and who are watching this case with interest and will be contacting you shortly with their own demands. The photographer raises an action in the local court. Due to the importance of the case not only for you, but also for similar bodies, you request that the lower court remit the case to the higher court. Lower court agrees. The photographer drops the action and has not been heard of since.

2) **Case Study Two**

Commercial image supplier approaches you stating that several images on your website infringe its copyright, and appropriate fees should be paid. You originally sourced the images from the internet and had not sought permission for the images to be used in the first place. You do not respond. Very shortly after this, the commercial image supplier demands immediate take-down. Again, you choose not to respond. The commercial image supplier swiftly sends you an invoice for several times the initial amount and a letter with threats of naming and shaming. You discuss with your lawyers, who have not been contacted until this point, and payment is settled.

3) **Case Study Three**

A photographer approaches you stating that there are photographs on your website in which he owns the copyright, which he had placed on an image sharing site, for reference and personal use only. The photographer has not given permission for these photographs to be used and asks you to credit him and to pay a small amount for each photograph. You agree and the issue is settled amicably.
## IPR Risk Assessments

<table>
<thead>
<tr>
<th>Risk Type</th>
<th>Risk Impact</th>
<th>Risk Probability</th>
<th>Risk Score</th>
<th>Risk Responsibility</th>
<th>Risk-Mitigation Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unauthorised use of third-party materials</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Training content creators and content users; provision of access to pre-cleared content such as JISC Collections and content created as a result of other public-sector funding initiatives</td>
</tr>
<tr>
<td>Theft of copyright materials by third parties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Use of copyright credit lines; deployment of copyright notices and terms and conditions to educate users; display of digital content in low resolution; possible use of digital watermarks and other encryption devices; password-protecting content of high value</td>
</tr>
<tr>
<td>Granting more rights to users to use third-party generated content, than permissions to use it have been secured</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Ensuring that there is compatibility between rights granted by third parties and those granted to subsequent users of the content</td>
</tr>
<tr>
<td>Inappropriate licences selected for providing access and use of content</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Making sure that licence types selected reflect organisational and departmental policies on access and use of content</td>
</tr>
<tr>
<td>Rights clearance costs exceeding budget</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Earmarking funds to clear rights within project planning</td>
</tr>
<tr>
<td>Insufficient resources to clear rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Allocating staff and administrative support to identify and clear rights at the start of the project. Identifying rights that need to be cleared and estimations of anticipated associated costs as early as possible. Creation of a contingency fund</td>
</tr>
<tr>
<td>Breaching IPR conditions from funding bodies, for example not clearing any third-party rights for use by funding bodies or breaching warranties that all third-party rights have been cleared</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Ensuring that any IPR clauses are understood and can be complied with within funding agreements. Any clauses that present difficulties will need to be negotiated with funding bodies, or alternative strategies applied, such as allocating extra funds to clear additional rights</td>
</tr>
<tr>
<td>Disputes over ownership of IP amongst consortium partners</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Discussing ownership or co-ownership of rights and other models (such as non-exclusive and exclusive licences) prior to the commencement of the project. Incorporating appropriate IPR clauses within consortium agreements to reflect the outcomes of these decisions. Ensuring consortium agreements are signed before work starts</td>
</tr>
<tr>
<td>Risk Type</td>
<td>Risk Impact</td>
<td>Risk Probability</td>
<td>Risk Score</td>
<td>Risk Responsibility</td>
<td>Risk-Mitigation Strategy</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>-------------</td>
<td>------------------</td>
<td>------------</td>
<td>---------------------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Breach of IPR conditions within consortium agreements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Ensuring that any IPR clauses are understood and can be complied with within consortium agreements. Any clauses that present difficulties will need to be negotiated with partners, or alternative strategies applied, such as allocating extra funds to clear additional rights</td>
</tr>
<tr>
<td>Lack of responsibility for clearing rights in projects with multiple partners</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Allocating roles and responsibilities for rights clearance to specific project partners, as well as embedding progress within project reporting mechanisms</td>
</tr>
<tr>
<td>Inadequate identification of the layers of rights that might exist in any one piece of content, for example, copyright in an artwork, and subsequent copyright in its photograph</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Allocating staff with a clear understanding of IPR issues and appropriate administrative support to identify and clear rights at the start of the project. Identifying rights that need to be cleared and estimations of possible associated costs as early as possible</td>
</tr>
<tr>
<td>Inadequate recording of rights requiring clearance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Creation or bolt-on of a rights management database to describe content and rights associated with it</td>
</tr>
<tr>
<td>Inadequate recording of licences granted to use third-party content</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Establishment of a paper-based filing system for permissions that have been granted (as well as printout of licences for content used under open content licences). Creation or bolt-on of a rights management database to describe content, rights associated with it and permissions granted by third parties to use their content</td>
</tr>
<tr>
<td>Inadequate recording of licences granted to third parties to use content that is created</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Establishment of a paper-based filing system for permissions that have been granted (as well as printout of licences for content used under open content licences). Creation or bolt-on of a rights management database to describe content, rights associated with it and permissions granted to third parties to use content</td>
</tr>
<tr>
<td>Expiry of permissions granted by third parties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Establishment of a paper-based filing system for permissions that have been granted (as well as printout of licences for content used under open content licences). Creation or bolt-on of a rights management database to forewarn of expiry dates of permissions</td>
</tr>
<tr>
<td>Risk Type</td>
<td>Risk Impact</td>
<td>Risk Probability</td>
<td>Risk Score</td>
<td>Risk Responsibility</td>
<td>Risk-Mitigation Strategy</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------</td>
<td>------------------</td>
<td>------------</td>
<td>---------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Exceeding use of permissions granted by third parties</td>
<td></td>
<td></td>
<td></td>
<td>Establishment of a paper-based filing system for permissions that have been granted (as well as printout of licences for content used under open content licences). Creation or bolt-on of a rights management database to describe content, rights associated with it and permissions granted to third parties to use content</td>
<td></td>
</tr>
<tr>
<td>Lack of appropriate IPR clauses (and waiver of moral rights) when working with contractors and freelancers</td>
<td>Use of assignment of rights clauses in commissioning contracts and requests for rights to be waived</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of suitable prior art checks when using or incorporating material protected by patents</td>
<td>Need to ensure that staff are aware of the risks of using patented materials without permission. Incorporation of patent searches prior to developing or using material that could be protected by patents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of third-party Trade Mark within unsuitable context</td>
<td>Staff training. Ensuring that permissions to reuse Trade Marks (particularly within a commercial context) are identified material requiring clearance, and incorporated within a rights clearance strategy</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of IP strategies to ensure long-term sustainability</td>
<td>Discussions at project initiation to evaluate and implement possible strategies relating to IP exploitation. This will then be a common thread running through subsequent use of the material and the terms under which it can be used</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of expertise in negotiating rights clearances</td>
<td>Staff training. Need to bring in expertise to help where appropriate (perhaps from consultants)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of procedures to deal with infringements of rights</td>
<td>Implementation of rapid and effective notice and take-down procedures</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of copyright notices and credit lines on content</td>
<td>Development of standard copyright notices and credit lines used in association with content that is created. Credit lines will need to reflect rights in content generated by the organisation, as well as rights in third-party material</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circumvention of technical protection measures (without authorisation or under a copyright exception) that protect third-party content</td>
<td>Staff training regarding the severity of penalties for unauthorised circumvention</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Risk Type</td>
<td>Risk Impact</td>
<td>Risk Probability</td>
<td>Risk Score</td>
<td>Risk Responsibility</td>
<td>Risk-Mitigation Strategy</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>-------------</td>
<td>------------------</td>
<td>------------</td>
<td>---------------------</td>
<td>----------------------------------------------------------------</td>
</tr>
<tr>
<td>Cannot trace or find rights holder (orphan works)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Use of reasonable searches (‘due diligence’) and the retention of paper-based proof to show that these have been carried out; disclaimer and possibility of putting money aside</td>
</tr>
<tr>
<td>Insufficient due-diligence procedures to trace rights holders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Established set of due-diligence procedures across the organisation</td>
</tr>
<tr>
<td>Inability to exploit content in which rights are owned because exclusive licences have been issued</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Identification of any pre-existing exclusive agreements. Re-negotiation if applicable</td>
</tr>
<tr>
<td>Difficulties in updating content, particularly with regards to moral rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Upon the creation of content by non-staff, processes should be implemented to ensure that moral rights are waived</td>
</tr>
</tbody>
</table>

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
Context

This resource is based upon the IPR Terminology Toolkit created by the JISC-funded Web2Rights Project ([www.web2rights.org.uk](http://www.web2rights.org.uk)) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This paper can be used as a guide to understand the different licence terms that a public-sector body may encounter when presented with a rights-related contract.

‘Acceptable Use Policy (AUP)’ is a set of rules, which the owner of the web-based technology will specify must be complied with by the user. The purpose of the AUP is to minimise exposure of the owner/operator of the technology to legal liability for behaviour of users (such as defamatory comments).

‘Accessibility Laws’ in the context of e-content and web-based technologies, means the requirement through such legislation as the Disability Discrimination Act 1995 (as amended by the Special Educational Needs and Disability Act 2001) to ensure that websites are accessible to and usable by all users regardless of ability or disability.

‘Arbitration’ is a process for settling disputes out of the formal court system (although appeals against a decision made by an arbiter can be made to a court on limited grounds). A neutral arbitrator is generally appointed to hear the evidence and decide the dispute. Arbitration is often considered to be cheaper and quicker than court litigation.

‘Assignment’ in England and Wales, ‘Assignation’ in Scotland, is, in this context, the transfer of IPR in action by one person (the assignor) to another (the assignee). Having assigned the IPR, the assignor has no further legal title in the IPR. An assignment MUST be in writing to take legal effect and be signed.

‘Clinical Content’ includes clinical content, such as photos of patients, in which the patient can be identified.

‘Commercial exploitation’ is exploitation for financial return, or an equivalent consideration. There is considerable ambiguity in this term such that it is not possible to give a precise definition; for example, is material placed on a free-of-charge website for ‘commercial exploitation’, as it may directly or indirectly lead to increased income for the organisation? Some licences may attempt to define the term more precisely.

‘Contempt of court’ includes the failure to abide by a court order such as an injunction (interdict) prohibiting a particular course of action.

‘Content’ can include printed content, content on floppy disk, websites, online databases and CD-ROM, and can comprise any combination of text, still images, moving images, artistic works, drawings, maps, photographs, collections of data, sound, music on any medium, and might include hypertext links, tags and other material produced as a result of reviewing and rating. Content can be produced by individual authors or may be the result of collaborative effort between two or more individuals.

‘Contract of employment’ means the contract between the employer and employee setting out the rights and obligations of the parties. The employment relationship is also subject to the broader regulatory framework governing such matters as non-discrimination, termination of employment etc.
'Cookie' refers to information that a website puts on your computer so that it can remember you the next time you visit the site.

'Defamation' is the publication of a statement that lowers the standing of a person in the eyes of right-thinking members of society. The defamation can be in any form – such as words or pictures.

'Due Diligence' is the documentation of any number of reasonable searches undertaken to try and find rights holders for works protected by copyright. It is often used as a defence in instances where rights holders cannot be traced or are unknown ('orphan works').

'E-security' refers to the laws and technologies involved in keeping information secure on the web.

'Exclusive' refers to the restriction imposed upon the licensor in being restricted in not being able to grant others the same rights as those granted under the terms of the licence nor being able to exploit the materials for the same purpose themselves. The licensee (the person to whom the licence is granted) is the only person who will be able to exercise the rights granted under the licence.

'Exploit/exploitation' is offering the content to third parties to use for their own purposes. The third party will be able to exploit the content within the terms of the licence.

'Force majeure' is a condition beyond the control of the parties such as war, strikes, floods, power failures, destruction of network facilities, etc, which was not foreseen by the parties and which have prevented performance under the contract. Most licences build in provisions that any party’s failure to perform any term of condition under the licence due to a force majeure will be excused and the failure to perform in those circumstances will not be deemed a breach of the Agreement.

'Freedom of Information' means the policy and attendant regulatory framework that allows individuals to obtain information from public-sector bodies.

'Incitement of Racial Hatred' refers to any act that directly or indirectly incites racial hatred, which is a criminal offence.

'Indemnities' are the protection or insurance offered by the party making certain assurances outlined in the 'warranties' that these have been met. If these obligations are not met, they will indemnify (ie pay) the other party for any losses, expenses, actions, liabilities etc with which they might be faced. Warranties without indemnities are of limited use; therefore each warranty should be accompanied by a corresponding indemnity.

'In perpetuity' refers to the duration of the terms of licence, which are granted without end.

'Intellectual Property Rights' (IPR) includes patents, Trade Marks (whether registered or not), design rights, database rights, copyright and confidential information/trade secrets. Patents, Registered Trade Marks and registered designs are obtained only through a formal application process. Copyright, database rights and confidential information/trade secrets are created automatically without any formal process. Intellectual Property (IP) is the name given to the rights that protect creations of the mind.

'Irrevocable' means that the terms of the licence cannot be revoked by either party. This term is often used when royalty-free licences are granted.

'Libel' means the writing or printing of a defamatory statement.

A 'licence' is a formal authority to do something that would otherwise be unlawful. In this context, it refers to a licence by the owner of IPR to copy, adapt, etc, content or technology even though copyright law prohibits such copying without authorisation. Unlike assignment, the owner of the IPR remains its owner and, depending on the terms of the licence, may be able to continue to do whatever they like with the IPR.

'Licence fee' can be included in the main clause or in a separate Schedule. It is important to ensure that any licence fee is an inclusive fee, covering everything that will need to be paid for and that ‘hidden’ costs cannot be charged at a later stage. However, it is acceptable to have VAT charged separately to the all-inclusive fee.

'Limitation of liability' means that the financial or legal liability of a party or both parties is limited instead of open ended (sometimes a fixed amount is given) in the event that the terms of the licence are breached.
'Moderation' means the process whereby the ISP or other party watches over content posted on a Web 2.0 technology by third parties and removes inappropriate/unlawful content. The moderation policy is most often underpinned by an acceptable use policy.

'Moral Rights' mean certain rights given to the creator of some copyright works, including literary works, artistic works and films. The first is the right of the author of a work to be acknowledged as the author or creator. The second is the right to object to his or her name being attributed to something he or she did not create. The third is the right not to have his or her work subjected to 'derogatory' treatment, ie treatment of the work [or copies of the work], which is detrimental to integrity or reputation.

'Negligence' refers to the doing or failing to do something that a reasonable and ordinary person in the circumstances would do or not do. It is conduct that falls below the standard that has been established by the law for protecting others from harm. It requires three major elements to be proved:

- The defendant breached that duty by failing to conform to the required standard of conduct
- The defendant had a duty to the claimant
- The defendant’s negligent conduct was the cause of the harm to the claimant.
- It must also be shown that the claimant was in fact harmed or damaged.

'Non commercial' refers to uses which do not directly or indirectly gain monetary or financial rewards or benefits.

'Non exclusive' refers to the ability of the Licensor to also grant others the same rights as those granted under the terms of the licence.

'Not for profit' refers to uses that might derive monetary or financial rewards or benefits, but for which profit is not generated.

'Notice and Take-Down' means the procedure whereby notice is given to an organisation of unlawful content (such as material infringing copyright; defamatory statements) hosted by the organisation, which is then removed by the organisation reducing liability for making the content available.

'Orphan Works' refers to works where the rights holders for works still in copyright cannot be traced or are unknown.

'Personal data', within the data protection regime, personal data are data about living identifiable individuals.

'Publication Scheme' means the procedure under the UK Freedom of Information Acts whereby public-sector authorities must make information publicly available in a number of classes including: information on the public authority and what it does; what is spent by the public authority and how; and the priorities and performance measures of the public authority. If information is not included in a publication scheme an individual may still make an individual request.

'Recitals' are a set of paragraphs that give a brief overview of what is intended to be achieved by the licence. Their role is to form a brief record of the parties’ objectives and the factual context in which the licence was originally written for use when, at some date in the future, the licence comes to be interpreted when disputed.

'Royalty' is a recurrent payment for, for example, the right to exploit copyright in a particular work.

'Royalty Free' means that the granting of the licence is without payment or financial remuneration.

'Sensitive personal data' within the data protection regime means data that discloses any of the following about a living identifiable individual: racial or ethnic origin; political opinions or persuasion; religious beliefs or other beliefs of a similar nature; trade union membership or affiliation; physical or mental health or condition; sexual life; commissioned or alleged commission of offences; any proceedings for any offence, committed or alleged, including any sentencing decisions made by the court.

'Slander' means words, speech or gestures of a defamatory nature.
‘Staff’ includes staff, research associates, technicians, or any other members of staff who are employed under a contract of employment (whether fixed term or permanent). It does not include freelancers or volunteers, since they do not have contracts of employment. It also does not include students, researchers or any other members of the general public who enter the establishment and make use of any of its services or exhibitions.

‘Tagging; reviewing; rating; favouring’ refer to terms used to describe methods to highlight, refer to, flag, sort, order or rate content that exists on the web.

‘Termination’ refers to the mechanism or circumstances upon which the licence terminates. The licence will often specify when it might terminate, such as due to expiry of the term or due to a breach. If a party materially breaches the agreement (fails to carry out their essential tasks under the agreement) the agreement can be terminated by the party not in default. If this happens there will often be provisions in the agreement to remedy such breach within a certain timeframe. If the breach is not remedied within the given period the agreement will automatically terminate and the party not in default can sue the other for damages.

‘Warranties’ are the guarantees that a specific party to the licence gives that certain obligations have been met or that they have sufficient rights to grant the licence. These might include, for example that ‘the IPR is owned by or duly licensed to the licensor’. An ambiguous warranty is one that says that the licensor is ‘to the best of its belief or knowledge’ the owner of the copyright in the licensed material. The words ‘best of its belief’ create a heavy burden of proof on the licensee as the licensor might honestly but misguidedly believe he/she was entitled to grant the licence. Typical warranties are: that the licensor owns the IPR in the materials, or is authorised to act on behalf of the owners; that the materials offered do not infringe any third-party’s IPR; and that the content does not break any laws, such as those of defamation, data protection, anti-terrorism legislation, pornography, etc.

Please see also:

2.4: Top Tips for Issuing Licences to Third Parties Wishing to Use Your Content
Naomi Korn and Professor Charles Oppenheim, March 2009

Context
This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project (www.web2rights.org.uk) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This paper provides some headline issues to consider when issuing licences to third parties who wish to use content generated by public-sector bodies.

Top Tips
Whatever use you allow:

- Remember that if you have obtained licences from others (staff, volunteers, freelancers, etc) to use their content and/or technology, the licences you issue to users cannot go beyond any limitations in these licences that have been granted to you.
- Make sure you clarify who you want to allow access to the content, and how your users will be able to use it.
- Ensure that any licence you propose to issue to users (whether in the form of a template, one you have developed with your own terms and conditions, or if you have decided to use an open content licence) is fit for purpose: if it does not do what you want it to do, then find or develop another one that is more appropriate.
- If you are using a ‘ready made’ licence, read the provisions and make sure that it covers what you want to allow and under what conditions.
- Where possible issue a licence that is governed by the law and courts of the country/region where your institution is located.
- Check with your institution who has the authority to grant the licence.
- Consider issuing a licence that disclaims liability for any subsequent unauthorised activities by users.
- Ensure that the licence does not include any clauses that might present legal risks for your institution, or your users.
- Copyright is not the only legal issue – make sure you cover other legal issues that may arise, such as defamation and liability for inaccurate information.
- Take legal advice if you are at all uncertain.
2.4: Top Tips for Issuing Licences to Third Parties Wishing to Use Your Content
Context

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project (www.web2rights.org.uk) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This paper provides some headline issues to consider when requesting permission from third parties whose content/technology may be required for use by public-sector bodies. NB: You may often find that when you want to ask for permission to use content from a third party, you can present them with your own model licence or use their licence.

Top Tips

- Give yourself plenty of time, enough resources and support to take account of what you need to do
- Try and factor rights clearances into project budgets and project management issues before you start
- Before you start, clarify what you want to do with the content; for how long; who you want to allow access to the content; and how and for what purpose your users will be able to use it
- Make sure that the licence granted to you reflects this

Do not forget

- Different audiences may require a different version of the same licence
- Some rights owners will not be grateful for a 20-page licence: understand the nature of your content, who your rights holders are likely to be and assess whether the content is high or low risk!
- Ensure that you understand your obligations to funders, eg if your outputs may need to be made accessible wherever possible, for free, perpetual, unlimited usage (for content) or under open source principles (for technology) – this usage needs to be reflected in the licence
- Ensure that any licence that you issue is fit for purpose: if it does not do what you want it to do, then find or develop another one that is more appropriate
- Think about the rights that you need, how long you need them for, and the rights that the content supplier retains
- Don’t ask for more than you anticipate you need, whilst considering your long-term aims and uses
- Permission can be obtained in different ways, such as a faxed-back agreement, email, or countersigned letter. It is safest to have the confirmation in a letter or a fax
- Make sure that the person/body who signs the licence or otherwise says ‘yes’ to what you ask for is authorised to grant permission (ie, they are the owner of the rights, or have the authority to sign on behalf of the owner of the rights)

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
2.5: Top Tips for Requesting Permission from Third Parties Whose Content You Wish to Use
2.6: IPR Model Consent Form
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project [www.web2rights.org.uk] and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances.

This form should be used to acquire consent from individuals who have agreed to be photographed, filmed or recorded prior to such activity taking place. This form should be adapted to suit specific requirements.
Section 2. Practical tools

2.6: IPR Model Consent Form

Model Consent Form

This form is to be signed by the person who has agreed to be photographed and/or filmed and/or recorded for [insert name of project here]. The purpose of this form is to seek consent for the photographs and/or films and/or recordings to be taken and subsequently to be used in a number of media, including print and the web by [insert name of organisation here]. [Insert name of organisation here] in turn offers a commitment to only allow said pictures and recordings to be used appropriately and sensitively.

I, the undersigned, consent to the use of my image and/or recordings of my voice being used within [insert name of project here]. I understand that the image and/or recordings will be used for [insert details] purposes only and that copyright in the image and/or recordings will be retained by [insert name of the organisation].

I acknowledge that the image and/or recording may also be used in, and distributed by, media pertaining to [insert name of project or organisation here] other than a printed publication, such as, but not limited to, CD-ROM or the World Wide Web.

Copyright restrictions placed on [insert name of organisation here] prevent the content being sold or used by way of trade without the express permission of the copyright holder. Images and recordings may not be edited, amended or reused without prior permission from [insert name of project or organisation here]. Personal details of those taking part are never made available to third parties.

I require/do not require that my name is removed/retained in association with the shots and/or recordings. {please delete as appropriate}

<table>
<thead>
<tr>
<th>FULL NAME AND TITLE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME OF ORGANISATION</td>
<td></td>
</tr>
<tr>
<td>CONTACT TELEPHONE</td>
<td></td>
</tr>
<tr>
<td>EMAIL ADDRESS</td>
<td></td>
</tr>
<tr>
<td>SIGNED</td>
<td>DATED</td>
</tr>
</tbody>
</table>

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
2.7: Model Licence
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

This agreement can be used to request permission to use third-party content. This resource should be adapted to suit specific requirements. It is based upon the JISC Model Licence, which was adapted for the JISC-funded Web2Rights project (www.web2rights.org.uk). It should be used in consultation with 3.1 Getting Permissions and 3.2 IPR Risk Assessments contained within this toolkit.
SUBJECT TO CONTRACT

[Please customise the highlighted sections]

DATED 2009

[LICENSOR]

-and-

[LICENSEE]

NAME OF RESOURCE SUPPLY AND LICENCE AGREEMENT
[NAME OF THE RESOURCE] SUPPLY AND LICENCE AGREEMENT

THIS AGREEMENT is made day of 2009

BETWEEN: [NAME OF THE LICENSOR], whose principle place of business is at [address] (‘Licensor’)

AND [NAME OF THE LICENSEE], whose principle place of business is at [address] (‘Licensee’).

WHEREAS:

a) The Licensor holds or controls the rights in [name of the resource] as further specified in Schedule 2;
b) The Licensee is the lead institution of the project called [name of the project], which aims to make [name of the resource] available free of charge to the public via [name of the Service] (as hereafter defined);
c) The parties are desirous of reaching agreement to make access to [name of the resource] available online to the public on the terms as set out in this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

- **‘Commercial Use’** means use of the Licensed Material for the purpose of monetary reward by means of the sale, resale, loan, transfer, hire or other form of commercial exploitation of the Licensed Material. For the avoidance of doubt, the placing of advertisements next to the web-delivered version of the Licensed Material is not deemed to constitute Commercial Use.

- **‘Derivative Works’** means a work based upon the Licensed Material to which enough original creative work has been added so that the new work represents an original work of authorship.

- **‘Educational Purposes’** means for all such purposes that are conducive to education, teaching, distance learning, private study and/or research.

- **‘Effective Date’** means the date that all parties have signed the Agreement.

- **‘Fee’** means the applicable fee payable by the Licensee to the Licensor in accordance with Schedule 1 for the rights granted herein.

- **‘Intellectual Property Rights’** means patents, Trade Marks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

- **‘Licensed Material’** means the resource licensed in this Agreement known to the parties as [name of the resource] being [description] as further specified in Schedule 2.

- **‘Third-Party Consents’** means all licences, permissions and consents in writing and payments to any third-party owner of Intellectual Property Rights in the Third-Party Material, which may be required for the use and exploitation of Third-Party Material for the purposes envisaged under this Agreement.

- **‘Third-Party Material’** means that part of the Licensed Material identified in Schedule 3 that is not owned by or licensed to the Licensor.

- **‘User’** means any person accessing the Licensed Material from anywhere in the world.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.
Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. AGREEMENT

2.1 The Licensor agrees: (a) to provide the Licensee with a copy of the Licensed Material; (b) to permit the Licensee to mount, communicate and make available the Licensed Material to Users in accordance with this Agreement; and (c) to permit the Licensee to use and sub-licence such use of the Licensed Material in accordance with this Agreement.

2.2 In consideration for the Licensor’s licensing of the Licensed Material pursuant to Clause 3, the Licensee undertakes to pay to the Licensor the Fee in accordance with the provisions of Schedule 1.

3. LICENCE GRANT

3.1 The Licensor hereby grants to the Licensee: a non-exclusive royalty-free licence in perpetuity to mount on any network or platform, preserve, communicate and make available the Licensed Material through any networked or un-networked electronic means and to provide access and allow use of the Licensed Material by Users.

3.2 The Licensor hereby agrees that the Licensee may appoint third parties to act on its behalf to perform the tasks and activities as set out in Clause 3.1. This arrangement shall be subject to an agreement between the Licensee and any third party, which is consistent with the terms of this Agreement where relevant.

3.3 The Licensee acknowledges and agrees that the Licensor grants no rights in respect of any Third-Party Material and the Licensee undertakes at the Licensee’s expense before using the Licensed Material and as a condition precedent to the grant of the licence under Clause 3.1 to obtain, or to require that its sub-licensees obtain, all Third-Party Consents and any other consents that may be required for the use of the Licensed Material as envisaged pursuant to this Agreement.

4. COMMENCEMENT AND TERM

4.1 This Agreement commences on the Effective Date and will remain in full force and effect in perpetuity. For the avoidance of doubt, the parties agree that the perpetual licences granted by the Licensor to the Licensee in Clause 3 are irrevocable and will survive any termination or repudiation of this Agreement.

5. USE OF THE LICENSED MATERIAL

5.1 Throughout the term of this Agreement the Licensee or a distributor duly appointed by the Licensee may:

   5.1.1 mount the Licensed Material and incorporate the Licensed Material in the Service or any other database from time to time; and

   5.1.2 make such copies of the Licensed Material as are technically necessary to provide access to Users and for preservation purposes.

5.2 Throughout the term of this Agreement the Licensee may permit Users:

   5.2.1 to access the Licensed Material in order to search, retrieve, display and view, and otherwise use portions of the Licensed Material;

   5.2.2 to electronically save parts of the Licensed Material;

   5.2.3 to print out copies of parts of the Licensed Material;
5.2.4 to use the Licensed Material for non-commercial purposes;

5.2.5 to incorporate parts of the Licensed Material in printed and electronic course packs, study packs, resource lists and in any other material [including but not limited to multimedia works]. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Materials in non-electronic non-print perceptible form, such as Braille, may also be offered to Users;

5.2.6 to incorporate parts of the Licensed Material in printed or electronic form in assignments and portfolios, theses and in dissertations ['the Academic Works'], including reproductions of the Academic Works for personal use and library deposit. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner;

5.2.7 to display, download and print parts of the Licensed Material for the purpose of promotion of the Licensed Material, testing of the Licensed Material, or for training Authorised Users;

5.2.8 to publicly display or publicly perform parts of the Licensed Material as part of a presentation at a seminar, conference, or workshop, or other such similar activity;

5.2.9 to deposit in perpetuity any learning and teaching objects in electronic repositories and/or in the JORUM Repository. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository;

5.2.10 to create Derivative Works; and

5.2.11 to use the Licensed Material for any other purposes that are conducive to education, teaching, learning, private study and/or research.

5.3 This Agreement shall be deemed to complement and extend the rights of the Users under the Copyright, Designs and Patents Act 1988 and the Copyright [Visually Impaired Persons] Act 2002 and nothing in this Agreement shall constitute a waiver of any statutory rights held by the Users from time to time under these Acts or any amending legislation.

6. RESTRICTIONS

6.1 Save as provided herein, the Licensee and Users may not:

   6.1.1 sell or resell the Licensed Material or use the Licensed Material for any other Commercial Use unless the Licensee or a User has been granted prior written consent by the Licensor to do so; and

   6.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Licensee acknowledges that all Intellectual Property Rights in the Licensed Material are the property of the Licensor or duly licensed to the Licensor and that this Agreement does not create, assign or transfer to the Licensee any right, title or interest in the Licensed Material except for the right to use the Licensed Material in accordance with the terms and conditions of this Agreement.

7.2 Save as provided for under Clause 7.1, any and all Intellectual Property Rights in and relating to any metadata and other works created by the Licensee or Users from the Licensed Material shall be the property of the Licensee or such Users absolutely.

7.3 Nothing in this Agreement conveys any other ownership rights to the Licensor in and in relation to any metadata and other works created by the Licensee from the Licensed Material.
8. REPRESENTATION, WARRANTIES AND INDEMNIFICATION

8.1 The Licensor warrants to the Licensee that the Licensed Material and all Intellectual Property Rights therein are owned by or licensed to the Licensor and that the Licensed Material used as contemplated in this Agreement and the Sub-Licence Agreement do not infringe any copyright or other proprietary or Intellectual Property Rights of any natural or legal person. The Licensor agrees that the Licensee shall have no liability and the Licensor will indemnify, defend and hold the Licensee harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by the Licensee in defending against any third-party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of the Licensee’s or any User’s use of the Licensed Work, provided that: (1) the use of the Licensed Work has been in full compliance with the terms and conditions of this Agreement; (2) the Licensee provide the Licensor with prompt notice of any such claim or threat of claim; (3) the Licensee cooperates fully with the Licensor in the defence or settlement of such claim; and (4) the Licensor has sole and complete control over the defence or settlement of such claim.

The foregoing does not apply to Third-Party Material or Derivative Works of the Licensed Material.

8.2 While the Licensor has no reason to believe that there are any inaccuracies or defects in the information contained in the Licensed Material, the Licensor makes no representation and gives no warranty express or implied with regard to the information contained in any part of the Licensed Material including (without limitation) the fitness of such information or part for any purposes whatsoever and, to the extent permitted by law, the Licensor accepts no liability for loss suffered or incurred by the Licensee or Users as a result of their reliance on the Licensed Material.

8.3 In no circumstances will the Licensor be liable to the Licensee for any loss resulting from a cause over which the Licensor does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems, unauthorised access, theft, or operator errors.

8.4 The Licensee agrees to notify the Licensor within 48 hours and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Material. It is expressly agreed that upon such notification, or if the Licensor becomes aware of such a claim from other sources, the Licensor may remove such work[s] from the Licensed Material. If the Licensor decides to remove such work[s] from the Licensed Material, the Licensee agrees to remove such work[s] from the Licensed Material and to notify any designated third parties that they must do the same. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement.

8.5 Nothing in this Agreement shall make the Licensee liable for breach of the terms of this Agreement by any User provided that the Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

8.6 The Licensor and the Licensee do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised subcontractors and agents.

9. ASSIGNMENT

9.1 Save as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be assigned or sub-licensed by either party without obtaining the prior written consent of the other party, such consent shall not unreasonably be withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.
10. GOVERNING LAW AND DISPUTE RESOLUTION

10.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

11. NOTICES

11.1 All notices required to be given under this Agreement shall be given in writing in English and sent by electronic mail, fax or first-class registered or recorded delivery to the relevant addressee at its address set out in this Agreement.

12. GENERAL

12.1 This Agreement and its Schedules constitute the entire agreement between the parties relating to the Licensed Material and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.

12.2 The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.

12.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

12.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party’s rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
SCHEDULE 1: FEE

1. The fee payable by the Licensee to the Licensor for the rights granted herein to the Licensee and HEFCE shall be fixed at one peppercorn payable by the Licensee only if demanded.
SCHEDULE 2 – LICENSED MATERIAL
IN WITNESS the hands of the above parties on the date first above written:

| SIGNED by: | [Signature] |
| Position: |
| for and on behalf of: |
| [LICENSOR] |
| WITNESSED by: | [Signature] |
| Position: |
| Address: |

| SIGNED by: | [Signature] |
| Position: |
| for and on behalf of: |
| [LICENSEE] |
| WITNESSED by: | [Signature] |
| Position: |
| Address: |

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
2.8: Template Email Permission Form
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project [www.web2rights.org.uk] and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances.

This template email for requesting copyright permission should be customised as indicated and used in conjunction with the guidance provided within ‘3.1 Getting Permissions Paper’ and ‘3.2 IPR Risk Assessments’ resources contained within this toolkit.
Dear Sir/Madam [or insert name of rights holder if you have this information available]

Request for Rights Permissions

[Provide description of your project, URL (where appropriate) and name of lead institution]

[Provide details of how the content/technology/software/databases etc will be made available to users, eg over the web/print/pda/repository etc]

We understand that you are the rights holder for [provide details of the material that you wish to reproduce, provenance and any other identifying information].

We wish to copy and use [reference the material here] and to provide access to it to [insert details of who will get access] for [educational/cultural/research, etc] purposes under the terms of [insert information about the terms under which users will be able to access the material, eg non-commercial research or private study; if you are using a Creative Commons licence or another open content and/or open source licence to provide access, reference it here].

We would therefore be most grateful for your permission to make use of [reference material here] for the purposes described above. Could you please confirm your consent to this proposed use of your copyright works by return of email, including details of how you wish to be credited.

We look forward to hearing from you in due course.

With kind regards

[Insert your name, job title/project role, the name of your institution and/or name of your project and contact details]
Template Permissions Letter for Using Third-Party Materials

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project [www.web2rights.org.uk] and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances.

The draft shown below is an example of the sort of letter that might be sent out when requesting permissions to use third-party rights. The wording should be amended and customised in the light of the specific request detail and the type of content/technology for which rights clearance is necessary. It should be used in conjunction with the guidance provided within ‘3.1 Getting Permissions Paper’ and ‘3.2 IPR Risk Assessments’ resources contained within this toolkit.

It is recommended that two copies of the letter, on letter-headed paper, are sent to the rights holder together with a stamped addressed return envelope and/or fax number.
[date]

[name and address of rights holder]

Dear [add name and title],

Request for Rights Permission to use [include name of work and creator]

We are currently [include details about your proposed use and context of use here].

We would like to seek your permission to make use of your works/works for which you administer the rights [delete as appropriate] for the purposes described above. Could you please confirm your consent, by countersigning both copies of this letter and returning one to us in the envelope provided or by return of fax.

We look forward to hearing from you in due course.

Yours faithfully,

[add signature and date]

[add name, position and organisation]

[Counter-signature of rights holder]

[Name]

[Date]

Schedule

<table>
<thead>
<tr>
<th>Author of work</th>
<th>Title of work</th>
<th>ISSN/ISBN</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
2.10: Rights Management
Naomi Korn and Professor Charles Oppenheim, March 2009

Introduction

The set of resources contained within this paper have been adapted for SCA sponsors and other organisations across the public sector. They are intended as the basis of a toolkit to be issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. They include:

- Standard rights management fields for capturing information about the progress of rights clearance and rights creation.

Rights Management Template

Within any rights clearance strategy, it is vital to ensure that any rights, subsequent permissions granted or not granted, rights holders who have not been traced etc, are recorded in an appropriate format to ensure that there is clarity regarding the status of works, crucial information is captured and this information can be easily accessed and shared across a public-sector body. As a means to ensure the information is recorded comprehensively, it is recommended that all information is recorded, including rights for which permission has already been granted.

The template below is based upon SPECTRUM, the National standard for collections management, produced by the Collections Trust [www.collectionstrust.org.uk/stand.htm]. The types of fields, which can be mapped into pre-existing collections management databases or used to create the headings of fields in simple off-the-shelf spreadsheets and databases, might include:

- **Ref No**
  The reference number of the content for which rights clearance is required, if appropriate (patent number, an internal reference number, etc).

- **Object Name**
  The type of piece of content for which rights clearance is required.

- **Title**
  The title of the piece of the content; this might be the name of painting, title of a book, etc.

- **Content_description**
  Reference to specific born-digital image on a website etc, or another piece of content if it does not have a name or formal title.

- **Right_type**
  The type of right for which permission is required.

- **Right_begin_date**
  The date that the right began (the date when the patent was granted; the date copyright in an image, in an unpublished piece of text etc, started).

---

1 Whilst the focus of these resources is copyright and database rights, patents and Trade Marks are also covered briefly.
2.10: Rights Management

**Right_end_date**
The date that the right expired or is due to expire (the date when the patent was first applied for plus 20 years; the expiry date of copyright in an image, in an unpublished piece of text, etc).

**Right_holder**
The name of the rights holder (where known).

**Org_address**
The address of the rights holder (where known).

**Rights_in_begin_date**
The date from which any permissions to use content have been granted.

**Rights_in_end_date**
The expiring date of any permissions to use content (e.g., whilst some permissions might be granted in perpetuity, others may be time or product limited).

**Rights_in_note**
Field for recording any extra information, such as any 'due diligence' carried out in order to trace the rights holder etc.

**Rights_in_consent_status**
The status of the rights clearance – i.e., cleared, permission pending, permission refused, rights holder not found, etc.

**Rights_out_begin_date**
The date from which any permissions to use content by third parties (including users) have been granted.

**Rights_out_end_date**
The expiring date of any permissions to use content by third parties (e.g., whilst some permissions might be granted in perpetuity, others may be time or product limited).

**Rights_out_holder**
Details of the any users of the content that this created, or details of the open licence that has been chosen in order to facilitate further use of the content.

**Rights_out_note**
Field for recording any extra information associated with the permissions that have been granted.

**Rights_out_consent_status**
The status of the rights clearance – cleared, permission pending, permission refused, etc.

**Author_record**
The name and job title of the person who created the record.

**Date_record**
The date that this record was last updated.

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

© HEFCE, on behalf of JISC. The contents of this IPR Toolkit are licensed for use under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence.
Introduction

These FAQs and Scenarios have been created to help provide context of use for the resources formed as part of this IPR Toolkit.

FAQs

1. Do you need a ‘©’ for a work to be protected by copyright?

Copyright protection is granted automatically when a creative, original work is made. A copyright symbol is not a requirement for protection, but instead is useful in showing that work is protected. In some cases, it may be a contractual requirement with a rights holder, that you display a copyright credit line including the use of a ©.

2. Who owns the rights in works produced by students, volunteers, contractors and freelancers?

As long as they are not paid employees, such as some research students etc, the rights owned by non-members of staff will belong to the authors, unless there are contractual arrangements in place, which either assign the rights to the commissioning party, or else a licence is granted for any use of works that are created. In the case of students, they will own the rights in any work that they produce as part of their studies. This means that the reuse of any of their work will require their permission. A study carried out by JISC Legal (www.jisclegal.ac.uk) into IP and student works (see www.jisclegal.ac.uk/publications/studentipr.htm) has unveiled some complexities and possibly irregularities in the case where students assign their IP to their university or college as a condition of being accepted on to a course of study. Resources provided within this toolkit, ‘3.14 Model contractual clauses for requesting permissions from students/volunteers’ and ‘3.15 Model contractual clauses for requesting permissions from freelancers/subcontractors’ can be adapted and used to suit these circumstances.

3. Who owns the rights in works produced by staff in their own time?

Under the Copyright Designs and Patent Act 1988, the default position is that employers will own the rights in any work produced by staff for or on behalf of their organisation. This will vary according to custom and practice, as well as formal contractual clauses made between staff and their organisations. In terms of work produced by staff in their own time, this is not a straightforward answer and will depend on the nature of the work that staff are creating and whether it is directly for or on behalf of their organisation or whether there is an indirect relationship (such as articles in which they are either using their formal job titles or that they are writing as a result of their association with a particular organisation). In such cases, where there is a lack of clarity, it is sensible to treat each instance on a case-by-case basis and, moreover, ensure that there are the procedures in place for staff to discuss such issues with line managers. Clearly in cases where staff are involved in the creation
2.11: FAQs

of works with no connection to their day jobs, they are likely to retain the rights and negotiation between both parties would be advisable. Template resources that might assist can be found within this toolkit: ‘3.12 Model contractual clauses for requesting permission from staff’.

4. If a rights holder cannot be traced, would a disclaimer provide coverage against any infringement?

The onus of responsibility to use content generated by third parties, which is still in copyright, is placed on the user of the content. This means that permission will need to be sought by way of some kind of licence agreement, unless you have a defence to an action of infringement under ‘fair dealing’ or one of the other exceptions. There may, however, be some cases where the rights holders can neither be traced nor found (so called ‘orphan works’), and in these cases it is important that if a disclaimer is used, it is in conjunction with some kind of reasonable search, a clear paper trail of what you have done to trace holders and proportionate risk management. Even if you do carry these out, it is important to remember that use of the work would still infringe, but your efforts may mitigate the risks. Furthermore, consideration of activities that might be employed if rights holders were to come forward will also be of benefit to your organisation. Further information about the possible issues, risks and actions relating to these issues are outlined in the following resources found within this toolkit: ‘3.1 Getting Permissions Paper’ and ‘3.2 IPR Risk Assessments’.

5. Is playing or reproducing content from a content-sharing website or social networking site an infringement?

This will depend upon the permissions that the creator of the content has granted any users, which will normally be expressed within some kind of licence, such as a Creative Commons licence and/or a copyright statement. The lack of such a licence should be taken to mean that the content cannot be used without further permission. However, even if there is a licence to use content, reproduce and broadcast content etc, it is important that the person who is granting the licence has the authority to grant it – ie they own the rights. In some cases, people think that because they own a work, this allows them the right to both post it on social networking sites and also allow others to access it. In cases where they do not have this authority, any subsequent permissions that they grant to users will be invalid contracts. Further information about Creative Commons licences can be found in the following resource contained within this toolkit: ‘1.1 Creative Commons Licences – Briefing Paper’.

6. Who is liable for an infringement of copyright carried out by staff and/or students?

Some organisations will have Acceptable Use Policies or clauses within staff contracts and/or staff handbooks that spell out what will happen if a member of staff and/or a student breaks the law, which would include any infringements of third-party rights. However, despite the fact that the organisation has taken such responsibility for ensuring that staff and/or students are aware of their legal responsibilities, if any repercussions were to arise following an infringement, the organisation may still be liable as well as possibly the member of staff/student. In addition, the member of staff will be in breach of their contract with the organisation in question and subject to possible disciplinary measures, whilst students will also be subject to disciplinary actions.

7. What is non-commercial use?

The restriction of fair dealing to ‘non-commercial use’ was only introduced into the law in October 2003 and has caused confusion since. There is no definition in the legislation of non-commercial, neither have there been any court cases directly in point although in 2007 an English court found that the activities of a private research company amounted to commercial use where it had gained unlicensed access to the contents of a mapping database service made available only to universities and the public research communities in the UK. The company argued that it had been using the information for research – the development of a mapping tool and as the tool was not completed it was at a non-commercial stage. The court rejected the argument taking account of the eventual commercial usage of the mapping tool. The court was also unimpressed by the covert nature and extent of the copying.
The British Academy and Publishers Association has recently published guidelines on Copyright and Academic Research for researchers and publishers in the humanities and social sciences in which it is suggested that consideration should be given to the primary purpose for which the research is undertaken at the time of carrying out the research. Academic research, where the primary objective is to make material widely available for the public benefit, would ordinarily be seen as non-commercial and as such distinct from commercial research, which is undertaken either for the private purposes of a client or in the expectation of recovering the costs of the research. However, it is acknowledged in the guidelines that the British Academy and the Publishers Association ‘take different views on whether any subsequent commercial publication of academic research comes within the exemption, or is rather likely to require consent or licensing in the normal way.’ The British Academy believes this comes within the exemption; the Publishers Association does not.

Where an agreement regulates the rights and obligations of the parties, non-commercial may be defined in the terms and conditions. For instance, Creative Commons licences define ‘non commercial’ as ‘not primarily intended for or directed towards commercial advantage or private monetary compensation’. However, this wording has been criticised as vague and does not seem to add much to the general law.

Further information about Creative Commons licences can be found in the following resource contained within this toolkit: ‘1.1 Creative Commons Licences – Briefing Paper’.

8. What are the rights issues that arise in using next-generation technologies?

The following have been identified as constituting major challenges:

- Copyright can act as a potential obstacle in the use of next-generation technologies; however, at the same time, we must engage with copyright if we want to do the right thing not only as part of our work for our projects and our institutions, but also in accordance with JISC terms and conditions of funding etc
- Copyright is part of bigger discussions about normalising the use of Web 2.0 technologies in HE/FE
- The fact that some rights holders do not recognise Fair Dealing in the digital environment, therefore the balance between rights holders and rights users is disrupted
- Orphan works pose major challenges (works for which the rights holders cannot be traced or are unknown)
- How to promote Open Access models and embedding of IP at institutional level

More information about the opportunities and obstacles associated with IPR and the web are outlined in the JISC-funded Web2Rights resources (www.web2rights.org.uk).

9. How relevant are open content licences for providing access to e-content?

Open content licences, like Creative Commons licences, are highly relevant and important licences in helping to achieve the principles of Open Access within a dynamic web environment. These licences have the enormous benefits of being delivered via the web and, in the case of Creative Commons licences, are available in three formats (including machine-readable code). As in the case of the use of any licences, it is important that they are fit for purpose and possible risks and benefits are carefully assessed prior to utilisation.

Any organisations/projects wishing to use open content licences need to ensure that they own the rights (or have permissions from any third-party rights holders) to make content available under the terms of these licences.

Further information about Creative Commons licences can be found in the following resource contained within this toolkit: ‘1.1 Creative Commons Licences – Briefing Paper’.
10. What are the issues arising from reusing and providing access to content whose component parts are licensed for use under different terms by a number of rights holders?

In these circumstances, the least permissive licence terms become the lowest common denominator. This means that uses of the entire content can only be made under the terms of the most restricted licences. For uses beyond these terms, permission should be re-sought for all the licensed content whose use falls beyond scope.

11. What are the legal issues arising from linking to content hosted by third parties?

Linking is a vital mechanism on the web, which creates a means by which the user can find, connect and access content. Depending upon the types of linking, there are varying rights issues which might arise:

**Simple linking:** this is where the user is taken to the home page of a site. It is generally accepted that this raises no copyright issues [if a reproduction is made it is made by the person who clicks on the link] and has been described as being ‘analogous to using a library’s card index to get a reference to particular items, albeit faster and more efficiently’. There is a tentative argument that linking could be said to be a ‘communication to the public’ under the Copyright Designs and Patents Act 1988 and therefore an infringement. However, this argument is untested in court and, even if found reasonable, would be likely to be met with the counter argument that the owner of the copyright in the linked-to work had given an implied licence for the act of linking.

On the other hand, linking to content that itself infringes copyright, is blasphemous, obscene, an incitement to racial hatred, a false endorsement etc is problematic. This is especially so when linking to works protected by copyright that are owned by the entertainment industry, the sector that has been behind most of the court cases. It should however be noted that these cases have concerned the most egregious examples of linking activity where links have been provided to hundreds of infringing works. Some sites, such as the BBC, include disclaimers, which state that the link is for information purposes only, although whether this would absolve the linker from liability is debatable. However, it should be noted that there have been no court cases concerning single links, which might have inadvertently been made to sites that contain infringing or otherwise objectionable content, meaning that the risk is minimal. If an objection is made, the link should simply be removed.

**Deep linking:** in situations where the user is taken to any part of a site that is a diversion from the home page, the website owner may have cause for grievance for a number of reasons: because the home page includes important user terms and conditions; the content may be accessible only via subscription; the home page may include sponsor information etc. If you are considering deep linking, in some situations it is advisable that either permission is sought from the website owner, or alternatively a link is provided to the home page with supplementary information about how to navigate to the required content. Perhaps the best known case on deep linking was *Shetland Times v Wills*, which took place in the Court of Session in Scotland. While no definitive judgement was handed down as the case finally settled out of court, at one point it looked as if deep linking would be classed as an infringement of copyright. However, it should be noted that the law has now changed and the category of ‘cable programme’ and ´cable programme service´ referred to in the case no longer exist in the Copyright Designs and Patents Act 1988.

**Framing:** while certain types of framing are unlikely to be an infringement of copyright, framing can be, and has been classed as, unfair competition [an extended type of passing off]. Framing is best avoided.

**Embedded/object linking:** many Web 2.0 services, such as YouTube and Flickr, provide the tools to allow users to embed links to objects on the service sites within their own websites. An example might include: a project which allows students to synchronise notes/comments with other people’s audio or video recordings [played back but not saved/stored by the project], such as embedding YouTube clips of musical performances [or merely inserting links to YouTube clips] into PowerPoint slides, studying them in class, circulating slides to students after class, mounting the slides on the institutional VLE or departmental website.

In these situations, while the object is not being reproduced as such, the user is provided with a link to view the content that is still held by service servers, and the content may be ´performed´ in public [in the class]. While technically there may be an infringement of the performance right [and links should not be made to material that infringes copyright nor where the content may be otherwise objectionable], practicalities may dictate that a robust notice and take-down procedure should be put into place to deal with any objections that might arise.
12. What rights do participants have in their image (likeness)?

Two areas of law are relevant to the use of images, whether in video clips or otherwise. The first is breach of confidence, which has been developing into a right that might be described as a 'right of privacy'; the second is Data Protection law. Broadly, combining these two means that the image of an individual should not be used in a video clip or otherwise unless consent has been given. This is subject to countervailing interests and in particular the public interest in freedom of expression. This is an exception that is most often relied on by the press, however recent cases and settlements out of court, including those involving Sienna Miller and Max Mosely, are increasingly shifting the balance in favour of rights of individuals privacy. Where an individual does appear in a video clip then she may have performers’ rights. Performers are not defined in the legislation but performance means 'a dramatic performance (including dance or mime), a musical one, a reading or recitation of a literary work or a performance of a variety act or any similar presentation'. Where the right exists, the performer has the right to object to fixation, reproduction, distribution, public performance and communication to the public of the performance without permission. Therefore if the participant can be classed as a performer, consent for these activities needs to be obtained.

13. Who owns the IPR in products produced by students for external clients?

Students are generally not considered as employees of the university and thus, unless there is an agreement to the contrary, the student will own his/her own IPR. Who owns the student IPR where products are produced for external clients will depend on whether the student has entered into any agreements with the external clients by virtue of which the student has assigned or licensed the IPR to the external client. This may take the form of specific terms and conditions within funding agreements and is likely if the student is funded to carry out research by a commercial company etc. However, note that the student needs to be a party to this agreement as it is the student who is transferring the IPR. If the student is not a party to the agreement then there needs to be an agreement between the student and the institution by virtue of which the student assigns or licences the IPR to the institution. The institution can then assign or licence the IPR to the external client.
2.12: Model Contractual Clauses for Requesting Permission from Staff
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

These contractual clauses can be used to cover work produced by staff. We recommend that these clauses are incorporated into standard contracts of employment. Please customise the highlighted sections.

This resource should be adapted to suit specific requirements. It is based upon resources produced from the HEFCE-produced ‘Good practice guidance for senior managers: Intellectual property rights in e-learning programmes’¹ and reused within the JISC-funded Web2Rights project [www.web2rights.org.uk].

It should used in consultation with the following resources contained within this toolkit:

- 2.1 Getting Permissions Paper
- 2.2 IPR Risk Assessments

¹ www.hefce.ac.uk/pubs/hefce/2006/06_20/06_20.doc
Model contractual clauses of employment for members of staff

Definitions
1. ‘Materials’ means any materials, text, image, audio and visually based, created within the institution or created on behalf of the institution by members of staff.
2. ‘IPR’ means patents, Trade Marks, trade names, design rights, copyright, confidential information, rights in know-how and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which shall subsist anywhere in the world.
3. ‘Member of staff’ means academic staff, research associates, technicians, or any other members of staff of the institution who are employed under a contract of employment (whether fixed term or permanent).

Primary obligation
4. The parties foresee that the member of staff may make or discover or create intellectual property in the course of his or her duties under this agreement and agree that in this respect the member of staff has a special duty to further the interests of the institution.

Title to rights
5. Subject to the provisions of the Patents Act 1977, the Registered Designs Act 1949 and the Copyright, Designs and Patents Act 1988, all IPR in the materials originated by the member of staff and arising out of the performance of his/her duties under this agreement shall be the property of the institution, and the member of staff undertakes to do all acts and things as may be thought by the institution to be necessary to vest any such property in the institution and to register title in such property in the institution.
6. In the event that the member of staff fails (for whatever reason) within 30 days of a demand by the institution to do all acts and things effectively to vest any such property in the institution, the member of staff hereby authorises the institution in his/her name and on his/her behalf to execute all such deeds or documents as may be necessary or desirable to transfer such property in the materials to the institution and register title in the materials in the institution.
7. If material from other copyright works is included in the materials, the member of staff shall identify such material to the institution and shall obtain all necessary written permissions from the owners or from any rights organisation authorised by the owner to grant such permissions in respect of such material. Alternatively, the member of staff shall, if the institution so agrees, provide the institution with sufficient information to enable the institution to obtain such permissions, but the institution shall not thereby be obliged to secure such permissions and may require that the member of staff omit any such material from the materials.
8. The institution hereby agrees and acknowledges that all performers’ rights in any video or other recording of the member of staff’s own lectures or presentations or similar works are owned by the member of staff. The member of staff grants to the institution and its authorised users an irrevocable royalty-free non-exclusive licence to use such material for administrative, educational, teaching and research purposes.
9. Nothing in this agreement shall constitute a waiver by the member of staff of any moral right under the Copyright, Designs and Patents Act 1988, and nothing therein shall constitute an exclusive recording contract within the meaning of Part II of that Act or consent by the member of staff to the exploitation of any qualifying performance for the purposes of that Part.

Exploitation and income
10. The institution is free to exploit (whether for financial gain or not) such materials as it sees fit, including licensing or assigning the IPR in the materials to third parties, or merging said materials with other materials created within the institution or elsewhere.
11. In the event that the institution fails to exploit the materials within a period of [to be inserted], the member of staff or his/her representative may give notice thereof to the institution, and in such event the institution shall declare within thirty (30) days in writing whether or not it intends to exploit the materials in the foreseeable future. The institution agrees it will enter into good faith negotiations with the member of staff with a view to assigning its rights in the materials to the member of staff if no prospect of commercial exploitation of materials is to be expected. In return, the member of staff shall grant the institution and its authorised users an irrevocable royalty-free licence to use such material for administrative, educational, teaching and research purposes.

12. Should the materials prove to be profitable, the institution agrees that it shall, in accordance with its normal procedures, enter into good faith negotiations with the member of staff regarding possible rewards.

Credits

13. The institution agrees to credit the member of staff for any significant contribution to the materials. The institution shall comply with any request by the member of staff in writing that his/her name be removed from the materials where such request is on grounds that the whole or parts of the materials are out of date or changed in a manner that might damage his/her reputation.

14. The institution may update or in any other way amend the materials to suit its requirements. The institution agrees to consult the member of staff over any significant amendments without any obligation to be bound by the same in deciding on the final form or content of such amendments.

Permitted uses

15. The institution grants to the member of staff a royalty-free non-exclusive licence to use the materials created by the member of staff or jointly with others for non-commercial teaching or research purposes only for as long as the member of staff remains employed by the institution. Such licence may continue after the termination of this agreement provided that the use of the materials does not damage the exploitation of the materials by the institution or prejudice in any way the interests of the institution.

16. Should the contract of employment of the member of staff terminate, the member of staff shall be entitled to enter into negotiations with the institution with a view to permitting the member of staff to make and retain a copy of the materials for his/her use for non-commercial teaching and research purposes. In the case of disagreement over these negotiations, dispute settlement procedures in accordance with Clause 20 of this agreement shall be invoked. Neither the member of staff nor his/her new employer is permitted to commercially exploit the materials without the express permission of the institution.

17. Nothing herein shall grant to the member of staff any right or licence to copy or use any versions of the materials updated or in any way amended by the institution after termination of the employment whose terms and conditions are governed by this agreement.

Prohibited uses

18. The member of staff is not permitted to assign or enter into any licence for the exploitation of the materials. In the event that the member of staff becomes aware of any third party wishing to exploit the materials, such third party shall be advised by the member of staff to contact the institution as the owner of the IPR in the materials.

Termination

19. Save as provided herein, all rights and obligations under this agreement shall continue to be in force after the termination of the employment whose terms and conditions are governed by this agreement in respect of all IPR in the materials originated by the member of staff during the member of staff’s employment under this agreement, and shall be binding on his/her representatives.
Dispute settlement

20. Any dispute between the parties arising out of or in connection with this agreement, except as otherwise provided in this agreement, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, failing agreement between the parties, within thirty (30) days after a request for a reference is made by either party, [eg] nominated on the application of either party by the chairman for the time being of the Bar Council.

[There might be a reversion of rights clause also inserted. Public-sector bodies and, in particular, HEIs, FEIs and schools should allow for the possibility of reversion of rights if, should the HEIs, FEIs and schools choose not to exploit the materials commercially, the individual or team that developed the materials wishes to take on the exploitation of the materials. Negotiations should be entered into in good faith and should be based on the premise that the HEIs, FEIs and schools should not unreasonably refuse the individual or the team the IPR if the HEIs, FEIs and schools have no interest in exploiting the materials. Appropriate arbitration procedures should be in place in case of disagreement. In return for the acquisition of the IPR, the member of staff should always grant his/her employer and its authorised users a royalty-free licence to use the materials for administrative, educational, teaching or research purposes. Any such clause should forbid the individual from exploiting the material in a way that the HEIs, FEIs and schools in their reasonable opinion deems to be competitive to their own activities.]
Context

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project [www.web2rights.org.uk] and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a toolkit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This agreement should be adapted to suit specific requirements. Further legal advice should be sought where necessary.
EXAMPLE OF A BASIC Consortium Agreement

[INSERT PROJECT NAME] CONSORTIUM AGREEMENT

THIS AGREEMENT is made the day of 2007

BETWEEN: [INSERT NAME OF PARTY A], whose registered office is at [insert address].

AND [INSERT NAME OF PARTY B], whose registered office is at [insert address].

AND [INSERT NAME OF PARTY C], whose registered office is at [insert address].

AND [INSERT NAME OF PARTY D], whose registered office is at [insert address].

[hereinafter referred to individually as a ‘Party’ and collectively as ‘the Parties’]

RECITALS

WHEREAS the Parties wish to cooperate over [insert details].

AND WHEREAS this Consortium Agreement sets out the relationship between the Parties and the organisation of the work.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Background IPR’</td>
<td>means all patents, designs, copyright (including copyright in software), database rights, and any other Intellectual Property Rights excluding Foreground IPR, owned by any of the Parties, in the field and which are necessary for the exploitation of Foreground IPR in accordance with this Agreement.</td>
</tr>
<tr>
<td>‘Business Day’</td>
<td>means any day other than a Saturday or Sunday or a public or bank holiday in the United Kingdom.</td>
</tr>
<tr>
<td>‘Confidential Information’</td>
<td>means all information that is marked as Confidential and that is disclosed by one Party to the others for the purpose of conducting the Project, including, without prejudice to the generality of the foregoing, any ideas; finance; financial, marketing, development or manpower plans; computer systems and software; products or services, including but not limited to know-how and information concerning relationships with other parties and all records, reports, documents, papers and other materials whatsoever originated pursuant to this Agreement.</td>
</tr>
<tr>
<td>‘Consortium’</td>
<td>means the Parties collectively.</td>
</tr>
<tr>
<td>‘Effective Date’</td>
<td>means the date when all Parties have signed this Agreement.</td>
</tr>
<tr>
<td>‘Foreground IPR’</td>
<td>means all patents, designs, copyright (including copyright in software), database rights and any other Intellectual Property Rights arising as a direct result of and in the performance of this Agreement.</td>
</tr>
<tr>
<td>‘Intellectual Property Rights’</td>
<td>means patents, Trade Marks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.</td>
</tr>
</tbody>
</table>
2.13: Example Consortium Agreement

Section 2. Practical tools

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>'Project'</td>
<td>means the collaborative [insert name of the project] as described in Schedule 1.</td>
</tr>
<tr>
<td>'Project Manager'</td>
<td>means the person appointed by the Steering Group to run the day-to-day operation of the Project.</td>
</tr>
<tr>
<td>'Personnel'</td>
<td>means any employee, director, agent, subcontractor or other person engaged by a Party.</td>
</tr>
<tr>
<td>'Steering Group'</td>
<td>means the committee appointed to be responsible for managing the Project whose individual members are set out in Schedule 2.</td>
</tr>
</tbody>
</table>

1.2 Headings contained in this Consortium Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

[This section provides clear definitions for key terms in the Agreement, as appropriate]

2. LEAD INSTITUTION

The Parties hereto agree that the [insert name of institution] will be the lead institution (‘Lead Institution’) and authorises it as their agent to sign agreements in their name and on their behalf in relation to the Project. The Parties agree that the Lead Institution will grant a licence to [insert name of any funding bodies] of the rights set out in [insert reference to any funding agreement]. The Lead Institution will open and maintain a dedicated bank account for the benefit of the Parties and the use of the Project. Without prejudice to its authority to contract on behalf of the Parties in relation to the Project, the Lead Institution agrees to take all reasonable steps in every occasion to seek and obtain the prior consent of each of the other Parties before signing agreements for the benefit of the Project and the other Parties.

[This section identifies the Lead Institution and explains its role]

3. PURPOSE OF THE CONSORTIUM

The purpose of the Consortium is:

- To specify the organisation of the work between the Parties in carrying out the Project and to set out the rights and obligations of the Parties
- Carry out the Project and to produce the Deliverables as described in Schedule 1

[This section states the purpose of the Consortium, as decided by the Project partners, which may be wider than simply carrying out the funded Project]

4. COMMENCEMENT AND DURATION

This Agreement shall commence on the Effective Date and shall continue until the completion of the Project on [insert Date].

The duration of this Agreement may be extended beyond [insert Date], at any time prior to that date, by written agreement of the Parties, for such period or periods as are deemed appropriate.

[This section states the starting date and duration of the Agreement but also makes provision for continuation of the Agreement after the initial funding period, should this be necessary]
5. OVERRIDING CONDITIONS

In all instances, until the completion of the Project, conditions laid down for the Project by the [insert name of the Funding Body] or its successor will override any agreement between the Parties concerning the Project, including any terms contained in this Agreement.

[A Funding Body may sometimes require, as part of the funding award contract, that a project Consortium Agreement contains a clause allowing the Funding Body to intervene in decisions made by the Project partners]

6. PROJECT MANAGEMENT

6.1 STEERING GROUP

The Parties shall establish, within thirty days after the Effective Date, a Steering Group, which shall be composed of one duly authorised representative of each Party. After having informed the others in writing, each Party shall have the right to replace its representative and/or to appoint a proxy, although it shall use all reasonable endeavours to maintain the continuity of its representation. The composition of the Steering Group is set out in Schedule 2. The Steering Group shall appoint a Chair from amongst its members. There shall also be a Project Manager, who shall be Secretary to the Steering Group.

6.2 RESPONSIBILITIES OF THE STEERING GROUP

6.2.1 Project Oversight

The Steering Group shall be responsible for the delivery of the Project outcomes and to this end will keep the Project plan, and progress towards meeting it, under review.

6.2.2 Appointment of Project Manager

The Steering Group shall be responsible for appointing a Project Manager. The Project Manager will have responsibility for the day-to-day management of the Project and will report to the Steering Group.

6.2.3 Financial Management

The Steering Group shall be responsible for the financial management of the Project, and will manage the Project in accordance with appropriate project management techniques. The Steering Group may choose to take advice from third parties as required.

6.2.4 Publications and Press Releases

The Steering Group shall decide procedures for dissemination of publications and press releases relating to the Project.

6.2.5 Commercial Exploitation Strategy

The Steering Group shall hold two Special Meetings, the first twelve months prior to the end of the Project, and the second at the end of the Project, whose business shall be exclusively to review the Deliverables, discuss the potential for the commercial exploitation of the Project Deliverables and the creation of products based on those Deliverable, and develop a strategy for such exploitation and development.
6.2.6 Exit Strategy

The Steering Group shall establish a Sustainability Sub-Group to plan for the future development of the [insert details and descriptions of the Deliverables] ‘the Deliverables’.

The Steering Group shall hold two Special Meetings, the first twelve months prior to the end of the Project, and the second at the end of the Project, whose business shall be exclusively to develop a suitable strategy or strategies for future development of the Deliverables, including the pursuit of additional funding from appropriate sources.

In the event that additional funding is secured for future development of the Deliverables, the Steering Group shall be responsible for making such financial and administrative arrangements as are necessary to secure the effective and efficient continuation of the Consortium including any necessary revisions of this Consortium Agreement, for approval by the Parties.

6.2.7 Division of Exploitation Income

The Steering Group will decide the division of income derived from exploitation of the Deliverables. The sharing of revenue applies to those Parties remaining at the end of the Project. If a Party withdraws or is expelled prior to the completion of the Project, their entitlement to a share in the income derived from commercial exploitation will be determined by the Steering Group and will take account of the proportion of the total Project undertaken by that Party.

6.3 STEERING GROUP MEETINGS

The Steering Group shall determine the frequency of its meetings, but shall meet at least twice yearly. Additional meetings may be called by two or more Parties or at the request of the Project Manager. Meetings will operate under the following rules:

6.3.1 At each meeting, the Steering Group will agree on a date for the next meeting. Otherwise, the Secretary, in consultation with the Chair or his nominee, shall call meetings, giving notice that is reasonable in the circumstances.

6.3.2 The Secretary shall circulate an agenda before the meeting.

6.3.3 Each Steering Group member (including the co-opted members, but not the Secretary) will have one vote, except the Chair who has a casting vote. A member may not vote on matters concerning a dispute with the Consortium where the member is the subject of the dispute.

6.3.4 The quorum for a meeting will be five (5) voting members.

6.3.5 With the approval of the Chair, Steering Group members may nominate a representative to attend meetings and vote on their behalf.

6.3.6 Votes, with the exception of a vote to terminate a Party’s membership of the Consortium, will be decided on the basis of a majority vote of those attending and eligible to vote.

6.4 RESPONSIBILITIES OF THE INDIVIDUAL MEMBERS OF THE STEERING GROUP

In addition to the Steering Group’s collective responsibility, individual members of the Steering Group will have specific responsibilities as determined by the Steering Group from time to time.
distribution of revenue from such exploitation, and planning for the end of the initial period of funding. The section also details the Steering Group meeting procedures, and provides that Steering Group members will have both collective and individual responsibilities under the Agreement.]

7. PROJECT RESOURCES

7.1 ALLOCATION

The total funding to be paid, subject to progress against Project milestones as agreed with the [insert name of the funding body] is as follows:

Financial Year 1 [insert Date] - [insert Date] [insert amount £XX,XXX]
Financial Year 2 [insert Date] - [insert Date] [insert amount £XX,XXX]
Financial Year 3 [insert Date] - [insert Date] [insert amount £XX,XXX]
Financial Year 4 [insert Date] - [insert Date] [insert amount £XX,XXX]

7.2 DISTRIBUTION

Payments are made from the [insert name of the funding body] to the [insert name of Lead Institution]. Thereafter [insert name of Lead Institution] shall apportion the budget between the Parties on the basis of financial plans approved from time to time by the Steering Group.

7.3 INVOICING/CLAIMS

Where claimable costs and expenses (that is, approved by the Project Manager or Steering Group) are incurred, claims should be passed to the Project Manager as soon as they have been paid with supporting evidence of the expenditure attached. The Project Manager will be required to make financial reports to the Steering Group from time to time.

[This section describes what the project resources from the initial funding are, and how they will be distributed. In this example, the detailed financial planning is left largely to the discretion of the Steering Group, but it could instead have been dealt with within the Consortium Agreement itself]

8. RESPONSIBILITIES OF THE PARTIES

PERFORMANCE

8.1 Each Party undertakes to each other Party to perform and fulfil on time the tasks assigned to it by the Steering Group and all other of its obligations under this Agreement.

8.2 Towards the Steering Group and the Project Manager, each Party hereby undertakes to supply promptly to the Project Manager all such information or documents as the Project Manager and the Steering Group need to fulfil obligations pursuant to this Agreement.

8.3 Towards each other, each Party undertakes to:

8.3.1 Notify each of the other Parties as a Party becomes aware of any significant delay in performance;
8.3.2 Inform other Parties of relevant communications it receives from third parties in relation to the Project.

8.4 Each Party shall use all best efforts to ensure the accuracy of any information or materials it supplies hereunder and promptly to correct any error therein of which it is notified.

8.5 Each Party agrees not to issue any press releases or other such publicity materials relating to the work of the Consortium without obtaining prior approval from the other Parties.

WARRANTIES AND UNDERTAKINGS

8.6 Each Party warrants that under its contractual relationships with each of its Personnel, any Intellectual Property Rights arising out of or relating to work done by the Personnel for the Party will vest in such Party and that the Personnel will have no right, title or interest, whether legal or beneficial, in any such Intellectual Property Rights. A Party shall, if so required by the Steering Group, produce written evidence of this to the Steering Group signed by its Personnel.

Each Party acknowledges that it is and shall remain liable for the consequences of any failure on its part or on the part of its Personnel to fulfil the tasks and work packages assigned to it under this Agreement and shall accordingly:

8.6.1 Procure and maintain its own insurance, with insurers of good repute, to cover its own liabilities and those on behalf of its Personnel

8.6.2 Keep true and accurate records of all things done by its Personnel in relation to the tasks and work packages assigned to it under this Agreement

8.6.3 Comply and assist the Consortium, the Steering Group and the Project Manager in complying with all relevant statutes, laws, regulations and codes of practice relating to its tasks and work packages from time to time in force

8.6.4 Comply with all recommendations and requirements of its insurers and

8.6.5 Indemnify, keep indemnified and hold harmless the other Parties from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which they incur or suffer as a result of a breach of this Agreement or negligent acts or omissions or wilful misconduct of the Party and/or its Personnel including without limitation any resulting liability the Consortium has to the funder or to any third party.

8.7 Each Party shall be responsible for providing all appropriate facilities and services as shall be necessary in the proper performance of the tasks and work packages, which will be entirely at the Party’s own expense.

8.8 Each Party agrees and undertakes at its own expense to make the Personnel available to attend a working group meeting with the Project Manager to review progress at such times and locations as the Steering Group shall reasonably specify.

8.9 Each Party shall provide the Steering Group with:

8.9.1 Quarterly statements of expenditure incurred in relation to the provision of the tasks and work packages assigned to it, together with copies of staff timesheets, invoices and other relevant documentation for audit purposes

8.9.2 A declaration that confirms that expenditure has been incurred in accordance with the Funding Agreement and
8.9.3 A final statement of expenditure within 4 weeks of the termination of this Agreement.

[This section outlines the responsibilities of the Project partners – these may vary according to the nature and scope of the Project. It includes warranties and undertakings between the Project Partners on issues including Intellectual Property, insurance, record keeping, and legal compliance, as well as an indemnity provision to protect the Project partners from financial and other damage arising from acts or omissions on the part of any of the Project partners. It also makes provision for a Project Working Group without fixed membership to be convened, at the discretion of the Steering Group, to review progress. Finally, it deals with issues of Project Partner financial accountability, and record keeping.]

9. ADDITION OF PARTIES TO THE CONSORTIUM

Institutions may be invited to join the Consortium only by the unanimous decision of the Steering Group and on the condition that the new institution becomes a party to this Agreement.

[This section makes provision for third-party institutions to join the Consortium. The conditions laid down for joining may vary according to the nature and scope of the Project. In this case, for a third party to join the Consortium they must agree to the same terms and conditions as the original Parties. As such, an agreement for a third party to join the Consortium which did not meet those criteria would not be valid, unless the Parties agreed to amend this Consortium Agreement accordingly.]

10. REMOVAL OR WITHDRAWAL OF PARTIES FROM THE CONSORTIUM

10.1 REMOVAL OF PARTIES

Without prejudice to any other rights or remedies open to the Consortium, the Steering Group may, after a two-thirds majority vote of the full Steering Group in favour of termination, and via a written notice served on the Party, terminate a Party’s membership of the Consortium, if the Party:

10.1.1 Is in material breach of any of the terms of this Agreement and, where the breach is capable of remedy, the Party fails to remedy such breach within 30 days’ service of a written notice specifying the breach and requiring it to be remedied or

10.1.2 In the opinion of a majority of the Steering Group, is incompetent, commits any act of gross or persistent misconduct and/or neglects or omits to perform any of its duties or obligations under this Agreement or

10.1.3 Fails or refuses after written warning from the Steering Group to carry out the duties or obligations reasonably and properly required of it under this Agreement or

10.1.4 Being a company, summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of s.123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertaking or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under s.425 Companies Act 1985, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House

10.1.5 Ceases to operate its business or undertaking

10.1.6 Provides the Steering Group with any false or misleading information with regard to its ability to perform its duties or obligations under this Agreement or
10.1.7 Has done anything which brings or might reasonably be expected to bring the Parties or the Project or the Funder into disrepute or otherwise damage other contractors, employees, agents, customers, other business associates or the general public including, but not limited to, committing an act of fraud or dishonesty, whether or not connected with the Project.

10.2 WITHDRAWAL OF PARTIES

A Party may withdraw from the Consortium only with the unanimous agreement of the remaining Parties.

10.3 CONDITIONS CONSEQUENT ON REMOVAL OR WITHDRAWAL

In the event of withdrawal or expulsion of a Party, the Consortium will be liable to meet only the cost of any work undertaken up to the point at which a Party ceases to be a member of the Consortium. The balance of any payments made to the Party will be returned to the nominated representative of [insert name of Lead Institution] within 30 days of withdrawal or expulsion. In all cases, the Consortium reserves the right of access to any work produced in the course of the Party’s work as part of the Consortium.

[This section makes provision for removal or withdrawal of Project Partners from the Consortium. In the case of removal, it provides a set of clear grounds that would justify removal and a specific procedure that must be followed. The section also makes provision for determining the financial outcomes of withdrawal or expulsion, and ensures that work carried out by an expelled or withdrawn Partner remains accessible to the remaining Project Partners. This should be read in conjunction with the Intellectual Property provisions below.]

11. DATA MANAGEMENT

11.1 DATA COLLECTION

In the course of the Project, each Party is involved in the production and collection of data in the form of [insert description]. The data are to be sent to the Project Manager and stored in an archive at [insert name of Institution/Project Partner] (‘the Project Archive’). Each Party agrees to ensure that all data submitted to the Project Manager are accompanied by documentation detailing the origin of the data, together with any necessary consents.

11.2 DATA MAINTENANCE

The [insert name of Institution/Project Partner] hereby undertakes to maintain the Project Archive for the duration of the Project and for a period of at least three (3) years after the end of the Project. This period is subject to extension if the Steering Group so decides.

11.3 DATA PROTECTION

As a member of the Consortium, each Party will be processing personal data for the purpose of the [insert name of Project]. Each Party must be a signatory of the [insert name of Project] Data Controllers Agreement, and must sign a Data Processing Agreement with the [insert name of Institution/Project Partner], prior to processing personal data for the purposes of the Project.

[This section makes provision for data management within the Project, in terms of archiving and preservation of both Project administrative data and Project outputs. This may be particularly important from the Funding body’s perspective, but also in terms of ongoing project management and future strategic planning. The section on data protection may, or may not, be necessary depending upon the nature and scope of the Project. It links the Consortium Agreement to a further set of DP-specific Agreements.]
12. CONFIDENTIALITY

12.1 Each Party hereby undertakes to the other Parties that it shall procure that its employees, agents and subcontractors shall:

12.1.1 Keep confidential all information of a confidential nature (whether written or oral) concerning this Agreement and the business affairs of another Party that it shall have obtained or received as a result of the discussions leading up to or entering into or performance of this agreement (the 'Information')

12.1.2 Not without the prior written consent of the relevant other Party disclose the Information either in whole or in part to any other person save those of its employees, agents and subcontractors involved in the implementation or evaluation of the Project who have a need to know the same for the performance of their duties

12.1.3 Use the Information solely in connection with the implementation of the Project and not otherwise for its own benefit or the benefit of any third party

12.1.4 These provisions above shall not apply to the whole or any part of the Information to the extent that it can be shown by the receiving Party to be:

12.1.4.1 Known to the receiving Party prior to the date of this Agreement and not obtained directly or indirectly from any other party or

12.1.5.1 Obtained from a third party who lawfully possesses such Information which has not been obtained in breach of a duty of confidence owed to any party by any person or

12.1.6.1 In the public domain in the form in which it is possessed by any other party other than as a result of a breach of a duty of confidence owed to such other party by any person or

12.1.7.1 Required to be disclosed by legal process, law or regulatory authority

12.2 Each Party hereby undertakes to the other Parties to make all relevant employees, agents and subcontractors aware of the confidentiality of the Information and provisions of this clause and without prejudice to the generality of the foregoing to ensure compliance by such employees, agents and subcontractors with the provisions of this clause.

[This is a standard confidentiality clause. It is important that if information of a confidential nature is to be made available between Project Partners, that the providing Partner makes it quite clear that it is to be considered confidential, and that the other Project Partners take all necessary steps to ensure that confidentiality is respected.]

13. INTELLECTUAL PROPERTY

13.1 IPR WARRANTIES

Each Party shall obtain the necessary assignments of Intellectual Property Rights or licences from all staff, agents, or subcontractors involved in the development and production of the Deliverables on its behalf. Each Party warrants to the other Parties that it is the owner of the Intellectual Property Rights in the Deliverables, or that it is duly licensed to use the Deliverables, and that the use of the content of the Deliverables as contemplated in this Agreement does not infringe any Intellectual Property Rights or other proprietary or rights of any natural or legal person.
13.2 BACKGROUND IPR

All Background IPR used in connection with this Agreement shall remain the property of the Party introducing the same or any other third parties. Each Party shall take responsibility for ensuring that all necessary permissions have been sought to use Background IPR.

13.3 FOREGROUND RIGHTS

All Foreground IPR arising from this Agreement shall belong to the Party generating the same.

13.4 ACCURACY

Each Party shall use reasonable endeavours to ensure the accuracy of any information or materials that it supplies to the other Parties under this clause and shall promptly correct any error therein of which it is notified. The donating Party will provide no warranties to recipient Parties in respect of the information and materials, and the recipient Parties shall be entirely responsible for the use to which they put such information and materials.

13.5 ACCESS RIGHTS

13.5.1 Each Party hereby grants to the other a royalty-free, non-exclusive, worldwide, irrevocable, assignable, perpetual licence to use its (and third parties) Background IPR and Foreground IPR for the purpose of performing their part of the Project.

13.5.2 Each Party hereby indemnifies the other Parties against any liabilities, loss, claims or expenses brought against or incurred as a result of its use of and/or sale of products containing the other Parties’ Background IPR and/or Foreground IPR.

13.5.3 After completion of the Project all Parties shall continue to have the right to use their Foreground IPR at no cost for the purposes of exploiting the materials in the carrying out of their usual educational activities.

13.5.4 After completion of the Project the Consortium shall provide on request, to any educational institution (as defined by s.65(5) of the Further and Higher Education Act 1992), a free copy of the Deliverables subject to a royalty-free non-exclusive perpetual licence to use the Deliverables for non-commercial purposes.

13.5.5 Use of Background IPR and/or Foreground IPR by third parties other than Parties, and by educational institutions (as defined by s.65(5) of the Further and Higher Education Act 1992) for commercial purposes, shall be at the discretion of the Parties owning such Background IPR and/or Foreground IPR.

13.5.6 Each Party hereby grants to the Lead Institution a royalty-free, non-exclusive, worldwide, irrevocable, assignable, perpetual licence to use all Background IPR and Foreground IPR of the Parties for the purpose of performing its obligations under Clause 2 and in order to licence to [insert name of the funding body] the rights as set out in the [insert reference to the funding body agreement].

13.5.7 Each Party hereby indemnifies [insert name of the funding body] against any liabilities, loss, claims or expenses brought against or incurred as a result of its use of the Deliverable in accordance with the [insert reference to the funding body agreement].
13.6 FUNDING AGREEMENTS

The provisions of this clause shall at all times be subject to any conflicting provisions in the funding letter, and in the event of any conflict, the content of the funding letter shall prevail.

This section deals with the issue of Intellectual Property. The Intellectual Property sections of a Consortium Agreement will be extremely important in terms of the development of a project and any future exploitation of project Deliverables, and it is vital that Project Partners are clear about the implications of their respective rights and obligations as outlined within it.

14 TERMINATION

14.1 TERMINATION OF FUNDING

This Agreement shall terminate immediately with no liability between the Parties should the Funding Agreement terminate for any reason whatsoever, unless the Parties, by means of written agreement, decide to continue it.

14.2 TERMINATION BY MUTUAL AGREEMENT

This Agreement may be terminated at any time by the unanimous written agreement of the Parties.

14.3 RIGHTS OF PARTIES

The termination of this Agreement, howsoever arising, is without prejudice to the rights, duties and liabilities of the Parties accrued due prior to termination. The provisions in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

This section outlines the conditions under which the Agreement may be terminated, other than its completion as set out in clause 4 'Commencement and Duration', and the implications of Termination for the Project Partners.

15 GOVERNING LAW AND DISPUTE RESOLUTION

15.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

15.2 The Parties agree to use best efforts to resolve disputes in an informal manner. Where the Parties agree that a dispute arising out or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement.

15.3 Any person to whom a reference is made under Clause 15.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the Parties except in the case of manifest error or fraud.

15.4 Each Party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

15.5 The costs of the expert shall be borne by the Parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the Parties in equal proportions.
[This section provides a mechanism for resolving disputes between the Project Partners, which cannot be resolved within the Consortium (ie in this case, by the Steering Group). This example envisages a simple binding dispute resolution, but there are a wide range of alternative options for those drafting Consortium Agreements to choose between, including more formal arbitration processes. It is important to consider carefully which model of dispute resolution best suits the arrangements for a particular project. The section also determines which jurisdiction’s law will be used when there is any dispute about, or arising from, the Agreement. It also states which country’s courts should have jurisdiction to hear any case arising from the Agreement.]

16 GENERAL PROVISIONS

16.1 SOLE AGREEMENT

Subject to Clause 5 this Agreement contains all the terms that the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements, representations or understandings between the Parties relating to such subject matters.

No Party to this Agreement has been induced to enter into this Agreement by a statement or promise which it does not contain save that this clause shall not exclude any liability which one Party would otherwise have to the other in respect of any statements made fraudulently by that Party.

16.2 SCHEDULES

The Schedules shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules.

16.3 WAIVER

No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

16.4 SEVERABILITY

If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Agreement and shall be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this shall not affect any other provisions of this Agreement, which shall remain in full force and effect.

16.5 FORCE MAJEURE

No Party will be deemed to be in breach of this Agreement, nor otherwise liable to the other for any failure or delay in performance of this Agreement if it is due to any event beyond its reasonable control other than strike, lock-out or industrial disputes but including, without limitation, acts of God, war, fire, flood, tempest and national emergencies and a Party so delayed shall be entitled to a reasonable extension of time for performing such obligations.
16.6 ASSIGNMENT

Save as permitted for under this Agreement, neither this Agreement nor any of the rights and obligations under it may be subcontracted or assigned by any Party without obtaining the prior written consent of the other Parties. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

16.7 VARIATION

This Agreement may be amended at any time by written agreement of the Parties. No variation to this Agreement shall be effective unless in writing signed by a duly authorised officer of each of the written Parties. Any variation during the term of the Project shall be subject to the approval of the Funder.

16.8 NOTICE

Any notice in connection with this Agreement shall be in writing and may be delivered by hand, pre-paid first class post, Special Delivery post, or facsimile (but not by email), addressed to the recipient at its registered office or its address or facsimile number as the case may be (or such other address, or facsimile number as may be notified in writing from time to time).

- The notice shall be deemed to have been delivered by hand, when left at the proper address for service.
- If given or made by pre-paid first class post or Special Delivery post, 48 hours after being posted or in the case of Airmail 14 days after being posted (excluding days other than Business Days).
- If given or made by facsimile, at the time of transmission, provided that a confirming copy is sent by pre-paid first class post to the other party within 24 hours after transmission.

provided that, where in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

[This section contains general provisions concerning the operation of the Consortium Agreement. For example, clause 16.4 provides that failure of one part of the Agreement does not invalidate the whole Agreement, clause 16.7 allows Project partners to amend the Agreement but only under specific conditions, and clause 16.8 covers the form that communications concerning the Agreement (ie not general day-to-day project messages, but messages specifically relating to the Agreement) should take, and when such communications will be considered to have been received.]

SCHEDULE 1 – Project

SCHEDULE 2 – Composition of Steering Group [List]
Context

These contractual clauses can be used to reuse work produced by students and volunteers. This resource should be adapted to suit specific requirements. It is based upon resources produced from the HEFCE-produced ‘Good practice guidance for senior managers: Intellectual property rights in e-learning programmes’ and reused within the JISC-funded Web2Rights project ([www.web2rights.org.uk](http://www.web2rights.org.uk)).

It should used in consultation with the following resources contained within this toolkit:

- 2.1 Getting Permissions
- 2.2 IPR Risk Assessments

When working with volunteers

We recommend that this resource is also used in conjunction with the fact sheet on Volunteers and Copyright, located within CollectionsLink ([www.collectionslink.org.uk](http://www.collectionslink.org.uk)).

When working with students

We recommend that any assignments of rights clauses should not form part of the standard contract between the HEI and its students, but is instead offered for voluntary signature by the student on a case-by-case basis. Please see the JISC Legal Investigation into Student Work and IPR([www.jisclegal.ac.uk/publications/studentipr.htm](http://www.jisclegal.ac.uk/publications/studentipr.htm)) for further information.
Model Contractual Clauses for Students/Volunteers

Definitions
1. ‘Materials’ means any materials created within the Institution or created on behalf of the Institution by Students and/or Volunteers.
2. ‘IPR’ means patents, Trade Marks, trade names, design rights, copyright, confidential information, performers rights, rights in know-how and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which shall exist anywhere in the world.
3. ‘Student’ means any person registered as an undergraduate or postgraduate student of the Institution or following any course as if such a student.
4. ‘Volunteer’ means any person providing support, help, advice or generating materials for the Institution without financial remuneration.

Title to rights
5. The Student/Volunteer [delete as applicable] hereby assigns all IPR in Materials originated by the Student/Volunteer [delete as applicable] to the Institution. The Student/Volunteer [delete as applicable] wherever requested to do so by the Institution, should (at the expense of the latter) execute any and all applications, assignments or other instruments which the Institution deems necessary to give effect hereto.
OR
The Student/Volunteer [delete as applicable] grants a royalty-free worldwide irrevocable non-exclusive licence to the Institution to use Materials as it sees fit.

Exploitation and income
6. The Institution is free to exploit (whether for financial gain or not) the Materials as it sees fit, including licensing or assigning the IPR in the Materials to third parties, or merging said Materials with other materials created within the Institution or elsewhere.
7. Should the Materials prove to be profitable, the Institution agrees that it shall enter into good faith negotiations with the Student/Volunteer [delete as applicable] regarding possible rewards.

Credits
8. The Institution agrees to credit the Student/Volunteer [delete as applicable] for any significant contribution to the Materials. The Institution shall comply with any request by the Student/Volunteer [delete as applicable] in writing that his/her name be removed from the Materials where such request is on the grounds that the whole or parts of the Materials are out of date or changed in a manner that might damage his/her reputation.
9. The Institution may update or in any other way amend the Materials to suit its requirements. The Institution agrees to consult the Student/Volunteer [delete as applicable] over any significant amendments without any obligation to be bound by the same in deciding on the final form or content of such amendments.

Permitted uses for Students
[THESE CLAUSES CAN BE CONSIDERED FOR USE FOR STUDENTS IF THE STUDENT Assigns COPYRIGHT TO THE INSTITUTION, OTHERWISE IF THE STUDENT RETAINS THE IPR, THEN THESE CLAUSES Are UNNECESSARY]
10. The Institution grants to the Student a royalty-free non-exclusive licence to use the Materials created by the Student or jointly with others for non-commercial teaching or research purposes only for the duration of the Student’s period of registration or course of study at the Institution, at the conclusion of which this agreement shall be treated as having terminated. Such licence may continue after the termination of this agreement provided that the use of the Materials does not damage the exploitation of the Materials by the Institution or prejudice in any way the interests of the Institution.

11. The Student is allowed to make and retain a single copy of the Materials for his/her use for non-commercial teaching or research purposes, for the purpose of supporting his/her c.v., or for any other job application purpose after the termination of this Agreement.

12. Nothing herein shall grant to the Student any right or licence to copy or use any versions of the Materials updated or in any way amended by the Institution after termination of this agreement.

**Prohibited uses for Students/Volunteers**

13. The Student/Volunteer [delete as applicable] is not permitted to assign or enter into any licence for the exploitation of the Materials. In the event that the Student/Volunteer [delete as applicable] becomes aware of any third party wishing to exploit the Materials, such third party shall be advised by the Student/Volunteer [delete as applicable] to contact the Institution as the owner of the IPR in the Materials.

**Termination**

14. Save as provided herein, all rights and obligations under this agreement shall continue to be in force after the termination of this agreement in respect of all IPR in the Materials originated by the Student/Volunteer [delete as applicable] during this Agreement and shall be binding on his/her representatives.

**Dispute settlement**

15. Any dispute between the parties arising out of or in connection with this Agreement, except as otherwise provided in this Agreement, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, failing agreement between the parties within thirty (30) days after a request for a reference is made by either party, [eg] nominated on the application of either party by the chairman for the time.
2.15: Model Contractual Clauses for Requesting Permission from Freelancers/Subcontractors
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

These contractual clauses can be used to use work produced by freelancers and subcontractors. This resource should be adapted to suit specific requirements. It is based upon resources produced from the HEFCE-produced ‘Good practice guidance for senior managers: Intellectual property rights in e-learning programmes’ and reused within the JISC-funded Web2Rights project (www.web2rights.org.uk).

We recommend these clauses be incorporated into any contract signed between the HEI and a contractor. Please customise to suit your specific requirements.

It should used in consultation with the following resources contained within this toolkit:

- 2.1 Getting Permissions
- 2.2 IPR Risk Assessments
Model Contractual Clauses for Freelancers and Subcontractors

Definitions
1. ‘Materials’ means any materials created within the Institution or created on behalf of the Institution by Students and/or Volunteers.
2. ‘IPR’ means patents, Trade Marks, trade names, design rights, copyright, confidential information, performers’ rights, rights in know-how and other Intellectual Property Rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing, which shall exist anywhere in the world.
3. ‘Freelancer’ and ‘Subcontractor’ means an individual or organisation working for the Institution other than under a contract of employment.

Title to rights
4. All IPR in the Materials conceived or made by the Freelancer in the course of providing the services are assigned to the Institution. Wherever requested to do so by the Institution, the Freelancer and/or Subcontractor will at their own expense execute any and all applications, assignments or other instruments which the Institution deems necessary to give effect hereto.

Exploitation and income
5. The Institution is free to exploit (whether for financial gain or not) the Materials as it sees fit, including licensing or assigning the IPR in the Materials to third parties, or merging said Materials with other materials created within the Institution or elsewhere.

Credits
6. The Institution agrees to credit the Freelancer for any significant contribution to the Materials. The Institution shall comply with any request by the Freelancer in writing that his/her name be removed from the Materials where such request is on the grounds that whole or parts of the Materials are out of date or changed in a manner that might damage his/her reputation.
7. The Institution may update or in any other way amend the Materials to suit its requirements. The Institution agrees to consult the Freelancer over any significant amendments without any obligation to be bound by the same in deciding on the final form or content of such amendments.

Prohibited uses
8. The Freelancer and/or Subcontractor is not permitted to assign or enter into any licence for the exploitation of the Materials. In the event that the Freelancer becomes aware of any third party wishing to exploit the Materials such third party shall be advised by the Freelancer and/or Subcontractor to contact the Institution as the owner of the IPR in the Materials.

Termination
9. Save as provided herein, all rights and obligations under this agreement shall continue to be in force after the termination of this agreement in respect of all IPR in the Materials originated by the Freelancer during this agreement and shall be binding on his/her representatives.
Dispute settlement

10. Any dispute between the parties arising out of or in connection with this agreement, except as otherwise provided in this agreement, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, failing agreement between the parties within thirty (30) days after a request for a reference is made by either party, nominated on the application of either party by the chairman for the time being of the Bar Council.
2.16: Model Terms and Conditions of Service
Naomi Korn and Professor Charles Oppenheim, March 2009

Context

This resource is based upon the IPR Toolkit created by the JISC-funded Web2Rights Project (www.web2rights.org.uk) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a tool kit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This paper should be read in conjunction with:

- 1.1 Creative Commons Licences – Briefing Paper
- 2.1 Getting Permissions

[P lease customise the highlighted sections]
Terms & Conditions of Service

THE AGREEMENT

The following agreement ['this Agreement'] describes the terms and conditions on which [Institution] offers you access and use of material found on this website ['the Service']. This offer is conditional on your agreement to all the terms and conditions contained in this Agreement, including your compliance with policies, guidelines and terms linked by way of URLs in this Agreement ['Terms & Conditions of Service'].

By using the Service or by exercising any rights provided to parts of it, you accept and agree to be bound by the Terms and Conditions of Service. [Institution] only grants you the rights contained in this Agreement in consideration of your acceptance of the Terms and Conditions of Service.

If you do not agree to the Terms and Conditions of Service you should not use the Service and therefore decline this Agreement, in which case you are prohibited from accessing and/or using the Service. [Institution] may amend this Agreement at any time at its sole discretion, effective upon posting the amended agreement on [insert URL]. No variation or counter offer of this Agreement will be accepted by [Institution].

1. The Service

1.1 [include here a basic description of the Service]

1.2 You acknowledge that [Institution] is a service provider that may allow people to interact online regarding topics and content chosen by users of the Service, and that users can alter the Service environment on a real-time basis. As part of the nature of the Service, [Institution] does not always or will not always be able to regulate the content/communications created and made available by users of the Service or otherwise. As a result [Institution] has limited control, if any, over the quality, morality, legality, truthfulness or accuracy of various aspects of the Service.

1.3 You acknowledge that: (1) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programs, animations, text and other creative output ('Content'); and (2) Content may be provided by [Institution] or by others such as the users of the Service ('Content Providers').

1.4 You acknowledge that [Institution] and other Content Providers have rights in their respective Content under copyright and other applicable laws, and that except as described in this Agreement that such rights are not transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from [Institution]. You acknowledge that this Agreement does not assign or transfer ownership, title or interest of the Intellectual Property Rights in the Service to you.

2. Licences and IPR

2.1 Subject to the terms of this Agreement, [Institution] hereby grants you a non-exclusive, royalty free and revocable licence to access and use the Service and use the Content in the Service in accordance with the Terms and Conditions of Service for as long as you are in compliance with such Terms and Conditions of Service.

2.2 Content owned or licensed to [Institution] as part of the Service can be used by any user of the Service for any such purposes that are conducive to education, teaching, learning, private study and/or research.

2.3 Users of the Service can create Content in the Service in various forms. [Institution] acknowledges and agrees that, subject to the Terms and Conditions of Service, you will retain any and all applicable copyright and any other Intellectual Property Rights with respect to any Content you create using the Service, to the extent that you have such rights under applicable law.
2.4 Notwithstanding the foregoing, you understand and agree that by submitting your Content to any area of the Service, you automatically grant (and you represent and warrant that you have the right to grant) to [Institution]: a non-exclusive, royalty free, perpetual licence to: (a) use, reproduce and communicate your Content within the Service and a right to sub-licence such use to users of the service as long as the Content is used by such user within the Service; and (b) to use and reproduce and to authorise third parties to use and reproduce any of your Content in any or all media for marketing and/or promotional purposes in connection with the Service.

2.5 You agree that by submitting your Content to any area of the Service you automatically grant to users of the Service who want to use your Content or parts of it outside the Service a non-exclusive, royalty free, perpetual licence in the form of [insert link here to user-user licence, such as Creative Commons Licence].

2.6 You understand and agree that by submitting your Content to any area of the Service you automatically grant (or you warrant that the owner of such Content has expressly granted) to [Institution] and to all other users of the Service a non-exclusive, worldwide, royalty free, perpetual licence under any and all patent rights you may have or obtain with respect of your Content, to use your Content for all purposes within the Service.

2.7 You agree to use all best efforts to ensure that your Content does not infringe any Intellectual Property Rights of a third party.

2.8 You agree that even though you may retain certain copyright or other Intellectual Property Rights with respect of the Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data on [Institution] servers submitted by others. Your Intellectual Property Rights do not confer ownership of others' data stored by or on behalf of [Institution].

3. Community Guidelines and Policies

3.1 You agree to read and comply with the Community Guidelines and Policies as posted on [insert URL].

3.2 In addition to abiding at all times to the Community Guidelines and Policies, you agree that you shall not: (a) take any action of upload post, email or otherwise transmit Content that infringes or violates any third-party rights; (b) impersonate any person or entity without their consent, including but not limited to a [Institution] employee, or falsely state or otherwise misrepresent your affiliation with a person or an entity; (c) upload, email or otherwise transmit Content that violates any United Kingdom law or regulation; (d) upload, email or otherwise transmit Content determined by [Institution] in its reasonable opinion to be libellous. You agree that [Institution] may take whatever steps it deems necessary to abridge, or delete material on the Service in its sole discretion, without notice to you.

4. Releases, Disclaimers of Warranties, Limitation of Liability and Indemnification

4.1 As a condition of access to the Service, you release [Institution] from claims, demands, damages of every kind and nature, known and unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more users of the Service. You further understand and agree that [Institution] will have the rights but not the obligation to resolve disputes between users relating to the Service.

4.2 ny Content, or other data residing on [Institution]'s servers or the Service may be deleted, altered, moved or transferred at any time for any reason at [Institution]'s sole discretion without notice and without liability to you or any third party.
4.3 [Institution] provides the Service and Content strictly on an ‘as is’ basis and use of the Service and/or Content is at your own risk. [Institution] hereby expressly disclaims all warranties or conditions of any kind to the extent permitted by law, including without limitation any merchantability or fitness for a particular purpose. To the extent permitted by law, [Institution] accepts no liability for loss suffered or incurred by the user or any third party as a result of their reliance on the Service and/or Content.

4.4 To the extent permitted by law, in no circumstances will [Institution] be liable to you or you liable to [Institution] for any loss resulting from a cause over which [Institution] or you do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems.

4.5 In no event shall [Institution] be liable to you or to any third party for any special, incidental, consequential, punitive or exemplary damages, including without limitation any damages for loss of profits arising (whether in contract, tort or otherwise) out of or in connection with the Service and Content. In addition, in no event will [Institution]’s cumulative liability to you for direct damages of any kind or nature exceed £50.00.

4.6 You agree to defend, indemnify and hold harmless [Institution] and users of the Service and Content from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any breach of this Agreement by you, or from your use of the Service. You agree to defend, indemnify and hold harmless [Institution] from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any claims by third parties that your activity or Content in the Service infringes upon or violates any of their Intellectual Property or proprietary rights.

5. Privacy

5.1 You acknowledge and agree that [Institution], in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service. [Institution] may share general, demographic or aggregated information with third parties about [Institution]’s user base and Service usage, but that information will not include or be linked to any personal information without consent. [Institution] agrees that when exercising these rights, it shall abide by the Data Protection Act, 1998 at all times.

6. Governing Law and Dispute Resolution

6.1 This Agreement and the relationship between you and [Institution] shall be governed by and construed in accordance with English law. You and [Institution] agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

6.2 You and [Institution] agree to use best efforts to resolve disputes in an informal manner. Where you and [Institution] agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, you and [Institution] will agree upon the nature of the expert required and together appoint a suitable expert by agreement.

6.3 Any person to whom a reference is made under Clause 6.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

6.4 You and [Institution] shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

6.5 The costs of the expert shall be borne by you and [Institution] in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by you and [Institution] in equal proportions.

7.1 This Agreement constitutes the entire understanding and agreement between you and [Institution] with respect of the subject matter hereof.

7.2 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

7.3 The rights granted to you or [Institution] arising under this Agreement shall not be waived except in writing. Any waiver of any of your or [Institution]’s rights under this Agreement or of any breach of this Agreement by you or [Institution] shall not be construed as a waiver of any other rights or of any other or further breach. Failure by you or [Institution] to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

7.4 The section headings contained in this Agreement are for convenient purposes only and shall not affect the interpretation of this Agreement.

7.5 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

7.6 All or any of [Institution]’s rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Service in a merger, acquisition or sale of all or substantially all of [Institution]’s assets.