

08. Copyright and licensing

Deciding on which license to use and issues to consider when using third-party content

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Key issues

There are a number of resources written with authors in mind that are nonetheless useful for publishers wanting an overview of core information relating to licensing. Although at times, publishers have experimented with drafting their own licenses (see [Adema 2010](#), p. 59), [Creative Commons](#) licenses are most frequently used by Open Access publishers. Another option to consider are [copyleft](#) licenses which are commonly used for software, digital art, writing, and other creative content.

Both the [Guide to Creative Commons for Scholarly Publications and Educational Resources](#) by Braak and colleagues and the [OAPEN Toolkit](#) provide a good overview of some core issues, including the differences between different Creative Commons licenses. Barnes' [post for Open Book Publishers](#) expands on related questions. It explains the advantages and disadvantages of different types of licenses and emphasizes the importance of authors retaining copyright. It "recommend[s] the most liberal licence because it allows, for example, whole chapters to be extracted and used in course packs without causing copyright issues for lecturers or the work to be translated into other languages" although does note that sometimes "if work is commercially sensitive or might be commercially exploited, a more restrictive type of licence might be appropriate". This advice echoes that by Janneke Adema, who noted (in [a report](#) which though published in 2010, still is very relevant today) that in a survey of Open Access book publishers, only a minority used the least restrictive Open Access licenses, which "seems to indicate that there is still a general lack of awareness with publishers, authors and end users of what Open Access really means" (p. 59).

[Cookbook](#) has some useful advice about how to integrate open licenses into contracts with authors, including an abridged contract template (p. 31). The text also highlights that publishers may want to consider some of the wider consequences of their choice of licenses. For example, Nordhoff suggests that using Creative Commons non-commercial licenses may cause issues for some print-on-demand publishers. Most are commercial enterprises and may want confirmation that the publisher has the right to print the book for commercial purposes. However, it should be noted that other Open Access publishers have used print-on-demand successfully while using non-commercial licenses – [Mattering Press](#), for example.

Copyright for third-party materials

In the [Jisc Interviews](#), publishers talk at length about difficulties in helping authors understand the intricacies of copyright, especially when it concerns third-party materials. Obtaining the right

permissions to reuse copyrighted material can be time-consuming and fraught with difficulties. It is often difficult to establish who the owner is and waiting for copyright clearance can be a major reason for editorial delays.

Third-party copyright applies to materials used in an author's work that belong to someone else, for example, images or artworks. Permission should be obtained from the person or organisation which holds the copyright to use this material in a published work, and usually, this is the author's job.

It should be noted that third-party materials in Open Access publications, such as images or extended sections of a text published elsewhere, do not need to have the same license as the published work.

For content that has been published with Creative Commons or other open licenses, it can often be used without directly seeking permission as long as the precise conditions of the original license are met (for example, attribution or that the content should not be used for a commercial piece of work). If this is not the case, or the proposed use is different than the terms that the open licence allows, then the publisher or author needs to seek permission to reuse from the rights holder (e.g. another publisher, or image rights holder).

The press must ensure that, for any third-party material where the rights for reuse have been obtained, permission to use the material is clearly stated, alongside the information about who owns the copyright. This will then ensure that the rights holder for this material is clear and that anybody who reuses the third party content without permission from the original rights holder would be violating the third party's copyright, even if they found the content in an Open Access publication ([NUP Toolkit](#)). Obtaining copyright clearance as soon as possible is often a key priority in the editorial process.

Case studies

- [Language Science Press](#) publishes almost all its books under the CC-BY license, although allows books to be published under the CC-BY-SA and the CC-BY-ND license in exceptional circumstances ([Business Models for OA Books](#))
- [Mattering Press](#) allows authors to choose the license they wish, but our recommended license is CC BY-NC-SA, as a way of guarding against the commercial exploitation of Open Access content ([Business Models for OA Books](#))
- [White Horse Press](#) primarily uses CC-BY NC-ND, which they state is the preference of most of their authors and editors (direct correspondence)
- All [African Minds](#) titles are published under a CC-BY license ([Business Models for OA Books](#))

Questions to guide good practice

- Does the press use appropriate open licenses OA licenses, with authors retaining copyright?
- How will you decide which license(s) to use? Will you recommend or mandate a licence? Or will you allow authors freedom to choose?
- If you decide to use a Creative Commons license that imposes some restrictions on use, have you considered any potential unintended consequences?
- Who will take responsibility for obtaining permission clearances for third-party material? The publisher or the author?

Resources

- [Cookbook](#), Chapter 3.10
- [NUP Toolkit](#), Publishing books
- [OAPEN Toolkit](#), Book contract and license
- Janneke Adema (2010). Overview of Open Access Models for eBooks in the Humanities and Social Sciences. OAPEN. <https://core.ac.uk/download/pdf/228144629.pdf>, Chapter 6.5
- Lucy Barnes (2018), Copyright and licensing: what do I need to know?, Open Book Publishers. <https://blogs.openbookpublishers.com/copyright-and-licensing-what-do-i-need-to-know/>
- Pascal Braak, Hans de Jonge, Giulia Trentacosti, Irene Verhagen, & Saskia Woutersen-Windhouver (2020). Guide to Creative Commons for Scholarly Publications and Educational Resources. <http://doi.org/10.5281/zenodo.4090923>, Chapter 3