

Academic Materials and Publishing

A Researcher's Guide



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Introduction

Although called a “Researcher’s Guide”, this guide is equally applicable to those operating in the academic field but who are not researchers, such as teaching fellows and educational designers.

During the course of your career, you will be involved in creating and/or using academic materials and will seek to publish your research. In doing so, you will create and develop IP, mainly copyright, and may use IP belonging to third parties. You may also be asked to give people rights over your IP so that it can be successfully commercialised.

There is a number of issues of which you need to be aware when engaging in such activities. Putting together academic materials may seem to be a straightforward task, however, protecting them or making sure that you are not using third party IP illegally can be a far more arduous task. Similarly, the publishing world is a minefield unless you possess the know-how required to navigate it successfully.

This Guide aims to give you some helpful tips and an overview of the key issues which you may need to consider when dealing with academic materials or when looking to publish. In particular, this Guide explains:

- what IP is relevant when dealing with academic materials and publishing
- what key issues you should be aware of when looking to publish
- how to get clearance to use others’ IP
- what matters you should be aware of when using and/or commercialising academic materials or engaging in publishing.

Throughout, we refer to “your IP”, but this is to make the Guide personal. Legally, any IP that you create almost certainly belongs to your research institution, though there are limited circumstances where this does not apply, as will be explained in this Guide. However, in spirit, you, your institution and its IP team will act as one. Your IP commercialisation organisation (or equivalent) will be able to advise you further, however, this Guide will act as a prompt for you in these relationships.

Remember that this is just a guide and not a substitute for you taking your own independent professional advice.

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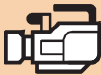

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What are “academic materials”? This phrase or “teaching and learning materials” is commonly used across universities and other research-based institutions to describe materials that you might create within or on behalf of your institution, generally for use by students. In the US, such materials are often referred to as “courseware”.

The materials do not have to be in written form. Nowadays, institutions are also using increasingly sophisticated e-learning tools including DVDs, computer programs, virtual learning environments (VLEs) and even podcasts to teach students. Table 1 gives you a few examples of academic materials.

Table 1

	Any course handouts (e.g. slides, manuscript notes or any audio-visual materials) that you have prepared for modules you are teaching to students at your institution.
	Any exam questions that you set for students at your institution.
	Any apparatus for a practical demonstration of an experiment that you have devised.
	Any videos filmed for a module of a course that you are teaching to students. If you converted that video into a DVD, the DVD would be a separate teaching and learning tool.
	Any computer program which allows students to access multiple-choice questions relating to their course of study (a VLE).

There will be occasions during the course of your work when you will create materials that are not intended for use by students at your institution. Such materials, e.g. a thesis or dissertation that you have written, notes created solely for your own personal use or a novel/poem, are sometimes referred to as “scholarly materials”. It is likely that your institution will own any IP in academic materials. However, you, as an individual, may own any IP in scholarly materials. (See Section 3 – IP Ownership).

Q: I completed my thesis six years ago. Until a year ago, it was placed on restricted access at my institution’s library. When I wrote my thesis, I put together some accompanying notes that were for my benefit only. I have now realised that these notes could be a useful tool for students taking my latest module, Informatics Kinetics. I am proposing to allow students access to these notes through a VLE that I have created. Are my notes “academic materials” or “scholarly materials”? And how will their status affect the ownership of the IP in them?

A: Your notes are both an academic tool and materials that you have put together in your time for your own benefit and which may not have been created in the course of your employment. As they were first a tool created solely for your own personal use, it may be that they are scholarly materials and are owned by you. Sometimes, research institutions waive their rights of ownership in the copyright in these materials. The key is to check your own institution’s IP policy.





IP can be split into six main categories: patents, copyright, database rights, know-how, designs and trade marks.

Copyright, which protects the form in which you express an idea, not the idea itself, is the main IP right that is relevant to academic materials and publishing. However, other rights, such as moral rights, performers' rights, database rights, trade marks, patents and domain names, may also be relevant.

Copyright

Copyright arises automatically; there is no need to register it in the UK. In the US, it is possible to register copyright and, there, you should indicate your copyright interest. You must not have copied the work for which you are claiming copyright protection from another source. Table 2 below gives some examples of works which can be protected by copyright.

Table 2

	Photographs, for example, any that you might take to use to illustrate a book, can be protected by copyright.
	If you write a piece of computer software to facilitate a VLE that you want to set up, the software itself can be protected by copyright.
	If you write a piece of music for use as a background score to a film that you have created, that music can be protected by copyright. If you write lyrics to accompany the music, the lyrics can attract separate copyright protection to the music. The film itself is protected by copyright.
	When a book is published, the way that it is laid out, its typographical arrangement, is protected by copyright.

Copyright protection does not last forever. How long it does last for will depend on the type of work. For example, if you write a book, copyright will last for your lifetime and then for a further 70 years after your death. Table 3 below shows how long copyright lasts for different types of work.

Table 3

Type of work	Examples	Duration of copyright protection
Literary works	Books, articles, examination papers, librettos, lyrics, translations of books, compilations, critical commentaries, tables, computer programs and transcripts.	The life of the author of the work PLUS 70 years after the death of the author (if there are joint authors, after the death of the longer living member of the joint team).
Artistic works	Photographs, paintings, drawings, sculptures, buildings, collages, jewellery, maps, charts, plans, engravings and lithographs.	The life of the artist of the work PLUS 70 years after the death of the artist (if there are joint artists, after the death of the longer living member of the joint team).
Musical works	Music (exclusive of any words or actions which go with it), and musical arrangements.	The life of the composer of the work PLUS 70 years after the death of the composer (if there are joint composers, after the death of the longer living member of the joint team).

Type of work	Examples	Duration of copyright protection
Dramatic works	Plays, scripts (for plays), screenplays (for films), dances and mimes.	The life of the author/choreographer of the work PLUS 70 years after the death of the author/choreographer (if there are joint authors/choreographers, after the death of the longer living member of the joint team).
Typographical arrangements	The way that a literary, dramatic or musical work such as a book or sheet music is set out.	25 years from the end of the year in which the edition was first published.
Films	Any recordings showing moving images and film soundtracks.	70 years from the death of the last to die of: <ul style="list-style-type: none"> • the director; • the author of the screenplay; • the author of the dialogue; and • the composer of the music for the film.
Sound recordings	Anything from which recorded sound can be reproduced e.g. CDs, vinyl albums, an audio book, a DVD of a play, etc.	50 years from the end of the year in which the recording is first made/published/played in public.
Broadcasts	Transmissions of television and radio programmes.	50 years from the end of the year in which the programme is first transmitted.

Moral rights

These are personal rights which belong to the creator (e.g. the writer) of a copyright work. They include the right for the creator to be identified as such. This right has to be asserted by the creator to be effective. In other words, you have to say expressly that you want to be identified as the author. Creators also have the personal right not to have their work altered in a derogatory manner and not to have the work of somebody else falsely attributed to them. These rights do not have to be asserted. You cannot transfer your moral rights, but you can waive them, though there is no reason why you should automatically do this. Moral rights do not arise in relation to any work created in the course of your employment which belongs to your employer or in computer software.

Performers' rights

There are certain rights given to performers to stop things like "bootlegging". Rights in performances cover not only dramatic, musical and literary reading but also things like circus acts. It does not cover sport itself. A performer can stop unauthorised recordings or live broadcasts and dealings in unauthorised recordings.

Q: I recently filmed members of the public responding to a questionnaire which I had prepared. I am going to be showing the film to my peers and students in order to show them the difference between responses received to "open" questions and those received to 'closed' questions. Can I do this?

A: No. You cannot show the film until you have obtained the consent of the members of the public that you filmed. These people have rights in their spoken words which you have recorded and so made into a literary work. You will also need their consent if you want to make any copies of or to sell your film. The same rules would apply if you recorded a person reading a book which you want to sell as an audio book – that person would have performer's rights.

Database rights

These protect collections of work or data (e.g. results, samples or patient information) which have been systematically arranged and are accessible electronically or by other means. There is no need to register and protection lasts for 15 years from the date the database was compiled. If you substantially alter a database, the 15 year protection period will begin to run again from the date you made the changes.

Trade marks

Q: I have put together a package of teaching materials on the topic of cancer causing chemicals. After much thought and consultation with my co-writer, I have decided to call the package "The CanChem Papers". My institution is considering marketing these materials across a number of other research-based institutions with which it is closely affiliated. Is there any way that I can prevent other people or institutions from using the name of the package?

A: Possibly. You could protect the name as a trade mark. Trade marks can arise automatically (if a mark has been used and has built up a reputation) or can be registered with the Trade Marks Registry at the UK Intellectual Property Office. If you can, it is much better to register your mark because unregistered trade marks are more difficult to enforce. A trade mark will usually be registered if it is distinctive and not descriptive and there are no existing identical or similar marks. In this case, if you registered the mark "THE CANCHEM PAPERS", you would be entitled to prevent third parties from using the same or a similar name for either the same or similar goods and services for which you were using your mark. The mark might be rejected though as being too descriptive.

Domain names

Domain names are not strictly IP; they are the resource through which web pages can be accessed. For example, university websites can be accessed through [www.\[institution name\].ac.uk](http://www.[institution name].ac.uk).

If you were thinking of delivering an on-line course on a separate website to that of your institution, you would need to first obtain a domain name at which you could set up the website through which your course could be accessed. Ideally, you should obtain a domain name which contains a reference to your course. If, as in the above example, your course was called 'THE CANCHEM PAPERS', you could check whether the domain name www.canchem.co.uk, or something close to it, was available. There would be advantages to this. Consumers may be able to guess the name of your website without having to search for it. Also, consumers would go to your website first and not be distracted by competing websites.

Patents

Patents can be granted for inventions that are new, inventive and capable of industrial application. This IP right does not usually have much relevance to academic materials and publishing. It is not possible to obtain patents for software as such e.g. you cannot obtain patent protection simply for computer programs embodying e-learning methods in Europe.

The rules are different in other countries. For instance, computer programs can be patented in the USA. Recently, the US Patent and Trademark Office has granted a company a patent for learning management systems. It is claimed that the patent covers the core technology relating to the systems and methods involved in offering on-line education, including course management systems and enterprise e-learning systems i.e. common systems and methods that people in the HE sector have been using for a number of years. It remains to be seen whether this will have any impact in the UK, but you should be aware of the issue in case it does limit the learning environments that you can set up and use.

Q: You have put together an on-line teaching package for a politics module of a course. The package includes various graphics that you have created or commissioned, the text of the teaching materials (written by you), photographs, film clips of, amongst other things, interviews with students at your institution and background music. You have written the source code for the software program that will support the teaching package. You have also included a table of all the experts in the field. What IP rights might there be in the package?

A:

Work	Right?
Written text of the materials	The written materials can be protected by COPYRIGHT
Film clips	The clips themselves can be protected by COPYRIGHT as can the words which are spoken once they are recorded BUT NOTE The clips cannot be broadcast without the permission of the students filmed as they will have PERFORMERS' RIGHTS if they were performing from a script and the students will own COPYRIGHT in their responses to the interview questions
Photographs	These can be protected by COPYRIGHT
Music	Music can also attract COPYRIGHT protection
Source code	Source codes for computer programs can be protected by COPYRIGHT
Table of experts	This could be protected by DATABASE RIGHT and COPYRIGHT

If you have commissioned a work, the copyright in it will not belong to you or your institution automatically. It needs to be assigned (transferred).

Why do you need to know?

So, why is it so important to know who owns what IP in which materials? Well, it will govern what use can be made of the materials, as we shall see in a bit more detail later on.

You need to be aware of the use which you can make of materials which you have created during the course of your employment. If you leave your institution, you should check what you can and cannot do with materials which you have helped to create and/or develop. If you join a new institution, would you be allowed to use materials which you developed whilst at your previous job? If you work together with a number of people, do you all own the rights in a particular piece of work to which you have all made a contribution? What happens if you update or modify materials that you have worked on or which have been created by someone else? Where would IP ownership lie?

The ownership point becomes very important when you come to look at commercialisation. If you do not own the relevant IP, you cannot commercialise it without the consent of the party which does own the IP.

The Basic Position

If you are an employee of your institution, and you create IP during the course of your employment, then, in most cases, your institution will own any IP that you create, unless there is an agreement to the contrary. At universities, you will usually be an employee if you are a professor, reader, senior lecturer, technician, administrator or a member of research and/or support staff.

The position is not so clear cut if you have an honorary contract with an NHS Trust. Was the work created in the course of your employment? If the main role of a doctor or nurse is as a patient carer, then it might not be obvious whether some particular IP in academic materials which they created was created in the course of their employment.

If you are a student at an institution, and not an employee, you will own any IP that you create, although there may be instances where you are required by your student contract with your institution to transfer IP to your institution, for example if you are registered for a higher degree which is sponsored by a company for a special scheme (Eng D).

IP Policies

Most universities or other research-based institutions will have IP policies which will specify where the ownership of IP lies in given situations. For example, a university may claim ownership of copyright in academic materials, but not in certain scholarly materials e.g. theses, dissertations and articles for journals. Take time to familiarise yourself with your university's/institution's IP policy. (See Section 8 – IP Policies).

Other situations

There are many instances nowadays where universities/institutions will be involved in work with visiting academics, secondees from industry, independent consultants, employees of spin-out companies or sponsoring outside bodies. In these circumstances, it is always important for your institution to have an express agreement as to who will own/have the rights to use any IP created. Where any individuals involved are employed by other research institutions/outside bodies, then the agreement should include those research institutions/outside bodies.

Whilst some works commissioned by your institution will automatically belong to your institution, not all will and so it is safer to get an express agreement as to what will happen, rather than to rely on these statutory rules.

It is important to check that these arrangements are in place if you are creating academic materials in conjunction with an individual who is not actually employed by your institution.

How can you get published?

You may find that the road from the idea for your publication to publication itself is long, arduous and studded with pitfalls. Table 4 sets out the different steps you may need to take to reach your goal of publication.

Table 4

Steps	
	Think of an idea for publication
	Decide on publisher
	Submit proposal to publisher
	Publisher reviews proposal
	Sign contract
	Draft manuscript
	Submit manuscript
	Correct proofs and create index
	Check if money is due

Step One: Idea

You may have a pre-conceived idea as to what your publication will cover. If this is not the case, you should carry out some market research in your field and identify a gap in the market that you could fill with your publication.

Step Two: Which publisher?

You can publish in a number of different media. Table 5 below sets out samples of such media.

Table 5

Forms of publication	Review process	Any Payment?
Refereed journals	External specialists	None
Non-refereed journals	Specialist editors	None
Magazines	Subject editor	Reasonable amount
Newspapers	Journalist/sub-editor	Moderate amount
Authored trade books	Commissioning editor	Royalty (% of sale price)
Authored academic books	Commissioning editor/specialist	Royalty (% of sale price)
Monograph	Commissioning editor/specialist	Not usual
Chapter in book	Book editor	Varies
Editing a book of readings	Limited	Royalty (% of sale price)
Conference paper	Conference committee	None
Internal report	Not usual	None
Website	None	None

There is a number of factors which may influence your decision as to which medium to use and, consequently, which type of publisher to approach.

Table 6 below sets these out.

Table 6

Factor	Issue
Your field	Different academic disciplines have different ideas as to what is the best form of publication. For example, in the humanities, books are the preferred route to publication, but the sciences prefer research to be published in articles in peer-reviewed journals.
Target audience	Do you want to reach a wide audience or target a small number of readers? If the former, you should think about approaching trade press as this is more commercially driven and potentially reaches out to a large and varied audience. If the latter, think about publishing in journals. Prestigious, refereed journals are likely to have a low circulation and not many people outside given circles will know about them. Professional periodicals, on the other hand, are read by more people and are an easier, quicker route to publication. (Peer review can often take some months.)
Timing	Do you have an idea that will lose its relevance if it is not published quickly? If this is the case, you may need to consider approaching less prestigious publishers, whether in the journals' or the books' world, as, in practice, these will publish more quickly than the more well-known publishing houses.

What else should you be doing/thinking about when deciding on a book publisher?

- Talk to people who you know have published books about their experiences with publishers
- Go to bookshops
- Look up publishers on the internet and examine their websites for information.
- Check whether they:
 - publish books in your area. If so, how many titles do they have?
 - have a series of books into which yours might fit
 - are well thought of by academics/researchers
 - present/market their books well. Are their books visible in bookshops? Do they appear at major conferences in your area?

What else should you be doing/thinking about when deciding on a journal's publisher?

- Familiarise yourself with the journal
- Check who the editor is and who comprises the editorial board
- Find out what kind of articles they have recently published
- What is the journal's prestige/rejection rate
- How long does it usually take for the journal to (1) process submissions and (2) publish once it has accepted a submission.

Step Three: Proposal

Books

Once you have decided on a publisher, you need to submit your proposal for your book. Look on your publisher's website and identify a particular person whom you can approach directly e.g. the commissioning editor for your area.

You can either send this person a brief letter asking them how you should structure your proposal or telephone them. Publishers do sometimes have an outline of what a proposal should look like on their websites. Even if this is the case, it is still worth approaching an identified person at the publisher directly as this establishes a personal relationship between you and the publisher.

What should you usually include in your proposal?

- The proposed title of your publication
- How long it will be
- Name of the author(s)
- The timescale in which you anticipate you can complete the book
- An outline and overview of the contents of your book
- Sample chapters, in draft
- Who is the intended audience of the book
- Details of competing titles, along with an explanation of what makes your proposed book stand out from the crowd
- Referees.

When you submit your proposal, you may want to indicate, in writing, that you are submitting it subject to the publisher keeping it confidential.

Journals

If you are submitting an article to a peer-reviewed journal, you will most likely need to submit your whole article to the editor. Again, when submitting your article, indicate that you are doing so under confidentiality. The editor will decide whether or not the article is worthy of being peer-reviewed for publication. If the editor decides that it is, s/he will forward it to the relevant peer reviewers.

Step Four: Review

For journals, the peer review process can take anything between 3-12 months, depending on the popularity of the journal to which you have submitted the article. Reviews of any book proposals that you submit are unlikely to take so long, but it depends on how busy your commissioning editor is. If it has been a while since you heard from him/her, send a gentle reminder of your existence.

Step Five: Contract

The publisher has accepted your proposal. The next step will be for it to give you a contract to sign. Remember, this is a legal document which will bind you once you have signed it. Make sure that you have read it carefully and understand what you will be expected to do and what the publisher's obligations are. If you are in any doubt as to what you are signing up to, speak to your IP commercialisation office or seek independent legal advice.

Whoever your publisher is, the contract which it provides to you will contain provisions which are common to most publishing contracts. It is important for you to be aware of the implications of these provisions.

Contract provisions

What will you be expected to do?

- Prepare the text of your proposed publication
- Get the text to the publisher by the given deadline
- Warrant that your work will not infringe any third party IP nor contain any defamatory or libellous statements
- Seek the permission of third parties whose material you want to use in your publication (see Section 5 – Clearances). You may be expected to pay out of your own pocket for obtaining these permissions
- Assign the copyright in your work to the publisher.

In a little more detail...

Warranties

If you give a warranty, you are making a binding promise that what you are saying is correct. So, if you warrant that your work does not infringe third party rights, that must be the case. If you give a warranty, and it is not correct, the publisher could sue you for damages for breach of contract. This could be very costly for you. For example, if it turned out that your work infringed someone else's copyright, the publisher might seek the costs of dealing with that action from you.

You may sometimes find that you are asked to "indemnify" the publisher against any loss or damage that it might suffer as a result of you being in breach of the agreement with the publisher. Try and resist this provision as far as possible as it effectively means that the publisher could recover, pound for pound, any loss that it suffers as a result of your breach. In practice, you may find yourself unable to exclude this provision if the publisher will not sign the agreement without it in place. If this is the case, try to water down any promises that you do make, for example by saying that "as far as you are aware", your work does not infringe anyone else's rights. You could also seek to put a financial limit to your liability.

Assignment

Publishers usually ask you to assign the copyright in your work to them so that they are free to use, adapt, circulate, re-publish etc, your work without having to seek permission from you every single time they do this. Again, it is unlikely that you will be able to resist this provision as, in practice, publishers often will not sign up to agreements unless it is included.

What will you get?

- An advance (this will usually be deducted from your royalties)
- Royalties – the rate is likely to be somewhere between 7.5% to 10% of the price that the publisher is paid for the book by a retail outlet i.e. a percentage of the net price
- Free copies of your publication
- Discounts on purchases of your books (possibly including purchases by your institution).

Step Six: Drafts

You will find that your manuscript will go through a number of drafts before it is ready for submission. Your editor will look to pick up on errors or ambiguities and clear these up.

Step Seven: Submission

You will probably be asked to submit your manuscript both electronically and in hard copy. Check what your publisher's requirements are as they will vary from publisher to publisher. Your publisher may even have a pre-submission checklist to which you need to adhere.

Step Eight: Proofs and Indexing

You might think that all the hard work ends once you have submitted your manuscript. Think again! You need to put together an index for your work. You also need to check page proofs that are sent through to you by your publisher and correct any errors, for example, typos, that there might be.

Step Nine: Payment

Do not forget to check from time to time if payments are due to you and to chase them if you are not paid on time.

Q: I want to reach as wide an audience as possible with my research. What is the best form of publication for me?

A: If you want to give wide access to your work, you should think about publishing your work on the internet. Recently, more and more researchers have started to do this. For example, the Creative Commons' website (www.creativecommons.org) allows people to use and disseminate academic works for free, as long as the use is for non-commercial purposes.

However, be careful, it is very difficult to police material that has been placed on the internet. If you are concerned about the use that people might make of your work, you need to make sure that you have adequate protection, for example a policy statement which sets out what people can and cannot do with your work (see Section 6 – Protection).

The Creative Commons' website has some very simple terms, set out in plain English which alert you to the dos and don'ts.

Whether you are putting together academic materials or an article or book, you may find that you need to use someone else’s IP. If you copy a piece of work which is protected by the copyright of another person or company, you may infringe that person’s or company’s copyright. There are exceptions which may allow you to do limited things without infringing the rights of the owner.

If you cannot take advantage of the limited exceptions, you will need to “clear” the material in order to be able to use it. The flowchart at Figure 1 below sets out a checklist of the steps you have to go through before you should use someone else’s copyright in your work.

Figure 1



In a little more detail...

What are the limited exceptions you might be able to use to avoid seeking permission to use someone else’s IP? Some key ones are set out in Table 7.

Table 7

Exception	
Consent	It is an infringement of copyright to copy a piece of work without the consent of the copyright owner
Insubstantial part	<p>It is only an infringement of copyright if you copy a substantial part of a piece of work. Be careful – there are no hard and fast rules on how much of a piece of work may constitute a substantial part. It depends on the importance of the part to the whole of the work. The key riff from a piece of music may be a substantial part even if it is only a few bars long.</p> <p>For example, publishers tend to allow use of a single extract of up to 400 words without needing clearance.</p>
Non-commercial purposes	You can copy literary, dramatic, musical or artistic works protected by copyright as long as you are doing it for private research or study and those purposes are non-commercial. You can also copy any work for the purposes of criticism and review. You must always clearly acknowledge any reference to the copyright work in question.
Special education exceptions	If you are teaching, you can, for example, copy a work protected by copyright onto a whiteboard and your students can copy what you have written. (The exception does not cover photocopying).

Seeking clearance

If you cannot use any of the exceptions which are available, you will need to get clearance to use someone else's IP. How do you go about doing this? It will depend on the type of copyright work you want to use.

Text

I am writing a book about female entrepreneurs. Some of the seminal work in this field has been done by the eminent Professor Jones. I want to use a number of important statements contained in his first book, which was published 30 years ago. Do I need permission to do this and, if so, how do I go about getting that permission?

If the material that you want to use forms a substantial part of the work from which it is taken, and that work is still protected by copyright, then yes, you do need to seek permission.

You first need to identify and contact the owner of the copyright. This might not be the author – remember that publishers often require the author of a work to assign his/her IP in the work to it. So, a good starting point would be the publisher. Check the acknowledgments page or the copyright notice of the text from which you are looking to use an extract and approach the source which is credited there.

Publishers tend to prefer it if you write to them to seek permission, rather than a telephone call or e-mail. Some publishers even have clearance forms on their websites that you can use to approach them. Always check the publisher's website to see if this is the case.

However you approach the publisher, you will need to provide them with information relating to your proposed use of the copyright work. In particular:

- clearly specify the rights required
- specify the context in which the material will be used.

It can take quite a while to obtain clearance. This might be because the publisher is not the owner of the copyright in the work and has to contact the relevant person for permission. The publisher might only control certain of the rights requested. Also, be prepared to pay a fee for permission to use the work – you might not always be charged, but there is a possibility. It is probably worthwhile checking this point first – if the fee is prohibitive, there may be no point in your seeking clearance.

When seeking clearance, remember to ask if there are any requirements regarding how the source is to be acknowledged. Publishers can be very particular about the way in which their works are referenced.

Photographs

I am putting together some course materials which I will be disseminating both through a website and during lectures. The course is about the paintings of Leonardo da Vinci and I want to use a photograph of the painting that I have seen on the website of the National Gallery. How do I go about getting permission to use the photograph?

As with text, you will need to identify and contact the owner of the copyright in any photographs that you want to use. (Copyright in da Vinci's painting has, of course, expired!)

Photo libraries, agencies, museums, galleries or publishers usually have a system in place whereby you can use their copyright works for a fee. The amount of the fee will vary from place to place and may depend on the photograph that you want to use. So, in the case of the above example, you could look on the National Gallery's website to check whether it tells you how you can get permission to use its photographs. If you do, you will see it has a Picture Library through which you can purchase rights to use images.

Also have a look at the website of the British Association of Picture Libraries and Agencies (BAPLA) at www.bapla.org.uk. BAPLA has a comprehensive list of photo libraries and agencies that you can use to source your materials.

If you do approach one of these libraries or agencies, bear in mind that you may have to pay search fees (for them looking through their archives for you) as well as clearance fees.

Music

My specialist area is researching the occurrence of alopecia in young, healthy females. I have put together a DVD which showcases my most recent research and includes some footage of a young girl set to a song by The Rolling Stones. My university will be selling this DVD to other research-based institutions. How can I get permission to use this song?

You will find with music that most record companies and some individual rights holders use “collecting societies” to license out their copyright works and collect licence fees in return. For example, there is PRS for Music (www.prsformusic.com) which licenses out the recording rights of composers, music publishers and some record companies and deals with the public performance and broadcasts of musical works, collecting for the writers and publishers of music. There is also Phonographic Performance Limited (PPL) (www.ppluk.com) which collects and distributes fees for the performance of any musical work and for any work that receives air-play.

Music clearances are usually agreed and negotiated by phone and can be done within days. Contrast this with the length of time it might take to clear written text! As with written text, you will need to tell the rights holder exactly what rights you require and how you will use them.

Films and programmes

I want to use footage from BBC1’s Match of the Day programme to demonstrate the use of graphics that can be used to measure the flight of objects. How can I get the right to do this?

Under its licensing scheme, the Educational Recording Agency (ERA) (www.era.org.uk) allows educational establishments to record certain broadcasts, as long as such recordings are made for non-commercial teaching purposes.

The broadcasts which can be recorded are those which are for general reception by members of the public i.e. not pay per view, on-demand and interactive services. Accordingly, the ERA’s licensing scheme covers

scheduled free to air broadcasts on BBC television and radio, ITV network services (including ITV2, ITV3 and ITV4), Channel 4, E4 and Five Television.

It is likely that your institution has an ERA licence and that you can therefore use footage from the BBC, but maybe not for the wide purpose which you intend. You may still have to approach the BBC's rights department for clearance. The same will apply to footage from any film companies. If you are thinking of using footage that has been created by an individual, you will need to approach that person as he or she will be the owner of the copyright in the work you are seeking to use.

Negotiation

You will have to work hard to negotiate a satisfactory deal for yourself when seeking clearance.

How can you prepare for your approach?

- Ask colleagues what a realistic offer would be
- Clarify the use to which you will put the material
- Find out what the person/organisation is like to negotiate with by asking colleagues
- Decide if you need to clear more now to save you coming back later on
- Look at similar deals that have been agreed
- Ask trade associations if they have any minimum rates for what you require
- Check with similar organisations/people what their rate would be for what you require
- If you are being asked for something that goes against current thinking/practice, check first
- As a last resort, ask the person/organisation that you are negotiating with if they have any views as to what the job or material is worth.

Make sure that you give yourself enough time to negotiate – depending on the person/organisation from whom you are seeking clearance, the process could end up being very lengthy. You do not want to find yourself, for example, in a situation where you have promised your publisher that your draft will be ready in six months, but cannot meet this deadline as you have not cleared a key piece of material that you need.

Collecting societies

Depending on the type of material for which you are seeking clearance, you may find that you need to approach agencies and collecting societies which help rights holders license their copyright works to third parties:

Table 8

Society/Agency	What does it do?
Authors' Licensing and Collecting Society (ALCS) (www.alcs.co.uk)	It represents the interests of all UK writers and aims to ensure writers are fairly compensated for any of their works that are copied, broadcast or recorded.
Design and Artists Copyright Society (DACS) (www.dacs.org.uk)	It represents fine artists and their heirs, photographers, illustrators, craftspeople, cartoonists, architects, animators and designers. It provides licensing arrangements for copyright consumers seeking to license the individual rights of an artist.
Educational Recording Agency Ltd (ERA) (www.era.org.uk)	The ERA Licensing Scheme allows staff at educational establishments to record, for non-commercial educational purposes, broadcast output of members of ERA, for example for teaching resources.
Newspaper Licensing Agency (NLA) (www.nla.co.uk)	It licenses companies to copy from national and regional newspapers in both paper and digital formats. It collects fees from licensed users for this copying and distributes the fees to publishers.

The agency which will be of most relevance to you is the Copyright Licensing Agency, the CLA. Normally, if you photocopy from a book or journal, you could be infringing the copyright in the work you are copying. However, it is likely that your institution has already obtained the consent from the copyright owner through its subscription to a blanket licence from the CLA.

You can also make digital copies of limited extracts from copyright protected printed books, journals and magazines. In all cases, you have to make sure that you are photocopying or scanning specifically for distribution or delivery to students, whether through course packs or distance learning, and that the use made is in accordance with the terms and conditions of the CLA licence. The blanket licence also covers the use of certain artistic works through an agreement CLA has in place with DACS (see Table 8).

Certain materials, for example printed music (including the words), maps, charts, newspapers (NLA – see Table 8), public examination papers, books of tables, workbooks, workcards, industrial house journals – all known as excluded works – cannot be photocopied or scanned under a CLA Licence. So, it is important to ensure that you do not inadvertently do such copying relying on a CLA licence. Note in particular that not all US publishers participate in the CLA licensing scheme. (A list of the relevant publishers can be found at CLA's website at www.cla.co.uk).

So how can you protect your IP in your academic materials and publications? One simple and practical thing you can do is place a copyright notice (for example © University of West Ham 2010) on your work. This will remind anyone using your work that copyright exists in the work and that action may be taken.

E-Protection

You can use a number of measures to protect your work if it is available electronically, for example, on the internet:

- copyright statement which sets out the dos and don'ts
- licence agreements with the people who use your materials
- technical measures e.g. digital rights management (DRM).

Copyright statement

A copyright statement can be as simple as saying *"All rights of the owner in this work are reserved. Unauthorised copying prohibited"*. You could include a more detailed statement which would let people know what they were entitled to do with your work, something along the lines of:

"The University of West Ham allows you to take one copy of the work solely for your own personal use. If you would like to make any other use of the work, you must obtain the Institution's express prior written consent before making any such use";

or

"You can download the work onto a hard disk solely for your personal use provided that you include our copyright notice on each copy and that you make no alterations to any of the work and do not use any of the work in any other work or publication in whatever medium".

You should make sure that your copyright statement forms part of your terms and conditions and that users have to accept those terms and conditions before they can access your material. This will mean that people cannot later claim that they did not know what they were not allowed to do with your work.

Licences

You could also set up actual licences on your institution's website so that someone wanting to use your materials could do so, but only if they agreed to the terms of the institution's licence. These would be more binding than your users agreeing to your copyright statement as part of your terms and conditions. You would usually want to make sure that the licence would provide that those taking a licence:

- could only use (including downloading) the materials for educational purposes and certainly not for commercial purposes
- could not alter or modify your materials except with your prior consent
- had to acknowledge their source when using the materials.

If your main concern is the dissemination of your work to as many people as possible, you could use a Creative Commons type licence to give open, free access to your work.

You could also consider placing your work in a learning object repository, for example JORUM (www.jorum.ac.uk). Under the JORUM system, you can share your academic materials with other people in UK higher and further education institutions. Check your employer is happy if they own the copyright. As a user, you can download, modify or annotate any materials that you access. However, you can only use the materials for non-commercial purposes.

Consult with the relevant professionals in your institution for guidance.

Technical measures

You will only really need to use these if you want to ensure that only certain parties can have access to your materials and that your materials are secure. There is a number of ways of doing this.

Digital Rights Management

Digital rights management or DRM systems are commonly used these days. They are any hardware or software that ensures that only authorised users can access digital materials.

Authentication systems

You could also use authentication systems such as ATHENS for protection (www.athens.ac.uk). ATHENS is a nationwide authentication system that allows access to a large number of different databases with a single username and password.

Gating

As with ATHENS, this allows you to access materials once you have identified yourself through a user name and password.

And the other way round...

If you are looking to use third party materials which have been placed on-line, you also need to watch out for terms and conditions and licences which might govern any use you make of third party materials. Even if there are no such conditions, this does not mean that you can use third party materials without seeking consent. This could still be an infringement.

If you are not doing so already, there may come a time when you decide to include on-line purchase facilities in, for example, a VLE which you have set up. If you do this, you have to make sure that you comply with a number of regulations.

Privacy legislation

The Privacy and Electronic Communications Regulations have brought into force a range of controls on use of electronic communications. The ones you will need to be most aware of are the provisions governing the use of unsolicited e-mail marketing (including text messages and other electronic communication methods) and the use of cookies.

Unsolicited e-mail marketing

You cannot send unsolicited e-mail communications to individual recipients (e.g. someone@home.com), without the recipient's prior consent.

Your message will be unsolicited if it is one that the recipient has not specifically invited. There is an exception relating to messages promoting goods or services similar to those which the recipient has previously purchased, or has expressed an interest in purchasing, and where the recipient has been given an opportunity to opt-out.

Prior consent does not mean the same thing as "opt-in". An "opt-in" generally refers to a tick box where a recipient positively indicates that they want to receive the communication. Prior consent does not specifically require opt-in, provided that the method used includes a clear indication of the recipient's intention to give consent, and gives the recipient an opportunity to "opt-out".

Basically, you cannot carry out direct marketing by electronic mail to all recipients (individual and corporate, previous or new) unless each e-mail contains the identity of the sender; and a valid "unsubscribe" address.

Cookies

You cannot store information or gain access to information stored in the terminal equipment of a user (like website cookies) unless you give the user detailed information about why you are storing and accessing the information and the opportunity to refuse the storage of/access to that information.

E-Commerce Regulations

It sounds like these will only apply if you set up a website through which people can purchase your materials. However, they can also apply to educational websites and VLEs.

What information do you need to provide?

On your website, you need to ensure that:

- you state the name, address, e-mail address and VAT number of the website provider and a company registration number, if appropriate
- your listed prices are clear and unambiguous, and are stated as being inclusive of tax and delivery costs
- you tell your customers what steps they have to take to complete the transaction
- you give your customers an acknowledgement promptly after the order is placed
- your customers can easily copy and retain your terms and conditions.

Distance Selling Regulations

These regulations tend to cover contracts made between institutions and students.

Prior information

You have to provide a variety of information to the customer prior to entering into any contract, including:

- a description of the main characteristics of the goods or services
- the arrangements for payment, delivery or performance
- the existence of a seven working day cancellation period.

Once a customer places an order, you have to provide your customer with written confirmation (e-mail is sufficient) of the information you have previously provided to them, otherwise you will not be able to enforce the distance selling contract. At the same time, further information must be provided including details of the customer's right to cancel the contract.

If your customer withdraws from the contract in the 7 day cancellation period, you have to treat the contract as though it never existed. You also have to return all sums paid to you by the customer (including delivery fees and taxes).

However, the cancellation period does not apply to all contracts. In particular, cancellation will not be possible after you have commenced work (with the customer's consent), if you explicitly stated this would be the case prior to the contract being formed

The start of the cancellation period varies depending on whether, and when, the prior information has been confirmed in writing/email. This means that while there is a statutory requirement to provide a 7 working day cancellation period from the day after the goods are received/the contract for services is concluded, this may effectively extend to 3 months and 7 working days. This highlights the importance of providing the written confirmation of prior information promptly on completion of the contract.

You also need to make sure that any website you do set up is easily accessible and user-friendly, including disabled-friendly.

Let's have a look now at the sorts of provisions that can be found in IP policies and are provisions that you should be considering.

Assignment and licence back

In your institution's IP policy, there may be an option for any IP in academic materials which your institution chooses not to commercialise to be assigned back to you and any other relevant people who have been involved in the creation of such academic materials.

Now, whether or not this occurs, or should occur, will depend on the individual circumstances and should be decided on a case by case basis. It may be that there is some disagreement between parties as to whether the IP in certain academic materials should be transferred to specific individuals or a team of people. To make sure that any such disagreement does not turn into a major issue and prevent you from using or commercialising academic materials, many IP policies have a dispute procedure in place. Such procedure will set out a process which all parties can follow if there is debate as to ownership of materials or what should be done with them. Your institution should ensure that it has a licence back of any materials which it transfers over to you. The licence may just be for research and teaching purposes only, but could extend to other purposes such as the promotional purposes of your institution.

It may be that your institution decides to commercialise academic materials which have been developed by you during the course of your employment. If that is the case, your institution will allow you to use the relevant IP for your work at your institution and may award you a share of the revenues which arise as a result of the commercialisation of the materials.

Credit

What if you have made a significant contribution to some academic materials, but you do not own the IP rights in such materials because your institution does as you produced them in the course of your employment. You could ask to be credited for the work that you have done. This might not gain you any more financial reward than you might already be entitled to, but it would obviously help in terms of your reputation and standing in your particular field.

Waiver

You could be asked to waive any moral rights you might have in copyright works which you create. (Remember you will not have any if the work is produced by you in the course of your employment). As a researcher, you could be asked for a blanket waiver by your institution in return for your institution agreeing to take reasonable steps to identify you as the author of a particular work. Obviously, if what you have created is a small part of a larger whole, it may be impractical to include you on the list of credits.

Right to object

You may want the right to object to significant amendments to a work that you have created in order to make sure, for example, that the amendments do not create inaccuracies. Where you are not the owner of the copyright in the material, if your institution does not agree to changes which you request, you may want to be able to ask your institution no longer to include you in the list of credits if you are unhappy with the amendments.

Leaver

Your institution's IP policy may clarify what will happen if you leave your institution and want to use academic materials that you have created during your time at your institution. You could be allowed to use certain extracts from your materials, but it is likely that each case would have to be examined on its own merits. If, for example, the relevant work had been materially updated by your previous institution, it is unlikely that it would grant you the right to use such materials. Check your institution's IP policy for clarification.

- Your institution's intranet for its IP policy
- Your institution's Research Office and IP Commercialisation Office
- Intellectual Property and Confidentiality – A Researcher's Guide
- UK Intellectual Property Office website (www.ipo.gov.uk)
- US Patent and Trademark Office website (www.uspto.gov)
- Creative Commons website (www.creativecommons.org)
- British Association of Picture Libraries and Agency website (www.bapla.org.uk)
- PRS for Music (www.prsformusic.com)
- Phonographic Performance Limited website (www.ppluk.com)
- Educational Recording Agency website (www.era.org.uk)
- Authors' Licensing and Collecting Society website (www.alcs.co.uk)
- Design and Artists Copyright Society (www.dacs.org.uk)
- Newspaper Licensing Agency website (www.nla.co.uk)
- Copyright Licensing Agency website (www.cla.co.uk)
- Jorum website (www.jorum.ac.uk)
- ATHENS website (www.athens.ac.uk)

Academic Materials and Publishing Checklist

INTELLECTUAL PROPERTY	Copyright	<ul style="list-style-type: none">■ Protects the form in which you express an idea and arises automatically. (No need to register in UK)■ Exists in original written items, pictures, photographs, software, music, films, broadcasts and typographical arrangements■ Protects generally for creator's lifetime + 70 years
	Moral Rights	<ul style="list-style-type: none">■ Personal rights of creator of a copyright work■ Includes rights to be identified as author■ Cannot be transferred but can be waived
	Performer's Rights	<ul style="list-style-type: none">■ Personal rights of a performer in their performance of a drama, dance, music, reading■ Rights in recordings of performances can be transferred
	Database Rights	<ul style="list-style-type: none">■ Protect collections of works/data systematically arranged and accessible electronically or by other means■ No need to register database rights■ Protection is for 15 years or longer if the database is substantially altered
	Trade Marks	<ul style="list-style-type: none">■ Can arise automatically – stronger if registered■ Registrable if distinctive and not descriptive
	Patents	<ul style="list-style-type: none">■ Protects inventions which are new, inventive and capable of industrial application■ Not often relevant to academic materials and publishing
PUBLISHING	Choosing a publisher	<ul style="list-style-type: none">■ Bear in mind the different media available■ How quickly do you want the material published?■ Find out about the publisher■ Submit in publisher's preferred form/style■ Indicate the need for any confidentiality

PUBLISHING	Contract	<ul style="list-style-type: none"> ■ Understand what you will be expected to do ■ Ensure that no third party rights will be infringed ■ Obtain any necessary clearances ■ Review any warranties and indemnities ■ Are you happy with the benefits (e.g. royalties)?
CLEARANCES	Obtain permission	<ul style="list-style-type: none"> ■ Do you have consent from the copyright owner? ■ Are you copying a substantial part? ■ Is it use for a commercial purposes? ■ Is the work within a special education exception?
	Seeking clearance	<ul style="list-style-type: none"> ■ Contact the copyright owner (often the publisher – there may be a clearance form on its website) ■ Leave enough time ■ Budget for fees
PROTECTION	Protect your materials	<ul style="list-style-type: none"> ■ Use a copyright notice (e.g. © XYZ 2007) ■ On electronic materials include a copyright statement and consider licence agreements ■ Use technical measures e.g. DRM, gating
DELIVERY	On-line purchasing facilities	<ul style="list-style-type: none"> ■ Comply with privacy legislation ■ Do not send unsolicited email to individual recipients without their prior consent ■ Disclose use of cookies to the user ■ Provide customers with pre-contract information e.g. payment, delivery and cancellation terms
IP POLICY	Review your institution's IP Policy	<ul style="list-style-type: none"> ■ Check your rights to be credited as the creator of materials ■ Check rights to object to amendments of your work ■ Check your right to use materials if you leave your institution