

# Third-Party Copyright & Open Access

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ICEPOPS Glasgow, 20 July 2023

Note: *I am speaking in my personal capacity  
and not on behalf of UKRI.*

# The UKRI Open Access Policy: overview

- The UKRI Open Access Policy for **long-form outputs** is coming into effect for outputs published on or after 1 January 2024.
- In-scope publications have an **OA licensing requirement**:
  - The final VoR or the AAM must be free to view and download on an online platform within 12 months of publication.
  - The OA version must be published under a CC licence (preferably CC BY).
- The OA licensing requirement **does not apply** to third-party ('3P') copyright content.
- Plus there is a **self-applied exemption** where 'reuse permissions for third-party materials cannot be obtained and there is no suitable alternative option to enable open access publication'.

# Clearing rights for OA outputs

- The **process** of clearing rights for OA outputs is essentially the same as that for 'traditional' publications. However, the **content** of the licence with the 3P copyright owner needs to reflect the OA environment:
  - the rights should **extend to** the conditions inherent in OA publishing:
    - e.g., worldwide territory; no time limit on licence term; not tied to concepts such as 'print run' or maximum downloads / views,
- and**
- you need to confirm **how the 3P content is presented**, especially whether it is 'all rights reserved' or subject to an open licence.
- This can have implications for fees and willingness to grant a licence.

# Special issues for long-form publications?

- Monographs and other long-form publications are particularly important for arts and humanities and social sciences.
- These are disciplines where **rights clearance tends to be less straightforward**, e.g.:
  - more likely to contain 3P material that cannot be substituted.
  - more likely to encounter rightsholders who maintain high degrees of control over their IP and who charge higher licensing fees.
- One question is whether these issues are (at least for now) **heightened** for OA outputs.

# Applying the OA exemption

- The exemption is available when ‘there is no suitable alternative option available to enable open access publication’.
- **When** to apply the exemption?
  - Rights are often cleared during production *after* the manuscript is submitted to the publisher, and *well after* the publishing contract is signed. At this point, it may be difficult to switch publishing models from OA to traditional. This suggests that it is **very important to think about copyright early**.
- **How** to apply the exemption?
  - The key word is ‘suitable’, as deletion of content will always be an option.
  - This must be evaluated on a case-by-case basis. What indicators might be relevant that there is no ‘suitable alternative’?
  - Recall that the OA licensing requirement can be satisfied through release of the AAM under an open licence.

# Options for content that cannot be licensed

- Remove it.
- Substitute that content with material for which permission is not required or is easier to obtain, e.g., content that:
  - the author generates themselves.
  - has been distributed under a CC licence that permits inclusion in your title.
  - is *genuinely* in the public domain.
- What about tombstoning and linking?
- Can exceptions or risk management apply? (*next*)
- **Authors can reduce copyright problems by choosing this sort of content right off the bat ... should they think about copyright ...**

# OA and copyright exceptions

- In the UK, the best option for including 3P content in academic outputs is fair dealing for quotation, criticism or review.
  - Some evidence that publishers think about fair dealing for images and illustrations; less so for integrated quotes.
- One (legal) issue for OA: worldwide distribution.
  - This needs to be considered in one's risk-informed legal assessment.
- If you rely on an exception such as fair dealing, that content needs to be **flagged** as **outside** the OA licence over the main work.
  - One option: identify the exception that is claimed.
  - Another (better?) option: just exclude the content from the OA licence.

Any questions?