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Detailed guidance for the use of external sources in a MOOC

Version 3: updated 19/06/2023 includes guidance from Codex of Fair Practice for the use of audio-visual works in film education

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# Preface

This document is intended for University of Glasgow (UofG) staff who are engaged in developing Massive Open Online Courses (MOOCs), which are public facing and not restricted to a UofG audience.

None of the content within this document should be considered legal advice. Furthermore, UK Copyright Law is open to interpretation, therefore, there is not always a straightforward ‘yes’ or ‘no’ answer. In a similar vein, Creative Commons, has established conditions around the licences and in relation to their uses, however specific external factors like the type of use, may raise issues that require you to assess the risk involved. Furthermore, the contents of this documents should not be interpreted as ‘instructions’, but as advice and guidance you can consider applying when assessing if external material(s) can be used in MOOCs you’re developing.

# Introduction

When developing a MOOC, that will made available outside of the UofG community, you must consider the Copyright implications when you make use of 3rd party content. An essential course of action when using 3rd party content, is to obtain written permission from the rights holder to clarify it is permitted to use their work.

When teaching is delivered to enrolled UofG students, either on campus or through a secure online environment, i.e., Moodle, several UK Copyright Exceptions can be used to defend the use of excerpts of 3rd party material, providing credit has been given to the creator. In the case of MOOCs, a vast majority of UK copyright exceptions cannot be applied as there is a commercial element associated with these types of courses. Furthermore, services such as, [Box of Broadcasts](https://learningonscreen.ac.uk/ondemand) and [institutional licences](https://edshare.gla.ac.uk/id/document/2414), i.e. [CLA](https://www.cla.co.uk/) cannot be relied upon as the audience to use these is restricted to UofG staff and students.

If a copyright owner discovers their content being used without permission on either of the MOOC service providers UofG is partnered with ([Future Learn](https://www.futurelearn.com/info/terms) & [Coursera](https://www.coursera.org/about/terms#copyright-and-trademark-policy)), then a possible outcome could be the removal of the offending content. Both services providers will act in accordance with their countries Copyright Law and in the case of Coursera, the [Digital Millennium Copyright Act](https://www.copyright.gov/legislation/dmca.pdf) (DMCA). From an institutional perspective, it would be undesirable to have content removed and may cause disruption to the participants enrolled on the course.

# What type of content can you include in your MOOC

**In House created materials** – If you create or have previously created materials and you own the necessary rights to them, then these can be used in your course. In the case of published material, you create or have created (i.e. book, journal), it would be advisable to examine the contract you have with the publisher to ensure it is permissible to use these materials in this capacity.

If it is necessary to use 3rd party copyright protected content, then you must obtain written permission from the copyright owner granting you all of the required rights to use their material in a MOOC. Copyright protected third party content can vary from, text, audio, video, sound recordings, charts, illustrations, diagrams, databases, films, screenplays, clip art and other types of works.

**If you intend to use 3rd party content in a MOOC you’re developing, you have the following options:**

* Seek permission:
Obtaining permission to use 3rd party content can be a lengthy process and should be conducted as soon as possible. The consent (permission) must be written or in another tangible format (email for example), verbal permission is unlikely to stand scrutiny in a court of law. For further guidance on seeking permission, refer to the document linked to below.

[Link to obtaining permission to use someone else’s work (image, video and audio)](https://edshare.gla.ac.uk/id/document/6542)

* Public Domain / Creative Commons (CC):
Works that are categorised as Public Domain, are done so because their copyright has expired. Typically, these types of works are historical images, manuscripts etc. This means you are free to use materials that are in the public domain, as there is no Copyright associated with them. However, in some cases a Creative Commons ‘Public Domain Mark’ may have been applied to a piece of work, which is usually carried out by a cultural heritage organisation (like a museum) or Library to make their collection(s) available to the public.

To follow on from works that fall into ‘Public Domain’, another type of licence you may encounter attached to materials is **Creative Commons**. This suite of licences enables creators a simple and standardised way of giving people permission to use their creative work on conditions chosen by them. From a consumer perspective (i.e. someone using materials with a CC licence), they allow you to reuse the copyright material without having to contact the owner for permission (providing attribution to the creator is provided). The licences tell you how to use, share and distribute the work.

For further information about Creative Commons licences and how to provide attribution please refer to webpage linked to below:

* + [Link to UofG webpage containing guidance on Creative Commons and other Copyright related resources](https://www.gla.ac.uk/myglasgow/library/help/copyright/guidance/)

### Linking to content

Links to external 3rd party content may be included within your course, providing the source is legitimate. In other words, you should not link to a website or content that is pirated, i.e., music and or video. Links within your course, should take learners to the external website or materials; embedding content from external websites within your course would be ill advised as this could be interpreted as Copyright infringement.

### UK Fair Dealing and 3rd party work

Primarily the UK legal framework [Fair Dealing](https://www.gov.uk/guidance/exceptions-to-copyright#fair-dealing), and the associated copyright exceptions allow 3rd party work(s) to be used for non-commercial, educational, and accessibility reasons. The only exception that doesn’t exclude the potential for commercial usage is [Section 30](https://www.legislation.gov.uk/ukpga/1988/48/section/30), which allows work(s) available to the public to be used for the purposes of criticism, review, (quotation), and news reporting.

When using an entire 3rd party entire commercial film, in a MOOC, (under Section 30 to defend the usage), it is unlikely to be consider ‘fair’. This is because it may be interpreted as commercially competing with the copyright owner by making it freely available on the net. Furthermore, MOOCs have a commercial element associated with them, meaning it could be interpreted as making money from the 3rd party film or work. Even when considering using an excerpt of 3rd party film, ideally written permission should be obtained from the copyright owner, as the same arguments made for the full film, could potentially be applied in this scenario as well.

The same consideration should be given if there is the intention to use 3rd party music, or other types of works.

N.B. the above scenario regarding the use of a whole film in a MOOC was taken from the [Codex of Fair Practice for the use of audiovisual work in Film Education](https://learningonscreen.ac.uk/copyright-guidance/code-of-fair-practice/) (section B, hard cases).

# Getting additional help

If you find additional non legal advice or guidance is required in relation to a MOOC you are developing, then please send an email to the address shown below.

Email: copyright-queries@glasgow.ac.uk

# Resources

Below are links to resources which may be useful when developing MOOCS

* [Link to MOOC Image Flowchart - if you require guidance on the use of images for use in a MOOC, please refer to this flowchart](https://www.gla.ac.uk/media/Media_475168_smxx.pdf)
* [Link to Microsoft Excel template for recording images for use in MOOC or Microcredential course (document will download automatically when link is clicked on)](https://edshare.gla.ac.uk/id/document/4426)
* [Link to webpage containing non-legal guidance about UK Copyright, Open Educational Resources along with links to various resources](https://www.gla.ac.uk/myglasgow/library/help/copyright/guidance/)

# FAQ

This section contains a range of questions with the applicable answer. If you have a question that is not answered below, then please feel free to send to the email address highlighted in the ‘Getting additional help’ section.

**Question 1**: **When using someone else’s material (including Creative Commons), should I always provide attribution?**

**Answer:** Yes, in both circumstances you should provide attribution (credit), to the creator of the material you would like to use. Creative Commons licences are comprised of four conditions, one of them usually being ‘**BY**’, which means ‘attribution’, indicating that attribution must be provided to the creator of the materials you intend to use.

In the case of materials which have ‘fallen’ into the ‘public domain’ (including CC materials that have CC0 & Public Domain mark), you should consider providing attribution despite there being no copyright associated. By providing attribution you can aid in ensuring historical materials do not become ‘Orphan Works’ as they will be identifiable to other users and secondly, from a ‘moral rights’ perspective attribution can benefit the creator of the work(s).

**Question 2: Are there any types of Creative Commons (CC) licences attached to work(s), I should avoid using in a MOOC?**

**Answer:** The two conditions are ‘NC’ (Non-Commercial), & SA (Share Alike), are both contentious when used in the context of MOOCs as there is some uncertainty amongst copyright specialists regarding their interpretation. Therefore, it is advised that you either avoid licences that contain these conditions, or at least carefully consider the risk factors involved if you choose to use materials that have either or both NC & SA associated with them.

In principle, the UK Copyright exception Section 30, could be used to defend their use, as it has the ‘no contractual override’ clause associated with it. This could potentially override both CC conditions (NC and SA). As touched on earlier, the use of this exception should be considered as a last resort only, due to the openness of interpretation in relation to UK Copyright Law and Creative Commons uses.

**Question 3: When seeking permission to use someone else’s work, if I do not receive a reply, is it ok to assume permission has been granted?**

**Answer:** Do not assume that just because you have not received a reply from the rights holder, that it is ok to use their material. You should always obtain written permission from either the single rights holder or all of them (if there is more than one). If you do not receive any further correspondence, then you may have to apply for an [Orphan Works licence](https://www.gov.uk/guidance/copyright-orphan-works).

**Question 4: Is there a way for me to track the online source of an image I have inherited?**

**Answer:** A useful tool for tracking images that you don’t have a source for is the reverse image search engine called [**Tineye**](https://tineye.com/). This is reverse image search, which lets you upload images to it for processing, so online sources for it can be shown. This is useful, not only for showing where the image is found online, but also to help determine if it has copyright protection associated with it.

Click on the video link below, to view a brief tutorial video that takes you through the process of uploading an image to Tineye and viewing the results.

[Follow this link to view Tineye tutorial video](https://www.gla.ac.uk/myglasgow/library/help/copyright/guidance/#videobasedcopyrightresources)

*Note: Tineye is available as a browser extension for both* [*Google Chrome*](https://tineye.com/extensions) *and* [*Mozilla Firefox*](https://addons.mozilla.org/en-GB/firefox/addon/tineye-reverse-image-search/)*.*

**Question 5: What if I find the same image on two different online sources?**

**Answer:** You may encounter a unique scenario (or something similar), called “**enclosing the commons”**. This is a term coined by James Boyle in his [book](http://www.thepublicdomain.org/enclosing-the-commons-of-the-mind/), which refers to commercial companies trying to monetise public domain works. For example, you may encounter an image in two different sources, i.e. in a commercial company website/collection and in Wikimedia Commons (with the public domain mark). In his circumstance you could choose the image found in Wikimedia Commons, as the mark associated with it indicates ‘Public Domain’, and therefore there is no copyright associated with this image. Enclosing the commons usually occurs with historical materials, however other subject areas have been exposed to this practice as well.

Below is an example of where the reverse search engine Tineye was used to resolve a scenario which was similar to “enclosing the commons”.

A public domain, historical image was found on a website, which had assigned a CC licence to it, that prohibited commercial use. This was problematic, as the intention was to use the image in a [Microcredential](https://www.gla.ac.uk/study/microcredentials/), which has a commercial element associated with it. This scenario is similar to ‘enclosing commons’, as the website had imposed a restriction on material that was freely available to the public. The solution to this, was to find an alternative online source to the image found on the website, which had the public domain mark associated with it. The image was downloaded from the website and then uploaded to [Tineye](https://tineye.com/), which highlighted numerous online sources, one of them being a Wikimedia entry with a public domain mark. By finding an alternative source, the image could be used in the Microcredential course.

 *Note: Section 30, could have possibly been used in the above scenarios to defend the usage of images. However, both examples emphasise the importance of finding alternative sources for images before considering using section 30, which as previously stated should only be considered as a last resort.*

**Question 6: Should I keep records of the images I use in a MOOC course I am developing; even if they have a Creative Commons licence associated with them?**

**Answer:** It’s always good practice to record every image you use when developing any type of online course. Whether the image is one that you made, 3rd party or has a Creative Commons licence associated with it, they all should be recorded.

Images can be recorded in a written document of your choosing; however, it is important to ensure key details such as ‘the creator’, ‘was permission given’ are recorded. Below is a link to an example excel which has fields you could use when recording images that are used in either a MOOC you are developing.

[Follow this link to view example Excel Spreadsheet for recording images used in a MOOC](https://edshare.gla.ac.uk/id/document/4426)