



Dealing with Legally Incompatible Content in OER¹

Recommendations on incorporating third-party content into otherwise open resources

What is this document?

Open Educational Resources (OER) are defined by the use of a Creative Commons license and are generally created by those who would like to share their work globally. However, some creators find the need to consider the costs and benefits of incorporating third-party materials with incompatible licenses into their “otherwise open” OER. This document recommends ways of managing or avoiding the problems that will arise.

Who is it for?

Anyone who creates or is thinking about creating OER, especially if the goal is to share the OER with anyone in the world.



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Incorporating Incompatible Content

If you are a creator of Open Educational Resources (OER)², you probably want to share your work openly with the world. Via an open, public license (such as a Creative Commons license), you give permission for anyone, anywhere to use your works in various ways. However, sometimes you feel the need to include content that is not your own, which may be “all-rights-reserved” or may carry a license that is not compatible with your ultimate goals. This may occur because the resource seems incomplete without the third-party materials, or because you are not aware that any openly licensed versions of the needed materials exist. This may occur for any resource you might create, including slide shows, lecture materials, course readers, educational toolkits, and so on.

In order to legally make use of other people's materials without permission, your use of the content must fall under an exception to copyright law, such as “fair use” or “fair dealing,” or be

¹ This document is based upon “[Otherwise Open: Managing Incompatible Content in OER](#),” a ccLearn production that outlines this problem in detail, explaining the ways in which copyright exceptions function globally and how these exceptions interact with open licensing.

² OER are teaching, learning and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or re-purposing by others (<http://www.hewlett.org/oer>).

subject to a statutory licensing scheme³. These exceptions and licensing schemes allow for certain uses of copyrighted content, such as educational uses of a work, even when the content is “all-rights-reserved.” Unfortunately, however, copyright laws vary greatly depending on where you live. This means that when you create OER using incompatible content, your OER may no longer be legally used by people living outside of your own country (and in some cases, even by others in your own country). Such mixed-license resources may also become incompatible with other resources, such as those licensed under a Creative Commons “Share Alike” license, which requires that derivatives be released under the same open license as the original. As a result, downstream users may decline to use your resources at all because they do not have the ability to do so under their own laws, because they do not understand whether their laws permit use of these materials, or because such resources are not compatible with other open resources.

These are just a few of the costs associated with incorporating restricted third-party content in OER. **If you would prefer not to impose some of these costs, then consider taking the following steps to ensure that your OER are globally shareable:**

- Get permission to share the incompatible content globally using a compatible license. Having the copyright holder's permission to share is the safest way to go. While this may not always be practical or possible, some copyright holders may be more than happy to share their work with the world.
- Link to the incompatibly copyrighted resources instead. It is usually possible to paraphrase and link to the incompatible material instead of copying it verbatim.
- Write a list of resources that would be valuable, creating a bibliography of resources you would have liked to include. If any of the resources are available legally online, then provide links to where they can be found.
- Recreate the resources yourself and CC-license them. Though certain resources are difficult to recreate, there are many cases where it is easier to recreate a graph or picture than to ask for permission to use the original under your terms.
- Incorporate other openly licensed resources. You can search Flickr or Google for CC-licensed images. There are also many sites, such as DiscoverEd and Connexions⁴, where you can find OER under the license you need.

In some cases, you may not be able to avoid the use of third-party content, or you may believe that your use of such content is necessary. In such cases, you should make sure to correctly attribute and cite the content, so that anyone can clearly know its original author and copyright status, and how it is distinct from the open license of the overarching resource.⁵

Questions?

This is a highly abbreviated document. For more information about these and related topics, visit Creative Commons (creativecommons.org) or send questions to ccLearn directly by email: ccllearn-info@creativecommons.org.

3 Some countries, such as Australia, allow certain uses of copyrighted works to be made without permission so long as a licensing fee is paid.

4 <http://discovered.creativecommons.org> and <http://cnx.org>

5 For more information about how to do this, see [Publishing Your OER on the Internet at learn.creativecommons.org/productions](http://publishingyourOERontheInternetatlearn.creativecommons.org/productions).