

IPR frequently asked questions and answers

These questions were compiled by Perry Williams, an Open University PhD student with the answers supplied by Richard McCracken, Head of Intellectual Property at the Open University. You should note that in his answers, Richard sometimes refers to regulations specific to the OU. In such circumstances you need to check your own university's policy on these issues.

Question 1

I'm getting my interview respondents to sign a consent form, giving me permission to use their words in my PhD and any publication arising from this. One of them has signed the form but added the condition that they must see and approve any use I make of their words. Do I have to agree to this?

Richard says....

Try going back to them and talking through the possible uses of their interview and what their objections might be. Get a feel for their concerns, some of which may be reasonable.

If your respondent won't change their mind then you have a choice: either agree to their limitations and seek their approval before using their words in any publication, or drop the interview from your PhD. The answer to this will be based on how valuable a contribution they make to your work measured against the risk of the respondent refusing permission at some future date.

In some areas of research, primarily medical research or research involving the clients of a social worker, interviews or similar records may constitute part of a patient's medical records. As such, the patient can only give "informed consent", meaning that they must be fully aware of the circumstances in which the record may be used, so that blanket consent is difficult to draft. Much more workable in these circumstances is a consent form that sets out various degrees of release; for example, research purposes only, teaching purposes within a named department, release on the internet, use in a commercial textbook, and so on.

Question 2

After I get my PhD, I expect to work as an independent consultant, trading on the basis of my accumulated knowledge and my expertise. Can I use ideas, data, writings, diagrams, schema, processes, methods, presentations, handouts, etc., which I developed during my time here, or does this count as 'intellectual property' that I have signed over to my university?

Richard says....

The Open University Policy on Research Intellectual Property Management and Exploitation requires that all postgraduate research students assign the OU the rights to intellectual property arising from their research. However, much of what you list in your question may be used freely. Using your accumulated knowledge and expertise is not prevented by the Policy.

Handouts, writings and so on are fixed 'works' and are protected by copyright assigned to the University. In practice, if these are works created by you in the course of your studies the Open University would not wish to stand in your way unless both you and the University have collaborated in their commercial development or exploitation in which case you should seek further advice from the OU Intellectual Property Management Office.

It should also be noted that the University makes no claim on any form of intellectual property that has *no connection with University work or facilities*. So if what you developed here is not connected with your University work, then that's yours anyway.

Question 3

I've developed a technical system as part of my PhD work. Now that I'm working for a commercial company, they've asked me to develop a similar system for them. Can I do this? On completion of my PhD, I have developed a system that has commercial potential and been approached by a company wishing to develop a marketable version. What scope do I have? (i.e. could I entertain the idea if my university gets a suitable share of any deal?)

Richard says....

The commercial exploitation of your research is governed by the Open University Policy on Research Intellectual Property Management and Exploitation. You should contact the OU Intellectual Property Management Office with details of any research capable of commercial exploitation. The terms of exploitation and the split of royalty returns between the University and the researcher or department are given in the Policy document. These terms survive the completion of your PhD.

Question 4

I've been asked to write a chapter for a book, based on my working experience before I joined the University. Do I have to assign copyright to my university? Can the university claim IPR on this, for example to demand a share of royalties? Would the situation be different if I were to include knowledge or information collected in the course of my PhD work?

Richard says....

The Open University makes no claim to copyright in "personal research" or other similar academic work, including publication in academic journals or textbooks. Even if you write this commissioned chapter using OU computing equipment or during "working

hours”, copyright in your chapter will be retained by you as the author and royalties entirely a matter for agreement between you and your publisher. (I wouldn’t, by the way, expect royalty income from writing a single chapter. It’s much more likely that you would be offered a (small) one-off fee, or no fee at all.)

Question 5

I’ve a lot of interview data that I collected in my previous work and for my taught Masters dissertation. I obtained interviewees’ consent to use it, but I only mentioned the Masters projects I was working on at the time. Can I use it in my PhD.?

Richard says...

If you specifically mentioned projects you were working on at the time, then permission is probably restricted to those projects and any additional use would require an extension of the original permission.

If your consent form was drafted more widely and did not mention specific projects but instead referred to types or categories of use, then the original consent could stand without any need to extend it. For example, obtaining permission to use contributions “for the purposes of academic research and publication in academic journals and textbooks” covers much more than referring to specific projects by name.

Question 6

I’m working on the final draft of my PhD. thesis. I’ve used a lot of interview data obtained from a large organisation. As a courtesy, and also to correct any factual inaccuracies, I sent a draft copy of the relevant chapter to my ‘gatekeeper’ there, but he sent it to his manager, and he sent it to his manager, and as a result I’ve now had a message back from the organisation to say that I cannot use the quotations. They’ve sent me my draft back, with over half of the quotations deleted, and the rest of the text re-written so that it either says something different or does not make sense at all. I have written consent from the interviewees to use their words and written consent from my gatekeeper to grant me access. Can they stop me from using the data? And can they insist on their changes?

Richard says...

Your approach to the organisation should make it clear that you have already obtained permission for use of your interview materials and that this approach is out of courtesy and for the correction of factual errors.

Your original consent letter should also state that, in signing the consent, the employee warrants that they are in a position to make the consent they grant both on their own behalf and on behalf of their company. Before entering premises and conducting interviews of this kind, you should also obtain a signed consent form from the company stating that you are a) free to enter the premises and conduct the interviews and b) free to

use the interviews for the purposes of your project (and any wider use you may be able to negotiate).

In the circumstances outlined in the question, the Copyright Act permits use of copyright works for the purposes of answering a 'bona fide examination'. This permits you to use quotes without hindrance in submitting your PhD thesis without infringing copyright.

I'm not convinced that the organisation in this example has any control over your work. Do they own copyright in the interviews given by their employees? Probably not. So unless they made it clear before you conducted the interview that they retained this kind of editorial control I should rely on the permissions you have already obtained.

Question 7

I have completed my PhD and moved to take an academic research post at another university. I would like to carry on, and extend my PhD research and further develop ideas, systems, materials etc. for which I have signed copyright over to my original university. Can I do this, and if so what conditions are involved? Would the answer to these questions be different if my future research was private or commercially funded?

Richard says....

You are free to extend and develop ideas and so on providing that you do not use work protected by copyright (works fixed in some form on paper, disk, film and so on) or restricted under confidentiality agreements. Some industries make use of confidentiality agreements to restrict the activities of employees leaving to join rival companies. For example, in the computer games business it is commonplace for contracts of employment to contain confidentiality clauses preventing them from working on similar products for six months after leaving employment.

For the Open University, commercial exploitation of research is subject to the terms set out in the Open University's Policy document, but this does not apply to your making use of your knowledge and experience as distinct from using materials and products.

Question 8

I have had an article accepted by a journal but they are asking me to assign worldwide copyright on the article to them. I am concerned because I would like to use some of the material in a report and conference paper. What should I do?

Richard says....

Many journal publishers use standard contracts that acquire copyright ownership on behalf of the publisher. This is a very convenient way for them to manage their publication rights. However, the copyright owner has exclusive control over all uses of the work, including your own personal use. If a publisher owns copyright in your article then you are unable to make it accessible on your web site, use it at conferences or

reports, photocopy it for distribution in teaching your own students, unless another clause in the contract explicitly gives you the right to perform these, seemingly innocuous acts.

It is best for the author to retain copyright and grant the publisher the right to publish the article in the journal. This allows the publisher to publish and distribute the article in either electronic or print formats as part of the journal only and retains all other rights for the author. This allows you to use the article for your own uses, or to license its publication in other academic collections or to include it in your own future publications.

If you are asked to sign a standard contract that vests copyright in the publisher, strike through the copyright clause and write “*Copyright in the article is retained by the author. First publication rights are granted to the journal.*” Most publishers will accept this without questioning it. If you are challenged, ask the publisher to suggest an alternative wording, but try hard not to give up your ownership of copyright. If you are forced to concede ownership to the journal, then have them draft a clause explicitly addressing your right to re-use your article for the purposes of teaching, research and further publication in your own work.