

3.16: Model Terms and Conditions of Service

Naomi Korn and Professor Charles Oppenheim, March 2009

Context

This resource is based upon the *IPR Toolkit* created by the JISC-funded Web2Rights Project (www.web2rights.org.uk) and adapted for SCA sponsors and other organisations across the public sector. It is intended to form part of a tool kit, which can be further adapted to suit specific requirements and issued to content creators and content users across the public sector who are responsible for rights management and rights clearances. This paper should be read in conjunction with:

- 1.1 Creative Commons Licences – Briefing Paper
- 3.1 Getting Permissions

[Please customise the highlighted sections]

Terms & Conditions of Service

THE AGREEMENT

The following agreement ('this Agreement') describes the terms and conditions on which [Institution] offers you access and use of material found on this website ('the Service'). This offer is conditional on your agreement to all the terms and conditions contained in this Agreement, including your compliance with policies, guidelines and terms linked by way of URLs in this Agreement ('Terms & Conditions of Service').

By using the Service or by exercising any rights provided to parts of it, you accept and agree to be bound by the Terms and Conditions of Service. [Institution] only grants you the rights contained in this Agreement in consideration of your acceptance of the Terms and Conditions of Service.

If you do not agree to the Terms and Conditions of Service you should not use the Service and therefore decline this Agreement, in which case you are prohibited from accessing and/or using the Service. [Institution] may amend this Agreement at any time at its sole discretion, effective upon posting the amended agreement on [insert URL]. No variation or counter offer of this Agreement will be accepted by [Institution].

1. The Service

- 1.1 [include here a basic description of the Service]
- 1.2 You acknowledge that [Institution] is a service provider that may allow people to interact online regarding topics and content chosen by users of the Service, and that users can alter the Service environment on a real-time basis. As part of the nature of the Service, [Institution] does not always or will not always be able to regulate the content/communications created and made available by users of the Service or otherwise. As a result [Institution] has limited control, if any, over the quality, morality, legality, truthfulness or accuracy of various aspects of the Service.
- 1.3 You acknowledge that: (1) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programs, animations, text and other creative output ('Content'); and (2) Content may be provided by [Institution] or by others such as the users of the Service ('Content Providers').
- 1.4 You acknowledge that [Institution] and other Content Providers have rights in their respective Content under copyright and other applicable laws, and that except as described in this Agreement that such rights are not transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from [Institution]. You acknowledge that this Agreement does not assign or transfer ownership, title or interest of the Intellectual Property Rights in the Service to you.

2. Licences and IPR

- 2.1 Subject to the terms of this Agreement, [Institution] hereby grants you a non-exclusive, royalty free and revocable licence to access and use the Service and use the Content in the Service in accordance with the Terms and Conditions of Service for as long as you are in compliance with such Terms and Conditions of Service.
- 2.2 Content owned or licensed to [Institution] as part of the Service can be used by any user of the Service for any such purposes that are conducive to education, teaching, learning, private study and/or research.
- 2.3 Users of the Service can create Content in the Service in various forms. [Institution] acknowledges and agrees that, subject to the Terms and Conditions of Service, you will retain any and all applicable copyright and any other Intellectual Property Rights with respect to any Content you create using the Service, to the extent that you have such rights under applicable law.

- 2.4 Notwithstanding the foregoing, you understand and agree that by submitting your Content to any area of the Service, you automatically grant (and you represent and warrant that you have the right to grant) to **[Institution]**: a non-exclusive, royalty free, perpetual licence to: (a) use, reproduce and communicate your Content within the Service and a right to sub-licence such use to users of the service as long as the Content is used by such user within the Service; and (b) to use and reproduce and to authorise third parties to use and reproduce any of your Content in any or all media for marketing and/or promotional purposes in connection with the Service.
- 2.5 You agree that by submitting your Content to any area of the Service you automatically grant to users of the Service who want to use your Content or parts of it outside the Service a non-exclusive, royalty free, perpetual licence in the form of **[insert link here to user-user licence, such as Creative Commons Licence]**.
- 2.6 You understand and agree that by submitting your Content to any area of the Service you automatically grant (or you warrant that the owner of such Content has expressly granted) to **[Institution]** and to all other users of the Service a non-exclusive, worldwide, royalty free, perpetual licence under any and all patent rights you may have or obtain with respect of your Content, to use your Content for all purposes within the Service.
- 2.7 You agree to use all best efforts to ensure that your Content does not infringe any Intellectual Property Rights of a third party.
- 2.8 You agree that even though you may retain certain copyright or other Intellectual Property Rights with respect of the Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data **[Institution]** stores on **[Institution]** servers submitted by others. Your Intellectual Property Rights do not confer ownership of others' data stored by or on behalf of **[Institution]**.

3. Community Guidelines and Policies

- 3.1 You agree to read and comply with the Community Guidelines and Policies as posted on **[insert URL]**.
- 3.2 In addition to abiding at all times to the Community Guidelines and Policies, you agree that you shall not: (a) take any action of upload post, email or otherwise transmit Content that infringes or violates any third-party rights; (b) impersonate any person or entity without their consent, including but not limited to a **[Institution]** employee, or falsely state or otherwise misrepresent your affiliation with a person or an entity; (c) upload, email or otherwise transmit Content that violates any United Kingdom law or regulation; (d) upload, email or otherwise transmit Content determined by **[Institution]** in its reasonable opinion to be libellous. You agree that **[Institution]** may take whatever steps it deems necessary to abridge, or delete material on the Service in its sole discretion, without notice to you.

4. Releases, Disclaimers of Warranties, Limitation of Liability and Indemnification

- 4.1 As a condition of access to the Service, you release **[Institution]** from claims, demands, damages of every kind and nature, known and unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way connected with any dispute you have or claim to have with one or more users of the Service. You further understand and agree that **[Institution]** will have the rights but not the obligation to resolve disputes between users relating to the Service.
- 4.2 ny Content, or other data residing on **[Institution]**'s servers or the Service may be deleted, altered, moved or transferred at any time for any reason at **[Institution]**'s sole discretion without notice and without liability to you or any third party.

- 4.3 **[Institution]** provides the Service and Content strictly on an 'as is' basis and use of the Service and/or Content is at your own risk. **[Institution]** hereby expressly disclaims all warranties or conditions of any kind to the extent permitted by law, including without limitation any merchantability or fitness for a particular purpose. To the extent permitted by law, **[Institution]** accepts no liability for loss suffered or incurred by the user or any third party as a result of their reliance on the Service and/or Content.
- 4.4 To the extent permitted by law, in no circumstances will **[Institution]** be liable to you or you liable to **[Institution]** for any loss resulting from a cause over which **[Institution]** or you do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems.
- 4.5 In no event shall **[Institution]** be liable to you or to any third party for any special, incidental, consequential, punitive or exemplary damages, including without limitation any damages for loss of profits arising (whether in contract, tort or otherwise) out of or in connection with the Service and or Content. In addition, in no event will **[Institution]**'s cumulative liability to you for direct damages of any kind or nature exceed £50.00.
- 4.6 You agree to defend, indemnify and hold harmless **[Institution]** and users of the Service and Content from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any breach of this Agreement by you, or from your use of the Service. You agree to defend, indemnify and hold harmless **[Institution]** from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any claims by third parties that your activity or Content in the Service infringes upon or violates any of their Intellectual Property or proprietary rights.

5. Privacy

- 5.1 You acknowledge and agree that **[Institution]**, in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service. **[Institution]** may share general, demographic or aggregated information with third parties about **[Institution]**'s user base and Service usage, but that information will not include or be linked to any personal information without consent. **[Institution]** agrees that when exercising these rights, it shall abide by the Data Protection Act, 1998 at all times.

6. Governing Law and Dispute Resolution

- 6.1 This Agreement and the relationship between you and **[Institution]** shall be governed by and construed in accordance with English law. You and **[Institution]** agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.
- 6.2 You and **[Institution]** agree to use best efforts to resolve disputes in an informal manner. Where you and **[Institution]** agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, you and **[Institution]** will agree upon the nature of the expert required and together appoint a suitable expert by agreement.
- 6.3 Any person to whom a reference is made under Clause 6.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.
- 6.4 You and **[Institution]** shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 6.5 The costs of the expert shall be borne by you and **[Institution]** in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by you and **[Institution]** in equal proportions.

7. General Provisions

- 7.1 This Agreement constitutes the entire understanding and agreement between you and **[Institution]** with respect of the subject matter hereof.
- 7.2 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 7.3 The rights granted to you or **[Institution]** arising under this Agreement shall not be waived except in writing. Any waiver of any of your or **[Institution]**'s rights under this Agreement or of any breach of this Agreement by you or **[Institution]** shall not be construed as a waiver of any other rights or of any other or further breach. Failure by you or **[Institution]** to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 7.4 The section headings contained in this Agreement are for convenient purposes only and shall not affect the interpretation of this Agreement.
- 7.5 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.
- 7.6 All or any of **[Institution]**'s rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Service in a merger, acquisition or sale of all or substantially all of **[Institution]**'s assets.

Whilst we hope you find the contents of the SCA IPR Toolkit useful and informative, the contents are for general advice and best practice purposes only and do not constitute legal advice. Although we believe the contents are up to date and accurate as well as a true representation of best practice advice, we can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents in relation to specific situations and particular circumstances. In such circumstances, appropriate professional legal advice should always be sought.

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