

As outlined in [Legal Issues](#) , it is important that copyright and any other intellectual property rights in digital resources to be preserved are clearly identified and access conditions agreed with the depositor and/or rights holders. If the legal ownership of these rights is unclear or excessively fragmented it may be impossible to preserve the materials, or for any users to access them. Rights management should therefore be addressed as part of collection development and accession procedures and be built in to institutional strategies for preservation. The degree of control or scope for negotiation institutions will have over rights will vary but in most cases institutional strategies in this area will help guide operational procedures. It will also be a crucial component of any preservation metadata (see [Metadata and Documentation](#) ) and access arrangements (see [Access](#) ).

### Negotiating rights

As the volume of electronic materials grows and the complexity of rights and number of rights holders in electronic media continues to expand, ad hoc negotiation between preservation agencies and depositors and between rights holders themselves becomes more onerous and less efficient.

Development of model letters for staff clearing rights, model deposit agreements, and model licences and clauses covering preservation related activities help to streamline and simplify such negotiations. Institutions should seek assistance from a legal advisor in drafting such models and providing guidance for staff on implementation or permissible variations in negotiations with rights holders.

A number of institutions have developed models which can be adopted or adapted for specific institutions and requirements. The procedures outlined below are a synthesis of sound practices now being promulgated.

### Recommended procedures

- Use a legal advisor to guide your rights management policy and develop documents.
- Develop model letters for rights clearance, model deposit agreements, model licences and clauses for preservation activities.
  - If you are licensing material from third parties ensure they have addressed future access to subscribed material in the licence and have robust procedures to support this.
  - Prepare reasoned arguments and explanations for your preservation activities. Remember awareness of preservation issues may be low and external stakeholders such as rights holders will need to be convinced of the need and persuaded that their interests will be safeguarded.
- Keep detailed records of rights negotiations.
- Treat licences and rights correspondence as key institutional records to be retained in fireproof and secure environments.
  - Make a schedule clearly identifying a list of materials deposited and covered by the licence. This will ensure that all that is believed to have been sent by the depositor has been received and may form the basis of an acknowledgement of receipt.

### Summary of issues for licences and deposit agreements

The following provides a brief checklist and summary of legal issues listed in [Legal](#) which may need to be considered in relation to licences for preservation or deposit agreements for digital materials. Requirements will differ between institutions, sectors and countries and the list should be adapted to individual requirements. This list does not constitute legal advice and you must seek legal counsel for your specific circumstances.

### IPR and digital preservation

A clause should be drafted to cover the following:

- Permissions needed for content.
- Permissions needed for associated software.
- Permissions needed for copying for the purposes of preservation.
- Permissions needed for future migration of content to new formats for the purposes of preservation.
  - Permissions needed for emulation for the purposes of preservation.
  - Permissions in respect of copyright protection mechanisms.

### **Access**

- Permissions and conditions in respect of access to the material.

### **Statutory and contractual issues**

- Statutory permissions and legal deposit obligations in respect of electronic materials.
- Grant and contractual obligations in respect of electronic materials.
- Conditions, rights and appropriate interests of authors, publishers and other funders.
- Confidential information and protection of the confidentiality of individuals and institutions.
- Protecting the integrity and reputation of data creators or other stakeholders.

### **Investment by the preservation agency**

- IPR in any value added by the preservation agency.
- Withdrawal clauses (and associated fees).

[See Exemplars and Further Reading](#)