

# Open Game License: Frequently Asked Questions

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The questions and answers below refer to sections of the [Open Game License](#). (12k RTF)

### **Q: What is the Open Game License?**

A: The Open Game License (OGL) is a royalty free copyright license developed by Wizards of the Coast.

### **Q: Where can I read the text of the OGL?**

A: You can download the full text of the current version of the [OGL](#) (12k RTF) right here.

### **Q: What are the penalties for violating the terms of the License?**

A: You are potentially liable to three groups of people, for various types of lawsuits.

First, you could be sued by anyone listed in the COPYRIGHT NOTICE section related to any Open Game Content you copied, modified or distributed. Second, you could be sued by anyone who receives Open Game Content from you and relies on you to ensure that your work conforms to the terms of the License who subsequently discovers problems with the Open Game Content they received from you. Third, you could be sued by someone with a copyright or trademark interest in the work you've distributed, even if you did so while relying on a previous publisher's representation that they had followed the terms of the License.

You could be sued for a copyright infringement, you could be sued for misuse of a trademark, you could be sued for breach of contract, and you could be sued for any number of torts related to those three actions.

If you have concerns about the scope of your liability under the Open Game License, you should consult with your legal counsel.

### **Q: Why does Wizards of the Coast hold the copyright to the license?**

A: Wizards of the Coast wrote the License and wants to control the right to make changes to the License in the future.

### **Q: Does Wizards of the Coast's copyright to the License mean that anything I publish using the License is owned by Wizards of the Coast?**

A: No. The copyright on the License pertains to the terms of the License itself, not to materials distributed using the License.

### **Q: How can I distribute the License if Wizards of the Coast owns the copyright to the License?**

A: Wizards of the Coast has granted a free and unrestricted right to distribute exact copies of the License.

### **Q: Can't Wizards of the Coast change the License in a way that I wouldn't like?**

A: Yes, it could. However, the License already defines what will happen to content that has been previously distributed using an earlier version, in Section 9. As a result, even if Wizards made a change you disagreed with, you could continue to use an earlier, acceptable version at

your option. In other words, there's no reason for Wizards to ever make a change that the community of people using the Open Gaming License would object to, because the community would just ignore the change anyway.

**Q: The license is confusing and full of legal terms I don't understand. Is there a "plain English" version?**

A: No, there is not. The License has been drafted with specific legal language to withstand any reasonable court challenge. An effort to simplify the text might introduce errors or omissions that would distort the License and could mislead potential users. You should consult your legal counsel if you have any questions about how to use the OGL.

**Q: What is "Open Game Content"?**

A: Open Game Content is any material that is distributed using the Open Game License clearly identified by the publisher as Open Game Content. Furthermore, any material that is derived from Open Game Content automatically becomes Open Game Content as well.

**Q: What does "clearly identified" mean?**

A: It means that the publisher has a burden to use some system to identify Open Game Content to any recipient of that content. Systems which have been used by some publishers include placing Open Game Content in shaded boxes, using a different font, italicizing or bolding the Open Game Content, and segregating all the Open Game Content into specifically designated chapters or appendixes. Some publishers have released documents that are identified as being comprised completely of Open Game Content.

"Clearly identified" means that the system should pass the "reasonable person" test; meaning that a reasonable person should be able to determine what portions of a given work are Open Game Content, and which portions are not. If you can't figure out what parts of a given work are Open Game Content, provided you exert a reasonable effort to read and apply the instructions for identification provided by the publisher, then the material isn't Clearly Identified.

This also applies to software. A reasonable person should be able to look at a piece of software and find and understand the Open Content. We'll make a slight allowance that they may have to take a little more time to understand some things, but they should be able to see and understand all Open Content. See the Software FAQ for more details.

**Q: What is "an enhancement over the prior art"?**

A: This term means that Open Game Content cannot be something that is in the public domain. The idea of a person using a sword and a shield, for example, is "prior art" - nobody can try to claim that such an idea is Open Game Content. Calling that person "Conan", and providing a detailed description of his physical features, history, manner of speaking, personality, equipment, and actions is an enhancement over the prior art. If something that is prior art appears in material that is clearly identified as Open Game Content, it isn't going to be treated as Open Game Content by the License. If you have questions about whether something identified as Open Game Content should be considered prior art, you should consult your legal counsel.

*Note:* You could take original material that you own and have previously published, and license it with the OGL as Open Game Content, because you still own the copyright to that material and it is not considered to be prior art. Just because something has been published in the past doesn't mean that it is automatically considered to be prior art.

**Q: Is Open Game Content limited to just "the game mechanic"?**

A: No. The definition of Open Game Content also provides for "any additional content clearly identified as Open Game Content." You can use the Open Game License for any kind of material you wish to distribute using the terms of the License, including fiction, artwork, maps, computer software, etc.

Wizards, however, rarely releases Open Content that is not just mechanics.

**Q: What is Product Identity?**

A: Product Identity is material, otherwise clearly identified as Open Game Content, that is excluded from the License terms that apply to Open Game Content. Product Identity usually includes trademarks and other Intellectual Property (characters, settings, etc.)

**Q: How do I identify Product Identity?**

A: Product Identity must be "clearly identified" just like Open Game Content.

**Q: If something is clearly identified as both Open Game Content and Product Identity in the same work, what is it?**

A: Product Identity.

**Q: Can a work be derived from both Open Game Content and Product Identity?**

A: Yes, but since the Open Game License only gives you the right to copy, modify and distribute Open Game Content, unless you had a separate license from whomever owned the Product Identity, you cannot legally copy or distribute a work that contained such material without a separate agreement from the owners of the Product Identity.

**Q: If I identify something as Product Identity that was previously distributed as Open Game Content, does the material become Product Identity?**

A: No. Once content has been distributed as Open Game Content, it cannot become Product Identity, even if you are the original creator of the content.

**Q: If I identify something as Product Identity, then in the future I distribute that material as Open Game Content, does the material become Open Game Content?**

A: Yes. By doing so, you will be relinquishing your claim that the material should be considered Product Identity.

**Q: Say I wanted to publish some material that was formatted as in this example: "Character Name (Stat Block)." How do I keep the Product Identity separate from the Open Game Content?**

A: You could clearly identify the Character Name as Product Identity elsewhere in the work. Assuming that the stat block was derived from other Open Game Content, the stat block must be clearly identified as Open Game Content (it will be Open Game Content even if you don't clearly identify it, but you have the burden to identify such content when you distribute the work).

**Q: In the example above, could I designate all the text as Open Game Content?**

A: Yes.

**Q: But that would mean that anyone else could use Character Name in his or her own material without my permission?**

A: Yes.

**Q: Who is the "Licensee" referred to as "You" by the License?**

A: Any recipient of any material using the Open Game License. In other words, you become a Licensee when you receive Open Game Content, and anyone you distribute that content to (or any derivative works based on that content) also becomes a Licensee. If you want to use the Open Game License in conjunction with some work that is wholly your own original creation, you become a Licensee when you first distribute that work using the OGL.

**Q: What if I distribute material that is Open Game Content, but I don't affix a notice saying that the Open Game Content can only be Used in compliance with the OGL?**

A: You will have breached the terms of the License.

**Q: Why can't any terms be added or subtracted from the License?**

A: This clause ensures that each person that you distribute Open Game Content to will get exactly the same rights that you received when you got the Open Game Content yourself. Note that this clause means you can't restrict others from adapting your Open Game Content, or limit who can distribute Open Game Content, or add any other restrictive term. Likewise, you can't alter the terms of the license to remove sections that you might find objectionable, like the Product Identity definition.

**Q: Does this mean that someone could take Open Game Content I wrote and distributed for free, and then put it in a product and sell that product to someone else?**

A: Yes.

**Q: To be clear: Does this mean that Wizards of the Coast could take Open Game Content I wrote and distributed for free, put it into a Dungeons & Dragons product and make money off it?**

A: Yes.

**Q: And they wouldn't have to ask my permission or pay me a royalty?**

A: No, they would not.

**Q: Isn't that pretty unfair?**

A: If you don't like the terms of the Open Game License, don't publish Open Game Content. Since the terms of the License are public knowledge, and they apply to everyone equally, including commercial publishers like Wizards of the Coast, your decision to use the Open Game License means that you consent to abide by its terms freely and without coercion. That's about as fair as anything ever gets.

**Q: Does Wizards of the Coast get the copyright to my Open Game Content?**

A: No, they do not. When you distribute Open Game Content, you must assert a valid copyright either on your own behalf, or on the behalf of whoever does own the valid copyright on the material. You do so by adding your copyright information to the COPYRIGHT NOTICE section of the License when you distribute the License with your Open Game Content.

Wizards of the Coast has to follow the terms of the Open Game License just like anyone else. That means that if they want to use Open Game Content that isn't something they own outright or have a separate agreement with the copyright holder, they'll have to include a copy of the OGL in the work where they've used Open Game Content, they'll have to clearly identify what content is Open Game Content, and they'll have to preserve the COPYRIGHT

NOTICE section of the OGL you used when you distributed your work originally. You will retain full copyright to your Open Game Content, regardless of who re-distributes it.

**Q: What does "Acceptance" mean?**

A: It means that by Using Open Game Content, you agree to be bound by the terms of the Open Game License. In order for a contract to be valid and enforceable, there must be an Offer (in this case, the terms of the License), Acceptance (in this case, your agreement to be bound by the terms of the License), and Consideration (in this case, the right to Use Open Game Content).

**Q: What if I clearly identify something as Open Game Content but I don't own the copyright to that material or have the permission of the copyright owner to do so?**

A: You will have breached Section 5, since you don't have Authority to Contribute. As a result, the material you clearly identified as Open Game Content does not become Open Game Content. The legal consequences of doing so could be quite dire. You should consult with your legal counsel to be sure that you have the Authority to Contribute anything you intend to distribute as Open Game Content.

**Q: What is the COPYRIGHT NOTICE?**

A: The COPYRIGHT NOTICE is a specific part of the License itself, as opposed to a general copyright notice that might appear elsewhere in a given work. The License requires that you combine all the COPYRIGHT NOTICE sections of each Open Game License you are extracting or deriving Open Game Content from, and include the consolidated notice with the copy of the Open Game License you will be distributing.

This mechanism is the way that proper credit is retained for each person who contributed some work to the Open Gaming community. No matter how small the contribution, each and every COPYRIGHT NOTICE propagates forward.

**Q: Why can't I indicate compatibility with a Trademark or a Registered Trademark?**

A: The Open Game License expands the control a Trademark owner has over your ability to use that Trademark beyond the restrictions normally allowed by trademark law. The explicit reason this clause is included in the Open Game License is to stop people from saying that their Open Game Content is compatible with **Dungeons & Dragons**, or any other Wizards of the Coast game, without getting permission from Wizards of the Coast first. Of course, the clause is generic, so you can't indicate compatibility with any other company's trademarks either unless you get their permission first.

**Q: Doesn't this conflict with the definition of an Open Game?**

A: No, it does not. You are not restricted from freely copying, modifying or distributing the Open Game Content itself. Your freedom to Use the Open Game Content is not restricted, except to the extent that you cannot indicate compatibility or co-adaptability with someone else's Trademark or Registered Trademark.

The rationale behind this clause is related to the value of the material covered by the Open Game License. Companies (and individuals) spend a lot of time and effort to create and establish Trademarks that others recognize in the marketplace. By restricting your right to indicate compatibility or co-adaptability with other people's Trademarks, the License recognizes that the value of those Trademarks is separate from the value of the Open Game Content itself. If you want to tap into the value represented by a given Trademark, you will need to negotiate a separate agreement with the Trademark holder for that privilege.

**Q: My understanding of Trademark law is that it is legal for me to indicate compatibility or co-adaptability with a Trademark so long as I don't dilute the mark,**

**confuse consumers about the ownership of the mark, or attempt to claim ownership of the mark. How can the OGL stop me from using a Trademark in a way that is otherwise completely legal?**

A: The terms of the Open Game License supercede the terms of general Trademark law. By agreeing to accept the Open Game License, gaining the benefit of the consideration of being able to use Open Game Content under the terms of the OGL, you limit certain other rights that you might otherwise have.

**Q: What happens if I go ahead and indicate compatibility or co-adaptability with a Trademark I don't have permission to use?**

A: You will be in breach of the Open Game License. You might also find yourself being sued by the owner of the trademark in question, under regular trademark law. If you have any question about your ability to use a Trademark owned by someone else, you should consult your legal counsel.

**Q: I want to make a product that claims compatibility with someone else's Trademark, and uses Open Game Content. I'm going to put the Open Game Content in a separate booklet in a box, and only use the Trademark on the packaging on the box. Can I get away with this?**

A: No. The terms of the Open Game License extend to the whole work. If you have questions about the technical legal definition of a "work", consult your legal counsel.

**Q: Do I really have to include a copy of the whole license when I distribute Open Game Content?**

A: Yes, you do.

**Q: Can I include one copy of the license in a work with many separate portions that are Open Game Content?**

A: Yes, so long as the copy of the License you include contains a complete and full list of all the COPYRIGHT NOTICE sections from all the source material.

**Q: What if I'm writing an email message or using a very small amount of Open Game Content?**

A: Technically, you are still required to include a copy of the License text. In the real world however, you are unlikely to be sued by someone over the use of Open Game Content in an email message or other trivial use if you fail to do so.

**Q: I want to create a website that contains many different pages with Open Game Content. Do I have to include a copy of the License on every page?**

A: It will be sufficient to include a link on every page containing Open Game Content to one centralized copy of the License.

**Q: I want to distribute computer software using the OGL. Is that possible?**

A: Yes, it's certainly possible. The most significant thing that will impact your effort is that you have to give all the recipients the right to extract and use any Open Game Content you've included in your application, and you have to clearly identify what part of the software is Open Game Content.

One way is to design your application so that all the Open Game Content resides in files that are human-readable (that is, in a format that can be opened and understood by a reasonable

person). Another is to have all the data used by the program viewable somehow while the program runs.

Distributing the source code not an acceptable method of compliance. First off, most programming languages are not easy to understand if the user hasn't studied the language. Second, the source code is a separate entity from the executable file. The user must have access to the actual Open Content used.

See the Software FAQ for more information.

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