



A (tour) Guide to Using the Online IPR Consulting Kit

Introduction

Are you a cultural entrepreneur who would like to re-use digital cultural heritage content for commercial purposes? Then this document is for you! It discusses all the relevant issues around Intellectual Property and cultural heritage, and offers a clear and concise guide to navigate and reflect on the [Online IPR Consulting Kit](#), as developed during the E-Space project. Topics include valuing intellectual property, accessing re-usable content, clearing copyright, labelling and attributing content, understanding licensing, taking re-use ethics into account, and carrying out risk assessments in a start-up business. The contents of this document were originally delivered as part of a Massive Open Online Course (MOOC) Europeana Space: Creative with Digital Heritage MOOC.

The Online IPR Consulting Kit includes the following tools (which you can access directly by clicking on them):

- | | |
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| 1. Valuing your IP—a tool for entrepreneurs | 10. Software Open Source Licence Chooser |
| 2. Creative Commons, a Guide to Proper Attribution | 11. Licensing Factsheet |
| 3. Rights clearance guidelines | 12. Risk Management: NTD Policy and Clauses |
| 4. Glossary of Frequently Used Terms | 13. New Rules on Orphan Works |
| 5. Basic IP Definitions | 14. New Rules on Public Sector Information |
| 6. Frequently Asked Questions for Hackathon Organisers | 15. Twelve Point Code of Ethics for the Sourcing and Use of Digital Cultural Content |
| 7. Frequently Asked Questions for Hackathon Attendees | 16. HackPack Creation Tool |
| 8. Internet resources | |
| 9. CC Licence Chooser | |

This guide explains most of these tools, arranged according to the five most important 'things to know' in terms of copyright. Each section includes practical exercises and reflective questions so you can tailor it to your own business: Valuing your IP (Tool 1); Rights Clearance (Tools 3, 15); Licensing (Factsheet) (Tools 11, 9, 2, 10); Risk Management: Notice and Take Down (Tool 12); Authorship and Ownership of Copyright: avoiding pitfalls (Tools 6, 7).

Before we start with the main contents however, we will provide some general background regarding the E-Space project, and an introduction to IP for the Cultural Entrepreneur.


1. Background to the Europeana Space project

The objective of Europeana Space (E-Space) is to increase and enhance the creative industries' use of Europeana and other online collections of digital cultural content, by delivering a range of resources to support their engagement. The use of digital cultural heritage by the creative industries is still limited by factors including issues around the IPR status of content and the need for business models demonstrating the potential for exploitation of available content. In addressing these problems **Europeana Space brings together high-level key expertise from the European creative industries, technology-based enterprises, the cultural heritage sector and higher education.**


Europeana Space addresses all sectors of the creative industries, from content providers to producers, exhibitors, artists and makers of cultural/creative content, publishers, broadcasters, telecoms and distributors of digital content. Its impact will be a significantly increased use of Europeana and **new opportunities for employment and economic growth** within the creative industries through continuing development of innovative applications and services based on Europe's rich digital cultural resources.

The project website can be accessed here: <http://www.europeana-space.eu>, while the project blog 'digital meets culture' is here: <http://www.digitalmeetsculture.net/projects/europeana-space/>.

Six themed pilots have been defined within the project and present innovative models of content use: **Photography, Open and Hybrid Publishing, TV, Dance, Museums and Games**. You can find out more on each of the pilots on the project's website under 'Pilots and Demonstrators': <http://www.europeana-space.eu/pilots-and-demostrators/>. If you are interested in the specific IP issues within the pilots, please go to: <http://www.europeana-space.eu/content-space/copyright-tools-for-cultural-heritage/e-space-case-studies/>.



Europeana Space, Best Practice Network
Spaces of possibility for the creative reuse of digital cultural content



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Project Overview

this page is available in: [Czech](#), [Lithuanian](#), [Spanish](#), [Estonian](#), [German](#), [Dutch](#), [Italian](#), [Greek](#), [Portuguese](#)

The aim of the Europeana Space project is to create **new opportunities for employment and economic growth within the creative industries sector** based on Europe's rich digital cultural resources. It will provide an open environment for the development of applications and services based on digital cultural content. The use of this environment will be fostered by a vigorous, wide-ranging and sustainable programme of **promotion, dissemination and replication of the Best Practices** developed within the project. The extensive **resources and networks** of the Europeana Space consortium will be drawn on to ensure the success of the project.

Blog

Pilots

Pop-Up Museum

Download

Digital Stage

2. IP for the Cultural Entrepreneur

This [introductory Scribble video](#) describes the importance of thinking about IP when considering re-use, and especially the *commercial* re-use, of digital cultural content. The text box below provides a verbatim transcription of the video:

Scribble Video Transcription

Copyright automatically protects anything that is written or drawn, so long as it is the author's own intellectual creation. It is because so many creative works are protected by copyright that when we think about making money from them, it is essential to think about copyright from the start. Otherwise, it may prove impossible to commercialise creative works, including digital cultural heritage, because ownership cannot be determined or permissions cannot be obtained for re-use.

When Kate decided to start a clothing business using digital images of heritage objects in her designs, it proved very difficult to find complete, high resolution images that were accompanied by enough information about ownership and licensing for her to determine whether she could re-use them, and in what ways, and to whom she would have to go to seek permissions where necessary. In the end the process of determining and clearing rights on existing images proved so time consuming and costly for Kate's fledgling business that she chose to work with an illustrator on original designs instead.

To address problems like those Kate encountered, the Europeana Space (or E-Space) project, a best practice network of partners from the culture sector, higher education and creative industries, sought to demonstrate how successful business models can be based on the re-use of digital cultural content when copyright is properly managed from the start. This requires content providers such as museums, galleries, libraries and archives to fully and correctly label their digitised content in a standardised format, and to make it more easily accessible. It also requires entrepreneurs and creative companies to follow best practices of rights clearance and re-use.

Project Website: <http://www.europeana-space.eu>

Project Blog: <http://www.digitalmeetsculture.net/projects/europeana-space/>

The E-Space Intellectual Property Team have produced a wide range of tools and resources for accessing re-usable content, clearing copyright, labelling and attributing content, understanding licensing, taking re-use ethics into account, valuing intellectual property, and carrying out risk assessments in a start-up business. These resources can be found in the Content Space of the E-Space website under "Copyright Tools for Cultural Heritage", where they are available in an easy to use, downloadable format. Tools to help with IP strategies for hackathons and business modelling can also be found here in the IPR Toolkit.

Navigate to the E-Space Content Space using the drop down menu under the Outcomes heading in the menu at the top of the E-Space project landing page, or click on the direct link below: <http://www.europeana-space.eu/content-space/>. Here you can click on the Copyright Tools for Cultural Heritage from where you can access the IPR Toolkit: <http://www.europeana-space.eu/content-space/ipr-toolkit/> and the other key resources for this course.

From the Content Space you can also access the project's own repository. Here you can find rights-labelled and thematic collections of high quality digital cultural heritage content from E-Space content providers which are either free to use, or for which re-use permissions can be easily sought.

E-Space Technical Space direct link: <http://www.europeana-space.eu/with/>

Also in the Content Space, are case studies based on the six thematic areas explored in the E-Space project: dance, open and hybrid publishing, TV, photography, museums and games. The case studies outline the lessons learnt from approaches to IP during the six thematic pilots, hackathons, business modelling workshops and the incubation process that followed with the winning teams.

These resources are intended for use by aspiring entrepreneurs and content providers but they also provide excellent learning materials for students. We hope they will help you to start up your business, open up your content for re-use, enter into new collaborations and learn more about the challenges of cultural entrepreneurship and how to overcome them.

If you are looking for some amazing content to use, please visit the following spaces:

- [Open Content Exchange Platform](#)
- [Content Space](#)
- [E-Space Portal](#) (this is a repository with many open content sources)



3. Valuing your IP

The first tool in the E-Space IPR Toolkit, *Valuing your IP – a tool for entrepreneurs*, describes five different kinds of IP:

1. Patent: protects new inventions and cover how products work, what they do, how they do it, what they are made of and how they are made.
2. Trade marks: can be made up of words, logos or a combination of both, an aspect of packaging and can even be sound or action based, or a shape or colour and might be used in connection with goods or services.
3. Design: protects the overall visual appearance of a product.
4. Copyright: protects books, art, music, websites, photographs, software, databases, films and print, radio and television broadcasts and promotional material. It protects the expression of but not the idea behind a work (for example the text in a manual but not the ideas conveyed in it), and gives the owner of a creative work the right to exclusively control and exploit its use.
5. Trade secrets: protects confidential information so long as it has the quality of confidence and is not in the public domain.

This tool furthermore explains why IP matters so much, and introduces you to the first step in managing your IP, the IP audit. You can access the full document by clicking [here](#). It also includes a [link to a government portal](#) for a detailed guide to presenting the security and financial worth of your IP when seeking finance and to help banks recognise the value of IP in your business.

Other useful reference materials can be found here:

- [The Glossary of Frequently Used Terms](#) (Tool 4)
- [Basic IP Definitions](#) (Tool 5)
- [Internet Resources](#) (Tool 8)

Exercise 1

Have a look at the websites of each of the companies outlined below. Identify what sorts of IP you think they own. Select the type of IP they own to the company. Choosing from the five types of IP (patents; trade marks; design; copyright; trade secrets) can you identify which company assets are connected with which type of IP? For each organisation there are at least two correct answers.

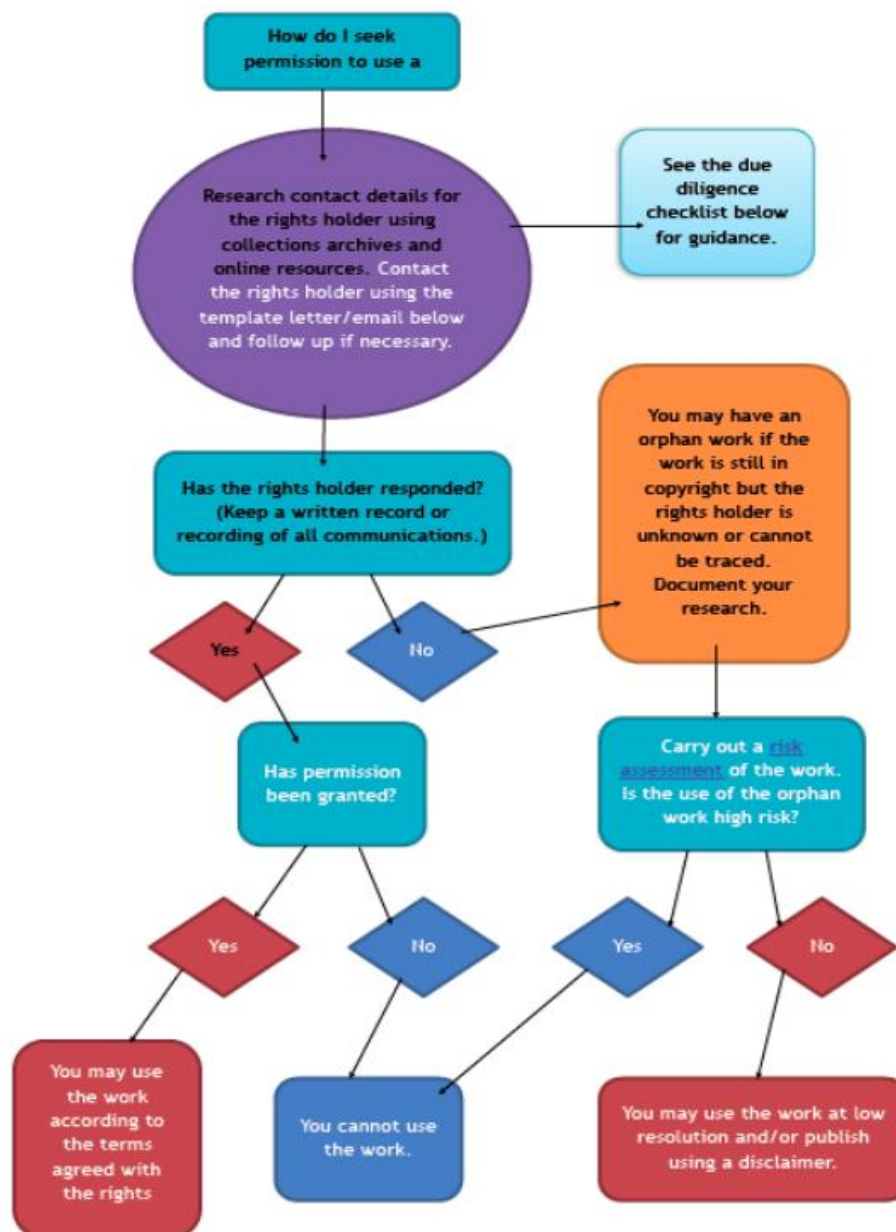
1. Smith Kline
2. Coca Cola
3. British Museum
4. Dyson
5. Tate Modern
6. National Theatre

4. Rights Clearance

It is important to seek permission for using works if they are protected by copyright. There are various exceptions such as when the author died 50-70 years ago (depending on country) which is when the work will fall in to the public domain; you or your organisation own the copyright and so you can use it as you wish; or if you are going to use part of the work for specific purposes such as non-commercial research and private study when the use may fall under an exception or limitation to copyright law.

Please familiarise yourself with the [Rights Clearance Guidelines](#) (IPR Tool 3) and the [Twelve Point Code of Ethics for the Sourcing and Use of Digital Cultural Content](#) (IPR Tool 15).

If you are looking for open content, here is also the link again to the [Open Content Exchange Platform](#).



Rights Clearance



Exercise 2

Reflect on IP that you identified in the previous section under your business audit. If the work you wish to use is indeed protected by copyright, how should you clear rights on this? Choose two correct answers from the options below:

1. Don't do anything specific, but carefully mention where you have found it
2. Check to see if there is a licence associated with the work and use it in accordance with the terms of the licence
3. Actively seek permission to use it

Exercise 3

In order to seek permission, you can:

1. Send a letter to the copyright owner to ask permission. True/False
2. Go ahead without permission if you have contacted the owner but they have not (yet) replied. True/False
3. Check the due diligence checklist for guidance. True/False
4. Carefully file any correspondence with rights holders and/or document your research if you cannot trace the rights holder. True/False
5. Use a lesser resolution of the image you want to use because you have no time to seek permission. True/False
6. Carry out a risk assessment if you cannot find the rights holder. True/False



5.1 Licensing Factsheet

As you read in the *Valuing your IP* tool discussed in the previous session, “Copyright protects books, art, music, websites, photographs, software, databases, films and print, radio and television broadcasts and promotional material. It protects the expression of but not the idea behind a work (for example the text in a manual but not the ideas conveyed in it), and gives the owner of a creative work the right to exclusively control and exploit its use.” Licensing agreements cover the use of content in detailed clauses concerning dates, descriptions, reach and so on. To learn about this, please explore the [Licensing Factsheet](#) (IPR Tool 1).

Exercise 4

Find the copyright clauses in the licences associated with the following websites:

- [Facebook](#)
- [Spotify](#)
- [BBC](#)
- [Rijksmuseum](#)

Please reflect on the following questions:

1. What sort of copyright licence do you grant to Facebook for the use of your content?
2. What sort of use are you able to make of the content that you can access via Spotify?
3. What sort of copyright licence do you grant to the BBC if you contribute content to the site? What use can you make of BBC copyright protected content?
4. What are the terms and conditions for copying images of cultural heritage artefacts found in the Rijksstudio?

Overall, how easy is it to find these terms and conditions? How easy are these terms and conditions associated with third party content to understand? Do you think they are fair? What do they aim to achieve? What sorts of terms and conditions will you use with the works protected by copyright that you create?

5.2 Creative Commons Licence Chooser

In your business you can use a Creative Commons License to license your own work to third parties – sometimes referred to as ‘licensing out’ IP. You can also choose to use third party works in your business which are made available under a Creative Commons license – sometimes referred to as ‘licensing in’ IP.

This section invites you to think about using Creative Commons licenses in connection with licensing your work to third parties, reflecting on what the terms of use actually mean.

A ‘Creative Commons license’ allows you to easily license a particular work according to a predefined set of terms. They consist of various elements that define to what extent and under what conditions a work can be reproduced/used. Please have a look at the [CC Licence Chooser](#) (Tool 9).

You also might like to check the open sources again, referred to at the [Open Content Exchange Platform](#).

The screenshot displays the Creative Commons License Chooser interface, which is divided into four main panels. The top-left panel, titled 'License Features', contains two sections: 'Allow adaptations of your work to be shared?' with radio buttons for 'Yes' (selected), 'No', and 'Yes, as long as others share alike'; and 'Allow commercial uses of your work?' with radio buttons for 'Yes' (selected) and 'No'. The top-right panel, titled 'Selected License', shows 'Attribution 4.0 International' with the CC and BY icons, the text 'This is a Free Culture License!', and a 'Free Culture Approved for Works' seal. The bottom-left panel, titled 'Help others attribute you!', includes input fields for 'Title of work', 'Attribute work to name', 'Attribute work to URL', 'Source work URL', and 'More permissions URL', along with dropdown menus for 'Format of work' (set to 'Other / Multiple formats') and 'License mark' (set to 'HTML+RDFa'). The bottom-right panel, titled 'Have a web page?', shows the CC BY icon, the text 'This work is licensed under a Creative Commons Attribution 4.0 International License.', and a section for copying code to let visitors know, with radio buttons for 'Normal Icon' (selected) and 'Compact Icon'.

License Chooser



Exercise 5

Please answer True or False:

1. The Selection Tool at <http://creativecommons.org/choose/> can help you to choose the right license for your purpose. True/False
2. If a work is dedicated to the Public Domain, you still need to give it proper attribution. True/False
3. All material on the Open Content Platform is free to use without any restrictions or conditions. True/False
4. The ShareAlike license element does not allow for commercial use. True/False
5. The No Derivative Works licence allows you to build on works created by others. True/False

Exercise 6

Reflect on the reasons for 'developing and using your own IP in your business' and 'acquiring the right to licence IP from others to use in your business'. Which ones are important for your business and why? If you are 'licensing in' IP, which Creative Commons licenses would you **not** be able to use and why?

5.3 Attribution

If you were interested in re-using an existing picture, there are requirements to acknowledge the creator of the work. This is called 'attribution', and can include title, creator, year, licence number, memory institution, digitisation project if applicable. The most important of these is the creator. To learn how to attribute respectfully, please click familiarise yourself with the [Creative Commons, a Guide to Proper Attribution](#) (Tool 2).



L'elephant de Xiang by Xiang Shi courtesy of Frissiras Museum and Digitising Contemporary Art is licensed under CC-BY-NC-SA 4.0. Go to <http://creativecommons.org/licenses/by-nc-sa/4.0/legalcode> to read the full licence text.



Attribution

Exercise 7

a) Why is proper attribution important?

1. It is a moral obligation/best practice to honour the author and/or owner of the work
2. It allows you to make a gift aid donation
3. It shows you have contacted the owner of the work.

b) What could be the consequences if you fail to properly attribute another's work?

- Loss of reputation
- Loss of income
- Potentially being sued

5.4 Software Open Source Licence Chooser

To complete this subsection on Licensing, have a look at [Software Open Source Licence Chooser](#) (Tool 10).

Choosing an OSS license doesn't need to be scary

Which of the following best describes your situation?

I want it simple and permissive.

The **MIT License** is a permissive license that is short and to the point. It lets people do anything they want with your code as long as they provide attribution back to you and don't hold you liable.

jQuery and Rails use the MIT License.

I'm concerned about patents.

The **Apache License** is a permissive license similar to the MIT License, but also provides an express grant of patent rights from contributors to users.

Apache, SVN, and NuGet use the Apache License.

I care about sharing improvements.

The **GPL (V2 or V3)** is a copyleft license that requires anyone who distributes your code or a derivative work to make the source available under the same terms. V3 is similar to V2, but further restricts use in hardware that forbids software alterations.

Linux, Git, and WordPress use the GPL.

Open Source Licence Chooser

Exercise 8

To experiment with this material, please develop a short literary work, draw a picture or sing and record a song. Choose your Creative Commons License for use in connection with making the work available to third parties and think about why you have chosen the one that you have.



6. Risk Management: Notice and Take down (NTD) Policies and Clauses

Very often an organisation will make works available on a website in which the copyright belongs to a third party. Think back to the examples that you looked at of the BBC and Facebook. Sometimes these works might be subject to third party copyright, but permission might not have been obtained from the owner to make the works available. In these circumstances the law will sometimes find the owner of the website liable for copyright infringement. In order to protect itself and to mitigate risk, an organisation should decide on a risk management strategy when making works available on their websites.

Please click here to read about [Risk Management](#) (Tool 12).

Exercise 9

Please answer True or False:

1. Any online website/portal that displays information should have a 'Notice and Take Down (NTD) Policy' even if the organisation puts up its own content and/or makes available content provided by third parties. True/False
2. Adopting a 'Notice and Take Down (NTD) Policy' is recommended for avoiding grey areas in which copyright owners cannot be found, exhaustive searches are too costly, or there is little clarity regarding whether a particular work is in the public domain or not. True/False

Exercise 10

Reflect the following questions:

1. Look at the NTD policy of Facebook.com at <https://www.facebook.com/help/400287850027717/>. Note the law that applies to the policy. Why does Facebook need this policy? Do you think that policy is clear for the user?
2. Reflecting on your own business, is a notice and takedown policy relevant for you? Why (not)?
3. Design an NTD notice for your business.
4. Consider if your business needs to take out insurance against being sued for infringement. Identify providers that would be able to provide you with cover. What risks to they allow you to insure against?

7. Authorship and ownership of copyright: avoiding pitfalls


The E-Space project organised themed hackathons for each of the six pilots: Dance, Games, Open and Hybrid Publishing, TV, Photography and Museums. These events were open to developers, individual makers/producers and creative SMEs. The aim was to invite and encourage “new, innovative and fresh applications, services and creative models of digital content re-use” (quote derived from <http://www.europeana-space.eu/hackathons-home/>) and to choose three projects to participate in a Business Modelling Workshop to develop their product and its business potential. IP played an important role within these Hackathons, and interesting issues came up.

If you are interested in organising or attending a hackathon event, please visit [Frequently Asked Questions for Hackathon Organisers](#) (Tool 6) and [Frequently Asked Questions for Hackathon Attendees](#) (Tool 7).



Hackathon

You can also read about IP issues in individual case studies, accessible through [this link](#).



At the foundation of these complicated issues are two basic questions, regarding authorship and ownership of copyright.

Who is the *author* of copyright?

In many jurisdictions the author of the copyright in a literary, dramatic, musical or artistic work is the person who creates it: in other words, the person who invests her own personal touch in the work and whose intellectual creation it is. The author of a film is the principal director and producer. The author of a sound recording is the record producer and the broadcaster is the author of a broadcast (in the UK).

Who is the *owner* of copyright?

In general the first owner of the copyright of the work is its author. In some jurisdictions such as the UK when an employee makes a work in the course of her employment, the employer is the first owner of copyright even though the employee has actually created it. In other jurisdictions, such as Germany, corporate ownership of copyright is not possible, emphasising the link between works protected by copyright and the personality of the author.

It is essential to identify both the author and owner of the work. The owner has the exclusive rights to exploit the work through licensing or (in some jurisdictions) assignation (outright transfer of the copyright in the work), whereas the author (normally) has the right to be identified as the author of the work.

Exercise 11

Please reflect on the following questions:

1. What is the purpose of the [Frequently Asked Questions for Hackathon Organisers](#) (Tool 6) and [Frequently Asked Questions for Hackathon Attendees](#) (Tool 7) in terms of copyright ownership during the course of the hackathon?
2. Now, have a look at the [Photography Pilot](#) and see where it went wrong. What would you have done differently to ensure that you did not find yourself in this position?

To conclude

Three tools from the [Online IPR Consulting Kit](#) we have not covered in this document. These provide additional, in-depth and background information on the following topics:

- [New Rules on Orphan Works](#) (Tool 13)
- [New Rules on Public Sector Information](#) (Tool 14)
- [HackPack Creation Tool](#) (Tool 16)

Please feel free to have a look.

We hope that this guide has been useful to you and that you enjoy getting creative with cultural heritage in a well-informed way.



Answers to the exercises

Exercise 1

1. Smith Kline: patents; trade marks; copyright; trade secrets
2. Coca Cola: trade marks; trade secrets; copyright; design rights
3. British Museum: copyright; trade marks
4. Dyson: design rights; patents; trade marks; copyright
5. Tate Modern: copyright; trade marks; design rights
6. National Theatre: copyright; (performance rights) trade marks; design rights

Exercise 2:

Options 2 and 3.

Exercise 3:

1) True. 2) False. 3) True. 4) True. 5) False. 6) True.

Exercise 5:

1) True. 2) False. 3) False. 4) False. 5) False.

Exercise 7:

a) Option 1. b) Option 3.

Exercise 9:

1) True. 2) True.