

SCRIPT: OPEN GAMING LICENSE

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#What the heck is an Open Gaming License?

And why should you care?

#The Open Gaming License, or OGL, is what lets people sell D&D-compatible adventures and supplements without getting Hasbro's specific permission to do so.

So if you're someone making D&D-compatible stuff, you should probably care about the OGL quite a bit, since it's one of only two ways to do that. (The other being the Dungeon Masters Guild, which we'll talk about later.)

But most of you watching this probably aren't trying to sell D&D-compatible stuff. You're probably just trying to run and play in your Saturday night sessions. So why should you care?

Well, probably because a lot of the stuff you love and use in your games has been produced using the OGL. And if it isn't, then there's a ton of really amazing stuff out there that you should really check out.

For example, maybe you're a fan of Critical Role. If so, you may be familiar with the Tal'Dorei campaign setting book. They were only able to publish that because of the OGL.

Or maybe you've played Adventures in Middle Earth, the 5th Edition compatible Lord of the Rings roleplaying game. Again, OGL.

Maybe you're a fan of my work, in which case you might be familiar with the adventures I've published with Fantasy Flight Games, Atlas Games, and others. Again, none of these would exist without the OGL. There's a lot of content on my website, the Alexandrian, that wouldn't exist without the OGL.

Okay, so the OGL makes cool stuff possible. So where does it come from? How does it work? Why is everyone screaming and yelling about it?

Well, the OGL has been around for about twenty years now. It was first released in 2000. But to really understand its roots, we have to go back a few years before it existed.

In 1997, a company called Tactical Studies Rules – TSR, Inc. – was going bankrupt. There were a lot of complicated reasons for this, and we're not going to dive into it here. But this was significant because TSR was the original publisher and still owner of Dungeons & Dragons. The thing to understand is that D&D was in real jeopardy here: TSR's assets were going to be hacked up and its parts divvied out among its many, many creditors.

It was very possible that someone would end up owning D&D who had no interest in publishing a tabletop roleplaying game: They'd exploit the IP for novels, video games, TV shows, or whatever, but they wouldn't necessarily publish an RPG. D&D as we know it would be dead.

Fortunately, a company called Wizards of the Coast had published a little indie card game called Magic the Gathering a few years earlier. You may have heard of it. They used the money they'd gained from Magic to purchase TSR outright. D&D was now in the hands of people who loved the roleplaying game. D&D was saved.

Now at this point a couple things happen pretty fast: First, Wizards of the Coast begins developing the third edition of Dungeons & Dragons. Second, in 1999, just a couple years later, Wizards itself is bought out by Hasbro, a huge toy and game conglomerate.

A year later, in 2000, the 3rd Edition of D&D is released. And a major pillar of its marketing campaign is the Open Gaming License: Anyone could publish third-party supplements that were compatible with the official version of D&D.

And they did: When the Player's Handbook was released at Gen Con in the summer of 2000, two compatible modules were immediately available the same day. Atlas Games' Three Days to Kill by John Tynes and Green Ronin's Death in Freeport by Chris Pramas.

The OGL can actually apply to a lot of different types of products, but to keep things simple we're just going to talk in terms of RPG supplements published as books.

There are three key things to understand about the OGL.

First, not everything in a book published under the OGL is free to use with the license. Instead, the publisher must explicitly declare what content in the book is Open Game Content. This is material that other people can use in their own OGL books. The only requirement is that any open game content you use from someone else MUST be declared as open content and credited in the copyright section of the copy of the OGL you print in your book.

Second, the publisher of an OGL book can also choose to declare Product Identity. This might be trademarks or character names or artwork. There's lots of stuff that can be Product Identity. The key thing is that Product Identity can never be open game content, even if the declaration of open game content would otherwise apply.

This provides a safety net that makes it easy for publishers to avoid accidentally opening their trademarks or other IP. For example, if they declare that "trugglewomps" are product identity and they declare that "everything in Chapter 2 is open content," then trugglewomps won't be open content even if they appear in Chapter 2.

This is good because it will encourage publishers to use the OGL, since they won't have to worry about accidentally voiding their IP rights. It's also good because it encourages liberal and clear declarations of open game content.

If product identity didn't exist, for example, a publisher might only declare very small parts of Chapter 2 open content, to make sure they didn't accidentally put trugglewomps on the open market.

The third thing to understand is that the D&D core rulebooks were NOT released under the OGL.

Instead, Wizards of the Coast copied SOME of the rules and lore from the core rulebooks into a digital file called the System Reference Document. It was this System Reference Document — or SRD — that was released under the OGL, and thus made available to other publishers using the OGL.

The final thing to know is that the OGL is unrevocable. Once you release open game content under the OGL, it will ALWAYS be open game content. There's no Undo button. Not even for Hasbro.

So why did Wizards do this?

Well, they had two goals.

First, Ryan Dancey — who was in charge of D&D at the time and schemed up the OGL — believed that Wizards needed to be publishing a lot fewer supplements and adventures for D&D. He'd seen TSR's books and he believed flooding the market with D&D books had been a major factor in the company's failure.

There were certain core titles — including the core rulebooks — which were far and away the most profitable books TSR published. Dancey believed Wizards should focus on producing those books. The most profitable ones. He called them evergreen titles.

But he also knew that supplement support was important for an RPG to thrive. The Open Gaming License would get other publishers – publishers who didn't have the huge overhead of Wizards and would be much more successful in turning profits on smaller print runs – to provide a constant flow of adventures and other support material for D&D.

That support material would make more people interested in buying and playing D&D. And this, in turn, would grow the network externality of D&D.

I'm not going to dive into network externality at length, but the short version is that the more people there are playing D&D, the more likely it is that someone looking to play a roleplaying game will find a group playing D&D. That will make it more likely that they become a D&D player, which increases the number of D&D players, and therefore increases the likelihood that the NEXT player will ALSO become a D&D player.

Dancey's argument, in short, is that D&D's biggest strength is that it's the roleplaying game you're most likely to find when you go looking for a roleplaying game, and the open gaming license was designed to make that even more true.

Second, the OGL meant that D&D would never again be at risk of being killed due to corporate malfeasance. Remember that just a couple years earlier D&D had almost died as a result of TSR's bankruptcy, and now it was owned by Hasbro, who could decide at any time that they weren't interested in publishing a tabletop roleplaying game.

But the OGL has no Undo button. Once the rules of D&D were placed under the OGL, it could never truly be taken out of print by the actions of a single corporation.

In addition to the OGL, Wizards also released the D20 System Trademark License. Basically, they wanted a method by which third-party publishers could indicate their compatibility with D&D, but they didn't want to let them use the D&D trademark. So they created a new "D20 System" trademark, including logo, and let the publishers use that.

The D20 System Trademark License required publishers to use the OGL, but it added a number of restrictions. For example, books published under the D20 System Trademark License couldn't include any rules for character creation.

The most notable of these restrictions, however, was the D20 System Trademark License could be unilaterally canceled by Wizards of the Coast at any time, after which publishers would have to stop selling any books that used the D20 System trademark.

#Spoilers: This will be significant later.

The OGL ended up being more successful than anyone could have imagined. Dozens of companies began publishing third-party support for D&D. Entirely new companies were founded, many of which have become major players in the RPG industry. And for players and DMs there was an unprecedented wealth of amazing material – new adventures, new classes, new settings.

All of this fueled a D&D renaissance.

But not everything was going according to plan.

First, Dancey's evergreen books – like the Epic Level Handbook and the Psionics Handbook – weren't selling the way he had hoped they would.

Second, the thing about a plan to design and publish fewer books is that you can downsize the design department. And the design department at Wizards of the Coast had some strong opinions about that.

Third, competition between third-party publishers was driving a radical improvement in production values. Wizards of the Coast was still making the softcover, black-and-white books they'd always been publishing. OGL publishers, on the other hand, were producing full color books in hardcover. Wizards' books, which should have been premiere products, instead looked cheap and second rate.

By 2003, leadership at Wizards of the Coast was also changing. Most of the designers of 3rd Edition were gone, and Dancey had also left the company. The new leadership was, at best, skeptical of the OGL. According to many accounts, they were actively hostile to it.

But, of course, they had a problem: the OGL couldn't be revoked.

D&D was sitting at the top of, and benefiting from, this huge pyramid of support material, and there was no way to shut that down. What they COULD do, though, was reboot the game. And that's exactly what they did in 2003, releasing the revised 3.5 Edition of D&D.

The way in which they did this was significant. Before 3.5 was released, Wizards made a big deal in all of its marketing about how the game was going to be "backwards compatible." It wasn't going to make your existing 3.0 books obsolete, and players should have no qualms about continuing buy 3.0 books because they would still work with the new 3.5 rulebooks.

But when 3.5 was actually released, a switch was flipped in the marketing: The 3.0 books were now worthless. Those black-and-white softcovers we were selling? Get rid of 'em. Time to buy the new full color hardcover splatbooks! The evergreen strategy was out, and the splatbook strategy was back, with Wizards using the 3.5 reboot to upgrade their splatbooks so that they could compete with the high quality third-party supplements.

But it wasn't just the customers who had been caught flatfooted by this abrupt one-eighty in marketing. OGL publishers had taken Wizards at their word, and continued developing, writing, playtesting, and printing 3.0 supplements they had been told would be completely compatible with the new rulebooks, but which their customers were now being told were worthless.

And it wasn't just the publishers. It was the local game stores, too, who had continued investing their capital in merchandise they thought they could sell, but which Wizards was now telling their customers should be left to rot on the shelves.

Hundreds of game stores went out of business. Dozens of publishers followed. The "D20 bubble" had burst, having been either accidentally – or, according to some – deliberately popped by Wizards.

But 3.5 was, in fact, pretty similar to 3.0. Even if WotC hadn't released an updated SRD for the 3.5 rules, third-party publishers would have been able to continue producing compatible books using the existing OGL. For now, at least, Wizards decided it made more sense to stay on top of the pyramid.

That would change, however, five years later with the release of 4th Edition.

The story of the release and many, many failures of 4th Edition is a saga in its own right, so I'm going to try to keep it as simple as possible and also stay focused on the OGL.

The short version is around 2005, Hasbro decided to split its brands into core brands, which had more than \$50 million in annual sales, and non-core brands, which didn't. Core brands would get investments in development, marketing, and licensing. Non-core brands would not, and in fact many of them would be mothballed, allowed to lie dormant for years before being potentially brought back for a fresh start.

D&D was not a \$50 million brand. It was a \$30 million brand.

So the D&D team had a big problem: At best, most of them were about to lose their jobs. At worst, D&D was once again on the corporate chopping block.

So they came up with a big plan for saving D&D by growing its annual revenues. This included a virtual tabletop, digital DLC, increased miniature and merch sales, and a subscription platform to get regular, monthly income from their fans just like an MMO. They also believed that they needed to kill all outside licensing, including the OGL, so that they could claw as much of that revenue back as they could.

But, of course, the OGL could not be revoked.

Do I know for an absolute fact that the design team of 4th Edition D&D was given a corporate directive to design a game that required the use of either miniatures or a virtual tabletop, both of which Wizards would sell; strongly encourage the use of a digital character creation subscription service; and so fundamentally alter the core gameplay of D&D that the OGL could no longer be used to create compatible supplements?

I don't.

So you can make up your own mind about that.

What we do know is that Hasbro killed the OGL for 4th Edition. And we also know that Wizards didn't really want to publicly admit that, so they spent a lot of time before 4th Edition came out hemming and hawing. They talked a lot about their commitment to open gaming and assured people that a license for "third-party and fan creations" would definitely be made available for 4th Edition.

There was a lot of back-and-forth here, and the timeline is made a lot muddier because there were both public announcements being made and private meetings with third-party publishers shielded with NDAs. There are a few key milestones that are probably worth establishing, though.

First, Wizards eventually admitted that 4th Edition would not use the OGL. Instead, they were creating a new Gaming System License, or GSL. But the details of this new license still weren't being made public.

Wizards then announced that people could pay them \$5,000 in order to get early access to the 4th Edition SRD and GSL, but still didn't tell anyone what the terms of the GSL were. This went over like a lead balloon and the program was cancelled.

When the GSL was finally released, it contained a poisoned pill: If you used the GSL, you could not publish anything in the same product line using the OGL.

It also contained a termination clause, just like the one used in the D20 System Trademark License: Hasbro could unilaterally cancel the GSL at any time, at which point you would need to immediately delist your books and pulp your inventory.

After more public outcry and pressure, they eventually dropped the poisoned pill. But the termination clause stuck. That was, after all, more or less the whole point of the exercise.

(Ironically, as far as I know, that termination clause has never been activated.)

At this point, Wizards had a few problems.

First, their GSL shenanigans were just one of several ways in which they'd alienated large chunks of their fanbase.

Second, even though they'd willfully abandoned their position on top of the vast pyramid of 3rd Edition support material, that pyramid was still there. And people were still free to create more of it.

Third, they'd pushed a company called Paizo Publishing into a desperate situation.

When Wizards decided they didn't want to keep publishing *Dragon* and *Dungeon Magazine* in 2002, they licensed those magazines to Paizo, a company which had been founded by former Wizards executives to specifically do that.

In preparation for 4th Edition, Wizards announced that Paizo's license would not be renewed and, in fact, that *Dragon* and *Dungeon* would no longer be published as physical magazines at all. Paizo, of course, still had the subscription lists, so they started publishing the *Pathfinder Adventure Path* as a new monthly periodical for their customers.

Paizo's intention was to transition the *Pathfinder Adventure Path* to 4th Edition when the new game came out, but Wizards' lengthy delays in making the GSL available put Paizo in a bind, which only became worse when it became clear that, whatever the Top Secret terms of the new license were going to be, they certainly weren't going to be particularly friendly.

The result was the *Pathfinder Roleplaying Game*. Published by Paizo, it was essentially a "3.75" edition of D&D that, because of the subscription lists, could be marketed directly to the most hardcore of D&D's fans by a company that had already spent years selling them premiere adventures and support material. It also became a banner for all those disaffected by Wizards' actions, the gameplay of 4th Edition, or both.

Wizards had completely blown their dismount from the OGL and managed to create their single largest competitor. Furthermore, *Pathfinder* made it certain that the OGL – and the wealth of third-party support made possible by the OGL – would continue through the long winter of 4th Edition.

Let's fast forward now to 2015.

Whatever your personal opinion of 4th Edition as a game, there's little question that it was a failure for Wizards of the Coast. They attempted to relaunch the game in late 2011, and then cancelled it entirely in 2012. The leadership responsible for 4th Edition was fired and development began on what would eventually become 5th Edition, which was released in the fall of 2014.

A lot of the marketing around 5th Edition took the form of *mea culpas*. As we've noted, Wizards had burnt a lot of bridges in 2008, and they were now working overtime to repair them. For example, whereas 4th Edition had seen them cancel all their third-party licenses, they would now reach out to third-party companies to develop their first official campaigns for the new edition.

In the spirit of bridge-building, they similarly announced, in May 2014, that 5th Edition would be returning to the OGL. Unlike in 2000, this wouldn't happen on the day of the game's release in September 2014, but would instead follow in the spring of 2015.

There would also be no trademark license this time, but the approach to the OGL itself would be similar: An SRD would be released under the license, containing all of the open game content required to make 5th Edition-compatible adventures and supplements.

Behind the scenes, this détente had actually required a titanic struggle with Hasbro's lawyers. The compromise that was made was that nothing would be included in the 5th Edition SRD unless it had already been included in the 3rd Edition SRD.

So, for example, the *magic missile* spell had appeared in 3rd Edition, so it's also in the 5th Edition SRD. *Arcane gate*, on the other hand, wasn't a spell in 3rd Edition, so it doesn't appear in the 5th Edition SRD.

This also means that the 5th Edition SRD contains enough material to allow for the creation of 5th Edition-compatible supplements, but not so much that something like the *Pathfinder Roleplaying Game* could be easily created by another company.

In terms of community content, however, the SRD and the OGL aren't the whole story for 5th Edition. There's also the *Dungeon Masters Guild*.

To understand the origins of the DMs Guild, we need to go back in time to the early days of 3rd Edition. During this time, a company called RPGNow had signed an agreement with Wizards of the Coast to sell

D&D PDFs. This included PDF versions of older books, too, going all the way back to the original 1974 game.

RPGnow would eventually merge with DriveThruRPG to form a company called OneBookShelf, which continued selling the D&D PDFs.

When Wizards started yanking all their external licenses with the release of 4th Edition, however, this included OneBookShelf's license. This was, rather infamously, done without any prior announcement and included preventing people who had previously purchased the books from downloading them.

In 2012, with leadership changing in the wake of 4th Edition's failure and the corporate strategy switching from No One Shall Play With Our Toys to Y' All Come Back Now, Ya Hear?, OneBookShelf was able to negotiate a new license, launching D&D Classics in 2013 to once again offer PDFs from all previous editions of D&D.

In 2016, D&D Classics was rebranded the Dungeon Masters Guild, and a community content program was launched: Independent creators could now create and sell content based not only on the SRD, but on all official D&D 5th Edition books. This included the Forgotten Realms, and has since expanded to include other official settings including Ravenloft, Eberron, Ravnica, Theros, and Dragonlance.

The license for the Dungeon Masters Guild has nothing to do with the OGL, and those using this license can ONLY sell their books through the Dungeon Masters Guild website. Furthermore, if you publish a book through the DMs Guild, you are prohibited from publishing any derivative work.

So, for example, you could not publish a book through the DMs Guild, then remove all the D&D-related material and publish it using a different set of rules. Nor could you publish a novel or comic book based on your DMs Guild book.

Finally, unlike the OGL, the DMs Guild license can once again be unilaterally terminated by Hasbro. This does not, crucially, end the exclusivity agreement, so you would still be unable to remove the D&D IP and publish your work somewhere else.

This means that there will come a day when Hasbro decides to shut down the DMs Guild and everything on the site will simply... vanish. Forever.

You'll hear some people say that this would never happen, because Hasbro would never want to deal with the huge public backlash that would follow. But, as we've seen, this isn't really a hypothetical: Hasbro HAS cancelled licenses just like this one. It's not a question of if they'll do it again, just when.

Does this mean that no one should publish on the DMs Guild? Not necessarily. Being able to commercially access the entire lore of D&D's official campaign settings and produce tie-ins and support products for their most recent adventure modules is an incredibly unique and creatively special privilege.

But unless you're doing that, you may want to take that whole "some day you'll never be able to show anyone your work ever again" thing into consideration.

Regardless, with the OGL and the DMs Guild, 5th Edition ushered in a second golden age of third-party content for D&D. As with the OGL and D20 System Trademark License for 3rd Edition, you can argue about exactly how much this openness has contributed to the success of the game, but there's no question that the game has succeeded brilliantly, with 5th Edition exceeding all expectations and finally achieving the lofty revenue goals that 4th Edition tried so desperately to grasp.

Now, in the waning days of 2022, preparations are being made for D&D's next chapter. A new edition of the game, currently referred to as OneD&D, has entered public playtesting and is scheduled for release in 2024 during the game's 50th anniversary.

A few days ago, Wizards of the Coast announced that OneD&D, like 4th Edition before it, would NOT be using the OGL. Instead, a new version of the license – currently referred to as the OGL v1.1 – will be used. We don't know a lot about this license, but we do know that:

- Those using the license will need to file their documents with Hasbro.
- Those using the license who have at least \$50,000 in OGL-related revenue will need to start reporting their income to Hasbro.
- Those who have \$750,000 in revenue or more will need to start paying a royalty to Hasbro.
- There are other changes in the terms of the license which have not yet been announced.

Any or all of this, of course, might still change. And what the final form of this 1.1 license will be is something we can really only speculate about. Will it have one or more poison pills? Will it give Hasbro the right to make unilateral changes to the license or otherwise be revocable?

As we look back over the history of the Open Gaming License, it seems as if we're in a period of time quite similar to 2008: New leadership has taken control of Wizards. They have a new edition coming out. Corporate leadership is calling for increased monetization of the D&D property. After hemming and hawing, Wizards has been forced to make a public statement about the future of the Open Gaming License.

And what we know for certain right now is that their intention is for OneD&D to be less open than 5th Edition.

How MUCH less open it will be is the unanswered question.