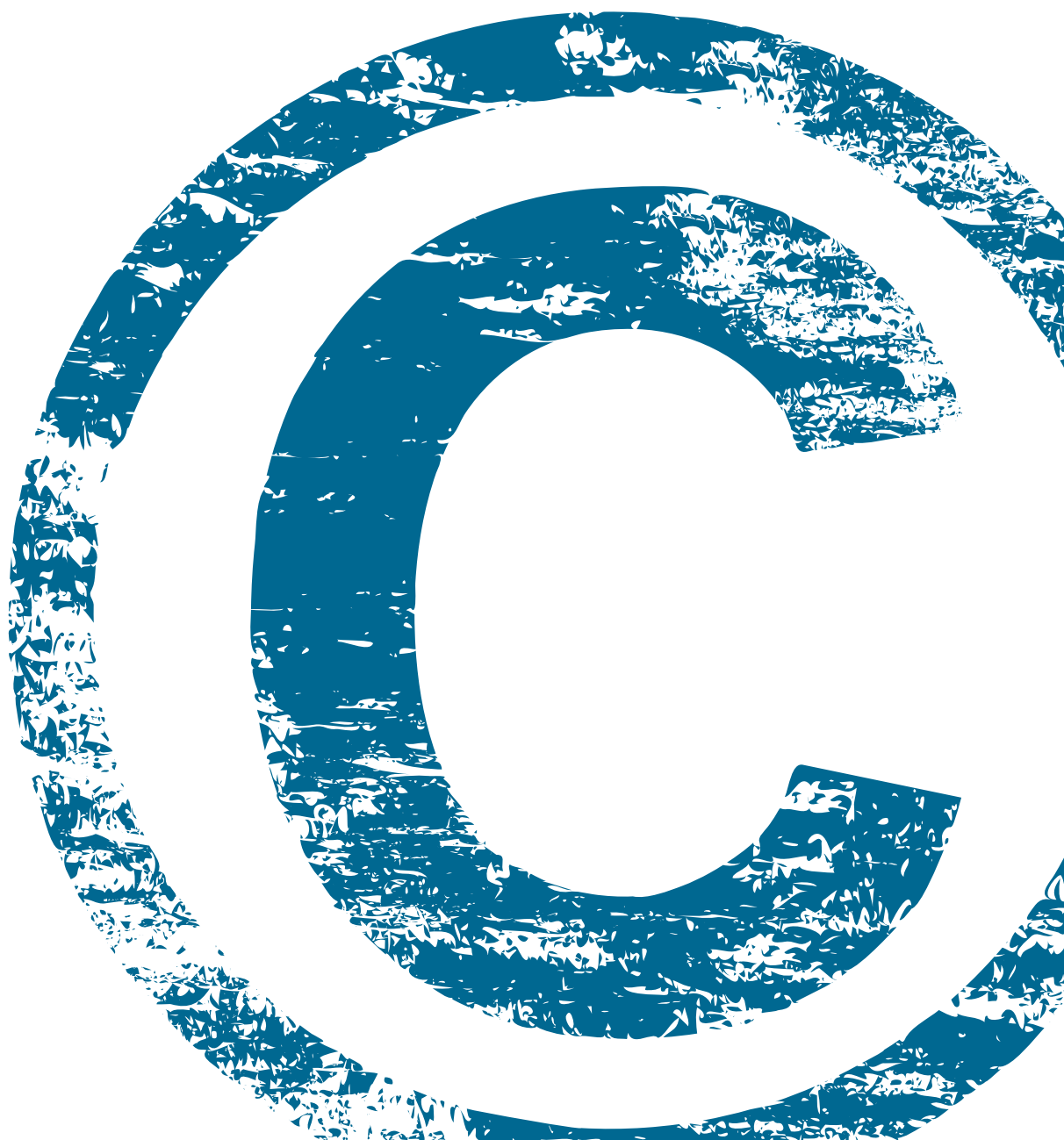




Association
of Colleges

Promoting. Representing. Supporting.

Copyright Guidelines



Contents

- 3 Welcome
- 4 Introduction
- 7 Text
- 12 Broadcasts
- 14 Music
- 17 Images
- 19 Film
- 20 YouTube
- 22 Social media
- 23 OK – so what can you do?
- 26 Creative Commons
- 27 Conclusion

About the author

Alan Rae has been involved with copyright and licensing since 1988 when the current Copyright Act was passed. Alan spent 34 years in further education and set up his copyright consultancy, © Here, 10 years ago. Since then he has been the copyright adviser to FE colleges in Scotland and runs a helpdesk for all college lecturers as well as undertaking regular CPD in colleges for both staff and students.

Another of his tasks with the Scottish colleges is to liaise and negotiate with the major licensing agencies. He is currently serving on the Copyright Licensing Steering Group education workstream which was set up in response to Richard Hooper's report for the Intellectual Property Office (IPO).

Alan is available to do in-college training sessions or copyright healthchecks and can be booked via AoC Create (contact: training@aoc-create.co.uk)

Welcome

The world of copyright and intellectual property has always been complicated for colleges but it continues to rise in price and is changing fast because of the use of digital technologies in education. Colleges in England pay more than £8 million on licence fees at a time when the development of E-learning, workplace training and mobile devices raises new questions about how to use and manage learning materials.

We find it hard to keep up with developments and also find that colleges often do not know what they are allowed to do under the law and also whether they are getting value for money from the tens of thousands of pounds which they each pay for the licences. We therefore commissioned this short guide from Alan Rae who advises Colleges Scotland on copyright issues this is not a definitive statement of the law but sets out the key issues which colleges need to consider. Alan is available to provide further individual advice to colleges via AoC Create (contact training@aoc-create.co.uk).

The Association of Colleges (AoC) has worked with various licensing agencies for more than 10 years and we have also successfully lobbied Government to widen the permitted uses in education – changes that will be included in forthcoming legislation. AoC's Julian Gravatt is now represented on the education workstream of the Copyright Licensing Steering Group.

Finally I hope you find these guidelines useful in helping you work with the current rules. If you have any comments, please do not hesitate to contact us.

Introduction

Welcome to AoC's guidelines to copyright and copyright licensing for further education (FE) lecturers. The use of third party materials in the creation of teaching and learning materials is a daily occurrence in FE and has to be dealt with as quickly and legally as possible.

If we want to copy third party materials –

- › Text
- › Images
- › Sound
- › Music
- › Moving images
- › Broadcasts

from a variety of platforms –

- › Books
- › E-books
- › Digital publications
- › CDs
- › DVDs
- › Television broadcasts
- › Internet streaming

and then present them on other platforms

- › Virtual Learning Environment (VLEs)
- › Websites – images, videos sound
- › Mobile platforms – smartphones, tablets, laptops
- › Blogs, wikis

Then we have four options –

1. The materials might be covered by a collective **licence**.
2. If not, then we might be able to apply to the content holder for **permission**.
3. Or we might be able to use an **exception to copyright** as detailed in legislation.
4. It may also be the case that the college owns the material either through assignation by the creator or through the creation of the material by a contracted member of staff.

These guidelines will attempt to point you in the right direction to help make the right decision. The guidelines are not here to turn you into copyright experts – just give you some basic information that will allow you to do the right thing and show a good example to your students, many of whom, in the current economic climate, will be leaving college to set up their own business, work for an small or medium-sizes enterprise (SME), or a larger organisation – all of whom rely heavily on the appropriate use of their, and others, intellectual property (IP).

Copyright is just one aspect of IP – but it's the main one affecting colleges. The other concepts covered by the IP umbrella are:

- › Patents
- › Trade marks (which may affect colleges through their marketing and branding)
- › Registered and Unregistered Designs
- › Confidential knowledge – the kind of information that competitors might like to get their hands on – and that can affect colleges as much as commercial corporations

However we're concentrating on copyright – the right to allow someone to use your work. If you create –

- › Literary works – books, articles, lyrics
- › Dramatic works – plays, screenplays
- › Musical works – just the notation – the lyrics are covered by literary works
- › Artistic works – illustrations, paintings, cartoons, photographs, etc
- › Sound recordings – CDs, MP3
- › Film – any form of moving image – DVD, video,
- › Broadcast – the broadcast signal – the other elements, sound and vision are already covered
- › A published work

Then you and you alone, have the rights to -

- › Allow copies of your work to be made
- › Issue copies of your work to the public
- › Lend or rent your work to the public
- › Perform, show or play the work in public
- › Communicate the work to the public (this pretty much means putting the work on the internet)
- › Make an adaptation of the work

In a wholly impractical world, this would mean that anyone who wanted to do any of those activities with your works, assuming you were going to allow them to carry out these activities, would have to contact you on an individual basis, which in our dynamic, organic digital world, would prove to be wholly unworkable.

So to help manage the flow of works from creators who want to exploit their work, but not have the hassle of having to grant and negotiate individual permissions every time to those who can see a market for these works, we have publishers and collective licensing organisations.

Just as there are a number of forms of created work, different things that can be done with them and different media for their distribution, so there is a variety of licensing organisations that colleges can deal with to ease the copyright path and facilitate the creation of teaching and learning materials.

Those licensors are –

- 1. The Copyright Licensing Agency (CLA)** – they licence books, magazines and journals for photocopying and scanning into a digital format
- 2. The Educational Recording Agency (ERA)** – they licence the recording, storing and dissemination of TV and radio broadcasts
- 3. The Newspaper Licensing Agency (NLA)** – they licence the photocopying and scanning of national, regional and foreign newspapers
- 4. The Open University (OU)** – they licence the use of their television productions which are broadcast by the BBC – this licence has now been merged with the ERA licence
- 5. Ordnance Survey (OS)** – they licence their own maps for educational use
- 6. Performing Rights Society (PRS) for Music** – they licence the playing of music in public places – they were previously known as PRS, but have rebranded since they began working with MCPS
- 7. Phonographic Performance Limited (PPL)** – they licence the playing of recorded sounds in public places – they also administer the Video Performance Licence (VPL) – more commonly a commercial licence, but occasionally of use in education
- 8. Mechanical Copyright Protection Society (MCPS)** – now allied to PRS for Music, MCPS licence the transfer of sound recordings being transferred from one medium to another
- 9. Design and Artists Copyright Society (DACS)** – although they are partnered with CLA for the copying of any artistic works included in licensed books, they also operate on their own, representing photographers, designers, illustrators etc
- 10. British Standards Institute (BSI)** – this organisation publishes British Standards, sells them to prospective users and also licences them for use in education
- 11. Christian Copyright Licensing International (CCLI)** - they act as agents for a variety of creators and their representatives whose words, music and images are used in religious studies, churches and other places of worship
- 12. Filmbank** – this is an organisation which will licence the non-curricular showing of feature films. Their most common use in colleges would be for film clubs
- 13. Motion Picture Licensing Company (MPLC)** – a relative newcomer to the licensing market in the UK. Similarly to Filmbank, they offer licences for the non-curricular showing of feature films. They represent different studios and distributors from those in the Filmbank roster
- 14. Music Publishers Association (MPA)** – This licensing agency represents the music publishers and covers the copying of sheet music – still a very important component of the overall music licensing system.

These guidelines will help you negotiate the copyright maze.

Text

Let's start with text which comes under the term "Literary Works" as defined by the 1988 Copyright, Designs and Patents Act. "Text" incorporates –

Printed works – in all media –

- › Hardback
- › Paperback
- › Newspapers
- › Online (including e-publications such as -
 - e-books
 - e-journals
 - e-magazines
 - e-newspapers
 - blogs
 - wikis etc

And includes

- › Narrative
- › Poems
- › Literature
- › Editorial
- › Song lyrics, and perhaps surprisingly
- › Computer programmes (categorised as literary works because they can be written out)

And text is text, irrespective of the platform in which it is distributed and viewed –

- › Computers
- › Tablets
- › Mobile devices

The licencing agencies that deal with text, in all its forms, are –

- › The CLA, NLA, BSI and CCLI

The Copyright Licensing Agency (CLA)

Briefly, The CLA does the following:

- Allows a lecturer to copy, by reprographic means (ie, photocopy) or scan, up to 5% or one chapter of a text (which must be owned by the college) and make sufficient copies for each member of a class which is undertaking a recognised course of study. The lecturer can copy the 5% of the work or one chapter whichever is greater.
 - The 5% doesn't have to be consecutive pages.
 - Any embedded illustrations, photographs, diagrams are included in the licence.
- The scanning limits are the same – and the scanned material can then be uploaded to the college's VLE – no upload to the public-facing internet is allowed – all uploading has to be done to an area that is secure and only accessible by username and password.
- [The licence](#) allows content from some websites and digital publications to be copied – for the list of publishers and authors who allow this to happen.
- A helpful, recent addition to the [CLA website](#) - is the introduction of a title search function that can save a lot of time – just click on "[Title search](#)" and follow the instructions.

Briefly, what the CLA doesn't allow

Copying and scanning from texts whose authors and/or publishers haven't given permission for their works to be copied and/or scanned. If a college wants to use these "excluded" works, then permission has to be applied for directly to the author, publisher or literary agent. This can be a long task, lasting weeks or months.

Full details of the list of [excluded works by author and/or publisher](#) is available online. This link will also show you the other excluded categories of text not covered by the CLA licence.

The CLA doesn't allow the copying or scanning of text in newspapers because the newspaper industry has its own licensing agency – the Newspaper Licensing Agency (NLA).

Useful tip

Let's say that a lecturer wanted to cut and paste images from a cartoon strip on the web – The Simpsons, for example. For a start, it is highly unlikely that Fox, the Simpsons copyright managers, would allow the website, let alone a college, to copy the images – that's why the website is infringing – what they are doing is illegal. If a lecturer copies from the website, they are compounding the infringement – and bringing infringing copies into the college. However, it is very possible that the same images have been published in a book, which is available to be copied under the terms of the CLA licence and therefore it's perfectly acceptable to make the copies. I know that you're going to say that it won't make any difference where the images are copied from, and that it looks as though copyright is not only complex but confused – and I would agree on the latter statement – but colleges must be seen to be doing the right thing – we are showing best practice to our students. It pays to find your way around the licences.

Full details of the ins and outs of the [CLA licence](#) are available online.

Newspaper Licensing Agency (NLA)

The NLA licence has been available for a number of years now, and allows physical newspapers and their digital equivalents to be copied and scanned for teaching and learning purposes. NLA have just recently renamed themselves NLA Media Access.

What the NLA licence allows –

- Copying and scanning from a basic list of titles and those that a college chooses to add on as [extras](#).
- Colleges can make up to 250 copies of an article.
- Individual articles can be copied for their editorial content.
- Whole pages can be copied for layout and context purposes.
- The licence allows colleges to copy from digital versions of newspapers, as long as they are included in the college's subscribed list.

The NLA FE licence does not allow –

BSI Licence

This is a specialised licence, normally used by those colleges who have need to refer to British Standards for teaching purposes. Many parts of British industry are subject to British Standards, especially construction and engineering and increasingly in business structures.

The actual British Standards can be bought online, along with a licence that will allow Standards to be made available over a network.

Please take care with British Standards – this is a commercial organisation that provides an excellent service and protects its intellectual property (including copyright) rigorously.

Please contact [BSI](#) directly for further information.

Useful tip

BSI has introduced a useful education section to their website. It's informative and well structured for those, at all educational levels, and not necessarily users of Standards, to find out much more about the [British Standards system](#) see online.

Christian Copyright Licensing International (CCLI)

Originally established for the clearance of copyright works used in churches, the scope of CCLI has extended to the education sector and if any college has requirements to have faith materials cleared for use, then [CCLI](#) is the place to go.

Broadcasts

Educational Recording Agency (ERA)

This is perhaps the easiest of the sections of copyright licensing. The Educational Recording Agency (ERA) has been the principal player in this area since the current legislation was enacted. If a college has an ERA licence, it can then record, store and distribute copies of licensed programmes. The output of the BBC, ITV, Channel 4 and 5, and all Freeview stations is licensed by the content providers for colleges to record and use in teaching and learning.

A few years ago, pre-digital, programmes could be recorded on to videotape and as many copies as were required for curricular purposes, could be made under the licence. Now, programmes can be stored on DVDs or on a college server for distribution to students through the college VLE. For this to happen, the college must have both the ERA and ERA+ licence. The standard licence only allows recorded broadcasts to be shown within the physical presence of the college – the ERA+ licence allows students to access programmes through the VLE – at home, on mobile platforms etc.

The only prerequisites laid down by ERA is that copies are logged and labelled and are only used for the purposes of instruction. Programmes can be recorded by staff off-campus, but the logging and labelling requirement remains. Colleges who have missed programmes can acquire copies from other colleges, as long as the borrower and lender both have ERA licences.

More recently, colleges have begun to subscribe to services such as Box of Broadcasts and ClickView, both of which allow libraries of programmes to be created – users of these services, in addition to the services' subscriptions, must also have an ERA and ERA+ licence. ERA have added National Geographic and the producers of the Discovery Channel to their list of stakeholders, so programmes from these channels may now also be recorded and used under the licence.

There was previously, one other broadcast licence available to colleges. This was issued by the Open University for their off-air broadcast scheme. In July 2013, this scheme was brought under ERA management, thereby simplifying the whole process of off-air recording, irrespective of the broadcaster or the source of the content.

The ERA licence is generally straightforward for broadcasts – but there are a couple of issues that you need to know about, since their use is extremely popular.

oplayer and catch up services

These can be used in colleges, although they are not directly licensed by ERA. BBC iplayer, and the ITV, C4 and C5 catch-up and on-demand services now all have in their terms and conditions a clause indicating that it is acceptable for colleges to use these services – as long as the college has an ERA licence, and if the services are to be made available through the VLE, then the college has to have the ERA + licence.

YouTube (and other streaming image sites)

Basically, YouTube is not intended for educational use – it says so in its terms and conditions – for individual, non-commercial use only. And being part of the interactive web 2.0, YouTube, by its very nature, encourages users to upload materials in the form of video clips. Originally, these clips were personal, usually funny and short due to bandwidth considerations. Now, YouTube has become a major broadcaster, but the majority of the content, is not made by YouTube – it's made by the contributors who may not have a very clear view of copyright when it comes to using music, video, images, sounds etc which belong to someone else.

This is the principal issue that colleges face with the use of YouTube – the ownership, quality and content of third party materials which are not proofed, moderated, peer-reviewed in any way. Without very careful monitoring and preview, tutors who use YouTube are opening up a very random and potentially damaging channel into their classrooms.

Music

Moving on to music – for many one, of the most complex and misunderstood areas of copyright.

There are a number of licensing organisations involved with music, but colleges, unless they have a music department, are only likely to encounter the principal two societies, PRS for Music and PPL.

PRS for Music – this is an alliance between the former **Performing Rights Society (PRS)** and the **Mechanical Copyright Protection Society (MCPS)** and this society licences the “playing” of music on behalf of the publishers, composers and songwriters.

Phonographic Performance Limited (PPL) – and its associate, **Video Performance Limited (VPL)** licence the playing of “recorded music” for the performers and record companies.

It is very often the case that musicians, who compose, play, record, publish and produce their own works, are members of both societies and so benefit from royalties from all exploitation of their works. Some musicians, although members of well-known groups, may only be paid for being playing members – unless they contribute to the writing of the music and/or lyrics, they may receive no royalties. This has led to some high-profile court cases over the years as band members feel aggrieved that they contribute to the success of the bands but since they have not written any of the music or songs, their reward is proportionately smaller than the “creators”.

The third society, which would be more appropriate for colleges where music is being taught and there is a requirement for sheet and published musical notation and lyrics is the MPA.

Music Publishers Association (MPA) – this body represents music publishers, whose permission is required for the playing of music in public – the mandate from the publishers is dealt with by PRS for Music, whose licence allows colleges to play music in non-curricular circumstances, the MPA also has a [code of practice](#) for anyone wishing to make physical copies of printed sheet music.

Before we go into the detail of the two principal licensing agencies – PRS and PPL, we need to look at the Copyright, Designs and Patents Act 1988 (as amended). Section 34 of the Act has two particular clauses that anyone playing music in a college should be aware of:

“Section 34 – Performing, playing or showing work in course of activities of educational establishment:

1. *the performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment –*
 - a. *by a teacher or pupil in the course of the activities of the establishment, or*
 - b. *At the establishment by any person for the purposes of instruction, is not a public performance for the purposes of the infringement of copyright*
2. *the playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.”*

From a music point of view, this means that if a college manages to keep the playing of music, either live or recorded, to “the purposes of instruction”, then no music licences are required. No licences are required because PRS and PPL are only allowed to licence music played for non-curricular purposes.

If music is played in a college in –

- Offices and places of work
- Reception areas
- Theatre foyers (before, during intervals and at the end of performances)
- Training restaurants
- Hair and beauty salons
- Gymnasias (as background music)

Then the college will require both a PRS and PPL licence.

Further, if members of the public, which includes parents, attend theatre performances, for example, where music is played live, a PRS licence is required, and if the music is recorded, then both PRS and PPL licences are required. It doesn't matter if there is an entry charge or not, both licences are required because the law interprets such performances as “non-curricular”.

You can see that music is a complex area – not made any easier when other circumstances are taken into account –

1. Although colleges may have training restaurants and hair and beauty salons which encourage staff and members of the public to be clients to provide practical and realistic training for the students, PRS and PPL insist that such areas are licensed, even though colleges treat such practices as “for the purposes of instruction”.
2. Increasingly, music is being used in digital formats, and in most cases, it is licensed by the content, not the platform, but recently, colleges have begun to transfer music to VLEs, for the “purposes of instruction” – but this no longer conforms to playing before an audience – putting music on to a VLE is another right – the right of communication – and has to be licensed by the MCPS section of PRS for Music.

So, if a college plays only live music, only a PRS licence would be required. But – when recorded music is played, both licences are needed – PRS for the “playing” and PPL because the music is coming from a recorded medium.

If music is transferred from one medium to another, for example, in the making of a training video (not for the purposes of instruction) and music is transferred from CD to a video format, then an MCPS licence is required, because this part of the PRS for Music organisation, licences the transfer of music from one medium to another.

To add to the considerable complexities of music licensing, both PRS and PPL charge colleges on an entirely different basis. PRS actually licences the entire college through the FTE count, while PPL licences either on square footage of areas where their licenced music is heard, or on the number of performances where recorded music is played, outside “the purposes of instruction”.

Also, PRS expect a college to take out further licences for performances where an admission fee is charged – they will expect to take a percentage of the gross income.

Music licensing is a specialist area and colleges who are unsure of their position regarding any music involvement, are advised to take advice on the matter if they are at all unsure of the actions needed. PRS for Music does have regional representatives who visit both licensed and unlicensed premises to offer advice and encourage participation in the licensing scheme if they think that their members’ works are being used without payment.

Images

“Images” is probably one of the most contentious sections of copyright content, especially in the digital context.

Images have always been contentious – previous copyright legislation didn’t even recognise a photographer, for example, as the creator of the photograph. The copyright owner was the commissioner of the photographs and/or the person holding the negatives.

It can still be the case that a commissioner owns the copyright, but it is now the photographer’s choice whether or not to assign their rights to the photographs.

The issues around images have been pretty much driven by the internet and the ease with which users can cut and paste images from websites and insert them into their own work.

Before getting bogged down in the rights and wrongs of cutting and pasting images, however, let’s look at the slightly simpler aspects.

Images are categorised as “artistic” works and include photographs, illustrations, graphics, cartoons, collage, drawings and plans.

Any of these which appears in a text which is licensed by the CLA and can be copied within the limits set by that licence can be copied or scanned – and that’s very useful to remember – if an image appears on the web, it may be licenced, then again, it may not – and if it isn’t, then any cutting and pasting is an infringement – if the same image appears in a CLA licensed text, then copies and scans can be made quite legally. Images on the web carry traceable information with them (metadata). That’s why colleges up and down the country have received penalty notices from online photo libraries such as Getty Images who track their licensed materials on the web and if they come across an infringing copy – i.e. one that hasn’t been paid for, they are likely to issue a takedown notice and may also impose a financial penalty – financial penalties are bad enough for a college, but you really want to avoid any reputational damage as well – it doesn’t set a very good example to the students or to your clients.

The CLA licence only covers images which are contained within their licenced publications – stand alone photographs are not included in the licence – they are considered to be “works” in their own right and are treated in the same way as any other work e.g. book, recording, broadcast.

The major issue with images is the web. Please remember that just because a work is on the web, it doesn’t in any way diminish the level of rights that the work commands. There is a myth that if a work is on the web, then it is in the “public domain”. The only time, under UK law, that a work is in the “public domain” is when it is out of copyright and as a rule of thumb, that’s 70 years after the year in which the author/creator dies.

It’s very easy to cut and paste images, but it’s becoming just as simple for the rights holder to track the usage of their work.

So – what to do to avoid infringement?

- › If you use Google Images, use the advanced search when looking for an image – you can find out which images might be copyright free.
- › Use sites like Flickr which has a copyright free section.
- › Search for images which come with a Creative Commons licence.
- › Take your own images.
- › Ask someone else to do it, but make sure that you get permission from them to use the images.
- › Start a college image bank.
- › Search through the JISC resources – images in these resources have either been cleared or come with a Creative Commons licence for example, if you go to [JISC MediaHub](#) - and search around, you will actually come across 12,000 perfectly legitimate Getty images for your college to use.
- › Use the Design and Artists Copyright Society (DACS) – This organisation, representing photographers, designers and illustrators works with the CLA to have their members' works licenced in those covered by CLA so colleges really have no worries about artistic works embedded in texts. DACS should be consulted when multiple copies of single images, not embedded in publications are required.

Try to avoid the process of just cutting and pasting images from websites. It is very easy and the question is often posed – “who’s going to find out?” You can take that risk if you want, but increasingly, web-based image libraries can all too easily find out who is using their images.

Metadata can be stripped out, but that is technically illegal, and in the face of this happening, image suppliers are turning more to watermarks, very low resolution images for preview and other forms of digital rights management.

Paradoxically, the time taken to find an image which is infringing, could just as easily be spent in finding one that is legal.

And, for those of you who are image providers, and there are many in colleges, either working on their own account, or for the college, who then becomes the copyright holder, there are a variety of search methods which you can use to see who is using your images. For example, try [Tineye](#).

Film (Moving Images)

Most films which are used for resources in further education are recorded under the Educational Recording Agency (ERA) licence – more about this in the section on Broadcasts.

There are a couple of very helpful clauses in the 1988 Act that are worth considering if you think that films could be useful in your college.

Under section 32 – “Things done for the purposes of instruction or examination”, sub-section 2 states –

“Copyright in a sound recording, film or broadcast is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films, or film sound tracks, provided the copying-

- a. is done a person giving or receiving instruction, and*
- b. is accompanied by a sufficient acknowledgement, and provided that the instruction is for a non-commercial purpose”*

The other way to use films in FE is through the educational allowance of section 34 (2) – this lets colleges show films for the “purposes of instruction” in front of an audience of students and lecturers. Make sure that the college has an audit trail for the purchase of the DVD. DVDs bought in retail outlets, strictly speaking, are not supposed to be used in schools and colleges, but to date, no one has been taken to task (or court) for doing this.

If, however, you want to use a film for “non-instructional purposes”, then you cannot use a film you’ve recorded under the terms of the ERA licence, nor can you rely on the Section 34 exception – you must contact Filmbank to get both the film and the licence that will allow you to show the film for non-curricular purposes such as a film club.

Another licensing body which has appeared in recent years is the Motion Picture Licensing Company (MPLC). They say that their “umbrella” licence covers colleges for non-curricular use of any DVDs that have been purchased. MPLC will not supply any content, as Filmbank does, so a college is being trusted to take out the MPLC licence for content from their stakeholders which the college wishes to use – for non-curricular purposes.

None of the above provides any form of licence for the streaming of films, unless you are doing so from one of the “catch up” services such as iplayer, ITV Player, 4 on Demand and Demand 5. The terms and conditions of these services allow you to show broadcasts (including films) for the purposes of instruction – as long as you have the ERA licence – and the ERA+ licence if you are using your VLE to show the films.

Be very careful of other streaming sites such as BlinkBox, Flixster etc – their terms and conditions clearly state that the service is for private, non-commercial use only.

YouTube

The use of YouTube and Google Images could seriously damage a college's finances and reputation. Both services are massive service providers, but there are a number of copyright questions attached to both.

The terms and conditions of YouTube quite clearly state that the service is for private, individual use only – but we all know that YouTube is used widely in education – and what the guideline for this section will try to do is suggest ways in which a college can mitigate the risk of using YouTube.

The majority of the videos on YouTube have unlicensed third party material in them – music, video, images and graphics. Individuals put these clips together, often using third party material with neither licence nor permission.

A college compounds this infringement by showing the videos to students. Now, I hear you say – “who's going to find out?” Who, indeed? But are you prepared to take the risk? The record companies whose music has been lifted to form a backing track, the movie company whose images have been copied, the photographers, the creators of original materials may just have a say in your level of risk.

YouTube now has an agreement with the major record companies that the music on uploaded videos will be matched against a permissions database – if no permission has been given by the record company, and it's highly unlikely that it has been given, then YouTube will remove the video.

A recent development here, however, has been that if the record company has no objection to the use of the music, then YouTube may very well put advertising beside the clip – but the uploader has no say in what adverts accompany the clip – would your college be happy to hand over that decision?

Please take all care with the use of YouTube clips – I know that many of them are excellent for illustration of sometimes complex themes – but you may well be infringing copyright if you show them to your students – far better, in my opinion, if you are happy with the content and quality of the materials, just to point the students in the direction of the URL.

If the college knows that the content on YouTube has been cleared for use by the content owner, then that's fine – this applies, for example to the many YouTube channels that are now operated by companies and organisations to promote their businesses and perhaps demonstrate how their products and services work. Many colleges themselves are realising how well they can promote themselves through a YouTube channel.

If the content on YouTube comes from one of the ERA stakeholders, then that's fine to watch as well – ERA licence the content, not the platform or distribution media.

The exception to content on YouTube is where a college doesn't know the provenance – it could be infringing movies, music, TV programmes which are not licensed to be on YouTube but which individuals have posted anyway. There is also the potential risk of the suitability of the content – does the quality meet the course criteria? Has the content been previewed? And if the content is infringing, then the college is compounding the misdemeanour by showing it in an educational location and context, when the terms and 18 conditions of YouTube explicitly state that the service is for private, individual use only.

The other aspect of YouTube which has to be taken into account, and this applies to all social networking sites which rely on user content being uploaded comes down to terms and conditions of the contract that the user enters into with YouTube. There is no physical contract to sign. The mere fact that you use YouTube means that you have agreed to the terms. If you post materials on YouTube, what is the copyright status of the content? If it is yours or belongs to the college, do you realise that although you retain the copyright, that by posting to YouTube, you grant YouTube a very wide ranging licence to use the content as they see fit?

That's the easy issue. What happens if you post content that you have no right to post? It's one thing doing that as an individual – it's entirely another if you are doing it on behalf of the college and you have no permission or licence from the content owner, and in the case of a complex piece of film, for example, it may not be just one content owner, but multiple owners – film, sound, screenplay, music, design, choreography, etc.

YouTube is very easy to use but it does bring with it considerable risk, and please remember an earlier point. Colleges have to be seen to be doing the right thing, especially where there are legal obligations to be met.

Social media (in general)

The only licence that a college has that has any bearing on any of the social media services – Facebook, LinkedIn, YouTube, Twitter, etc is the ERA licence – as noted above, this licence will allow you to watch/use any platform or social media that is showing programmes that are licensed by ERA and ERA+

All other social media must be treated with extreme caution, they are attractive as teaching and learning media, but they are full of traps and pitfalls -

- They are not licensed for educational use
- They do not take too kindly to uncleared third party materials being uploaded
- If original material is uploaded, the creator may retain the copyright, but by using the social media service, the creator is effectively giving the service a non-exclusive, world wide licence for others to copy the work – if you put work on YouTube, for example, you are pretty much giving it away.

What can you legally do?

So far, there has been a mixture, throughout the explanations of the licences about what can and cannot be done with regards to copyright of content in teaching and learning materials.

All is not doom and gloom – it's possible that too many people in FE see copyright as a threat – a bad thing that is to be avoided – something that is far too complicated/irrelevant/antiquated/ too much bother.

But fear not, with just a little bit of effort, copyright can be very useful in the creation of teaching and learning materials.

Educational exceptions in the Copyright Designs and Patents Act 1988 (as amended).

Section 29 – research and private study.

This exception currently allows “fair dealing” with literary, dramatic, musical or artistic works for the purposes of non-commercial research or study. There are a couple of issues with this exception – “fair dealing” means many things to many people, and there is no definition as such in the legislation – and it only deals with four categories of work.

You have to decide what is “fair” – is it fair to copy an entire work? Or only part of it? And if it is only a part, which part? In this author's view, this exception applies to single copying of parts of works by staff and students – and where possible, and this is always good practice, say where the copy came from – in other words, give an acknowledgement – just as a student should cite references in their work, so making an acknowledgement is to be recommended.

(Author's note – there is a possibility that all categories of works will be included in this section by the end of 2013 due to proposed changes to copyright legislation).

Section 30 – Criticism, review and news reporting

Interestingly, there is no limit under this section, (with the exception of individual photographs) to the categories of works that are included. This is the exception that newspapers and reviewers use when commenting on new films, plays, music, books etc. The view is that if the copying is done for genuine criticism and review, then there are no limits to the amount that can be copied – as long as they are “fair” – again, no guidance to precise limits in the legislation. Equally, no specific guidance is given to say that it is only newspaper publishers, for example, that can call upon this exception – there's nothing to say that educational establishments couldn't use the exception.

Section 32 – things done for the purposes of instruction or examination

Section 32 is very interesting and not often called into use – which seems a shame.

Subsection one indicates that literary, dramatic, musical and artistic works can be copied

for educational purposes – but the big catch is that the copying can't be done if you are using "reprographic processes" – that is supposed to cover all means of copying – photocopiers, scanners, audio and video recording etc.

Subsection two is a little more useful – especially for media related courses – copyright in sound recordings, films and broadcasts is not infringed by their use in making films or soundtracks for films – in the course of instruction.

Subsection three is perhaps the most interesting of all - this says "copyright is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the three questions to the candidates or answering the questions, provided that the questions are accompanied by sufficient acknowledgement". (NB the only work that doesn't fall into this category is sheet music).

The points to take from subsection three –

- The examination is supposed to be summative, not formative
- The examination papers cannot be copied and then issued to students for curricular purposes
- And please **don't** copy questions and assessments from published exam and assessment books – there is copyright in these works.

Section 34 – Performing, playing or showing work in course of activities of educational establishment

For the purposes of instruction, subsection one allows the "performance of literary, dramatic and musical works" in front of non-paying audiences of staff and students (parents are not included – as soon as they attend, everything changes).

Subsection two allows "the playing or showing of a sound recording, film or broadcast" before the staff/student audience for the "purposes of instruction". This is the clause, that could help a college financially – if the playing of music and sound recordings is only ever done for "the purposes of instruction" then the college would need neither a PRS or PPL licence. As soon as you move away from the instruction, however, the need for those two licences appears – PRS for the playing of music, and PPL for the playing of sound recordings.

This clause is also the one that a college can use to avoid having to take out licences from either Filmbank or the Motion Picture Licensing Company (MPLC) – as long as a college shows movies only for educational purposes, and owns a copy of the movie, either on DVD or recorded under the terms of the ERA licence, then there is no need for either a licence from Filmbank or MPLC. These are both unnecessary licences, so please don't let yourselves be pushed into taking one – MPLC in particular have been very aggressive in their marketing which leads a college to believe that the licence is compulsory.

The Hargreaves Review (2012/2013)

At the time of writing these guidelines, August 2013, the Hargreaves Review, commissioned by Prime Minister David Cameron, was still in the consultation process but proposed changes to the education exceptions had been published for responses.

If the exceptions stay as they are and make it through to legislation, then there will be considerable changes for colleges – and on balance, all for the good. There will be more emphasis on “fair dealing” and the possibility of more copying allowed without reference to either the law or to licences. There is no word when the legislation will be enacted, so we may have to wait some time.

Creative Commons Licences

In recent years, and principally evolving from the USA, a number of content creators have adopted the Creative Commons (CC) approach. It's very simple – whereas most copyright statements state that “all rights in the work are reserved”, the CC proponents say that “some rights are reserved” and others can be used freely under the terms of the licence. The best place to find out about CC is the informative [CC website](#).

But just to give a flavour of what CC can do –

If you are a creator and you want to share, rather than reserve, your rights to your work, whatever it might be, then you can add a CC licence to your work – either in writing or attach it online to any digital forms of your work.

CC licences come in a number of variations, but the basic aspects are –

- The creator still retains the copyright in the work
- The creator grants a CC licence that allows the user to use the work as long as there is an attribution to the original creator
- The licence can state that derivatives of the work can be made – as long the derivatives carry the CC licence with them
- The creator can offer a licence that allows the user to share the work further
- The creator can state in the licence that the work can be shared, attributed, used for derivatives – as long as the work is not used for any commercial purpose

CC licencing is often associated with Open Education Resources (OER) a movement to free works from the constraints of copyright and allow much wider use and even allow further development of the work to be made.

The creator still retains the copyright – that's important, because if the creator gives all rights away, they are effectively assigning their work to another party. The creator may be compensated for an assignment, but whether or not they are paid, the work no longer belongs to them and they have very little say in what happens to the work in the future.

It's the perennial dilemma of a creator. Say a publisher offers an outright payment of £10,000 to a creator for an assignment of the work, the creator has to decide what to do – is it worth taking the £10,000 and letting go, or should they try to licence the work (i.e. retain the copyright, but allow some uses to be made of the work) for a lesser amount and then rely on royalties from the sale/further licences of their work? Many struggling creators will be tempted/encouraged to take the money, how many live to regret it?

Some examples – David Bowie assigned much of his early work and tried in vain to buy back the rights when he became very successful in the Ziggy Stardust and Aladdin Sane days – he did eventually buy the works back, but not before other parties had made considerable income at his expense.

J K Rowling has become very famous, and very wealthy on the back of her Harry Potter stories – all licensed – she still retains all copyright – so every time a book is sold, a movie is made and distributed, a DVD is copied from the movie, a computer game is devised or merchandise is sold, Ms Rowling gets a royalty. We could get money from Harry Potter as well, if we tried hard enough – come up with the good idea that would be enhanced greatly by an association with the young wizard, ask Ms Rowling’s permission through either Bloomsbury, her publisher or Warner Brothers who look after the movie side of the product and hey, your worries are over – or are they? Are you prepared to pay up to 50% of your income in the way of royalties – will you be making enough from this wonderful product to pay your bills, the royalties and make a profit?

Knowing when to assign or licence is a tough call – and that’s when an agent and/or publisher can come in, but they have to be paid as well.

Conclusion

Please remember that copyright issues can actually be simple – it is OK to copy someone else’s material if you have -

Permission

A licence

A legal exception

If you own the materials

We know, however, it’s not quite as simple as that – there might be a tendency for staff and students to take a chance when they copy content that they don’t have permission, licence or exception for – that’s when the risk elements kick in.

What would be the financial and/or reputational consequences if staff or student infringement is detected and acted on by the content holder?

Are you prepared to find out? I hope not – it would be much more preferable that your college has a robust copyright policy that everyone signs for, and that there is a strong programme of copyright staff development, backed up by a sensible set of guidelines and sources where useful advice could be acquired.



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