Copyright and e-learning

a guide for practitioners

Second edition

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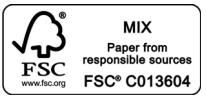

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Introduction

This chapter considers copyright in the digital environment, and its relationship to recent developments in education. It provides an overview of the major differences between copyright laws in several English-speaking countries in the world and how they apply to online learning. The focus of this book is on the UK, but it briefly discusses copyright laws in the USA, Australia, Canada and New Zealand. While the book does not replace any legal advice that those developing online learning might need to obtain, it considers how copying can be undertaken for educational purposes. This chapter focuses on various exceptions to copyright law (activities such as copying that can be done without the rights holder's permission) and the impact of copyright issues on face-to-face teaching. The chapter also defines e-learning (or online learning) for the purposes of this book. This definition includes the use of the internet, intranets and secure computer networks such as VLEs, course management systems and other online learning environments. This chapter considers the different effects copyright law has on teaching in the digital environment when compared with the classroom. It also explores new developments in scholarly publishing, including the open access movement and open-source software, along with the development of open licensing schemes such as Creative Commons. This chapter includes the first case study in the book, from Brunel University, where the institution appointed a copyright officer in response to the copyright challenges they were facing.

Recognizing the copyright dilemma

Much of what teachers wish to do in an online learning environment is similar to what they have traditionally done in the classroom. They give students learning activities such as reading, critiquing a work of art or consulting a manuscript source. Students may work individually or in groups. However, online technologies provide huge opportunities to broaden the reach of education by allowing students to participate in learning regardless of their geographic location. Digital technology also allows students to work together asynchronously at a time and place convenient to each learner. Used effectively, e-learning is far more than simply the use of an online document repository, it can be an engaging, online, interactive learning environment. Many of the copyright challenges to e-learning relate to the creation of an online library of resources. Digital technology offers the teacher the opportunity to provide students with perfect copies of copyright works such as digitized books, music files or a piece of digital video. Early digital library research projects, such as those funded by Jisc (the Joint Information Systems Committee) in the 1990s as part of the Electronic Libraries (e-Lib) programme, recognized the complex copyright issues that the digitization process could cause.[1] Many early digitization projects in libraries throughout the world deliberately concentrated on using material that was out of copyright, thus avoiding the need to seek copyright permissions. Seeking such permission is time consuming and potentially problematic if the owner of a work cannot be traced. However, in the UK, Jisc launched several projects as part of e-Lib to tackle this issue head on, looking at what at the time was called 'on-demand publishing' and 'electronic short loan'. These various projects ultimately led to the establishment of a service called Heron (which stood for Higher Education Resources On-demand) funded initially by Jisc. In 2002 Heron became a commercial service providing digitization and copyright services to higher education primarily in the UK until 2015. The services have subsequently been acquired by the Copyright Licensing Agency (CLA) and Heron will be wound up in 2016 and incorporated into new services offered by CLA. These developments are discussed in greater detail in Chapter 2. Needless to say the reason that Heron was developed in the first place was as a response to the growing demand to provide students with digitized access to copyright content.

Through early projects in e-learning and digital libraries, Jisc became

increasingly aware of the legal ramifications of working in a digital environment. Consequently it launched Jisc Legal in 2000 to provide advice and support on a wide range of legal concerns for the further and higher education community. Until the end of 2014 the Jisc Legal website (www.jisclegal.ac.uk) provided a wealth of legal advice and guidance over the use of technology in education, including copyright issues. In January 2015 the service was reduced following funding cuts and replaced by the Jisc Customer Services Division, which has seven geographically based teams around the UK. The team employs a subject specialist focusing on technology and the law, although since late 2014 the helpdesk support for copyright and IPR queries has been more limited. However, Jisc still provides written guidance on legal issues, and *A Quick Guide to Intellectual Property Rights in the Digital World* is one of the resources produced by this team in 2015 (Jisc, 2015). Other suggested resources for keeping up to date in this field are listed in the section 'Further resources'.

The development of e-learning in the UK

Before considering copyright issues any further, this next section will briefly provide an overview of developments in the field of online learning. A list of general readings on this topic is provided in the section 'Further resources'. Technology has become increasingly important in education and training, with the proliferation of digital tools to support administration and online learning, and the widespread availability of high-speed broadband in many places around the world. Technologies to enhance and support teaching and learning have had the greatest impact in the higher education sector, with significant investment from funding bodies such as Jisc, which has provided the infrastructure through the Janet network and research and development funding for projects and initiatives. The Janet network is dedicated to the needs of education and research in the UK; it connects the UK's education and research organizations to each other and the rest of the world through links to the global internet. Thus every higher education institution (HEI) in the UK has invested significantly in digital technologies to support teaching and learning. Students' face-to-face learning is primarily supported through the use of online learning platforms (known as VLEs in the UK and learning or course management systems elsewhere in the world). The 2014

survey on technology-enhanced learning in higher education in the UK by the Universities and Colleges Information Systems Association (UCISA, 2014) showed that Blackboard Learn is the most widely used commercial institutional VLE in the UK (used by 49% of responding HEIs), however 62% of institutions use the open-source system Moodle. In the past five years there has also been a growth in the number of online courses offered to students who may rarely or never attend a UK HEI, or who may be taught at an overseas campus. VLEs are the main teaching platform used to support the increasing globalization of the UK higher education sector. The number of massive open online courses (MOOCs) offered in the higher education sector has grown in recent years; these are free online courses offered by traditional universities, but open to students from around the world. MOOCs present specific copyright challenges. They are considered in the case study in Chapter 3 and discussed in more detail in Chapter 5.

In reality, entirely online learning, as defined in the Introduction, is rare, but most educational establishments have recognized that providing online support for learners and face-to-face teaching offers many rewards for teachers and learners. The use of technology is largely linked to the need to provide students in higher and further education with greater flexibility as to where and when they can access learning. As a result of the funding cuts and introduction of fees in the higher education sector there are now far higher numbers of students who work while studying, so students increasingly need to take advantage of convenient, electronic access to course content. Meanwhile, academic institutions can reduce their administrative burdens by distributing content online rather than in paper format.

In the further education sector most colleges also have VLEs, the most common platform being the open-source system Moodle. Essentially what these systems provide is a relatively easy-to-use platform to distribute content to learners, with built-in educational tools or activities to engage them and facilitate learning. These include discussion tools, assessment tools, file uploads and collaborative workspaces. There has been a significant decline in public funding in the further education sector in the past five years. However the Further Education Learning Technology Action Group recommended in June 2014 that a minimum of 10% of all publicly funded programmes should be delivered online by 2015–16, demonstrating that there has been a significant investment in online

learning in this sector. Jisc are currently working on a programme to implement this recommendation in the FE sector (Jisc, 2016).

In the school sector the use of learning technologies has been slower to develop. There was some progress from 2006 to 2010 following investment from central government through Becta, but funding cuts following the general election in 2010 led to the closure of this agency. Becta's role was to ensure that technology was used effectively in the British education system and it ran events and produced numerous resources to help encourage the use of e-learning. Developments in the school sector in this period were driven by the UK Government's e-strategy *Harnessing Technology* (DfES, 2005), which was launched in 2005 and sought to provide a 'cradle to grave' approach to using technology in learning. The e-strategy also set the expectations that:

- by spring 2008 every pupil should have access to a personalized online learning space with the potential to support an e-portfolio (provided by their local authority)
- by 2010 every school should have integrated learning and management systems (a comprehensive suite of learning platform technologies).

Following the election in 2010, the Department for Education's approach to technology-enhanced learning has been largely silent. Nevertheless, as a result of earlier investment 'learning platforms' or VLEs are increasingly common in UK schools along with the use of other classroom technologies such as interactive whiteboards. However, the current government policy has focused on enhancing the computing curriculum and developing the capacity of teachers to support 'digital literacies' (see the Glossary for more details) rather than on using online learning.

Online vs. 'blended' learning

Many HEIs were drawn into investment in online learning technology by the potential of supporting students at a distance, which until there were developments in technology had remained the preserve of specialist institutions such as the Open University. The potential of entirely online learning has become a reality in the last five years, and can be seen as a

way of expanding student numbers without the need for additional teaching space. It also meets the growing demand for education throughout the world, but the financial investment associated with fully online distance education is significant. In 2005 the UK 'e-university' collapsed at a reported cost of over £500 million. This led some institutions to reconsider how they might use technology and focus on what is often called 'blended learning'. This is defined in the Introduction as the support of on-campus face-to-face students with an e-learning platform that enables them to access lecture materials, resources and readings and communicate with their peers and tutors outside the classroom. This model has become increasingly common as higher education has expanded and the way students manage their studies has changed. Since 1992, there has been significant expansion in higher education in the UK and many other English-speaking countries, and participation levels in higher education in the UK are now approximately 50%. With increasingly large class sizes and more students studying while working part (or even full) time, online and blended learning open up higher education and provide students with flexibility to learn at a time and place convenient to them. Thus, technology has been linked to the widening participation agenda in the UK, in which students from non-traditional backgrounds enter universities. Student retention can be a key issue and many e-learning systems include administrative functions that allow student participation to be tracked to alert tutors to potential problems with student engagement early on.

In 2012–13 the higher education landscape changed again in the UK following the introduction of full fees for undergraduate students, whereby most students pay up to £9000 per year for their tuition. A report by Universities UK noted a 6.3% decline in student numbers (Universities UK, 2014) although it recognized a growth in the UK's international higher education market share. In the last five years there has been a growing globalization of the UK higher education market with some institutions developing entirely online courses for students based overseas, and others expanding internationally by setting up overseas campuses, or working in partnership with other universities around the world. In 2013–14 Universities UK reported that there were 638,850 students studying for UK qualifications, but based outside the UK – the highest number of students was based in Malaysia. This figure has grown by 65% since 2008 and while more than half are registered with an overseas partner institution, almost

120,000 are studying by distance, flexible or blended learning (Universities UK, 2015). Research was also commissioned by the UK Government's Department for Business, Innovation & Skills (BIS) in 2014 to explore the value of transnational education to the UK economy. This study found 63 HEIs (of around 150 universities in total) reporting that they run active transnational education programmes, which bring in revenue of almost £500 million (BIS, 2014). Since 2010 there has also been a growth in the number of private for-profit higher education providers. This creates specific copyright challenges, blurring the line between not-for-profit education and commercial activities.

E-learning and digital resources

Learning technologists have long advocated that VLEs should be interactive environments to enhance learning, where students complete activities and assessments rather than simply access content. However many teachers still use a VLE simply as a digital document repository. Materials such as PowerPoint slides, lecture notes and essential readings are often uploaded onto the learning platform and these have replaced hard copy handouts in most institutions. A typical HEI digital course site therefore acts as an electronic file store for materials which were previously included in course handbooks or given out in the classroom. In recent years institutions have invested in lecture capture systems, so not only can students access slides from a presentation, but a recording of the lecture will also be made available to them. In 2012 51% of HEIs reported having institutionally supported lecture capture tools; by 2014 this figure had risen to 63% (UCISA, 2014, 28). Expectations about the quality of video and audio production have increased in line with the sophistication and accessibility of recording and content delivery technologies. Therefore many learning technology teams now work alongside more traditional audiovisual technicians to provide quality services in this area as the technology improves and the costs are reduced. Media streaming services are now available in 65% of all HEIs (UCISA, 2014) allowing video and audio to be delivered over university networks.

The wide availability of digital resources, be they useful web-based resources, e-journals or e-books, leads many teachers to try to include as many different types of learning resources as are appropriate within the

VLE for the convenience of their students. Librarians are aware that students and academic staff visit the library building less frequently than in the past to access resources, as many prefer the convenience of access from their own devices at their chosen location as allowed by institutional authentication systems. It is therefore no surprise that teachers who use the VLE want to include direct links to access full-text materials, for example from the course reading list. Reading list management systems were used by 55% of HEIs in 2014 (UCISA, 2014), which makes it relatively easy to add links to online resources, through integration with library systems. However, many teachers remain unaware of the complex licensing arrangements negotiated by libraries that allow them to access resources such as e-journals and e-books. In fact with more sophisticated authentication procedures and federated search tools, many teachers are not aware when they are using subscription resources rather than content freely available on the internet. The desire to provide students with as many resources as possible to help their learning can inevitably lead to copyright issues. Teachers will argue that they are simply trying to help students get access to material, but the ease with which content can be downloaded from the internet or a library subscription resource, or even scanned from hard copy, makes it all too easy to break licence agreement terms and conditions or infringe another's copyright. The general perception that there is an overarching exception for educational or not-for-profit use prevails in education, particularly outside higher education.[2] Additionally many teachers incorrectly believe that because they are distributing content to students via a secure network this provides them with greater legal protection than making material available on the open internet.

Our learners: 'the Google Generation'?

Before turning to copyright laws, it is also worth briefly mentioning the ongoing research that has looked at the characteristics of students today. Several studies (Prensky, 2001; Research Information Network, 2007; Rowlands et al., 2008) suggested that young people have a greater level of comfort around using technology than earlier generations leading to the coining of the term 'digital natives' (among others[3]), though some researchers have disputed the concept of digital natives finding it too simplistic (Jones et al., 2010). White and Le Cornu (2011) proposed the idea

of a continuum to describe how people interact with the web as one of 'visitors and residents', which is neither age nor background specific, but dependent on people's motivation and context. While it is true to say that in much of the developed world many young people have greater access to technology, perhaps more worryingly, there is also some evidence to suggest that young people have a different (or lack of) understanding of copyright law than those from previous generations. Rowlands et al. (2008, 301) qualified findings from earlier research which suggested that young people did not respect intellectual property, saying they found this to be only partly true. However, they noted: 'Young people feel that copyright regimes are unfair and unjust and a big age gap is opening up. The implications for libraries and for the information industry of a collapse of respect for copyright are potentially very serious.' Meanwhile in 2013 the Intellectual Property Office (IPO) in conjunction with the National Union of Students (NUS) conducted a survey of over 2000 students in the UK into their attitudes towards and knowledge of IPR, including copyright (NUS, 2013). The findings suggested that most students did not feel they knew enough about IPR for their future careers and that IPR education is generally not embedded in their course in most institutions. Students believed IPR education focused almost entirely on plagiarism issues and only in law departments is copyright covered in any detail. These findings suggested that students recognized the value of learning about IPR, particularly with the increasing focus on innovation and entrepreneurship where students want to understand how to protect their own ideas.

Clearly students expect their learning resources to be freely available to them, either on the internet or in their online learning environment. The payment of fees has brought this more sharply into focus. However, many students have a limited understanding of why copyright might present those delivering or supporting their teaching with challenges. In the future we may start to see this change with an increased focus on entrepreneurship and innovation, and as students become more interested in how to protect their own ideas. Chapter 6 will discuss copyright education and suggest ways it can be delivered for different audiences, including students.

Copyright and educational copying

This section introduces the legal frameworks in which educational practitioners operate. It will compare how copying for online learning can be undertaken within the law in the UK, and then contrast this with the law in Ireland, the USA, Australia, Canada and New Zealand. For practical reasons this book cannot provide a comprehensive overview of the legal position across the world. Therefore, the focus is deliberately on the major English-speaking jurisdictions in the world to provide advice for e-learning practitioners in those countries. Other books that provide detailed copyright advice for specific countries are listed in the section 'Further resources'. Copyright legislation in the former Commonwealth countries (including Canada, Australia and New Zealand) is based on UK law and so is broadly similar. The key differences in the laws are discussed later in the chapter. In the USA, the law differs significantly because the 1976 Copyright Act includes the concept of 'fair use' to cover legal uses of copyright content without the rights holder's permission, whereas in the UK the tradition of 'fair dealing' is used (see 'fair dealing' section on pages 18–19). Fair use is generally seen as a more permissive approach to copyright for it allows copyright material to be copied for any educational use as long as a set of 'fair' criteria apply. Fair dealing, on the other hand, also requires application of a test of fairness, but only applies to a finite list of activities as defined in the legislation (such as criticism and review, or illustration for instruction). There has been some discussion in Europe about introducing the concept of fair use, but to date it seems unlikely to be adopted following significant push back from rights holders. Its introduction in the UK was also explicitly rejected in the Hargreaves Review (2011). Significantly, in the UK and many other countries, much educational or classroom copying still requires institutions to take out a licence from the respective reprographic rights body, as UK law does not include the 'fair use' concept.

An important query often raised by teachers who are developing content they want to deliver throughout the world concerns the jurisdiction that applies when they are copying material. Does the law of the country in which they work take precedence over the law of the country where the content is accessed by the end user? The most pragmatic way to approach this is that if you are developing an online course at a UK institution the laws of the UK apply (or if you are developing a course in a US educational

institution US law applies). This is the approach that many institutions take when considering whether exceptions apply even if students might be accessing this material from a different country. This is primarily a risk-based position prompted by the un-harmonized nature of global copyright laws; the nature of this disjointed system is presented in great detail by Kenneth Crews in his World Intellectual Property Organization (WIPO) report on the impact of limitations and exceptions on libraries and archives (Crews, 2015). While further in-depth examination of the fragmented nature of cross-border access to copyright content is outside the scope of this book, it is worth noting that many licences have territorial restrictions in them and this is currently the focus of European policy debate over the creation of a European Digital Single Market (European Commission, 2016). These restrictions in particular apply to licences and services offered by commercial organizations, such as broadcasters and audiovisual production companies, whose business models rely on providing content at different times, different costs and in different formats from country to country. An example of how this has affected education is the ERA licence in the UK, which provides access to free-to-air broadcast material, but only for students geographically located within the UK. E-resource licences (see Chapter 4) increasingly provide access to authorized users based in a range of countries but this has proved a challenging task for collective management organizations like the ERA attempting to negotiate cross-border licences for entire classes of creative work. In the UK the CLA has sought to address this issue through a trial extension to its higher education licence that covers students based at overseas campuses. The pilot is still ongoing; one of the requirements is that students need to be registered at the UK institution to be covered by this licence. Further details about educational licences in the UK are discussed later in this chapter as well as in context throughout the book.

Distance learning has always required a specific focus on copyright issues, and units or institutions dedicated to distance education (like the Open University) have rights and permissions departments to clear content for use, and considering application of exceptions. However, as we have seen earlier, many HEIs have ventured into the realm of online education to improve the effectiveness of their teaching and capitalize on the international market for UK education. As a result the model for traditional educational establishments has changed from one where learning materials were either made available at a physical location (a library) for on-campus

students, or were deliberately compiled for off-campus students in conjunction with distance learning teams who were adequately resourced to consider copyright issues. This responsibility now often falls on the shoulders of teaching staff who want to provide compelling teaching content in digital format, but find it difficult to respond appropriately to the many legal questions (including about copyright) that arise. However, the potential for digital technology to empower both teachers and students in this new context is significant, and with the appropriate training and support (see Chapter 6), copyright need not be a barrier to creative teaching.

In general there are a number of ways that copying works can be undertaken without infringing copyright laws. These include copying:

- very small amounts of a work (copyright protects a substantial part of a work although no definition of what 'substantial' might be is provided in UK law and it does not relate simply to quantity)
- where copyright has expired; copyright protection is limited by duration to a set number of years (a summary of durations as they apply to different kinds of works is listed in Table 1.1), thus copying of a work which is out of copyright and in the 'public domain' is permitted
- under a statutory exception; for instance, copying in accordance with 'fair dealing' in the UK for the purposes of quotation, criticism and review
- under a collective licence, which gives permission from a broad range of copyright holders to carry out activities restricted by default under law – for example the CLA offer licences for the education sector to permit multiple copying of published works within limits
- under some other form of licence issued by the rights holder, such as a licence agreement for an electronic resource or direct permission obtained for use of a specific piece of content
- an 'orphan work' using the UK's Orphan Work Licensing Scheme or the EU Directive on orphan works (see above and Chapter 2).

It is interesting to trace how different countries have dealt with educational copying since the advent of the internet, and particularly how they allow teachers and educational establishments to make material available via an online learning platform. While not attempting to be comprehensive, the

later part of this chapter includes details from a selection of English-speaking countries. It aims to highlight how technology is causing governments around the world to reconsider their copyright laws and try to bring them up to date. Yet, despite the need for changes to accommodate and support teaching practices, the pressure to amend the law often seems to be coming from well resourced, commercial lobbyists. In particular the media industries such as global publishing, music and film companies that flourished in the 20th century are attempting to combat internet piracy and illegal file sharing by persuading policy makers to strengthen copyright law. In trying to clamp down on this type of copying, legislators could well be causing further problems for educators who simply want to allow students and researchers to be able to access information in the most convenient format. As educational content is increasingly provided in digital format, the copyright and licensing regime in countries throughout the world has proved burdensome for administrators and librarians. However there are signs that a more progressive copyright regime might be evolving as demonstrated in the changes in the UK following the Hargreaves Review. Hopefully future debate will reveal a route to a fairer balance between the needs of education and the need for copyright owners to receive just rewards for their endeavours, and that this will be recognized by governments around the world as they undertake copyright reforms. Nonetheless, those in education need to be mindful that there is a powerful lobby from commercial publishers and the movie and music industry that continues to push back against copyright exceptions. An important aspect of copyright education is to instill ethical use of copyright material in educational institutions in order to challenge the view that exceptions undermine the creative industries' ability to exploit copyright works.

A brief introduction to UK copyright law

These next sections will explore copyright in greater detail, looking at why the laws exist, what types of works are protected, and for how long and what activities are permitted for educational purposes in the UK. This part of the book has been updated following amendments in the UK to the Copyright, Designs and Patents Act 1988 (CDPA) in June and October 2014, which provided several new education-related copyright exceptions and amendments to a number of existing exceptions. These changes[4] followed

an independent review of intellectual property law launched by the Prime Minister in November 2010 and conducted by Professor Ian Hargreaves of Cardiff University (Hargreaves, 2011).

This book focuses on copyright and e-learning and is therefore not intended as a comprehensive guide for librarians to copying under the law. See the section 'Further resources' at the end of the book, but notable authors who have produced invaluable guides for UK librarians or archivists include Padfield (2015), Pedley (2015) and Cornish (2015). The works of Padfield and Cornish are useful supplements to this book as they include questions and answers to common copyright dilemmas that those dealing with copyright queries are frequently asked about. Meanwhile Pedley's *The E-Copyright Handbook* (2012) is particularly useful for those interested in relevant case law on digital copyright. This book seeks neither to replace nor replicate these existing publications, but rather to provide a focus on how copyright issues impact specifically on online learning.

The first ever copyright law was implemented in Great Britain at the start of the 18th century. This was intended to provide intellectual and financial incentives for the production of cultural works by providing limited protections to those who create, and invest in the creation of them. The legislation – called the Statute of Anne – was introduced into British law in 1709 and its creation was prompted by the invention of the printing press and the need to regulate copying of literary works. The first words of the statute said that it was 'an act for the encouragement of learning' and even though copyright law has changed a great deal since then it still has a major impact on those working and studying in educational establishments. Since 1709 policy makers around the world have tried to strike the balance between adequate copyright protection against theft and piracy, versus sufficiently generous educational and societally beneficial provisions that foster the free flow of ideas. The need for balance was the main focus on the Hargreaves Review (2011), which sought to modernize UK copyright laws in the digital age. In the UK, copyright does not require a registration process and provided that works meet certain criteria, they then qualify for automatic copyright protection on their creation. These criteria state that the work must be:

- original
- fixed or recorded in some form

- created by a qualified national (effectively this means any person).

Copyright offers protection and certain exclusive rights to the owner or owners of the work. These exclusive rights are the right to:

- copy the work
- issue copies to the public (essentially to publish the work)
- rent or lend the work to the public
- perform, show or play the work in public
- communicate the work to the public (which means to put it on the internet or broadcast it)
- make an adaptation of the work or do any of the above in relation to an adaptation.

Usually the primary author (or authors) owns the copyright to a work, but this is dependent on the nature of the work. In the case of literary works such as books, it is often fairly clear who the author is. However, identifying the owner of copyright for works such as films and sound recordings can become more complex. For example in the case of a musical sound recording, the author of the work (the recording) is the producer, and the company that made the arrangements for the recording (e.g. paid for the studio) owns the copyright in it. The performances as captured on the sound recording give rise to an additional set of 'performance rights' for the featured artists. This is all in addition to the separate copyright protection afforded to the underlying musical work and the lyrics (in the

Table 1.1 *UK law on duration of copyright by type of material (CDPA 1988)*

Type of material	**Duration of copyright**
Literary, artistic, dramatic and musical works	70 years from the death of the author, or 70 years from publication/performance if no named author
Sound recordings	70 years from the date of recording
Films	50 years following the last to die of: the principal director, producer, author of screenplay, composer of soundtrack
Broadcasts	50 years from the date of broadcast
Typographical layout	25 years from publication
Unpublished works	70 years from the death of the author or 31 December 2039 – whichever is longer

case of a song), the authors of which are often different people to the producer or the artists. In the case of films the producer and the principal director are the author of the work. Cornish (2015, 121–9) provides an excellent overview of the issues surrounding copyright ownership, many of which were complicated by the changes to UK copyright law throughout the 20th century. Anyone trying to identify the copyright holder in any given work should be aware that as a property right, copyright can also be transferred (sold) to someone other than the author. In many cases the copyright owner of a work can be identified from the copyright symbol placed somewhere prominently on the work (for example, © Jane Secker with Chris Morrison 2016), but its use is not a prerequisite for copyright protection in the UK or for much of the world.

Cornish (2015, 42–3) provides greater detail about the duration of copyright and should be consulted for specific queries such as protection for authors from outside the European Economic Area and protection for works with multiple authors. Even when copyright has expired, some moral rights may remain. The moral rights are the right to be identified as the author of a work (paternity), the right to object to derogatory treatment of a work (integrity), the right not to be identified as the author of someone else's work (false attribution), and the right to privacy of certain photographs and films. See the Glossary for more details.

In addition to the protection that a copyright work receives in the country where it was first published, there are several international copyright agreements that provide protection for works internationally. For further details of these agreements such as the Berne Convention, the UK's IPO provides a useful overview (IPO, 2014).

Content produced by UK civil servants, ministers and government departments (including legislation and government reports) is known as Crown Copyright material. Most copying and publication of Crown Copyright material was previously allowed under a waiver, but is now explicitly permitted under the terms of the Open Government Licence (National Archives, 2015). This now permits unrestricted copying of the material following amendment of the Public Sector Information Directive in 2013. The Open Government Licence is discussed in Chapter 4 (pages 132–3); in essence, provided you acknowledge the source and do not reproduce government logos or insignias, you are free to copy, adapt and exploit UK government information.

The Hargreaves Review

Before we consider copyright exceptions and licences it is worth considering the recent changes to the law in the UK to provide some context. Although the UK Copyright Act has been modified many times since 1988, significant amendments relating to education were finally made to the CDPA in June and October 2014. This followed the review of intellectual property by Professor Ian Hargreaves, which came after several failed attempts in the preceding decades to redress the balance in the copyright regime and modernize it for the digital age (Hargreaves, 2011). For example, in December 2005 HM Treasury launched a widespread review of UK intellectual property laws, known as the Gowers Review. The recommendations made by the Gowers Report (HM Treasury, 2006) were widely criticized as not going far enough to recognize the pace of technological change and they were never implemented in UK law. Consequently in November 2010 the Prime Minister announced another review of intellectual property laws to make them fit for the digital age and to ensure they supported innovation in the interests of economic growth. This time the recommendations from the review led to amendments to the law following several rounds of consultations with stakeholders. This included the education community and representatives of rights holders and other commercial and non-commercial organizations.

Professor Hargreaves made ten recommendations and the government responded to the Hargreaves Review in August 2011. In 2013 the first changes were enacted via the Enterprise and Regulatory Reform Act, which made provision for the handling of orphan works – works where it is not possible to identify or contact the author. Meanwhile the Copyright Hub[5] was launched in July 2013 (see Chapter 5, page 203, for more details) and the new exceptions finally came into force on 1 October 2014.

The issue of 'orphan works' has caused many problems in education and cultural institutions. Orphan works consume a considerable amount of staff time in attempts to track down rights holders to obtain permission to copy the materials. On occasions where the rights cannot be traced, an institution needs to assess the risks involved in copying the material without permission for each individual case. Institutions also need to maintain records to demonstrate that all possible avenues were explored. The launch of the Orphan Works Licensing Scheme by the IPO in October 2014 gave institutions one route to using orphan works in a risk free way.

However, there is also now an orphan works exception following a European directive that allows use of certain orphan works by educational and cultural institutions. For more information see Chapter 2, pages 81–2.

One of the most significant aspects of the 2014 copyright reforms in the UK was the provision that certain exceptions could not be undermined by the terms of a contract between rights holder and end user. This was particularly important to the education sector in relation to the licensing of electronic resources, where the terms of a licence are often more restrictive than the provisions of the law. For example, the law allows people to make a single copy of an article for their own non-commercial research or private study but an electronic resource licence may prohibit this. The effect of the changes to the law in October 2014 was that any term of a contract or licence that attempted to undermine an exception provided for by law in the UK could be ignored. However it is still early days to ascertain what this actually means in practice. For many academic librarians working under the provisions of a range of licence agreements there is a level of anxiety about whether they can ignore a legal contract they or their employers have agreed to. The issue has also been further complicated where commercial publishers use some form of digital rights management (DRM) technology to prevent copying or exploitation of the work under an exception (see Chapter 4, pages 125–7, for more information). In early 2016 these matters were subject to ongoing discussions between the IPO and the Libraries and Archives Copyright Alliance (LACA).

'Fair dealing'

If you wish to use a copyright work for educational purposes in the UK you could do this under a direct licence, where permission is obtained directly from the rights holder, or a collective licence from a reprographic rights organization such as the CLA. Alternatively you could choose to rely on a copyright exception if licences are unavailable or inappropriate, although this will require consideration of the CDPA to ensure that the proposed activity is permitted by law. Licences are effectively a risk free approach to copying, because you have permission, meanwhile copyright exceptions rely on an element of judgement. UK law (like many other copyright laws throughout the world) has a provision known as 'fair dealing', and most educational copying done under an exception to

copyright law is subject to this provision. It requires a judgement to be made over how a 'fair-minded and honest person would deal with the work' and case law is relevant here in determining what might be 'fair'. Fair dealing is in fact a defence that could be used in court rather than a right under law. This is particularly important because it puts the onus on the person using the defence to make sure it actually applies. Since 2014 fair dealing can be applied to all types of copyright works (including films, sound recordings or broadcasts) and permits the making of limited copies for the following specific purposes:

- non-commercial research and private study
- quotation, criticism and review
- the reporting of news
- government administration
- illustration for instruction
- caricature, parody, or pastiche.

In all cases, where feasible you must provide a sufficient acknowledgement. Much photocopying and scanning of published works undertaken in an educational context falls under the fair dealing provisions; for example, single copies made by teachers for their research or by students as part of their private study. However, distribution of copies via the VLE or similar network constitutes multiple copying and thus is unlikely to be considered as fair dealing. Having said that, fair dealing defences do cover some activities beyond single, personal copies as the next section on specific educational exceptions in the UK explains.

Educational copying and UK law

Anyone wanting to make copyright material legally available in educational establishments in the UK has to do so under either a licence or an exception to copyright. In order to stay within the law and make the best use of your resources you need to understand the relationship between the two.

Licences can be for specific works or collections of content, or they may be 'blanket' licences that cover whole classes of work (e.g. musical works or published editions). The most commonly encountered licensing bodies

providing blanket permissions to UK educational establishments are summarized in Table 1.2.

Table 1.2 *Licensing bodies providing blanket permissions to UK educational establishments*

Licensing body	Class of work	What is allowed
The CLA (Copyright Licensing Agency; www.cla.co.uk/)	Books, magazines	Limited copying and use in a VLE such as Moodle
The ERA (Educational Recording Agency; www.era.org.uk/)	UK TV broadcasts	Recording and storage allows use of Box of Broadcasts (BoB) service http://bobnational.net/
NLA Media Access (Newspaper Licensing Agency; www.nlamediaaccess.com/)	Newspapers, magazines	Press clippings (including digital content)
The DACS (Design and Artists Copyright Society; www.dacs.org.uk/)	Artistic images (including photos)	Reproduction of artistic works
PRS for Music (www.prsformusic.com/), formerly two separate organizations: the Performing Right Society and the Mechanical Copyright Protection Society	Musical works and sound recordings	Public performance, audio products, online services; performance, communication and reproduction of musical works on behalf of songwriters and composers
PPL (Phonographic Performance Limited; www.ppluk.com/)	Musical sound recordings	Public performance of musical sound recordings on behalf of the copyright holders (record companies, producers and performers)
Filmbank (www.filmbank.co.uk/)	Feature films	Showing film and TV in non-educational context

In addition to dealing with the licensing bodies listed in Table 1.2, institutions can purchase licences for specific electronic library resources, teaching objects and software packages directly from suppliers or via aggregators like Jisc Collections and Eduserv (for more details on born digital resources see Chapter 4).

In the UK, Sections 29 to 36 of the CDPA include specific exceptions that relate to education where it is not possible or appropriate to get a licence.

Table 1.3 sets these out in more detail (although as this is a summary you should refer to the original wording of the legislation when assessing a copyright issue).

Table 1.3 *Exceptions in the CDPA relating to education*

Copyright exception	**Brief description**	**Limitation and caveats**
Section 29: Research and private study 	Allows individuals to make single copies of limited extracts of copyright works for non-commercial research or private study. No contractual override.	Subject to fair dealing. Cannot be used for sharing material on a VLE. Individuals must make their own copies. Cannot be used to circulate copies to students.
Section 30: Quotation (criticism and review) 	Allows 'fair dealing' usage of quotations for any purposes including 'criticism and review'. No contractual override.	Subject to fair dealing. Works must have been made publicly available (this does not cover unpublished material).
Section 31A & 31B: Accessible copies for disabled users 	Allows copying to provide equal access to copyright works for users with any type of physical or mental disability, as individuals (s.31A) or institutions (s. 31B). No contractual override.	Covers all types of copyright work. No contractual override. Does not address use of DRM technologies or technical protection measures.
Section 32: Illustration for instruction 	Allows limited, non-commercial 'fair dealing' use of copyright material for the purposes of teaching. No contractual override.	Subject to fair dealing. Covers all copyright works including sound recordings, films and broadcasts.
Section 34: Performing or playing a work for educational purposes 	Performing, playing or showing work in course of activities of educational establishment.	Members of the public cannot be admitted. Does not permit copying of the work.
Section 35: Recording of broadcasts 	Allows recording of free-to-air broadcasts by or on behalf of educational establishments for non-commercial purposes. Only applies where no licensing scheme (ERA) available.	ERA licensing scheme takes precedence. Non-commercial educational use. Allows off premises access only via secure electronic network.

Continued on next page

Table 1.3 *Continued*

Copyright exception	Brief description	Limitation and caveats
Section 36: Educational copying of published works 	Allows copying and use of multiple copies of extracts from published copyright works. Only applies where no licensing scheme (i.e. CLA) available.	Cannot exceed more than 5% of a work in a year per institution. CLA licensing scheme takes precedence if the work is in CLA's licensed repertoire. Includes incorporated works (e.g. illustrations).

Although the CDPA makes a provision for educational copying, relying on the exceptions to the law involves a degree of risk. The CDPA does not specify which technologies can be used to make copies, so digital copying is permitted. However, the distribution of copies of a work via a network was clarified to be an exclusive right of the right holders in 2003 when the UK law was amended by the Copyright and Related Rights Regulations (Statutory Instrument No. 2498). This amendment:

- redefined broadcasts to specifically exclude internet transmission (or podcasts)
- gave copyright holders the exclusive right to 'communicate a work to the public'
- defined this right as making the material available by 'electronic transmission' – via the internet and/or broadcasting the work.

Before this amendment it was technically illegal to view websites, as doing so created temporary copies on the viewer's computer, but the amendment stated that copyright is not infringed by:

> the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable:
>
> (a) a transmission of the work in a network between third parties by an intermediary; or
> (b) a lawful use of the work.

Chapters 2–5 of this book consider in greater depth the ways in which licences and exceptions apply to certain types of content and context in the UK, although it is worth discussing the broader implications of the recently updated legislative environment. One of the objectives of the recent UK copyright reforms was to legitimize existing educational practice and provide the flexibility to avoid copyright being a barrier to the use of new tools and practices in learning and teaching. Section 32 of the CDPA – 'illustration for instruction' – is one of the most important additions to the law because until 2014 there was no provision for the reproduction of copyright material in teaching 'by means of a reprographic process'. This meant that using copyright content in PowerPoint slides and electronic whiteboards for teaching without permission was illegal and there was no provision for the copying of sound recordings or film. Effectively this left traditional 'chalk and talk' reproductions of existing works as the only practical, legal option, although it was widely recognized that use of technology to present copyright content to students in a classroom was widespread and caused little harm to copyright holders. This section of the CDPA also updated the provisions for use of copyright content for the purposes of answering or preparing an examination question – an exception that has also been widely used by those creating dissertations or theses. The amendment in 2014 actually narrowed the scope of this exception by removing the condition that 'anything done for the purposes of an examination' was permissible and instead applied a fair dealing test. However, it is likely that for the most part the activities undertaken under the previous, more wide-ranging exception are still valid under the newly worded legislation. As before, the exception only relates to the preparation or answering of the exam question, so subsequent use of the material such as posting a thesis containing third-party copyright material is not covered under this exception, although it may be under Section 30 – criticism and review, quotation and news reporting. See Chapter 4, pages 158–9, for more information on the online submission of theses.

The practice of quoting from other works is fundamental to the process of learning, but up until 2014 there was no exception that specifically mentioned the term 'quotation'. Instead Section 30 of the CDPA allowed limited portions of works to be reproduced for the purposes of criticism and review (and for news reporting), so the use of the work had to relate to a critical evaluation of the work or a related concept (such as the values

and thoughts embodied in it). Following the Hargreaves Review, the law was amended to say that people could quote a reasonable proportion of a copyright work for any purpose as long as it had already been published and the use passed the fair dealing test (not any more than was needed, not affecting sales or exploitation and with attribution where practical). For the vast majority of students, quotations of short passages of text would already have been allowed under the standing concept of criticism and review. However, the exception now covers other potential uses in an e-learning environment, such as including material in exam tests, or teaching materials (although as mentioned earlier there is likely to be some overlap with Section 32, 'illustration for instruction', where both exceptions might apply). As the introduction of the concept of quotation is so new and there has been little UK case law, it is by no means clear what is and is not acceptable. Of particular relevance to those looking to make teaching materials available is whether an image (protected as an artistic work) could be said to be 'quoted' if it was reproduced in its entirety. EU case law suggests that in some cases reproduction of a photograph could be a quotation. This is discussed in more depth in Chapter 3, pages 91–2.

Section 34 allows copyright works such as films, TV programmes and music to be shown or performed in educational establishments as part of their educational activities. Therefore showing or performing a copyright work at an educational institution would not be covered by this exception unless it was done for the purposes of teaching or assessment.

Section 35 allows educational establishments to record broadcasts for the purposes of teaching and learning as long as there are no licences available for this activity. Although this exception can be used for subscription TV and radio, the recording of free-to-air broadcasts in the UK is licensed by the ERA. The ERA licences and the ways of getting access to broadcast content in education are mentioned in more detail in Chapter 3.

Section 36 allows educational establishments to make multiple copies of limited extracts from copyright works (with the exception of broadcasts or images that are not incorporated into other works) in order to support teaching. The limits before the 2014 copyright reforms were so low (1% of a work per quarter) that they were rarely, if ever, used. The updated limits now cover up to 5% of a work per institution per year, but as before do not apply if there are licences available to cover the copying. In the UK the CLA and Newspaper Licensing Agency (NLA) licences cover books,

journals and newspapers, respectively, so the exception does not relate to anything within those organizations' repertoire where a licence is available. Educational institutions wanting to take advantage of Section 36 need to consider that although the percentage limit of an extract is similar to that of the CLA Licence, the conditions of the exception are different from the available licences. One major difference is that the 5% limit on a particular copyright work applies to the whole institution, so two or more teachers must not copy from the same work even if they are copying different extracts for different groups of students. In any event, it is important for institutions to incorporate an understanding of Section 36 alongside the application of the CLA Licence within their standard processes and procedures. The history and practical applications of the CLA Licence are discussed in more detail in Chapter 2.

Before 2014, copies for students with a visual impairment could be made under the Copyright (Visually Impaired Persons) Act 2002. This allowed single copies of copyright works (literary, dramatic, musical or artistic work or a published edition) to be made for visually impaired persons for accessibility purposes if they were not available commercially. The act has now been repealed following the Hargreaves recommendations that this should form a new exception and be extended to persons with all types of disabilities, not just visual. Section 31 of the CDPA now allows copying to provide equal access to copyright works for users with any type of physical or mental disability, either as individuals (s. 31A) or institutions (s. 31B). Copying for students with disabilities is also explicitly covered by the CLA Licence and the copying does not need to be reported, unlike other scanned items.

Case Study 1 The copyright officer at Brunel University London

Monique Ritchie

Introduction

In 2004–5, Brunel University Library created a new dedicated post to manage copyright in the academic environment, with a focus on digital copyright: the copyright and digital resources officer. Like most educational institutions, recent

changes to copyright law and licensing schemes, and the increased use of e-learning environments and e-resources, threw copyright to the forefront of strategic planning. There was a strong recognition among library and senior university management that the digital age posed particular challenges at a time when the University's e-learning strategy was evolving rapidly. It became increasingly apparent that a university-wide copyright consultancy service was required to manage licence administration and copyright advice faced with an increasingly intricate licensing and legislative framework.

In 2012–13, the copyright officer assumed additional research support responsibilities in response to changes affecting academic research around open access and research data management and the post became a dual one: research librarian and copyright officer.

Remit, scope and position in the institution

The remit is broad, with the copyright officer responsible for providing support on copyright and IPR issues to all staff and students, academic and non-academic. However, the post sits within the library staff structure as, despite the close links with external departments and colleges and institutes, key stakeholders are primarily engaged in teaching, learning and research functions. The library naturally occupies a central position in relation to these, and is quite often the first port of call for questions – library or non-library related.

Initially, the Director of Library Services directly oversaw the direction and focus of the role as it had linkages with the University's strategic planning process. Once established, and following internal restructuring in 2008–9 to address changing university priorities, management devolved to the Academic Services team, working alongside subject liaison librarians and the institutional repository team. Further internal and institutional restructuring found copyright, digital readings and the institutional repository moving to Content Services, responsible for electronic resources, library systems and e-strategy in 2013–14, with the role based in a newly created Research Support Services sub-team. The copyright officer works closely with the Collection Services team responsible for interlibrary loans, reading list processing and acquisitions.

While copyright is no longer based in the same team as the subject liaison librarians who provide comprehensive support to the University's learning, teaching and research aims and objectives, the copyright officer continues to benefit from their close links with academic staff, and they also assume some

copyright support responsibilities.

Within the institution, there are links with the Legal, Governance and Information Office, Computing and Media Services and the Learning Technology Team, and directly with academic staff within colleges and research institutes. The role therefore involves working with a wide variety of colleagues at many levels.

Role and responsibilities

The copyright officer deals primarily with the following areas:

- copyright licence administration
- creating and implementing copyright policy and procedures
- copyright compliance monitoring
- copyright clearance
- copyright consultancy (guidance on copyright and IPR issues, with a focus on digital copyright)
- designing and delivering staff development and user education on copyright and IPR in a teaching, learning and research environment.

The copyright officer is responsible for ensuring that the University meets the requirements of copyright law by administering licences and providing advice and training. The role directly supports the University's teaching and learning strategy, playing a significant role in making digital resources of all kinds available to staff and students, developing services and helping to ensure that initiatives in this area are seamlessly integrated from a user's perspective. The Digital Readings Service, which delivers digital readings licensed by CLA to the VLE, is one such initiative.

Core parts of the role of the copyright officer are ensuring that staff and students are aware of the terms of the licences, developing support materials and disseminating information in the form of web pages, staff development sessions, handbooks and newsletters. Copyright clearance is perhaps the smallest part of the role, possibly because Brunel encourages and provides support to staff to obtain their own, and before the post was created, many staff and departments were accustomed to doing this themselves. External liaison with similar post holders at other institutions is encouraged.

Although it may appear that the research and copyright elements of the Brunel role are unconnected, in fact they are symbiotically linked. First, there

are significant copyright and intellectual property issues affecting all aspects of the research lifecycle, from conceptualization of a research project or idea to the publication and curation of research outputs and beyond. This dual role provides a unique opportunity to link support and target a community which is typically more difficult to target than the education community.

Second, the highly individualized and 'siloed' nature of research makes providing services and training to the research community challenging compared with the teaching or administrative communities, where centralized support is more embedded. Research support has proved to be a way in, as researchers seek advice on demand based on their individual schedules and needs, such as when applying for funding or publishing.

Problems, issues, challenges

The key areas of difficulty relate mainly to the CLA Licence and the legislative framework. Licensing terms and conditions are complex, requiring interpretation or condensing into manageable bite-sized formats for staff. Administratively, the CLA Licence requires separate processes from other content and its reporting and collection maintenance requirements are onerous, although there have been recent improvements and a commitment to working closely with the sector to improve licensing conditions.

Changes to copyright law in 2014 have further complicated copyright support, as some aspects of copyright practice and interpretation have now become less clear, particularly around fair dealing statutory exceptions for examinations and instruction. The use of certain content types, like images and broadcasts, is still fraught with difficulty. Some positive changes in the legislation, such as the exception allowing 5% of unlicensed works to be used for teaching in a 12-month period, are not being used because of the impracticability of managing processes institutionally and workload implications.

When the VLE was upgraded to a new version in 2007, which required training for most staff, 50 sessions were delivered to staff during that year. Sustaining a copyright training programme of this intensity is not feasible and so training is provided to e-learning support staff who cascade support to academics with back-up from the copyright officer. In 2015–16, centralized training is to be delivered through a central academic practice programme co-ordinated by the Brunel Educational Excellence Centre.

Brunel has found that academic staff, who are the primary users of the CLA Licence in their teaching, and to a lesser extent in their research, simply do not have the time to absorb the complexities of the licence and work out how to apply them to their needs or attend training sessions. Many staff are balancing heavy teaching, research and administrative workloads and the reality for most is that planning course content and relevant readings is often done under pressure. It is not uncommon for reading lists to be put together ad hoc, even a week before they are needed. In fact, from an academic's viewpoint, it is arguably the best method to guarantee the currency and relevance of readings, although from a library perspective this is the worst possible way, as the acquisitions process takes time, particularly when many lists come in at once.

Brunel tackles copyright compliance holistically, by focusing on embedding good practice into processes, rather than on the rules and regulations, and by simplifying administration for staff. A key example of this is the introduction of a simple requirement for staff to prepare and submit reading lists to the library for resourcing. Library staff then resource the content, consulting academics when there is a conflict or clearance is needed. Staff no longer need worry about what is legal, they can simply prepare lists based on the most appropriate content for their teaching needs and library staff advise accordingly. However, this approach is demanding and resource intensive for the library.

Technological advancements in teaching methods and evolving 'reading lists' that are less text based and feature multimedia and other content types (e.g. YouTube) more frequently increase demands on copyright support.

Conclusion

Compliance with multiple terms and conditions in complex licences is resource intensive and the workload it generates increases exponentially each year with increasing use of e-learning environments and other emerging technologies where the rules are different.

Overall, it is a very challenging task to ensure that the institution complies with copyright legislation and terms of blanket and contractual licensing. These licences are not yet flexible enough to allow academics to make use of the best resources available, without getting bogged down in working out what is legal or not. At Brunel the view is that copyright, even with recent changes to legislation in 2014, can at times hamper the ability to teach and conduct research effectively in the increasingly competitive international higher

education environment, which has an impact on the creative output of students and researchers and ultimately on the economy.

Ireland

Irish copyright laws are broadly similar to those in the UK, although Ireland's Copyright and Related Rights Act dates from 2000 rather than 1988. As with the UK, Irish copyright laws have been amended in recent years following European directives. Educational institutions are required to take out a licence to cover multiple copying of copyright works from the Irish Copyright Licensing Agency (ICLA; www.icla.ie). Licences are available for schools and for HEIs. The licences cover photocopying, scanning and digital distribution of Irish works for secondary schools and HEIs. The ICLA also has reciprocal agreements in place for scanning of titles from the UK, Australia, Canada (including Quebec), New Zealand and South Africa. It has a list of participating US publishers and the licence also covers newspapers from Ireland and the UK. The licence specifies that institutions can make 'digital copies' (defined as scanning unaltered from the original) of copyright works that:

- are already owned by the institution
- do not exceed the limits of the paper licence (5% or chapter of a book, one article from a journal, a short story or poem not exceeding ten pages from an anthology)
- do not include printed music, newspapers, maps, charts, books of tables, artistic works (other than those essential to illustrate a text), in-house journals or 'privately prepared teaching materials'.

The licence also specifies that:

- no changing or editing of the material is permitted
- digital copies should not be posted on the web or sent by e-mail or linked to such that it can be accessed by unauthorized parties
- no copying to storage devices of the digital materials is permitted
- gathering of the copies is only permissible for back-up purposes and not for construction of a repository or database of resources.

Scanning under the licence causes some concerns in Irish institutions that are not able to restrict users from copying the files to a storage device – such as a USB stick or their own computer. Irish copyright laws were amended some time before those in the UK so that licences and contracts for digital publications (such as electronic journals or databases) cannot override the exceptions to copyright provided by statute. However, Kretschmer et al. (2010, 101) pointed out that no case law exists in Ireland and no empirical studies have been carried out to establish the impact this provision has on the Irish copyright industry.

Australia

In Australia the Copyright Act 1968 remains in force although significant changes were made to the law in 2000, which impacted on the copying that could be undertaken for educational purposes. Since the Copyright Amendment (Digital Agenda) Act 2000 came into force in 2001 it has been possible to scan copyright works for educational purposes under a licence from the reprographic rights organization, Copyright Agency Limited (CAL; www.copyright.com.au). The CAL website provides guidance for those in education and the education licences are blanket licences similar to those issued by the CLA in the UK since 2005. The licence covers photocopying, scanning and digital copying of text or images and allows any form of 'reproduction' or 'communication'. This includes adding to or changing the content, or presenting it in a different context. There are many similarities between the UK and Australian licences, which largely reflect the similarities of the legislative environment.

However, the CAL licences are more permissive than the CLA Licence in the UK, permitting 10% of a literary or musical work to be copied or one article from a journal issue. Artistic works can be copied in their entirety and copying from both published and unpublished works is permitted. Copies can only be distributed to registered students on a course and the material must also contain a copyright statement. Australian CAL licences also differ from the UK's CLA licences in the obligation to report data. Whereas UK universities have agreed to full data reporting on all items they scan under licence since 2005, data reporting is not a requirement of the Australian licence and compliance is monitored largely through periodic surveys. Further information and answers to frequently asked

questions about the CAL licences are available from the agency's website (CAL, 2015).

Screenrights (www.screenrights.org) manages a licence that allows educational institutions to copy and share broadcast content, such as documentaries shown on television. There are also arrangements in place for music licensing of educational establishments.

New Zealand

Although the New Zealand Copyright Act 1994 allows schools, public tertiary (higher education) institutions and non-profit private training establishments to copy material from published works for educational purposes, the amounts permitted are limited. Therefore New Zealand has a similar licensing scheme to those in the UK and Australia. This permits copying beyond these limits and is issued by Copyright Licensing New Zealand (CLNZ; www.copyright.co.nz), which is the reprographic rights organization in New Zealand and offers licences for education and other sectors. Scanning under the CLNZ licence and copyright issues are discussed in Case Study 5 about the University of Auckland, presented in Chapter 4. The licence is similar to the Australian CAL licence in that the limits are 10% or one chapter of a work. However, the New Zealand CLNZ licence only covers copying from print originals. Pages copied from websites or electronic retrieval systems can be stored in the learning management system (VLE) under the Copyright Act 1994, providing certain conditions are met. Until recently each licensee provided sample data for all content copied under the licence during the period of one year, once in the five year term of the licence. New Zealand universities are currently piloting a different system, whereby each university has agreed to install e-reporting software that will automate the survey process and report more frequently with more accurate data. This will be reviewed at the end of 2016. In 2013 CLNZ referred a new licence and a significant increase in the licence fee for New Zealand universities to the New Zealand Copyright Tribunal. The reference followed a breakdown in negotiations after the universities refused to agree to the increased licence fee. The universities considered the proposed increase, from $6 to $20 per year per student, to be unreasonable given that journals and books were increasingly available in digital format. Further sources of advice about

New Zealand copyright law are included in the section 'Further resources'; the Copyright Council of New Zealand and the Library and Information Association of New Zealand Aotearoa provide useful information.

Canada

Canadian copyright laws are based on UK law, and therefore include common principles such as fair dealing and similar exceptions to copyright for educational purposes. Since 2007 the Canadian Government has been attempting to review its copyright laws, which has led to considerable public concern about copyright issues. Known as C-61 and C-32, the reforms have been criticized by many including Michael Geist, a University of Ottawa law professor, who led a movement that gained enormous popularity through a Facebook group. For example, amendments to Canadian law to outlaw the circumvention of digital rights management systems have been met with much opposition. Campaigners argue that circumvention for non-infringing purposes, such as fair dealing or uses permitted by educational and library exceptions in the Copyright Act, must be allowed.

In order to address these questions the Canadian Government convened the Gatineau Copyright Roundtable in July 2009. It was attended by copyright experts and representatives from bodies such as the Association of Universities and Colleges of Canada (AUCC) – now known as Universities Canada (www.univcan.ca/). In 2009 the AUCC recognized that copyright reforms were needed to support e-learning, and believed that educational uses of materials freely posted on the internet should be permitted. They therefore advocated that copyright laws should be amended to facilitate technology-enhanced learning and not to disadvantage online learners. In 2012, Bill C-11, otherwise known as the Copyright Modernization Act, was adopted, resulting in significant amendments to the Copyright Act. These included expanded exceptions for educational institutions and libraries, archives and museums, and reduced statutory damages for non-commercial infringement.

In 2012 Canadian universities had a similar dispute to that in New Zealand over copyright licensing with their reprographic rights organization, Access Copyright (which covers all of Canada, with the exception of Quebec), over the price of the annual licence. Access

Copyright had claimed that universities were unable to opt out of their licence, but a Supreme Court of Canada decision – in Alberta (Education) vs. Access Copyright – found that some copying for educational purposes did fall firmly under fair dealing. This decision, in combination with expansion to fair dealing in Bill C-11, led Canadian universities to question the value of the licence. Many Canadian universities have subsequently opted out of the licence, and rely on the fair dealing guidelines adopted by Universities Canada. These guidelines (Universities Canada, 2015) outline the amounts of copyright material that may be reproduced for educational purposes and under which circumstances, without payment of fees or obtaining permissions. However, some legal experts caution that the amounts referred to in the policy have no firm basis in law. Access Copyright is currently suing one Canadian university, while another university is embroiled in a lawsuit with the Quebec rights collective Copibec.

Access Copyright now offers a wide variety of licence options, to cover photocopies, e-mail attachments and the distribution of digital readings. There are several resources on Canadian copyright law listed in the section 'Further resources'. The Canadian Library Association maintains a Copyright Information Centre on its website and Michael Geist's blog (www.michaelgeist.ca) is another good source of up-to-date information.

The USA

Copyright legislation

In the USA the current legislation dates from 1974, but several other acts have been issued that those working in education need to be aware of. Copying for education under the Copyright Act 1974 is certainly less restrictive than in other countries in the world. The concept of 'fair use' is enshrined in the law, and differs substantially from the UK concept of 'fair dealing'. Specifically 'fair use' is a broad legal doctrine, which covers copying of copyright material for educational and other societally beneficial purposes. In the late 1990s many US librarians were involved in the Conference on Fair Use (CONFU) to set out guidelines of what could be copied under this provision. This coincided with many university libraries establishing electronic reserves services. Electronic reserves are either scanned or digital copies of copyright works made available to

students via the library. The term 'reserves' is taken from the US word used commonly for short loan collections. Traditional paper 'reserves' were either books or copies of articles kept in the library for reference only access to allow large numbers of students to access them. Electronic reserves services were originally developed in parallel with online learning, and required students to access the material in the library via dedicated terminals. However, increasingly these services are now integrated so readings are delivered via the VLE. Some US universities rely on the fair use provision to deliver copyright material to students, and only seek copyright permission for material that is repeatedly used in a course of study. Others are more risk averse and routinely seek permission to digitize material for electronic reserves either directly with publishers or through the US reprographic rights organization, the Copyright Clearance Center (CCC). The CCC offers a blanket licence to institutions that wish to cover the copying they undertake. Unlike in the UK, most US government materials are not covered by copyright and unrestricted copying is permitted (see Chapter 1, page 16).

Other relevant US legislation

The Digital Millennium Copyright Act (DMCA) came into force in 1998 and specifically prohibits the circumvention of any 'technological protection measure' that a copyright owner might put in place, so the use of the digital material by students or teachers may be restricted if a publisher had used some form of digital rights management technology. The DCMA also added a provision known as 'safe harbor' which limits the legal liability of internet service providers from copyright infringements carried out by users of their service. This safe harbor provision has been instrumental in allowing the growth of internet services containing large volumes of third party copyright material. Meanwhile legislation dating from 2002 has also impacted on the delivery of copyright works in the USA, specifically with relation to distance learners. TEACHAct (covering technology, education and copyright harmonization) allows copyright works to be delivered to distance learners without permission from the rights holder and without the payment of fees. It covers the digitization of analogue works to produce digital materials if a digital version is not available for purchase.

Some of the specific requirements of this act are: only not-for-profit educational institutions are covered; the educational institution must have an institutional copyright policy; the educational institution must provide copyright information to faculty, other staff and students; the material must have a notice to inform students of the copyright policy; and the material can only be distributed to enrolled students.

The TEACHAct formalized what had been a grey area in US legislation. It allowed US institutions to make digital copies of published content available to students via a secure network (ALA, 2015). However, the act has not been without controversy and in 2008 several large publishing houses embarked on legal action against universities that they believed to be in breach of copyright. Both the University of California and Georgia State University have been pursued in court by publishers who believed their copyright had been infringed over the interpretation of fair use in regard to electronic copies for educational use. In the instance of Georgia State cases were first filed in 2008 and it was not until 2015 that the case was finally dropped. Case Study 3 in Chapter 2 examines the practice of one US university which takes a less risk-averse approach to copyright issues.

Copyright and scholarly communication

While technology moves at a fast pace and constantly offers teachers new ways of delivering different types of resources to students across a network, copyright law is often perceived as being slow to change and out of step with what is technically possible. Arguably copying material for educational purposes has also been an area of unspoken tension between publishers and academics. Many academic authors are themselves rights holders and as content creators they wish to see their work protected and derive a modest income from their publications. However, reproducing, copying, modifying and amending the work of others has always been a fundamental part of scholarship. Very little research is undertaken without building on the findings of previous studies and conventions such as quotation, citation and referencing were developed to recognize and acknowledge the works of others. So it is inevitable that teachers use others' ideas in the classroom, particularly in the arts, humanities and social sciences, where debate, opinion and argument are an essential part of the learning process. Yet technology has led many in the publishing, film

and music industries to try to tighten copyright laws in conjunction with the application of technical protection measures (or digital locks).

This tension between the ease with which people can now share knowledge and creativity, and the concerns of those who have prospered under the more regulated and controlled information environment of the pre-internet age, has created an ideological battleground and copyright is at its heart. While rights holders talk of piracy and the risk this puts to jobs in the creative sector, advocates of the potential for humanity to share knowledge and creative outputs talk about freedom. The most famous and tragic example of these two viewpoints clashing involved the programmer and activist Aaron Swartz, who was a key figure in the creation of the Creative Commons licences (see below). He also helped to defeat the US Stop Online Piracy Act (SOPA) legislation in 2012, which was intended to control piracy on the internet. Swartz was caught systematically downloading JSTOR (see Chapter 4) articles on the campus of the Massachusetts Institute of Technology (MIT) in the USA in 2011. The subsequent prosecution through the US criminal justice system led Swartz to take his own life in 2013. Although this is an extreme example it demonstrates the level of investment that many people have in continuing this ideological battle. The rise of Sci-Hub, an illicit scholarly publishing file sharing service, is the latest incarnation of this battle in the education and research sector – see Chapter 5 for more detail. In the face of ever-tighter copyright restrictions some academics and IPR experts have launched initiatives to attempt to redress the imbalance that they believe now exists. A few of these initiatives are worthy of mention and discussed briefly next.

Creative Commons

The Creative Commons movement was founded in 2001 by Lawrence Lessig and a group of cyber law and IPR experts. Lessig is Professor of Law at Stanford Law School and founder of the school's Center for Internet and Society. The movement, sometimes called an alternative to copyright, is founded on the belief that modern copyright laws have become overly restrictive and are stifling creativity: 'A single goal unites Creative Commons' current and future projects: to build a layer of reasonable, flexible copyright in the face of increasingly restrictive default rules' (Creative Commons, 2009).

Creative Commons licences offer creators various choices, including to apply limited restrictions, an approach called 'some rights reserved'. This allows content creators to attach licences to their work to indicate that they are happy for it to be used in certain circumstances. Awareness of Creative Commons has grown considerably since the decision was taken to use these licences on Wikipedia in 2009. It is also now possible to search Google for content licensed under Creative Commons and the popular photo-sharing website Flickr uses Creative Commons licences as a key feature of its service. There are six types of Creative Commons licence, comprising four licence components: Attribution (BY), Non-Commercial (NC), No Derivatives (ND) and ShareAlike (SA). A summary of the six licences and their constituent components is given in Table 1.4.

As a content creator, a teacher can attach a Creative Commons licence to their work to indicate that they are happy to share it under certain

Table 1.4 *Creative Commons licences*

Licence type	Abbreviation	Description
Attribution 	CC-BY	Lets others distribute, remix, tweak and build on creators' work, even commercially, as long as they credit them for the original creation. This is the most accommodating of licences offered. Recommended for maximum dissemination and use of licensed materials.
Attribution – ShareAlike 	CC-BY-SA	Lets others remix, tweak and build on creators' work even for commercial purposes, as long as they credit them and license their new creations under the identical terms. This licence is aligned with the 'copyleft' free and open-source software licences, which ensure that derivative works can never be put under more restrictive licensing terms than the original. All new works based on the original work carry the same licence, so any derivatives will also allow commercial use. This is the licence used by Wikipedia, and is recommended for work that incorporates content from Wikipedia and similarly licensed projects.

Table 1.4 *Continued*

Licence type	Abbreviation	Description
Attribution – Non-Commercial 	CC-BY-NC	Lets others remix, tweak and build on the creators' work for non-commercial purposes, and although new works must also acknowledge the creator and be non-commercial, creators do not have to license their derivative works on the same terms.
Attribution – No Derivatives 	CC-BY-ND	Allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to the creator.
Attribution – Non-Commercial – ShareAlike 	CC-BY-NC-SA	Lets others remix, tweak and build on the creators' work for non-commercial purposes, as long as they credit the creator and license their new creations under identical terms.
Attribution – Non-Commercial – NoDerivatives 	CC-BY-NC-ND	The most restrictive of the six licences, only allowing others to download the creators' works and share them with others as long as they credit the creator, but they cannot change them in any way or use them commercially.

conditions. Teachers can also use the Creative Commons Search to identify material that they can use in their teaching. The most recent version of the licences, The Creative Commons 4.0 Licence, is an international licence designed to be used in any territory around the world. You can find out more about the licences from: http://creativecommons.org/.

The Open Movement

The open movement originated from the development of open-source software and this section discusses how this movement relates to technology and copyright issues. Open-source software as defined by the Open Source Initiative (2009) needs to meet ten criteria, including free distribution, providing access to the source code and having a free licence to distribute the software. It is an alternative to commercial, proprietary (controlled by a sole proprietor) software and was largely the inspiration for the Creative Commons licences and the open access movement. In the

UK in 2014 over 60% of institutions used open-source solutions for online learning and the open-source VLE Moodle is widely used in higher and further education. A growing number of other open-source learning tools are also available such as e-portfolio software, social networking tools such as wikis and blogging platforms, and content management systems. The use of open-source software gives institutions greater control over the software that they use and the licensing fees that they are charged, but this has to be weighed up against the costs of employing technical staff to set up and maintain the software.

While open-source software might have been seen by some as a niche area for the technically or legally minded, two subsequent open movements have done much to raise awareness about copyright issues in education: open access and the open educational resources movement. Peter Suber, one of the leading voices in the open access movement, provides a useful definition: 'Open access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions' (Suber, 2015). Suber provides a valuable overview of the open access movement, which is largely beyond the scope of this book. However, the establishment of open access repositories to capture the research output of universities has done much to highlight the importance of understanding copyright issues. Many higher education funding bodies around the world are now mandating authors to deposit publicly funded research outputs into an open access repository. Additionally, academics are starting to question whether they should assign copyright in their own publications to a commercial publisher. Arguably the biggest concern of the open access movement has been the restrictive licensing models of large publishers that effectively lock the general public out of accessing the outputs of publicly funded research. Many in the open access movement maintain it is not anti-copyright. In fact websites such as the SHERPA/RoMEO website (University of Nottingham, 2015), developed by Jisc and hosted by the University of Nottingham, have done much to raise awareness of publishers' copyright policies and help ensure that content deposited in open access repositories is there with permission from the publisher. A key advantage of open access publications for the e-learning community is that research output can be used (often by simply linking to it) without the need to pay additional permission fees to publishers.

Meanwhile the open educational resources movement has its origins in

2001 when MIT launched its OpenCourseWare Initiative (http://ocw.mit.edu/), which was a pledge to make all their teaching materials available online for free. The term open educational resources was first used by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2002, which described open educational resources as:

> typically made freely available over the Web or the Internet. Their principal use is by teachers and educational institutions [to] support course development, but they can also be used directly by students. Open Educational Resources include learning objects such as lecture material, references and readings, simulations, experiments and demonstrations, as well as syllabi, curricula and teachers' guides.
>
> UNESCO, 2002

The Organisation for Economic Co-operation and Development (OECD) describes open educational resources as 'digitised materials offered freely and openly for educators, students and self-learners to use and reuse for teaching, learning and research' (OECD, 2007). It is important to be clear about the distinction between the terms 'free' and 'open' and how they are used together in this context. 'Free' materials may be offered for no cost but under strict copyright protection without permission to repurpose, adapt and re-use. 'Open' educational materials are deliberately licensed by the creator for re-use by others, sometimes without the need to reference the original author, and without restriction on how and in what context the materials can be used. However, free materials, even online, are not necessarily open.[6] The term 'open practice' (Beetham et al., 2012) is increasingly being used in higher education to describe a range of open educational activities, such as developing and using open educational resources, developing open courses such as MOOCs, practising open scholarship through sharing research openly and using open-source technologies. Open practices inevitably involve staff developing an understanding of copyright and licences and provide an opportunity to discuss the issues in this context. The copyright questions associated with delivering open education and open courses are explored in more detail in Case Study 4 about UCL (see pages 106–10) and in Chapter 5.

Conclusion

This chapter first explored what online learning is and how teachers might wish to use content in the digital environment. It also considered how e-learning differs from traditional face-to-face teaching and why when we put course materials online, copyright issues become more pertinent. It has examined how the UK and several other countries approach copyright law, the exceptions that exist and their impact on online education. The chapter has shown how developments in technology are driving reforms to the existing copyright regimes throughout the world. In many countries a satisfactory balance has yet to be achieved between protecting the economic wellbeing of rights holders, and the needs of educators to be able to share, copy and disseminate information freely. Recent copyright reform suggests that the needs of education can be balanced more fairly against the need for copyright owners to receive just rewards for their endeavours. However, educators need to be mindful that copyright exceptions may only go so far, and online learning can be seen by rights holders as both a potential new market, but also a threat to their ability to exploit copyright works.

Notes

1. The background to this programme is discussed in greater detail by other authors (Rusbridge, 1998; Secker, 2004), and is outside the scope of this book.
2. The higher education sector tends to be better resourced than other sectors and consequently more likely to employ copyright experts to advise staff and students.
3. These include 'the Net Generation', 'the Google Generation' and 'Generation Y'.
4. At the time of writing the legislation.gov.uk website had still not been updated to reflect these changes but links are provided to the Statutory Instruments and an unofficial consolidation of the Act in the reference section. Consolidated versions can also be found in legal databases such as LexisNexis and Westlaw.
5. copyrighthub.org – an industry funded initiative to streamline licensing of copyright works on the internet.
6. The difference between the two definitions of free is often expressed as 'free as in speech, or free as in beer'.

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3 Using digital media: video, images, sound and software

Introduction

There is a growing demand for non-text-based digital media content, such as images, video and sound recordings, to provide engaging materials for use in both traditional and online learning. However, copyright questions become increasingly complex when education professionals wish to digitize existing analogue content, as it is usually necessary to obtain permission from several rights holders. Meanwhile, producing digital media content in-house is now technically straightforward but can raise a host of copyright and IPR issues. In both cases delivering this type of content using a VLE highlights, but also exacerbates, the copyright issues. This chapter explores the copyright issues associated with the digitization of non-text-based digital media content, starting with using images in education. It goes on to explore using recordings of broadcast material. In the UK, the ERA licence permits broadcasts to be recorded off-air and digitized for educational use. Although a number of restrictions apply, the ERA licence allows subscribing institutions to deliver free-to-air broadcast content via secure digital networks within the UK. This chapter will also consider digitization of commercially available non-text-based material (including recordings that can be purchased specifically for educational use). Often in these situations permission is required from the rights holder and therefore the procedures for identifying the owner and for securing copyright permission are outlined.

Many educational institutions are now producing digital media content in-house and there are many copyright issues that need to be considered. For example, semi-automated lecture capture systems are now available

in many universities in the USA, the UK and other countries (UCISA, 2014). These offer institutions the ability to record and deliver lecture material asynchronously (e.g. after the event for revision purposes) via a computer network. However, copyright issues become a much bigger area of concern when classroom teaching is recorded and made available online. Aside from the need to get permission to include third-party content, the ownership of the resulting video also raises wider IPR concerns in institutions. In some institutions teaching staff have raised concerns over their lectures being recorded and have cited IPR issues (such as their rights as a performer and responsibility for clearing third-party rights) as reasons for objecting. This chapter explores some of these topics, and gives advice for dealing with third-party content and guidance for resolving the ownership of the resulting material. Finally the chapter includes a list of visual, audio and audiovisual resources (sound, video and image collections) for teachers, including some that can be used for educational purposes without the payment of fees. Arguably, directing teachers to openly licensed collections, or those licensed for educational use, is an important role for e-learning professionals. In doing this, an understanding of copyright issues can become embedded as good practice in finding and using resources for teaching. Sources of advice for resolving queries related to digital media content are also included in this chapter; the case study comes from UCL and covers some of the complexities of negotiating rights to deliver content worldwide in an open way.

Why use sound, images and video in teaching?

Non-text-based content is increasingly used in the classroom as a way of engaging students. Many authors have written about the way that young people spend less time reading and more time consuming visual and audio content. Arguably this may be changing the way they want to learn. The notion of the 'Google Generation' or 'Net Generation' was discussed briefly in Chapter 1 (see pages 8–9). Although Prensky's (2001) idea of young people being 'digital natives' as opposed to 'digital immigrants' has been found to be over-simplistic (Jones et al., 2010), it is fair to say that many people have become increasingly visual learners with a shorter attention span. The digitally connected student has a tendency to switch focus from their phone, laptop and face-to-face interactions rapidly, with relative ease.

We are all bombarded with music, moving and still images and consequently audio and video resources are being used as an addition to traditional text-based teaching resources. In the 21st century these resources are a valuable way of conveying information to students who tend to spend more time online, using social media, playing video games and using their smartphones than they do reading books, newspapers or listening to the radio. For example, a study from 2015 called *Adults' Media Use and Attitudes* (Ofcom, 2015) found young adults are now spending just over 27 hours a week online, compared with around ten hours in 2005, and are more likely to use their mobiles, computers and games consoles every day than older respondents. The evidence that using multiple media (known as 'multimodal learning') helps students retain information is still not concrete, but in one study (Sankey, Birch and Gardiner, 2010) students reported favourably on this approach as it engages both aural and visual senses and caters to those with different learning styles. Sankey, Birch and Gardiner cite several studies that show how audio and visual material can engage students better than traditional material does and how it has particular benefits for low achieving students (Moreno and Mayer, 2007); therefore it is unsurprising that there is a growing demand from teachers to use this type of content in online learning.

In the past five years there has also been a growth in the number of digitally enabled interactive teaching methods, such as the 'flipped classroom', which was made popular by Harvard physics Professor Eric Mazur. This approach maximizes face-to-face teaching time by getting students to watch a pre-recorded video covering the key concepts of a lesson before attending class. Class time is spent in discussions, with peer and teacher-led instruction. Recording short videos to replace a lecture or screencasts is relatively easy, with many lecture recording systems having a facility to record using most digital devices. Given the ease with which video recordings can now be made, some teachers have also chosen to respond to questions from students by producing supplementary material in video format and uploading it to the VLE.

Copyright and non-text-based works: an introduction

Images, audio and audiovisual material present a whole set of copyright challenges for the e-learning professional and the copyright adviser. They

might not only have to obtain permission for the re-use of content, but also need to advise on ownership of resulting materials and determine appropriate re-use terms. Establishing copyright ownership and obtaining permission to re-use printed materials such as books and journals are relatively well established processes, with many larger publishers having dedicated rights and permissions departments to handle requests. However, managing rights in non-text material is inherently complicated by the multiple layers of rights involved. Audio and audiovisual material in particular is often produced by more than one person and there could be a whole range of rights holders pertaining to each of the rights involved (e.g. the script, the film, the sound recording, the music). In addition there is no obvious single body such as the CLA that can grant permission or act as a broker for handling permissions.

Copyright laws protect the various types of work incorporated in a single piece of content (e.g. the film, the sound recording, the script as literary work, etc.) and determine the duration of copyright protection that applies to the material. In the UK sound recordings are now protected for 70 years from the year of creation,[1] while films are protected for 70 years after the last to die of the principal director, the author of the screenplay, the author of the dialogue or the composer of the music. As a result, in reality very few films are out of copyright. Moreover film companies have been quick to extend copyright protection by re-mastering and re-issuing films, as the copyright in the re-mastered versions is calculated from the date of the new version, not the original. In the USA, sound recordings produced before 1978 are protected for 50 years but those published after 1978 qualify for 70 years' protection.

Copyright can easily become complicated when dealing with dramatic works, film and sound recordings. For example, performing a work such as a play or a piece of music is the exclusive right of the copyright holder and the cast or group's performances qualify for performance rights, which become significant if the work is recorded. Performances qualify for protection for 50 years, as do broadcasts. However, under Section 34 of the CDPA films and sound recordings can be shown in the classroom for educational purposes, and musical and dramatic works can also be performed. In October 2014 the law in the UK was changed so that the fair dealing exceptions apply to sound recordings, film and broadcasts, but establishing what is 'fair' when copying films, broadcasts, images and

sounds recordings is less easy to define than it is for literary works. In order to deliver this type of content online, it needs to be copied.

Using images in education

The use of images presents a unique challenge to those considering the copyright implications of teaching in the digital environment. As previously mentioned, images are a hugely important component of almost all teaching, but for the use of an image to have any value it almost invariably must be reproduced in its entirety. This clearly provides a challenge to those who wish to use images either under licence or exception. In the case of acquiring a licence, a rights holder's expectations as to the value of their artistic work being reproduced in full may be at odds with a teacher's need to use a wide range of images for illustrative and genuine pedagogic reasons. Similarly, a key aspect of applying a fair dealing test to consider whether exceptions such as illustration for instruction or quotation apply is whether the amount of copying is excessive. In a situation where almost all use of images in education requires the reproduction of entire copyright works, the focus then turns to the other aspects of fair dealing, particularly whether the use of the work disadvantages the rights holder or interferes with the normal exploitation of the work. For example, making available a low resolution image may be less likely to disrupt the normal exploitation of the work and be considered fair dealing. However, as mentioned later in the section on digital images collections on pages 93–5, it is important to check that any amendments made to images, such as cropping, distorting or re-contextualizing the image, do not breach the creators' moral rights.

Another key challenge to having an appropriate approach to the use of images is that there are many different types of image, created by different people (or even by computers) for different reasons, under widely varying commercial models (including those made with no commercial end in mind). This makes it virtually impossible to have a one-size-fits-all approach. The value associated with graphs, charts and diagrams published in academic textbooks is likely to be different from that associated with works of fine art, historical photographs, illustrations from children's books, cartoons or iconic imagery from popular culture. The reproduction of charts from textbooks in a teaching environment is likely to be accepted without

an expectation of payment from most rights holders particularly if they do not constitute a substantial part of the book. A publisher might also expect further sales of the textbook to the students on the course so the reproduction of the image in the teaching would have little to no negative impact on the normal exploitation of the work if it was properly attributed (or perhaps even a positive impact). However, there are many images, such as photographs controlled by picture libraries (see below), where there are established market rates and norms of use. The issue here is that these market rates and licensing mechanisms do not translate to an educational environment where the use of the images is likely be extensive, but often only available to small groups of people (students on a course of study). The situation is further complicated if an educational establishment wishes to teach in a more open way, such as by launching a massive open online course (MOOC) – see Chapter 5, page 199, for more on this.

It is widely accepted that the copying of images in to a digital document (such as a PowerPoint slide deck) for presentation to a room of students is now defensible in the UK under the illustration for instruction exception, as long as the teaching is for non-commercial purposes.[2] However, whether it is also defensible to post the presentation slides including those images to a VLE, or indeed record the teacher giving the presentation and upload the video file, is less clear. From a rights holder's perspective the use of the work in this way involves the making of multiple copies of entire copyright works and they may well expect teachers or institutions to obtain permission. From a teacher's perspective the ability to show a range of images (most of which may well be easily accessible to anyone via a Google image search) in a classroom, but not to be allowed to share the file digitally with their students afterwards, suggests there is a contradiction in copyright law. The pressure on teachers to carry out their own rights clearance or consider whether fair dealing applies can cause considerable anxiety, particularly when under pressure to deliver high volumes of teaching with limited support. This is why it is very important that educational establishments develop clear guidance and procedures to support teachers in the legal and ethical use of images. As discussed later in Chapter 6, it is important to focus on the positives – the types of images that teachers *can* use easily (such as Creative Commons licensed images). It is also important to liaise with those from particular subject areas and disciplines to identify collections of content which are either licensed by

the institution or available for re-use under appropriate terms. A selection of these types of collections is included later in this chapter. As mentioned in Chapter 1, it is also helpful to encourage teachers to consider open practices when creating their own visual resources (e.g. taking photographs to create a collection associated with a particular area of study) and if appropriate make them available for re-use by others. This can have the benefit of raising the profile of the teacher and the institution and providing a common resource for other teachers.

The use of content from digital image libraries is described in further detail in the next section along with an explanation of the licensing body, the Design and Artists Copyright Society (DACS; www.dacs.org.uk), which primarily represents commercial visual artists. Many in education might be tempted to decry the lack of a blanket licence or exception that allows use of any images for teaching purposes. However, given the wide range of images and artistic works that exist, this type of licence is not practical nor would it be welcomed by many artists or photographers. In the same way that a blanket licence cannot allow the use of all written (literary) works, a blanket licence or exception for all artistic works is not realistic. For this reason educational establishments need to build a clear approach to encouraging and supporting the ethical use of images in digital education. The most fundamental element of this is that all images, whether used under licence or exception, need to be attributed appropriately to the creator and the rights holder (where practical).

Digital images collections

This section concentrates on dedicated image collections rather than incidental or illustrative images found on websites. As mentioned previously, images are particularly useful in many educational subjects from science to art, history to medicine. They add interest to text-based content and in some cases may be a more appropriate way of conveying information than using text-based material. For this reason, there are a wide range of digital images collections available and these fall into several categories including:

- Commercial or subscription collections that are available either on a pay per item basis or as a subscription for the collection. Examples of

these include the Getty Image Archive, the Jisc Media Hub, private image collections either from photographers, artists or art galleries and museums such as the Bridgeman Art Gallery.

- Image collections where the content is considered to be out of copyright or in the public domain. These are often made available by libraries, museums or other charitable bodies. Examples of these include collections from the University of Virginia Library and Images of America.
- Image collections that have been licensed under Creative Commons licences and so can be re-used under the terms of these licences. The photo-sharing website Flickr is the largest example of this type of collection and it is discussed in more detail in Chapter 4. Wikipedia now uses Creative Commons licences on all its images and Wikimedia is a good source of openly licensed images.
- Other image collections which can be used for educational purposes, for example, FreeFoto (www.freefoto.com) or OpenClipArt (https://openclipart.org/).

One of the issues of making digital images available in any online collection is that they are technically very easy to copy. It is also easy to reproduce only a part of an image, although in most cases this may be of little value. In fact by cropping an image it is also easy to change its meaning considerably, therefore misrepresenting the original intention of the artist or photographer and possibly breaching their moral rights. Professional photographers and organizations such as art galleries which rely on their images for a revenue stream tend to protect their images, for example by using watermarking, so the details of the copyright owners are clearly visible across a photo, limiting its use. Other rights protection techniques include making only low resolution files available online, with the higher resolution copies sold commercially via an online store. For example, many museums and galleries such as the National Portrait Gallery (www.npg.uk) offer high resolution images for sale, but allow lower resolution copies to be downloaded for non-commercial purposes.

Many subscription or commercial image collections tend to be governed by either licence agreements or terms and conditions. These set out how the images can be used and usually specify how the images must be credited. In the UK DACS provides a range of licences for those wishing

to copy artistic works. One-off licences for copying specific material can be obtained and the pricing structure is fixed. This includes 'free' permissions for use of content in learning materials, although this involves paying a fee of £42 per reproduction. In the past many universities teaching fine art used the DACS slide licence scheme to allow them to reproduce artistic works in lectures. Although DACS has not issued a blanket digital licence to replace the slide licence, it has a reciprocal agreement with the CLA that allows artistic works within published works (e.g. illustrations) to be digitized under the CLA higher education licence. Currently dis-embedded images (those that are not reproduced along with accompanying text) need to be recorded on the CLA record sheet so that payments can be returned to the artists in question. However, images included within an extract of text-based material do not need to be recorded separately. If DACS issued a digitization licence of its own it would benefit those developing e-learning content, as it would allow universities to digitize their slide collections and integrate the materials into the VLE.

Where licences are not available, UK copyright law is clear about copyright ownership of images. The CDPA states that:

- Images are protected as artistic works and copyright lies with the artist.
- Copyright in photographs taken after 1989 is owned by the person taking the photograph, even if the photograph is commissioned by another person.
- Commissioned artistic works pre-1989 are owned by the person commissioning the work.
- Copyright restricts taking photographs of in-copyright artistic works unless they are on permanent display and open to members of the public.

Institutions that hold collections of artistic works (such as galleries and museums) may still charge a copying fee for a work in their possession, despite the work being out of copyright. Anyone seeking permission to reproduce an artistic work may wish to consult DACS for further advice.

Digitization of analogue recordings

In the same way that print resources are digitized to improve access in the online environment, many institutions have started to invest in digitizing audio and video collections that were traditionally available in an analogue format. In the home entertainment market, video recordings on analogue formats such as VHS have largely been superseded by digital formats like DVD, Blu-ray and digital downloads and streams. In the past many libraries might have built up significant analogue collections either on video or audio cassette. These collections are now rarely used even though they can be borrowed by individuals or shown in classrooms. Access to this material can be significantly improved if the content is digitized and placed onto a streaming server that would allow delivery over a network. Digitization also facilitates the material being used online either for face-to-face students or distance learners.

Format shifting to convert material from analogue to digital has become a relatively straightforward technical process but raises several copyright issues, particularly if the intention is to place the digital file onto a network for educational use. Even when audio or video material exists in digital format (on CD or on DVD) the file format is often not suitable for delivery over a network without some processing (this is particularly true for video material). In addition, recordings such as videos, DVDs and audio CDs tend to be licensed for personal use only. Following the Hargreaves Review in the UK (discussed in some detail in Chapter 1), copying of films, sound recordings and broadcasts in the permanent collection for preservation purposes is now permitted under Section 42 of the CDPA when undertaken by libraries. However, further copying or distribution via a network requires negotiating a separate permission.

The Survey of Digitisation of Core Readings in UK Higher Education discussed in Chapter 2 showed that few libraries responsible for digitization of text resources also deal with audiovisual material. This suggests that it is relatively uncommon in the UK higher education sector for permissions to be sought to digitize content such as film or sound recordings. The perception among staff is that the process is both time consuming and expensive, and the authors' experience suggests that this is the case. It is frequently difficult to know who to approach to get permission to use an excerpt from a film because the copyright often lies with several different individuals and permissions are usually handled by

a large multinational organization such as a film distributor using a commercial licence model. Getting permission from smaller educational companies can often be more straightforward, and surprisingly inexpensive. However, without a dedicated copyright clearance person it is often unclear who in an educational establishment should be negotiating the permission (the academic, the learning technology team or perhaps library staff) and who should retain the documentation relating to any permissions received. Few universities are in the fortunate situation of the Open University to have a well resourced rights and permissions department that is well versed in negotiating permissions to use text, images and audiovisual materials in teaching.

Identifying rights holders and getting permission

If a film or sound recording is to be screened for clearly educational purposes, permission is not required. Additionally if you wish to use broadcast content from television and radio, the ERA licence (see below) covers most teaching activities, including making copies to support teaching. However, permission usually needs to be sought when films or sound recordings are copied so they can be made available online. The following guidelines can be used to help speed up the process and improve the chances of obtaining a positive response. This advice also applies to permission requests for other types of content, not just films and sound recordings. In order to obtain copyright permission take the following steps:

- First establish exactly what the teacher wants to do with the material, how much they wish to include (including exact timings of frames) and for what purpose. This will help establish if permission is required. For example, it may be that they only wish to show an extract from a film in class.
- Check what sort of budget might be in place to pay for any permission – is there a limit the teacher is prepared to pay?
- Spend some time establishing who owns copyright in the material – check the copyright statement on any packaging or in the credits on a recording.
- Spend some time researching the organization or person that owns

the copyright, in order to find contact details. If they have a rights and permissions department, approach them first.
- Send permission requests in written format (either by letter or e-mail) or by following any specific instructions on the rights owners' web pages.
- Provide as much detail as possible about what you want to do with the material – for example, what file format you will distribute the material in, what sort of password protection will be in place and most importantly who wants to access the material (student numbers) and for how long (is it for one academic year or for several years?).
- You may well need to send several reminders if you do not get a response to your message. Do not assume if you do not receive a response that you can go ahead.
- Ensure you keep teaching staff informed about the progress of their request.
- If permission is granted to use the material, ensure that records are kept to manage the permission from year to year. If a licence is for a limited period of time ensure that teachers are aware of this restriction.

Copying broadcasts: the ERA Licence

In the UK the CDPA permits recording of TV and radio broadcasts for educational use under Section 35, but states that if a licensing scheme is available copying must be done in accordance with this. Licences from the Educational Recording Agency (ERA; www.era.org.uk) are available to educational establishments in the UK, with a separate licence available for schools, further education and higher education establishments (ERA, 2016). The licences cover scheduled, free-to-air broadcasts from ERA members, and cover the following channels:

- BBC television and radio (including content made by Open University Worldwide Limited)
- ITV Network services (including ITV2, ITV3 and ITV4)
- Channel 4, E4, More 4 and Film 4
- Channel Five and its subsidiaries
- S4C.

A full list of ERA members is available in the Licence Schedule (ERA, 2014). Any recording of free-to-air broadcasts by educational establishments in the UK must be undertaken in accordance with the terms of these licensing schemes, rather than under any exceptions in UK copyright law. However, as an example, the ERA Plus higher education licence[3] is relatively permissive and it allows educational establishments not only to record broadcast output, but also to copy this material, use extracts from a broadcast and digitize analogue recordings. Recordings can take place within the establishment or off the premises, for example they can be made by a lecturer at home. Recordings can be shown in the classroom or elsewhere on the premises of the educational establishment, and they can also be deposited in the library to facilitate access to the material by students. Furthermore, since 2014 ERA explicitly allows off-site streamed access to recordings by all students in a class or on a course through a secure service such as a VLE. The caveat to this is that the jurisdiction of this licence does not extend beyond the UK, so broadcasts cannot be delivered legally to students outside the UK.

There are further conditions and limits to the ERA licences; for example, it specifies that recordings on physical media must be labelled appropriately to include the name, time and date of the broadcast. Recordings stored digitally on a server should include this information as a written opening credit or web page which must be viewed or listened to before access to the recording is permitted. A recently added benefit of the licence is that it now allows educational establishments to access and download content from on-demand services in a similar way to personal private users.

Finally, satellite and cable broadcasts are not covered by the ERA licence. However, because a licensing scheme for this material is not available, educational establishments are currently free to copy this material under Section 35 of the CDPA provided the material is free-to-air and not from an encrypted or subscription service. Therefore premium rate satellite and cable channels such as Sky Movies are not covered by this exception, but Freeview and Freesat channels are.

There a number of additional services provided to universities by the British Universities Film & Video Council (BUFVC; http://bufvc.ac.uk) to support teaching and learning. These include the recording back-up service, where using a database known as the Television and Radio Index

for Learning and Teaching (http://bufvc.ac.uk/tvandradio/trilt) you can find out when a programme was broadcast and request an off-air recording, and the BoB National (http://bobnational.net) service, see below. BUFVC also runs numerous training courses on digital media production and a one-day course focusing on obtaining copyright for multimedia resources. Further details are listed in the section 'Further resources'.

Box of Broadcasts

Box of Broadcasts (BoB National; http://bobnational.net) is a service available to UK further and higher education, which provides off-air recordings and a media archive for educational purposes. BoB is only available to institutions that are members of the BUFVC and hold an ERA licence. It is a shared online service for UK higher and further education institutions, which allows staff and students to record any broadcast programme from more than 60 TV and radio channels. The recorded programmes are kept indefinitely and added to an archive which contains (as of October 2015) over 1 million programmes. All content is available to users across the subscribing institutions. The service is particularly valuable for features such as the ability for users to edit programmes to create clips, playlists, embed clips into the VLE and share what they are watching with others. A number of enhanced features were launched as part of this service in January 2014; however, a key issue for those delivering online learning is that because of the limitations of Section 35 and the ERA licence, the service is only available to students in the UK. Therefore, its value to institutions providing distance learning for students outside the UK is limited.

Catch-up TV services and television on demand

Many radio and television broadcasters use internet technologies to provide catch-up or 'listen again' services on their websites or via apps on Smart TVs. However, with these on-demand TV services, television and radio programmes are not archived on the web in perpetuity and are only available for a relatively short period of time after the original broadcast (often less than one month) . Some programmes are available for streaming, others can be downloaded to a device such as a laptop, tablet

or smartphone, but the downloaded files usually expire after a set period of time. Since 2014, the ERA has clarified that on-demand TV services such as the BBC iPlayer (www.bbc.co.uk/iplayer) or the ITV Player (www.itv.com/itvplayer) can be used by educational establishments under the terms of the ERA licences.

BBC iPlayer

The iPlayer service for the BBC generally makes programmes available for 30 days after they have been broadcast within the UK. Not all TV and radio broadcasts are available on the iPlayer because of rights issues, but the broadcasts can be watched via a streaming service, or downloaded via an iPlayer application onto a computer, tablet or other mobile device. The download service is only available in the UK, and downloaded files are encrypted with DRM software that deletes them from your device after their expiry date. Any attempt to remove the DRM protection from a downloaded file would be illegal under UK (and other) laws.

The use of the BBC iPlayer is governed by terms of use that state that in general educational establishments cannot use BBC Online Services unless they have taken out a licence with the ERA. So, for example, programmes (be they radio or TV broadcasts) can be added as a link from the VLE, or shown in the classroom. Because of the DRM protection, copies cannot be made of streamed programmes.

Frequently asked questions and help are available about the BBC iPlayer at http://iplayerhelp.external.bbc.co.uk/tv.

Creating audio and video content in-house: copyright issues

A number of educational establishments now create audio and video content in-house, partly to avoid the copyright issues associated with using commercial recordings or other third-party materials. While this requires an investment in equipment and staff expertise to produce professional recordings, the technologies are now increasingly sophisticated and inexpensive. Many universities are keen to capitalize on the expertise and knowledge of their teaching staff and make promotional videos as well as those that can be used in teaching. Some academic staff have considerable press and broadcasting experience and are regularly interviewed by

newspaper, television and radio journalists when expert opinions are required. It therefore makes sense to use internal expertise to produce video and audio content. Most universities now have a YouTube channel and some use these sites to host recordings of public events or inaugural lectures that might have wider appeal. It is also increasingly common for high profile lectures to be live streamed, to enable those outside the university to participate online. While the costs associated with producing this type of content are not insignificant, the price of digital recording and streaming equipment has fallen dramatically in recent years and highly professional broadcasts and recordings can be made at a relatively low cost.

Aside from the technical skills and equipment requirements, legal questions – specifically copyright and other IPR issues – need to be considered when producing this material in-house. When recording individuals it is good practice to ensure that they sign a release form to make certain that they have given their consent for the resulting recording to be re-used. This applies whether the presenters work for the institution making the recording or not. In addition, it is important to be mindful of any third-party content that might be included to ensure it is either covered by exceptions (see Chapter 1), removed from the video or that appropriate permission is sought for its inclusion. For example, if a speaker is making significant use of images, clips from videos or audio recordings in a lecture, permission is usually required if the resulting material is going to be hosted on a network. A release form can be a useful way to remind people that permission may be needed for some of their content, if it is not entirely their own.

Institutions should use a release form if they wish to claim copyright in the resulting production or to obtain a license for their own re-use. Under UK employment law, if teachers or lecturers are recorded under the terms of their employment it would be standard practice that the institution would own this resulting material. However, academic lectures are often seen as performances and thus the recordings of the lecturer's teaching qualifies for performance rights, which are not automatically assigned to their employing institution. There is a certain degree of sensitivity around these issues and in 2006 Jisc recommended that all universities should have an IPR policy to clarify these types of concerns (Jisc, 2006). IPR policies of several universities are listed in the section 'Further resources', for institutions seeking to develop such a document.

Sound recordings

Creating sound recordings (or podcasts) of lectures or public events is technically more straightforward than producing a video. It also avoids the copyright issues associated with recording visual material, where it could be easy to include images or other media content from third parties inadvertently. Care still needs to be taken to ensure that re-use of any third-party content played during a lecture (for example, musical sound recordings or performances) is either covered by statutory exceptions or that copyright clearance has been obtained through existing licences or negotiated permissions. A variety of equipment is now available to facilitate the creation of audio recording such as digital recorders, radio microphones and audio tools embedded in the VLE. Commercial and open-source products are available; for example Wimba Voice (www.wimba.com/products/wimba_voice) offer a suite of tools including voice-recording facilities and online classrooms tools. Big Blue Button (www.bigbluebutton.org) is an open-source plug-in to Moodle which offers similar functionality. As previously mentioned the recording of the lecture creates performance rights, which are automatically owned by the speaker. For the sake of clarity a release form can be used, and this is particularly important when an external speaker is being recorded. Some institutions have an explicit statement to indicate that they (rather than the individual) will own the rights in the resulting podcast (an assignment of rights). Other institutions ask lecturers to grant them a licence to distribute the content, but allow the speaker to retain the rights in their work and performance. As with video, a release form can clarify issues such as what the recording will be used for, who will own the resulting copy and where it will be placed.

Lecture capture and intellectual property rights issues

Lecture capture is the term used to describe the semi-automated recording of a lecture. The US not-for-profit educational organization EDUCAUSE defines 'lecture capture' as 'any technology that allows instructors to record what happens in their classroom and deliver it digitally' (EDUCAUSE, 2008). In the past, lecture capture was usually restricted to an audio recording of the event, which might enable students to either revise or catch up on a missed lecture. Some universities used to record

the audio of lectures, for example if there was a clash in the timetable that might prevent groups of students from attending. However, many universities have invested in large-scale lecture capture technology, which once installed in the classroom or lecture theatre enables the entire lecture (audio, video and screen capture) to be recorded with fairly minimal intervention by staff. Chapter 1 highlighted how over 50% of universities in the UK have now invested in these systems. The value of recording lectures has been recognized since the 1970s, but until recently video-recording equipment has usually been expensive and complex to use. The development of complete automated lecture capture systems such as Panopto (http://panopto.com/uses/lecture-capture), Echo360 (www.echo360.com) and Sonic Foundry's MediaSite (www.sonicfoundry.com) are transforming the lecture experience, allowing students to review the content after the lecture in their own time, or choose to watch a recording rather than attend a live lecture.

Lecture capture or video recording of lectures raises several interesting copyright issues, including:

- who owns the resulting recorded lecture
- whether it can be shown if a lecturer subsequently leaves an institution
- how to deal with any third-party content that might be included in the lecture
- who might be responsible for any copyright infringement if third-party content is shown in the lecture
- how far the copyright exceptions for 'illustration for instruction' and 'quotation' can be relied on for showing third-party content in lectures
- what to do about students' intellectual property issues if they are recorded during a lecture – for example when they ask a question.

The ownership of teaching materials in higher education has for many years relied on an unwritten agreement that respects academic and intellectual freedom. While universities as employers might legally own the materials produced by their teaching staff under employment law, they would rarely assert this ownership. This is very different from a commercial organization that would regard the intellectual output of their staff as the employer's

property. However, classroom technologies such as lecture capture do concern some members of academic staff, and institutions have taken a range of approaches from 'opt out' to 'opt in' and all points in between. Some institutions routinely archive recordings and use them in subsequent years whereas others do not. Staff are advised to seek permission or remove substantial use of third-party content from the recordings of their lectures. Those institutions investing in such technologies would be advised to ensure that they address IPR questions early on to avoid any potential misunderstandings or problems in this area, though in many instances rights issues are only considered after such a technology is installed (Jisc, 2015).

Screen recording

There are a number of free and commercial screen-recording tools that allow instructors to make a video recording of their computer displays to create educational videos for their students. Commercial products with this functionality include Camtasia Studio and Adobe Captivate. Meanwhile free or open-source tools include CamStudio, ScreenToaster, Jing, Screenr and Webinaria.

There are several copyright issues to be aware of when creating screen recordings, particularly if you wish to create demonstrations of other software. However, in general the same advice applies to creating any digital media in-house and, where possible, to avoid using any third-party materials without clearing the rights. It is also advisable to check the licence of specific software if you wish to make a screen recording that includes a named product. For example, if you were creating a screen recording to demonstrate how to use the reference management software Endnote you should check the Endnote licence to ensure that this is permitted.[4]

iTunes U

Mobile digital devices have revolutionized the way in which many people access audio and audiovisual content. The Apple iPod was launched in 2002 and although it only played audio and needed to be synced with another computer it brought home to many the power of mobile digital technology. In recognition of the growing demand for 'mobile learning' Apple launched iTunes U (www.apple.com/uk/education/ipad/itunes-u) in

May 2007 in partnership with Stanford University, UC Berkeley, Duke University and MIT. The service manages, distributes and controls access to educational audio and video content for students within a university as well as on the wider internet. Content is free to users, although password restrictions may apply to manage access to certain content within an institution. It is used by universities in countries throughout the world, including the USA, the UK, Australia, Canada, Ireland and New Zealand. Member institutions have their own iTunes U site that uses Apple's iTunes Store infrastructure. The University of Oxford was the first university outside the USA to go into partnership with Apple to make audio and video recordings available via the iTunes platform. Although today's internet-connected smartphones and tablets have powerful processors and high definition screens, which allow development of sophisticated interactive apps and services, iTunes U remains a popular platform for accessing educational content.

Case Study 4 Supporting open course creation at UCL

June Hedges

This case study presents UCL's evolving programme of online courses delivered to non-traditional[5] learners. It focuses primarily on how free, open courses[6] have been developed at UCL and how issues around IPR and third-party copyright have been handled with input from UCL Library Services.

Developing intellectual property right and copyright support for open courses

CPD4HE Project

CPD4HE was a small-scale project sponsored by Jisc and the Higher Education Academy under its Open Education Resources Programme 2009–12 (Jisc, 2009), which created open educational resources equivalent to 300 study hours in the priority areas of digital and information literacies and discipline-specific teaching and learning. The project included input from UCL Library Services' copyright support officer, who gave advice and guidance on IPR and copyright issues. This involved working with course designers to ensure that appropriate permissions were in place for any third-party content in the materials they

wished to convert to open educational resources, and helping them to understand Creative Commons licensing. The copyright support officer created templates for recording any third-party content in their teaching materials, worked with each course designer to identify rights owners, provided templates for sending requests to rights owners for re-use, assisted in identifying 'free-to-use' alternatives, and ensured that course designers understood how to use Creative Commons licences to publish the materials. Ultimately, the responsibility for ensuring third-party materials were used correctly lay with the course designers so the project provided the blueprint for supporting the development of open courses or MOOCs at UCL.

UCL eXtend

UCL eXtend, UCL's public-facing online learning platform, was developed as a vehicle to deliver free, open courses to a wider audience (UCL, n.d.). It has since evolved to deliver a mixture of open (free) courses alongside paid-for short course and CPD provision. In addition to developing eXtend, UCL has in recent years entered into partnerships to develop and deliver courses via FutureLearn, the Digital Business Academy and Coursera[7] with a view to delivering more free, open courses to a much wider audience.

Work on UCL eXtend began in 2012 with the collection of pathfinder courses and offline development. This pilot period enabled colleagues supporting the project to develop processes and support systems that were flexible and scalable. The outcome of this was an online resource, built in the UCL wiki, which takes course designers through the process of creating an online, open course (see Figure 3.1 on the next page). Intellectual property rights and copyright support largely takes the form of written guidance and documentation that signposts issues around the re-use of third-party content and points course designers to alternatives.

Before going live the creation of an open course in UCL eXtend typically involves the following four points of contact with the UCL eXtend team and other support staff:

- The course proposal form is submitted online to the eXtend Team.
- The team member assesses the proposal and provides feedback (at this stage they put the course proposer in contact with the copyright support officer if they feel that third-party content will be an issue).

- The course is developed in an online test area (the copyright support officer can be granted access to the course in the test area if copyright concerns have been identified, so that they can assist with reviewing material).
- The course is submitted for approval by the Course Approval Team – copyright queries may still crop up at this stage so the copyright support officer may be contacted. The timescale for this stage is tight – typically three weeks.

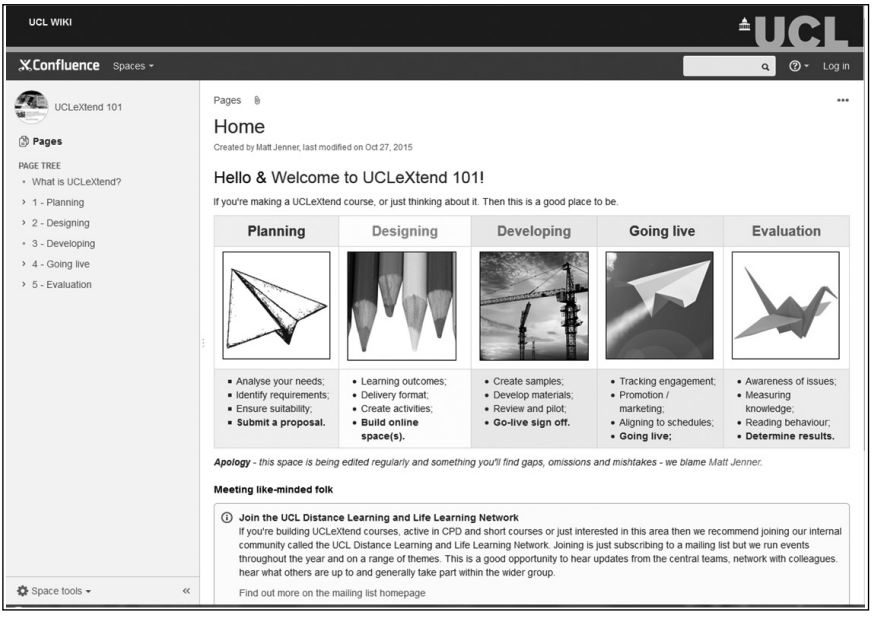

Figure 3.1 *UCL eXtend 101*

Dealing with third-party content issues

The onus for ensuring that content is being used legally within UCL's open courses rests with course designers. As a result they are strongly encouraged to generate their own content and avoid using third-party content wherever possible. Guidance on locating appropriate open resources (for example using Creative Commons filters in Google) and re-using them is provided within the UCL eXtend 101 resource. A process of critical appraisal developed in the CPD4HE project is also encouraged to weed out third-party content that is not essential: course designers must ask themselves 'does leaving this resource out

impact on the learning experience of those following the course?'. More often than not the answer is 'no' and the content can be dropped. Finally, as part of the course approval process contributors must confirm that all content contained in the course has appropriate copyright clearance.

Perhaps as a result of the effectiveness of briefing course designers during the planning stages, the copyright support officer has not been asked to clear copyright on any content to be used in open online courses to date. They have, very occasionally, been asked to review content in courses during the development stage. Where this support has been provided the focus has been in identifying alternative versions of essential materials or assisting with making a request for re-use where there is no clear licence associated with a resource. For instance, open access versions of published articles located in institutional repositories have been a valuable resource as alternatives to papers in published, licensed journals; where papers have not been available colleagues have helped course designers make contact with researchers elsewhere to request they deposit a paper in their local repository.

After a few years of developing open courses, the UCL eXtend team refers relatively few courses to the Library's copyright support officer for additional support. This is mainly because course designers are not simply opting to repurpose components of existing modules, but are using the free, open environment to develop modules that are more skills-based[8] and therefore less dependent on third-party content, or they focus more on learner participation (e.g. discussion) and depend less on learning from secondary sources. Only one course proposal has been rejected outright by the eXtend team because of the level of third-party content.

The future

As UCL plans to expand its portfolio of free, open courses via partnerships with FutureLearn and other MOOC providers and to increase its life learning offering, the issue of access to learning resources, particularly licensed content, continues. Discussions on how to avoid inequality in learner experience, particularly for the fee-paying life learning cohort, are currently underway at UCL. Meanwhile, the model of support developed for UCL eXtend provides a basis for working with course designers who want to engage with both open and life learning courses.

With this in mind, UCL Library Services has started a project to enhance the

support provided for course designers working on open and life learning courses. To ensure the continued scalability of this support, the primary vehicle for this will be a new web-based resource that brings together the issues and options for accessing and re-using content that draws on the experiences of our existing free, open courses.

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Managing digital media content

While it is not strictly a copyright issue, managing digital media content is increasingly important for institutions who are building up collections of digital 'assets' that they either own or have permission to distribute. In the past five years many academic libraries have replaced their traditional library catalogue with an integrated search service that can manage all their print and digital assets, such as Ex-Libris Primo or Serials Solutions Summon. This makes it possible to include metadata about multimedia content alongside traditional bibliographic records. Encouraged by funding bodies such as Jisc, some universities in the UK have an in-house 'learning object repository', which can manage storage of and access to multimedia content. Several commercial and open-source solutions are also available, such as:

- intraLibrary (www.intrallect.com)
- Drupal (http://drupal.org)
- DSpace (www.dspace.org)
- EPrints (www.eprints.org).

In many instances the physical storage of digital media files remains an issue because of the relatively large file size. In addition, many institutions are keen to provide this content in streamed format to facilitate access, rather than requiring individuals to download files in order to listen to or watch the content. Streamed files in general require storage on specialist servers and increasingly institutions require metadata to manage access to the material and storage space for the files. Metadata schema, such as Dublin Core, include fields for describing rights information and it is vital that rights information is stored alongside digital media. So, for example, if material has been digitized with the permission of a commercial publisher, or is available under a licence, this information needs to be retained alongside the digital object. While many large educational institutions have resolved this issue by using a repository or specialist digital library tool, in small organizations where resources are more limited this is unlikely to be the case. Therefore, it is vital that records are retained and that a system is devised for managing licence or rights information alongside the digital assets. This could take the form of a simple spreadsheet or database, which would then also facilitate re-use of the content. Whatever system is used staff should ensure that if copyright permissions need to be renewed, alerts or reports can indicate this in good time, so that they are not overlooked.

Software

Although software is protected by copyright as a type of literary work, in practice the use of software is rarely if ever allowable under a copyright exception and therefore requires appropriate licences. The concept of using only a limited proportion of computer code does not translate to the normal usage of software, which needs to be available in its entirety to work properly. Most educational establishments have people and teams responsible for acquiring and managing software licences, which are often available at an educational discount. One area of caution for those wanting to use software provided at no charge such as 'freeware', is that 'freely available' does not necessarily mean free of licensing restrictions. It may be that a software application is free for download for personal use, but an educational institution would be required to pay licensing fees. Commercial software vendors can be very protective of their products and have

audit programmes aimed at educational establishments to ensure they are not under-licensed and are providing software only to authorized users. It is important that educational establishments have appropriate procedures in place to minimize the likelihood of software licence infringement, and measures in place to respond to audit requests. However, much free software is open source and can be used throughout an institution without incurring any costs.

Finding digital media content for use in e-learning

There are many different collections of images, video and audio that are available for use in an educational context, some of which are free at the point of use. Other collections are subscription resources, where a licence fee is paid by the institution. In most cases institutional licences allow unlimited use of the material in the collection for teaching purposes. A selection of resources is provided in the next section, although this list is not comprehensive and is intended only to provide a starting point. It can be helpful to maintain a list of 'free' or approved resources in-house for teachers, to direct them to suitable multimedia and image collections. At the London School of Economics and Political Science (LSE), Learning Technology and Innovation maintains such a list for teaching staff, which is illustrated in Figure 3.2.

It is important to educate teachers and lecturers about Creative Commons licences that allow them to re-use an increasing number of copyright works without having to ask for further permission. Staff can be encouraged to use the Creative Commons website, which can be searched to find resources. The Creative Commons Search is available at http://search.creativecommons.org.

The site does not describe itself as a search engine but rather links to the search engines of other websites, to which it applies a licence filter. For example it searches the photo-sharing website Flickr for images, pulling back results where the person uploading the image has applied a Creative Commons licence to it. Creative Commons Search also can help locate royalty-free music and provides a link to a wide variety of sources (https://creativecommons.org/legalmusicforvideos). It is also possible to search Google to find images and other content licensed under Creative Commons, using an advanced search and amending the usage rights.

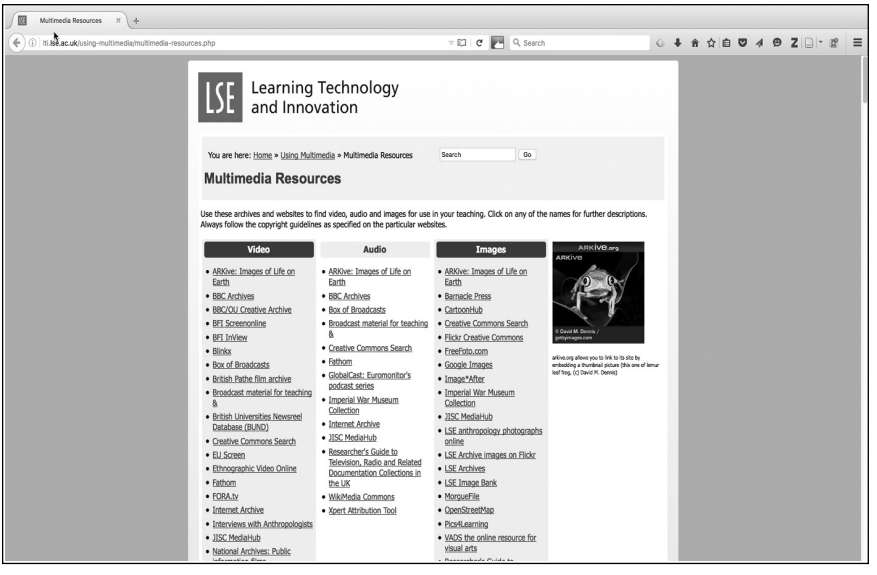

Figure 3.2 *Multimedia resources page of LSE Learning Technology and Innovation, http://lti.lse.ac.uk/using-multimedia/multimedia-resources.php (4 April 2016)*

Those who wish to re-use resources they find through regular search engines need to obtain copyright permission (or determine if an exception applies to their proposed activity) unless the material is licensed under a Creative Commons or similar open licence.

Example sources for still images

British Cartoon Archive

The British Cartoon Archive (https://www.cartoons.ac.uk) is the UK's leading collection of political and satirical cartoons and is held at the University of Kent's Templeman Library. The collection includes work by many famous cartoonists such as Ralph Steadman, Martin Rowson, Steve Bell and Carl Giles and over 170,000 items from the collection have been digitized and are available to view on the Archive's website. In some cases images can be downloaded for educational use where licences permit.

Cartoons for the Classroom

A selection of cartoons called Cartoons for the Classroom (http://nieonline.

com/aaec/cftc.cfm) from the Association of American Editorial Cartoonists is available for use in teaching. Covering many of the major political events of the 20th century, these cartoons and a lesson plan can be downloaded for use in the classroom. You can also add permanent links to cartoons in a VLE.

Jisc Media Hub

Higher and further education institutions can subscribe to the Jisc Media Hub (http://jiscmediahub.ac.uk), a collection of thousands of images, video and audio, which have been selected for educational use in higher and further educational institutions. The collection is updated monthly and spans diverse subject areas such as architecture, archaeology, arts, culture and entertainment, environmental issues, industry, leisure, news, music and politics. All images are free to download for use in teaching and research and can be displayed online via a secure network, such as an e-learning system. The collection now includes a number of previously separate services such as NewsFilm Online, which offers access to news clips from ITN and Reuters ranging from 1910 onwards, and the Education Image Gallery, which includes Wellcome Images and a Getty Images collection of still and moving images. It also includes a collection of openly licensed materials that can be used by anyone without a subscription.

MorgueFile

MorgueFile (www.morguefile.com) is a free 'stock photo' site. Registration is only required if you want to submit photos; downloading and redistribution is allowed 'for . . . ordinary personal and/or commercial purposes'. You should include credits with any photos that you use. It is not clear how many images are available. The unusual name is a publishing term for a place to keep reference material.

Pics4Learning

Pics4Learning (www.pics4learning.com) is a 'copyright-friendly' image library for teachers and students. There are approximately 28,000 images in the collection all of which are donated by students, teachers and amateur

photographers. Permission is granted for teachers and students to use the images in print, multimedia and video productions within an educational setting.

FreeFoto.com

FreeFoto (www.freefoto.com/index.jsp) is an archive of over 130,000 photos that are 'free to private non-commercial users'. Some images are licensed under Creative Commons licences, others are available for anyone to use provided you attribute them to freefoto.com. The website allows images to be used for educational purposes and to be used online, including on social media websites provided users give credit and a link to the website.

Google image search

Google now offers a 'licensing filter' for its image search (http://images.google.com/advanced_image_search), so you can search for images that you will be able to re-use in your teaching without needing to ask for permission. Note, however, that you may still need to attribute the work – check the specific licence that applies in each case to find out whether this is necessary. You should also amend the 'usage rights' field if you wish to search for images that are openly licensed. You should also use caution and consider whether any Creative Commons licences you find assigned to images have actually been applied by the creator themselves.

Example sources for moving images

BFI InView

The British Film Institute's InView (www.bfi.org.uk/inview) is a collection of diverse and rarely seen moving image titles focusing on the changing social, political and economic landscape of Britain in the 20th and into the early 21st century. The content is searchable and also comprehensively catalogued and organized under six main historical categories (education; health; environment; immigration, race and equality; industry and economy; and law and order). Sources include television documentaries, party political broadcasts, parliamentary debates and newsreels. This is a subscription resource for higher and further educational institutions.

BFI Player

BFI Player (http://player.bfi.org.uk/search) is a video on-demand service offering a wide variety of modern and classic British films from the British Film Institute. A collection that may be of interest to teachers is called Britain on Film (http://player.bfi.org.uk/britain-on-film), which has over 1000 films from around the UK accessible from an interactive map of the UK. Most of the collection is free to watch using the free BFI Player app. Owing to geo-blocking, the collection is only available in the UK; where films can be watched by international audiences the BFI has made them available on its YouTube channel.

Blinkx

Blinkx (www.blinkx.com) is a video search engine that uses speech recognition and video analysis to filter its results. The video content comes from a wide range of providers including national broadcasters and commercial media producers such as the British Broadcasting Corporation (BBC), Home Box Office (HBO) and Music Television (MTV). The videos available are for the most part streamed, so they may be linked to, but not downloaded.

The British Pathé film archive

The British Pathé film archive (www.britishpathe.com) contains over 3500 hours of British Pathé film footage, covering news, sport, social history and entertainment from 1896 to 1970. The still and moving image files are available to schools and educational establishments through a subscription service.

iTunes U

iTunes U (www.apple.com/uk/education/ipad/itunes-u) is a subset of the iTunes store that manages, distributes and controls access to educational audio and video content for students within a university and on the wider internet. Content is free to users, although password restrictions may apply to manage access to certain content within an institution. It is used by universities around the world and you can download lectures and a variety

of course content in almost every academic discipline. Some universities (e.g. Oxford University) make some content available under a Creative Commons licence.

Open Culture

The Open Culture website (www.openculture.com) contains a wide range of educational media including free movies, courses, books and audio books. Its mission is to curate 'high quality cultural & educational media for the worldwide lifelong learning community'.

TeacherTube

TeacherTube (www.teachertube.com) was launched in 2007 by a US teacher and is modelled on the popular video-sharing service YouTube, but has the aim of providing educational video content. It contains images, audio and teaching resources, has a search function, and you can browse the extensive list of channels. The content comes largely from school teachers, although some university level material is also available. Resources can be linked to, or embedded into, online materials, but remain copyright of the contributor and are not available for download.

YouTube EDU

Launched in March 2009, the popular video-sharing service YouTube EDU (www.youtube.com/edu) has an educational channel, which has allowed some of the world's leading universities to share audiovisual content. It contains an eclectic mix of lectures, interviews with vice chancellors and promotional materials. Universities need to apply to have their content available on this channel so there is some form of quality control.

Example sources for audio

British Library Sounds

British Library Sounds (http://sounds.bl.uk) is a collection of 50,000 sound recordings available for use by staff and students in further and higher educational institutions under a free licence. The collection contains many

different types of materials including classical music, sounds from nature, spoken word and world and traditional music. Recordings can be downloaded in MP3 format for use in education.

Creative Commons Legal Music for videos

The Creative Commons Legal Music for videos (https://creativecommons.org/legalmusicforvideos) web page provides advice and a list of search engines to find Creative Commons licensed music that can be incorporated into films and videos. It suggests a way of crediting the music and warns users not to re-use any music with a 'no derivative' licence component because incorporating this into a new work would breach the licence terms.

The Internet Archive

The Internet Archive (www.archive.org/index.php) is wide ranging and contains all sorts of online resources, with specific sections for moving images and audio. There is an enormous range of different types of content, including millions of free books, movies, software, music and archived web pages. Most content is in the public domain and therefore freely available for use in teaching.

Royalty Free Music

The Royalty Free Music (www.royaltyfreemusic.com/free.html) website contains a selection of stock music that is free for download and use in education. Royalty free means that the content can be used without further payment to the rights holder; this is not the same as copyright-free, which means something is not protected by copyright or the copyright in it has expired. In addition to music, the site also contains royalty-free stock footage, royalty-free sound effects, royalty-free clip art, royalty-free images and royalty-free photos.

Partners in Rhyme

The Partners in Rhyme website (www.partnersinrhyme.com) contains royalty-free music and sound effects, some for free and others at a very

low cost. The site is aimed at amateur and professional multimedia producers, film makers, musicians and students. It provides music, sound effects and audio tools. A selection of music loops and sound effects are available for free download, provided that they are not used for commercial purposes.

Conclusion

Films, sound recordings and images are rich sources of content that many teachers want to use in e-learning, but it is all too easy to infringe copyright laws when embedding this type of content into an online course. Advice for teachers is needed early on in the course design process to help them identify copyright cleared sources, and to ensure that if permission is required it is sought in good time. Teachers also need to be educated about open licences such as Creative Commons licences, which can help them find digital media that can be re-used. Sources of advice for training and support specifically related to using non-text-based digital media content are listed in the section 'Further resources'.

Notes

1. This change came into law in 2013. Previously sound recordings had been protected for 50 years but after heavy lobbying from the recorded music industry the duration was extended by an additional 20 years.
2. For clarity most traditional education providers such as schools, colleges and universities regard their activities as fundamentally non-commercial, even if they charge fees. This is in contrast to companies providing training courses at commercial rates, whose activities are unlikely to be regarded as non-commercial.
3. From 2007 to 2014 the ERA had a two tier licensing scheme – ERA and ERA Plus – with the latter providing rights to copy and access content digitally. Since 2014 the ERA Licence Plus is the single scheme open to HEIs.
4. Contact your software licensing team for this information, but many higher and further education institutions in the UK license software through the Eduserv Chest consortium agreements

(www.eduserv.org.uk/services/Chest-Agreements).

5 The term 'non-traditional' is used to describe any learners who do not form part of a university's enrolled student body, and are therefore not entitled to access their licensed resources.

6 UCL has produced a number of free, open courses, but these have been quite specialist and/or niche. Its first official MOOC was launched in January 2016 via the FutureLearn platform (UCL News, 2016).

7 This course is delivered via the University of London's International Programme.

8 For example, the series of seven urban graphics courses developed by the Bartlett Faculty of the Built Environment, which develop skills via a number of exercises using licensed software or open-source alternatives. See Urban Skills Portal in UCL eXtend for more information: https://extendstore.ucl.ac.uk/catalog?pagename=urbanskillsportal.

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