An Intellectual Property Rights Toolkit for Distance Learning. University of Wolverhampton

Alex Fenlon,
CLL Consultant,
June 2013.
Intellectual Property Rights (IPR) in developing Online Distance courses as well as for students learning online, increasing use of e-Learning Landscape project.

This document was prepared for the University of Wolverhampton as a part of their Changing the Learning Landscape project ‘The ethical and legal considerations of IPR in the context of the increasing use of e-learning’.

The project set out to address an emerging issue of uncertainty at strategic level, and for staff developing Online Distance courses as well as for students learning online, when dealing with Intellectual Property Rights (IPR) in on-line learning materials.
Copyright check list

To ensure that your module does not contain any content for which the University does not have permission to display publicly, please read through all material in your module and annotate each section of content (text, image, table, graph etc.) using the following questions as a guide:

1. Did you or an employee of the University of Wolverhampton create the section of content?
   - Yes: Content is OK for use, identify with: X
   - No/Unsure: Go to 2

2. Is the section of content protected by copyright?
   - Yes/Unsure: Go to 3
   - No: Content is OK for use, identify with: X and record the source

3. Is the section of content vital to the module?
   - Yes: Go to 4
   - No: Content can be removed, identify with: X

4. Can you identify the owner(s) of the copyright protected content?
   - Yes: Go to 5
   - No: Go to 6

5. Has permission been obtained from the copyright owner?
   - Yes: Content is OK for use, identify with: X and record the source
   - No: Go to 6

6. Can you suggest a copyright free alternative?
   - Yes: Provide details of alternative
   - No: Content can be removed, identify with: X

Based upon 'Guide for Academics' © University of Exeter, reused under an Attribution-Noncommercial-Share Alike 2.0 UK: England & Wales licence.
What is IPR and why is it relevant

‘are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.’ World Intellectual Property Office (WIPO)1

Trade Marks (registered and unregistered)

Design Rights (registered and unregistered)

Patents

Copyright

Figure 1. A Wordle tag cloud relating to IPR.

These rights apply to anything we create within our teaching, anything found online or anything published in print. We need to be aware of how we can use and protect the efforts we expel in creating these resources.

We are focusing on copyright within this document but a brief explanation of other forms of IPR can be found within Appendix 1.

Further support is available from Learning and Information Services http://www.wlv.ac.uk/lib/contacts.aspx.
# IPR policies

Contracts and policies for managing ownership of teaching materials vary tremendously across the UK, from the employer owning everything (which helps when IPR is ‘jointly arising’ - developed by more than one person) to the author (employee) owning everything, depending on the culture and freedom of the organisation. Policies may be different for teaching and research.

Obtain, if possible, copies of employment contracts for different categories of staff, and review who owns any teaching outputs developed by the employee. Search your organisation’s website for your IPR or copyright policy - if you cannot find one then try looking in your organisation's teaching and learning strategy. The Registrar (or equivalent), representative of HR, student affairs, business development/contracting may be able to tell you whether such a policy exists. If you find a policy but can’t find teaching mentioned, look for who owns research outputs or copyrights (as these are generally considered more commercially exploitable) and extrapolate/infer. The IPR policy in relation to teaching might look like:

"Subject only to any existing third party copyright, in material incorporated into Teaching Materials, the copyright and design rights in all Teaching Materials belongs to the University. The University respects the moral rights of its employees including the right to be identified as author of the Teaching Materials, and will ensure that the author's contribution to the work is credited where appropriate. The University recommends that, as a matter of good practice, all Teaching Materials should carry a standard copyright and authorship statement as follows: University of XXX 20XX, AN Other, Author"

If you do find a policy stating who owns the copyright in teaching outputs produced as a normal part of the role (or similar), then it is important to also know what licence terms apply (if any). A key question is whether teaching outputs licenced in any way (including to third parties and staff who move to new employment).

©MEDEV Subject Centre, Newcastle University, Open Education Resources risk Kit (v3) under a [Creative Commons Attribution-ShareAlike 3.0 Unported Licence](https://creativecommons.org/licenses/by-sa/3.0/)
The University of Wolverhampton recognises that copyright compliance is a legal requirement for the institution and also a personal responsibility, and treats failure to comply as a disciplinary offence. The practice of good Copyright awareness is becoming more and more important, especially in the creative atmosphere of Higher Education Institutions such as colleges and universities. With the addition of the Internet and e-learning programmes into the creative 'cooking pot' of these institutions, all works used (past, present and in the future) need to be properly managed, so to encourage and reward creativeness and also to protect the work from 'infringing actions' by others. “http://www.wlv.ac.uk/lib/info/copyright.aspx#CQ1

Copyright protects the rights of anyone who creates, and/or owns, a piece of work of the sort listed below

- literary works including novels, instruction manuals, computer programs, song lyrics, newspaper articles and some types of database
- dramatic works, including dance or mime
- musical works
- artistic works including paintings, engravings, photographs, sculptures, collages, architecture, technical drawings, diagrams, maps and logos
- layouts or typographical arrangements used to publish a work, for a book for instance
- recordings of a work, including sound and film
- broadcasts of a work

No registration is required and copyright arises as soon as a 'work' is created or recorded in some form.

Owner is the author of the work – the person who creates it/ records it except where work is produced under a contract of employment.
Owner can:
- control how and when you work is used, as well as who uses it
- sell and license
- object if your work is mistreated,
- demand to be identified as the author of the work

### Duration of copyright

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Example</th>
<th>Duration of copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literary, dramatic, musical or artistic works</td>
<td>Journal articles, books, letters, lecture slides/ hand-outs, pictures, photographs, images, graphs, tables.</td>
<td>70 years after death of author</td>
</tr>
<tr>
<td>Sound recordings</td>
<td>Songs, speeches, performances, pieces of music, any recorded sounds.</td>
<td>50 years from the end of the year in which the recording was made.</td>
</tr>
<tr>
<td>Films</td>
<td>Feature films, home movies</td>
<td>70 years after the end of the year in which the last of the principal director, author of screenplay, author of dialogue or composer of music dies.</td>
</tr>
<tr>
<td>Broadcasts</td>
<td>TV programmes, podcasts, online seminars as aired.</td>
<td>50 years from the end of the year in which the broadcast was made.</td>
</tr>
<tr>
<td>Typographic arrangements</td>
<td>The typeset/ appearance of something, i.e. layout, format, stylisation etc.</td>
<td>25 years from publication.</td>
</tr>
</tbody>
</table>

### Who owns my copyright?

Most HEIs will have detailed IPR policies, Staff contracts, and / or Academic conditions of service.

All will outline who owns any IP you produce.

Default under UK law is;

Employer is first owner of anything produced ‘in the course of employment’.

Anything you produce at work or to enable you to do your job is owned by your employer, regardless of when and where.

Care should be taken when using materials created during your employment as permission may be need to use them outside of the institution, i.e. to upload to social media or so called ‘web 2.0’ services.
Exceptions

Fair Dealing
The permitted acts are defences in a court of law they are not rights

‘Fair dealing’ permits copying for:

- Non-commercial research and private study;
- criticism and review;
- reporting of current events, i.e. news reporting.

Fair dealing is not the same as Fair Use in the US where copying for educational purposes is allowed only by non-mechanical means (i.e. not by a photocopier)

NB- There is NO educational exception in UK Law.

Any use under Fair Dealing must be ‘fair’ and must be attributed. Fair has no set legal definition unfortunately!

Examination
There is a specific exception for examinations meaning that excerpts of third party content can be used for the purposes of examination unless this is impractical i.e. the exam asks a student to identify the author of a work. This applies only within the examination setting, i.e. the exam room.

If you wish to use the exam paper or question in another context, e.g. as a past paper, this exception no longer applies and permission would be required.

Orphan works
An orphan work has been described as a work protected by copyright, but where the current owner of the copyright is unknown or untraceable by reasonable enquiry. There is currently no British legislation that would permit the ‘free’ use of orphan works if the owner cannot be found (i.e. there is no defence to an action of infringement should the owner be subsequently identified and object to the use), nor any definition of ‘reasonable enquiry’.

Avenues to investigate in search of the owner of copyright in a work might include:

- A Google search
- Copyright licensing agencies:
  - The British Copyright Council (BCC) http://www.britishcopyright.org/
  - Copyright Licensing Agency (CLA) http://www.cla.co.uk/
  - Design and Artists Copyright Society (DACS) http://www.dacs.org.uk/
  - Authors’ Licensing and Collecting Society Limited (ALCS) http://www.alcs.co.uk/
  - Educational Recording Agency (ERA) http://www.era.org.uk/
  - Newspaper Licensing Agency (NLA) http://www.nla.co.uk/
  - Office of Public Sector Information (Crown Copyright)

If you exhaust the lines of enquiry but are unable to find the owner of the copyright the risk may be one worth taking.

© HEFCE, 2008. This paper is licensed under a Creative Commons Attribution-Non-Commercial 2.0 UK: England & Wales Licence, Version 1.1 www.Web2Rights.org.uk
Wolverhampton IPR project - IPR materials and checklists

WLV licences

Copyright Licensing Authority
You can photocopy or have scanned up to the following limits (per module) from publications covered under the licence:

- Up to 5% or one whole chapter (whichever is the greater) from a book.
- Up to 5% or one whole article (whichever is the greater) from a journal issue.
- Up to 5% or a short story or poem (not exceeding 10 pages in length) from an anthology (whichever is the greater).
- Up to 5% or one single case (whichever is the greater) from a published report of judicial proceedings.

For more information regarding the permissions of this licence please visit our Copyright Licensing Agency page.

Educational Recording Agency
This covers the recording of UK broadcasts via Television (including Films), Radio and some Internet broadcasts by members (fixed viewing time broadcasts only - not 'on-demand' services).

Material may be recorded for ‘educational’ purposes only. Analogue recordings made under licence may be transferred into digital formats for the ‘educational use’ of licensed establishments. Video recordings can be transferred to DVD / included in Powerpoint or placed on our server – but the licence states that they can only be accessed from ‘on-site terminals’ and through ‘secure access’ (password protected etc) – not from home PCs and must carry a permissions/copyright statement.

See the ERA Licence Educational Recording Agency page for further details of this licence.

Social Media Licences
WLV has no special permission to use YouTube, Flickr or other web2.0 services within teaching materials or courses. If you wish to use content found on these services please treat it the same as if it were in printed form as you will need permission to copy any content.

You can however link to the videos if you wish to.

If you want to release materials on ‘web2.0’ you may need permission from the institution. When you upload to these platforms you grant them a licence to use your materials. You should check what permission you grant to the owners to use your material. When using YouTube for example you grant them a;

“worldwide, non-exclusive, royalty-free, transferable licence (with right to sub-licence) to use, reproduce, distribute, prepare derivative works of, display, and perform that Content in connection with the provision of the Service and otherwise in connection with the provision of the Service and YouTube's business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels;”

You also grant users of YouTube a:

“worldwide, non-exclusive, royalty-free licence to access your Content through the Service, and to use, reproduce, distribute, prepare derivative works of, display and perform such Content to the extent permitted by the functionality of the Service and under these Terms.”

For further guidance on the use of Web2 and social media tools Please see the social media policy.
Dealing with third party materials

For items not covered by the University licences you should write to the copyright owner with as much information as possible about the material you want to use and how you intend to use it.

For permission contact the copyright owner in writing/ email and specify

- the material you wish use (title, author name etc.)
- the exact content to be duplicated (i.e. page numbers)
- the number of copies you wish to make
- how the copies will be used (i.e. for an event, course work)
- who the copies will be distributed to (i.e. students)

For most published works this will be the publisher

Permission is needed for each and every purpose

Fees may be charged to copy the item, or for administering the request to copy the item

www.cla.co.uk

Adapted from ‘Suzanne Hardy and Gillian Brown, 3 May 2011, NOVICE online workshop’ under a Creative Commons Attribution Share Alike version 3.0 unported licence via www.medev.ac.uk/blog/oer-phase-2-blog/

Template Permission requests

Dear Sir/madam,

As a [Lecturer] in [Copyright] at the University of Wolverhampton, I am writing to request permission from you as the rights holder, to use an extract from your work [insert details].

The extract would amount to a [insert quantity e.g. three minute clip, 2 pages p45-p46].

I wish to produce [insert details of intended use e.g. a PowerPoint presentation] that includes your extracts and then place it on our VLE (Virtual Learning Environment) system for teaching/educational purposes only. The module I teach is module [insert number and title]. It runs during [Semester One] of our teaching calendar [September to February] but I would like the clip to be available for a 12 month period for students to cover any examination re-sits etc. The module has [30] students registered on it and the VLE system we use is a secure system accessed by staff and students only, via password and user name.

Copyright regulations will apply to the accessing and use of the work and all permissions duly acknowledged.

If you are no longer the rights holder (recently sold or transferred etc), I would be most obliged if you could pass onto me any information you may have as to who now owns the rights.

Thanking you in anticipation of your kind attention to this matter, I look forward to hearing from you at your earliest convenience.

Yours faithfully
NB Retaining records
The replies and permissions granted should be retained for future reference. Contact Learning and Information Services (http://www.wlv.ac.uk/lib/contacts.aspx) for assistance with how to record and retain these permissions.

NB Royalty Free resources
Be aware with 'free sites' as well - check the 'terms and conditions' links (usually found at the bottom of the home page) to see exactly the permitted use of the material is. For example a resource may be free to view, but further use may need permission.

If in doubt contact Learning and Information Services (http://www.wlv.ac.uk/lib/contacts.aspx) for support.

Keep it Simple – Link When Possible
Alternatively in many cases you can eliminate the need for permission or paying fees by linking to the work instead of making a copy. The Library may already have paid for a subscription license that entitles you and your students to access online.

The work may also be available for free on a legitimate Web site such as the Institutional repository or another online open archive, or Open Access Journal.

For more information on linking please e-mail LIS Liaison @wlv.ac.uk.
Open licensing
There are increasingly resources that are released under open licences such as Creative Commons. These resources sometimes known as Open Educational Resources (OERs) can be reused without contacting the owner for permission as the licence states how you can use the materials.

Materials can be found using the ‘Advanced Search’ tool in Google and services like Flickr and SlideShare—simply select the ‘usage rights’ option that applies to how you want to reuse the material.

Creative Commons
Creative Commons is the preferred by leading institutions such as Oxford, Harvard, MIT and as a result are the most widely used open licence associated with OERs today.

CC licences:
‘give everyone from individual creators to large companies and institutions a simple, standardized way to keep their copyright while allowing certain uses of their work — a “some rights reserved” approach to copyright.’

<table>
<thead>
<tr>
<th>The Licence Types</th>
<th>Attribution (BY)</th>
<th>Non -Commercial (NC)</th>
<th>No - Derivatives (ND)</th>
<th>Share Alike (SA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>You must credit the licensor of the work.</td>
<td>You can only use the work for non-commercial purposes.</td>
<td>You may not create adaptations of the work.</td>
<td>You may create adaptations of the work, but these must be under the same licence as this work.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Licence Combinations</th>
<th>Attribution-Only</th>
<th>Attribution-No-Derivatives</th>
<th>Attribution-Non-Commercial No-Derivatives</th>
<th>Attribution-Non-Commercial</th>
<th>Attribution-Non-Commercial-Share Alike</th>
<th>Attribution-Share Alike</th>
<th>CC ZERO</th>
</tr>
</thead>
<tbody>
<tr>
<td>CC-By</td>
<td>CC-By-ND</td>
<td>CC-By-NC-ND</td>
<td>CC-By-NC</td>
<td>CC-By-NC-NC</td>
<td>CC-By-NC-SA</td>
<td>CC-By-SA</td>
<td>CC0</td>
</tr>
</tbody>
</table>

Changing the learning landscape.
**NB Licence restrictions**

Using the SA and NC licences described above place retain restrictions and obligations upon you and the University.

When you use a SA licence you must release your material under the same licence as the original and it must be freely shared in the same manner as the original.

The NC restriction means that you cannot sell that resource for profit or include the content within any materials that are included in a course that is provided for a fee.

The University has taken the view that these two options should be avoided to remove the obligations and limitations that they carry.

**Risk management**

The exercise of using materials and content produced by WLV whether through any of the exceptions mentioned above, under a Creative Commons licence or an orphan work is about managing risk. All of the activities above will help to reduce the risk of copyright infringement to a manageable level that the University is happy with.

In trying to manage and assess the level of risk involved you are advised to use the risk management calculator below.

![Risk Management Calculator](QRcode.png)

To access the tool visit or use the QR code in the top right hand corner.

**NB Institutional risk**

The decision to use any content is entirely at the project's and/or institution's sole discretion, and this Risk Management Calculator should be only used as part of a wider Risk Assessment process. The authors of this Calculator, the JISC and other associated organisations cannot be held responsible nor endorse any decisions based upon the use of this Calculator.
made based upon the use of this Calculator nor held responsible for the Indicative Risk Value which might be indicated. If you receive a score of over 150 please consult Learning and Information Services for further guidance and help to find alternative material.
Appendix 1; Other forms of Intellectual Property

Trade marks
‘A trade mark is a sign which can distinguish your goods and services from those of your competitors (you may refer to your trade mark as your “brand”). It can be for example words, logos or a combination of both.’ UK Intellectual Property Office.¹

Registered Design
‘the appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or ornamentation.’ UK Intellectual Property Office³

A design must:
- be new = no identical (or very similar) design published or publicly disclosed,
- have individual character= different from other already known designs.

Exclusive rights
Up to 25 years protection (renewed in 5 year periods)

Easier to enforce

Licensing opportunities

Unregistrable if;
- It is offensive
- It consists of, or includes, certain protected flags and international emblems
- It is solely dictated by the product's technical function

¹ [http://www.ipo.gov.uk/types/tm/about/t-whatism.htm](http://www.ipo.gov.uk/types/tm/about/t-whatism.htm) under an OGL.

The logos are the registered trade marks of the respective organisations.
**Design Right**
‘automatic protection for the internal or external shape or configuration of an original design.’ UK Intellectual Property Office
- Exclusive right to reproduce
- UK only
- Last 10 years from publication or 15 from creation (if not published)
- No protection for 2D aspects (i.e. surface patterns)
- More difficult to enforce

**Patents**
‘protects new inventions and covers how things work, what they do, how they do it, what they are made of and how they are made.’ UK Intellectual Property Office.

Must be;
- new
- have an inventive step that is not obvious to someone with knowledge and experience in the subject
- be capable of being made or used in some kind of industry

Last for up to 20 years (renewed annually after the 4th year)

Can be sold/licensed

Public benefit - knowledge is made public

Must not be:
- a scientific or mathematical discovery, theory or method
- a literary, dramatic, musical or artistic work
- a way of performing a mental act, playing a game or doing business
- the presentation of information, or some computer programs
- an animal or plant variety
- a method of medical treatment or diagnosis
- against public policy or morality.
**Notices**

Changing the Learning Landscape (CLL) is a HEFCE-funded programme supporting and encouraging higher and further education institutions to make a step change in how they adopt effective and strategic uses of online technology in teaching and learning.

The programme is a unique partnership between the Leadership Foundation for Higher Education, JISC, the National Union of Students, the Association for Learning Technology and the Higher Education Academy (HEA).

This document was prepared for the University of Wolverhampton as a part of their Changing the Learning Landscape project ‘The ethical and legal considerations of IPR in the context of the increasing use of e-learning’.

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>An Intellectual Property Rights Toolkit for Distance Learning. University of Wolverhampton</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Author</strong></td>
<td>Alex Fenlon</td>
</tr>
<tr>
<td><strong>Institute – Owner</strong></td>
<td>Higher Education Academy</td>
</tr>
<tr>
<td><strong>Acknowledgement</strong></td>
<td>This work was produced with the help of Frances Machell, Joss Granger, Dr Paul Brett and Martin Cartwright (all University of Wolverhampton). Thanks should also go to the authors and owners of the third party materials that have been used to create this document.</td>
</tr>
<tr>
<td><strong>Date Created</strong></td>
<td>June 2013</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>A toolkit focusing on intellectual property rights, specifically copyright created using existing third party materials under Creative Commons licence.</td>
</tr>
<tr>
<td><strong>Educational Level</strong></td>
<td>HE Staff and teaching support professionals</td>
</tr>
<tr>
<td><strong>Keywords</strong></td>
<td>OER, Changing the Learning Landscape, #CLL1213, Wolverhampton, resources, open, IPR, Intellectual Property Rights, copyright, licensing, creative commons, rights clearance, risk management, distance learning, blended learning,</td>
</tr>
<tr>
<td><strong>Creative Commons Licence</strong></td>
<td>Except where otherwise noted this document is licensed under a Attribution-Non-Commercial-Share Alike 2.0 UK: England &amp; Wales</td>
</tr>
<tr>
<td><strong>Third party rights/Exceptions</strong></td>
<td>Any logos or artwork are excluded from the CC licence and should not be reproduced without permission of the owner. See all the notices under figures and images for exceptions to the CC licence mentioned here.</td>
</tr>
</tbody>
</table>