



Copyright Issues in Higher Education

Disclaimer

Copyright is a complex legal issue and as such, there are often no clear cut answers to what is and is not, acceptable use of copyright material. As with much legislation, copyright legislation is based on its interpretation and caution must be applied when deciding what is reasonable use of copyright material and what is not. This Toolkit aims to provide some introductory advice and links to further information but should not be interpreted literally. It is not a legal defence to argue a position based on one person's interpretation of advice (such as provided by this Toolkit) and ultimate responsibility lies with the individual to seek clarification before risking copyright infringement.

What is copyright

Copyright is the legal protection given to people who create materials in a wide range of formats, including literary, music, art, sound recordings and films. Copyright enables people to protect their work from unwarranted publishing, copying or changes which might otherwise alter the original work and to object to distortion or mutilation of it, without the author's permission. Material does not have to be registered in any way to be protected by copyright, it simply has to be recorded in any medium e.g. on paper or on CD. The purpose of copyright is to give authors recognition and/or economic reward for their work.

The Copyright Licensing Agency Ltd (CLA)

The CLA is a company owned by organisations representing authors and publishers to protect copyright and to ensure authors receive fair payments for use of their copyrighted material. The CLA grants fee-based licences to Higher Education Institutions to allow staff and students to copy extracts from books, journals and magazines (but not newspapers) protected by copyright and published in the UK and 17 other countries. The licence allows for only single copies to be made for private research or study. Staff however, are permitted to make additional copies for each of their students, plus one extra copy for themselves. Under CLA terms, the definition of a student is quite clear so copying for certain types of student is not permitted, such as those on short term modules or courses.

What is a **TOOLKIT?**

A resource
which brings
together and
provides links to:

- reports
- information
- resources
- downloads

for a particular
topic.



Since the CLA licence primarily covers paper to paper copying, this mostly concerns photocopying. Under general terms of a licence, as stated by CLA:

The basic permission to photocopy extends to the copying (from paper on to paper) of:

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 single issue of a journal

Up to 5% or one paper (whichever is the greater) from a set of conference proceedings

Up to 5% of an anthology of short stories or poems or one short story or one poem of not more than 10 pages (whichever is the greater)

Up to 5% or one single case (whichever is the greater) from a published report of judicial proceedings

However, this is by no means definitive since it depends on how the copyright holder considers this 5% to be crucial to the importance of the publication, defined as a 'qualitatively significant part of a work'. For example, the number of pages being photocopied from a book may fall within the 5% limits but the actual content may be considered central to the value of the overall book and it may be argued that this falls outside of acceptable permission for copying.

Fair Dealing

The issue of fair dealing relates to any copying activity that is permitted under copyright law which does not require payment of fees. A caveat to this however, is that it is more of a defence in law, rather than a right. Fair dealing allows individuals to make single copy extracts from various media, including digital format, for research or private study. The volume of material that can be copied is still the same as the amount defined under the CLA licence. Exactly what material may be copied is dependent on permissions by individual copyright holders and cannot automatically be assumed without verification.

New legislation introduced on 31st October 2003 further states that fair dealing is only permissible for 'non-commercial' research or private study. For example, if research is funded and the outcomes will be used for commercial gain then this is not considered fair dealing. Since there is a lot of commercial sponsorship of research for staff and for students during their courses you should be more careful about what constitutes fair dealing under the new legislation. The British Library link below is a good source of information about what is considered fair dealing under the new regulations.

Course packs

A course pack is defined as:

“a compilation (whether bound or loose-leaf) of four or more photocopied extracts of Licensed Material from one or more sources which compilation:

- (a) exceeds twenty five pages of such Licensed Material, and
- (b) is intended to provide the students registered on a Course of Study with a compilation of materials designed to support the teaching of that Course of Study; and
- (c) is prepared and distributed in advance of and/or during a Course of Study and either piecemeal or in one batch.”



After a change in the licensing agreement in 2001, the CLA licence now allows photocopying for course packs, although the same 5% extracts permissions would still apply as normal. So it is now acceptable under the terms of the CLA licence to produce course packs for students. Course packs are still governed under the CLA licence so an academic may only make enough copies for each student plus one extra copy for themselves. The CLA or its licences no longer make direct reference to course packs although the general conditions for the range and volume of content that can be copied still applies. If you are in doubt as to how much can be copied for student use you should seek clarification.

Electronic distribution and use of material

Early CLA licences used to only cover the copying of paper based resources i.e. photocopying and electronic distribution was covered separately. The CLA now offers a ‘comprehensive’ licence over and above the basic licence (photocopying and scanning) which allows for the storage and distribution of digital material. This allows for digital copies of resources to be made available “on any computer or computer network on the publicly accessible internet in such a way as to be publicly accessible or accessible otherwise than by Secure Authentication”. The licence therefore allows tutors to place permitted digital material on secure networks such as Virtual Learning Environment (such as Blackboard or WebCT) for their students. It should be noted however that the amount of material is still restricted according to the levels laid out in the course packs section above.

Legislation and licences says that educational exceptions to copyright law allow for images and other material (except sheet music) to be used for examination purposes. However under fair dealing of use for non-commercial research or private study it is unclear whether this relates to student coursework and so caution must be used if students wish to include images from the web for work such as essays or reports. If the source of the material (website, CD etc.) states that the material

should not be used then students should seek formal permission before including it in their work. As with other references, students should also make sure they fully reference any digital images used, with full acknowledgements.

With the expansion of content available on the Internet, many people feel that there is an implicit acceptance by authors who make material available online that their material is free to copy. Therefore there is an argument that web material can be copied for use in education. This is what is called an implied licence, where the author might allow you to use the material in-house in your institution or even via an Intranet (a secure network), if the web site does not stipulate otherwise. However, this is a matter of interpretation and an implied licence cannot be argued if the material on the Web was placed there illegally in the first place.

Useful Links

Copyright Licensing Agency Ltd

<www.cla.co.uk/>

Intellectual Property Office

<www.ipo.gov.uk/home.htm>

The British Library

<www.bl.uk/reshelp/atyourdesk/docsupply/help/copyright/copyrightfaq/index.html>

JISC Legal

<www.jisclegal.ac.uk>



Publication Details

This document is just one of a series of Toolkits from the UK Physical Sciences Centre all available to download from the website (see right). The Centre also produces other publications and resources in support of teaching and learning in higher education. This includes a newsletter and journal. To have these sent to you in hard copy format upon publication, visit our website and join the Centre mailing list.

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