

Copyright in Further Education

How sure are you that the teaching and learning materials that your college is using do not infringe someone else's copyright?

Colleges are realising the importance of good copyright management because delivering high quality learning materials is fundamental to all knowledge and teaching.

In order to be effective a college must make certain that ownership of the learning materials being used in the college has been clearly established and that all permissions and licences are in order. Further, agreements with regard to use of copyright materials need to be structured so that the future needs of the college are accommodated.

What is copyright?

Copyright is a form of intellectual property right and usually resides in literary, artistic, dramatic and musical works. Computer software is included in this as a literary work. The right permits the owner of the copyright to carry out certain restricted acts the most important of which is copying. Copyright will be infringed by anyone who, without the consent of the owner does any of the restricted acts. In addition, if they authorise someone else to do or carry out any of the restricted acts they will be infringing copyright.

In the UK copyright comes into existence as soon as one of these types of works is recorded in a permanent form. There is no need to register the right.

The current law of copyright is contained in the Copyright, Designs and Patents Act 1988 ("CDPA")

The law of copyright is an attempt to balance the rights of authors, publishers and users and ensure that the interests of all parties are adequately met.

Who owns copyright?

Subject to an agreement to the contrary copyright is owned in the first instance by the author (creator). In most cases a college will own copyright in any materials created by its staff. Ownership will transfer to the college as a result of the member of staff's contract of employment.

What does a college need to do to ensure that its use of copyright protected materials is lawful?

If you have purchased something that does not mean that you are the copyright owner. When you buy a music compact disc, the copyright in the music and the artwork remains with the writer or the publisher. You only have a licence to use the music for limited purposes and these purposes are usually indicated somewhere on the packaging.

The same basic rules apply to teaching and learning materials. A college may not be able to copy the materials for further use - check the licence to see the extent of what you can do.

Here are some important rules that you should get across to your staff and students.

1. If you don't own the copyright work, then someone else does!
2. Don't use someone else's work without authority in the same way as you wouldn't use someone's other property without their authority.

College Materials

As well as using other people's copyright works under licence, colleges are often also the owners of copyright works that may be used by other people. Colleges should ensure that the rights of others are not abused and be watchful for opportunities to make the most of the rights that they have in their employees own work.

Clearing works for your use

Rights clearance is only required where a material's copyright is held by someone other than your college. In order to use work already published you will have to have clearance in the form of written permission or a licence from the rights holders, usually the publisher.



Is your copying legal?

Colleges are very much in the business of copying for the purposes of preparing and producing teaching and learning materials for learners. Is this copying legal?

✓ Yes -

- If written permission has been obtained from the owner of the right to copy the materials.
- If copying falls within the regulations of a licensing agency to which the College subscribes.
- If you have a legal defence, for example “fair dealing”.

✗ No -

- If you don't have permission, don't have a licence from an agency or don't have a legal defence.

What is the likelihood of being caught?

Computers have made it simple to make multiple copies of a work. In the same way they have made it easier to track where materials have come from. Owners of copyright materials have access to the same searching tools and can identify where their works are being used. There are clear signs that copyright owners are increasingly seeking to protect and enforce their rights. Does your college want to be guilty of breaching someone's copyright? Those found to be in breach of the CDPA may incur a fine or face imprisonment.

Is material on the Internet protected by copyright?

Yes. Copyright material sent over the Internet or stored on web servers will generally be protected in the same way as material in other media. So anyone wishing to download material that others have placed on the internet, or further distribute it, or wish to put material they are using on the internet, should ensure that they have the prior permission of the owners of the copyright in the material.

Summary

Once the ownership of copyright in a college's teaching and learning materials is clearly established managing and controlling this copyright is a much easier task. Colleges should try to maintain awareness of the value of these learning assets among their staff and students and encourage a compliance culture where the rights of others are not abused.

The JISC Legal Information Service runs a helpdesk for Further Education Colleges where you can email or telephone for information on the legal issues you have to tackle in your work.

Telephone - 0141 548 4939
email - jlis@strath.ac.uk
web: - www.jisc.ac.uk/legal

Eversheds is a leading law firm in the education sector and has the largest education team in the UK. They offer an online Knowledge Bank dedicated to senior managers in Further and Higher Education Institutions providing a full range of information, services and news. Their website can be accessed at - www.eversheds.com

If you have any questions, please contact John Boardman at johnboardman@eversheds.com.

Resources

Some of the sources used in the compilation of this paper include

- The UK Patent Office website <http://www.patent.gov.uk/copy/>
- The UK Government backed Intellectual Property website <http://www.intellectual-property.gov.uk/std/resources/copyright/index.htm>
- “Copyright – Be aware be very aware” a paper by Alan Rae, Dundee College on the JISC Legal Information Service website at <http://www.jisc.ac.uk/legal/>



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