

Copyright Licensing for e-Learning Authors

Points to Remember

e-Learning authors should consider the following points when licensing third party materials.

1. Consider what licence is appropriate for the works, and whether the works may be licensed under a CLA or other form of standard licence.
2. Do not rely on defences under the CDPA for making use of copyright works except with great care as these are very limited, and ensure that appropriate consents are obtained for all educational materials and systems.
3. Establish the purposes to which the works will need to be put, and consider the extent to which the licence terms will permit appropriate use of the works for these purposes.
4. Seek to resolve any disputes through a means of alternative dispute resolution. In particular comply with any dispute resolution provisions contained in the licences to avoid breach of licence and an adverse award of court expenses.

This paper contains an overview of some of the key legal issues to be considered in relation to the topic. For more detailed information see www.out-law.com. This paper does not constitute legal advice.



Copyright Licensing for e-Learning Authors



Licences are the traditional way in which copyright holders allow their works to be used, distributed and disseminated without having to grant an assignment, or otherwise transfer the intellectual property rights in the works (including copyright).

Introduction

A licence can be defined as a formal authority to do something that would otherwise be unlawful under the Copyright, Designs and Patents Act 1988 (the 'CDPA').

The grant of an express licence provides specific rights, as defined by the terms of the licence. If the licence is an exclusive one, the licensor not only allows the licensee to do certain acts but also restricts himself from extending licence rights to anyone else.

The scope of the licence will be important in establishing what rights the educational establishment will receive, and what they will be able to do with the materials. At a minimum this must be wide enough to permit use of the material in different media (online, in brochures, in hard copy materials etc), as well as the ability to use for educational purposes, to disseminate to students, and where relevant to sub-licence to other institutions.

In the absence of an express licence, licence terms may be implied into a course of dealings between parties. However, this introduces an undesirable degree of uncertainty for all parties.

For educational establishments, the use of third party content in online learning environments will usually require the licensing of this material. Educational materials may be procured from third parties, as may the software and systems through which they are delivered. Understanding the basis on which these licences grant rights to use the materials is essential to understand what can ultimately be done within the online learning environment.

Statutory Rights

An express licence may not be necessary where a party is able to rely on statutory defences against a claim of copyright infringement. These include the 'fair dealing' defences under the CDPA which permit limited use and reproduction of works for purposes such as research and private study. Recent changes have tightened the use of the fair dealing defences, and educational establishments should not rely on these as a means of procuring third party content for e-learning systems.

Copyright Licensing Agency ('CLA')

While many of the materials and systems involved in an online learning environment will be subject to individual licence terms, in a number of cases educational materials can be procured using a blanket licence from organisations like the 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 further and higher education institutions, to allow staff and students to copy extracts (to pre-determined limits and within certain rules) from books, journals and magazines protected by copyright and published in the UK and various other countries.

CLA Trial Scanning Licences

Creation of a 'digitised' version of licensed material is generally not allowed under the terms of the CLA's standard ('photocopy') licences. However, the CLA has recognised that educational establishments are changing the way copyright materials are used, and in particular their use in virtual learning environments.

A Trial Scanning Licence for Further Education was introduced in 2003, and a Trial Scanning Licence for Higher Education in 2005. For their respective sectors, each allows the licensee institution to scan extracts from books, journals and periodicals, retype extracts onto a computer, email copies to authorised users and to host copies on a secure VLE.

Under either licence, an institution must own an original (or a copyright fee-paid) print copy of the work to be scanned. These blanket licences do not give a right to reproduce digital materials, however, irrespective of whether the copying is digital or print. They do not give a right to amend the materials either, and any digital copy produced must be accompanied by sufficient acknowledgement of source.

The CLA FE Trial Scanning Licence

The continuing FE Trial Scanning Licence has the following features:

- Optical character recognition (OCR) of scanned text is not permitted
- There is no limitation on scanning previous editions of material

- There is no requirement to log all scanning done under the licence
- The text of the CLA FE Trial Scanning Licence can be found at <http://www.cla.co.uk/support/fe/FE-Licence-AoC-03-04.pdf>

The CLA HE Trial Scanning Licence

The recently agreed HE Trial Scanning Licence has the following features:

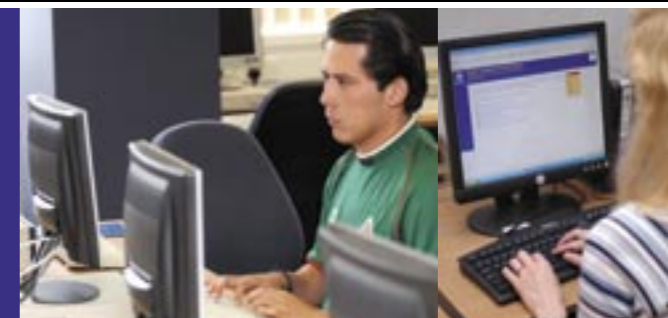
- It allows optical character recognition (OCR) from scanned text
- Scanning is usually limited to the latest edition of any material
- A log must be kept of all material scanned under the licence, and reported back to the CLA
- The reason for not using a commercially available digital version must be recorded (if after reasonable inquiry such a version is found)
- The text of the CLA HE Trial Scanning Licence can be found at http://www.cla.co.uk/support/he/HE_TrialPhotocopyingandScanningLicence.pdf.

Other Standard Licences

As well as the CLA blanket licences, educational materials and systems may be licensed under a range of other standard licence terms.

Open source software ('OSS') is software where the human-readable source code is made openly available for copying. While OSS is often described as 'free', this does not mean that it is not subject to licence terms. These may place restrictions on the extent and conditions under which further distribution may take place, or may restrict particular uses of the software. OSS is normally licensed under a General Public Licence, and it is vital to understand the terms of this. While OSS can be used and developed freely it will always be subject to the constraints of the original licence, and may present a range of other copyright risks.

The Creative Commons licence in some ways builds upon the ideas found in the fair dealing defences. It offers a 'some rights reserved' licence of artistic works, which may allow



for use of materials in a VLE. The licence terms have only recently been issued, and more consideration will need to be given, but works licensed under a creative commons licence could prove an important part of developing e-learning systems for use in educational establishments.

Dispute Resolution

The CLA Licences provide that parties should seek to resolve disputes by mediation in accordance with Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedures. The commencement of a mediation will not prevent the parties commencing or continuing Court proceedings, or where appropriate Copyright Tribunal proceedings, nor will it prevent CLA exercising its rights under the licence. However, in calculating expenses the courts may consider the extent to which parties engaged in mediation to establish liability for costs.

With regards to non-CLA licences, mediation in itself is a very appropriate forum for all types of licence disputes, especially within the FE/HE sector, as it is intended to be largely non-adversarial.

Additional Useful Links

Copyright, Designs and Patents Act 1988 at: http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm

OSS Watch at: <http://www.oss-watch.ac.uk/>

Creative Commons UK at: <http://creativecommons.org.uk/>

